Questions for the Record for Miguel Cardona

Committee on Education and the Workforce Hearing:

"Examining the Policies and Priorities of the Department of Education"

May 16, 2023

10:15 a.m.

<u>Chairwoman Virginia Foxx (R-NC)</u>

1. How has the Department prepared student loan servicers for the return to repayment?

Response: The U.S. Department of Education (Department) has been in constant communication with servicers since the beginning of the payment pause. The Department created playbooks for servicers to use for their borrower communications and operations efforts during the return to repayment, all of which have been shared with the Committee on Education and the Workforce as they are updated.

Because student loan servicers play an important part in the Department's efforts to smoothly transition borrowers back into repayment, the Department provided guidance to servicers about returning borrowers to repayment through various channels, including through formal change requests and a communications plan called the *Return to Repayment, Student Debt Relief, and Income Driven Repayment New Communications Playbook: Federal Student Aid's Outreach Plan to Borrowers*. The Department provided this communications plan—referred to as "the Playbook" —to the servicers on July 3, 2023, and also, as of Spring 2024, has provided it to your staff 27 times since July 3. We continue to update this document, as needed, and provided updated versions to committee staff.

2. How has the Department communicated promptly and clearly with student loan servicers about potential difficulties for the return to repayment?

Response: The Department has worked closely with servicers to identify key challenges for return to repayment. The playbooks provided to servicers outline key borrower segments and the role servicers play in supporting at-risk borrowers. The Department communicates with servicers daily and exchanges information about the challenges we have identified and how they can be addressed.

3. Has the Department provided fair and sufficient compensation for student loan servicers to have capacity for the return to repayment? If it has done so, explain how this was done.

Response: The Department continues to work closely with its servicers to ensure a successful return to repayment. In order to adjust FSA's budget to the FY 2023 flatline amount, in April 2023, FSA implemented a modification that reduced monthly loan-status-based compensation rates for loan servicers.

4. Has the Department reduced the service levels provided by servicers and the funding they receive by amending their current contracts while at the same time you have extended those contracts through December 2024?

Response: The Department exercised the authority granted to it by Congress to extend the current loan servicers' contracts through December 2024 to ensure an orderly transition to the Unified Servicing and Data Solution (USDS), our modernized loan servicing environment. As noted in the response to question 3, due to budget constraints, FSA implemented a modification that reduced monthly loan-status-based compensation rates for loan servicers beginning in April 2023.

5. How many written communications explaining the details of the restart has the Department had with loan services from January of this year until the present? Please provide copies of these communications.

Response: The Department has now updated its Communications Playbook 27 times and each time provided it to the servicers, as well as the Committee on Education and the Workforce. These Playbooks provide a comprehensive look at return-to-repayment plans that the Department has outlined for servicers.

6. Have you or Mr. Cordray spoken directly with the loan servicers about the restart at any time during the period January 2023 through the present? What was the topic and content of those conversations?

Response: Yes, FSA's Chief Operating Officer Richard Cordray has spoken directly with the Department's loan servicers about return to repayment on several occasions since January 2023. Other members of FSA's leadership team and staff are in daily communication with servicers.

7. Will you provide information about adjusted compensation to the student loan servicers to ensure they have the additional capacity to return to repayment? Will you include that in your communications to the servicers?

Response: We communicated the April 2023 contract modification referenced in questions 3 and 4 to servicers through the standard contracting processes. As noted above, FSA worked closely with servicers leading up to returning to repayment and continues to do so.

8. Congress has spent staggering sums on COVID education relief. The purpose of these relief funds was to recover from the pandemic, safely reopen, and mitigate the effects of the pandemic. And yet we have reports of numerous school districts using COVID money for things that have absolutely nothing to do with the pandemic. For example, New York used part of the $9 billion it received to provide staff development on "culturally responsive . . . instruction" and "privilege." The California ESSER State Plan indicates that California will spend money on "implicit bias training." Newburyport Public Schools in Newburyport, Massachusetts, spent at least $56,800 in ESSER funds to hire a consultant who coached a high school principal to use a racial slur in front of other faculty members. Can you tell me, in detail, what your Department is doing to prevent these abuses?

Response: The Department is committed to supporting States as they continue to spend the resources provided by the Elementary and Secondary School Emergency Relief (ESSER) program to ensure that students have sustained access to in-person instruction and to provide the academic, mental health, and other supports that will foster a sustainable, equitable educational recovery from the COVID-19 pandemic.

Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, 2021, and the American Rescue Plan (ARP) Act of 2021, Congress allowed very broad uses of funds for the ESSER program. In accordance with the ARP ESSER Interim Final Requirements, States were required to submit plans that detailed how ARP ESSER funds would be used to safely re-open schools and provide academic and mental health supports for school communities to recover from the COVID-19 pandemic. The Department reviewed each State's plan to ensure compliance with the applicable requirements. Under these requirements, State educational agencies (SEAs) had to ensure that local educational agencies (LEAs) developed plans for how they were spending their American Rescue Plan funds for the safe return to in-person instruction and a safe academic recovery.

For an overview of how SEAs and LEAs may use ESSER and Governors Emergency Education Relief (GEER) funds, please see Frequently Asked Question (FAQ) A-3 in the Use of Funds FAQs for the ESSER and GEER programs. Additionally, FAQs A-4, B-13, C-2, C-3, C-4, C-11, and C-14 provide guidance related to professional development activities, including examples of interventions that address and help mitigate the academic and non-academic impacts of lost instructional time. While SEAs and LEAs work diligently to implement programs supported by ESSER funds, the Department continues to provide comprehensive guidance to grantees through webinars, monitoring, technical assistance, and regulatory and informational publications.

To access additional ESSER grantee resources, visit the Department's ESSER web page. You can also find States' Certification and Agreement documents, ARP ESSER grant assurances, and other important grantee communications from the Department.

9. Please provide all communications that you provided to loan servicers, or plan to provide to loan servicers, regarding the implementation of self-certification for IDR plans.

Response: As part of our efforts to support borrowers during the pandemic and facilitate a successful return to repayment for them, we temporarily allowed borrowers to self-certify their income and family size when they applied for an Income-Driven Repayment (IDR) plan. This temporary option to self-certify income was made to provide student loan borrowers with flexibility in response to the extraordinary effects of the pandemic. The deadline to recertify income and family size for an IDR plan was extended to November 1, 2024. The earliest that a borrower will have to update income and family size for their IDR plan to meet that deadline is September 2024. More importantly, the majority of borrowers will now authorize the Department to automatically transfer their tax information from the Internal Revenue Service (IRS), thereby removing the need for borrowers to submit family size and income data and improving program integrity.

10. Please provide all communications that you provided to loan servicers, or plan to provide, as it pertains to repayment.

Response: The Department has provided its Communications Playbook and the 27 subsequently updated versions, to the Committee on Education and the Workforce and will continue to provide updated versions as they are produced.

11. As far as we know, the Garland memo establishing investigation protocols for parents seeking to exercise their First Amendment rights at school board meetings has not been rescinded. Will the Department commit to working with the Department of Justice to see that this memo is rescinded? If yes, please lay out the steps the Department will take and when each step will be completed. If not, please explain the legal justification for continuing to treat parents as threats?

Response: The Department treats parents as partners, not as threats. The Department and the Administration know that parents play a critical role in their children's education, and that education leaders at all levels should provide opportunities for all parents to be heard and be partners in their child's education. The Department prioritizes hearing from parents and families across the country and has provided resources to support parents and families as they engage with local school and district leaders on essential topics, like how educators are supporting students' learning, mental health, and overall well-being.

The Department strongly believes that conversations around the health and safety of our students go best when they are civil and respectful. Strongly held beliefs and passionate advocacy are bedrocks of our nation but, at a time when bullying and hostile environments are all too real, we must make clear that violence or threats of violence against students, parents, educators, administrators, or any member of our school communities have no place in our democracy. The Department remains committed to ensuring that schools are safe, inclusive, and welcoming environments where students can learn and grow, and parents are welcome. The Department will continue to endeavor to hear from as many parents as possible and to engage with them in the most meaningful and effective way, and to support parents in being full partners with their children's schools.

12. Please provide a breakdown of the borrower defense claims that have been approved by a type of institution (public, private non-profit, and private for-profit).

Response: Please see the below table for the number of borrower defense claims that have been approved by type of institution. Please note that the Department has not approved claims associated with public institutions under the borrower defense regulations as of March 2024. However, the settlement agreement in *Sweet v. Cardona, No. 3:19-cv-03674 (N.D. Cal. filed Jun. 25, 2019)*, provided for loan discharges as part of "Full Settlement Relief" on more than 10,000 claims associated with public institutions, as of March 2024.

Public Two-Year Institution	-
Public Four-Year Institutions	-
For-Profit Two-Year Institutions	48,000
For-Profit Four-Year Institutions	33,600
Private Non-Profit Four-Year Institutions	1,200
Private Non-Profit Two-Year Institutions	34,800

Please note that the data in this chart does not include discharges processed as part of group discharges or discharges processed for class members covered by the settlement agreement in Sweet v. Cardona. In *addition, please note that institution type is based on current data for each Office of Post Secondary Education ID and may differ from the institution type during the enrollment period for each borrower/case. All applications approved under the borrower defense regulations to date relate to the following institutions: American Career Institute, the Corinthian Colleges, ITT Technical Institute, Court Reporting Institute, Westwood College, Globe University, Marinello Schools of Beauty, University of Phoenix, DeVry University, and Ashford University.*

Additionally, this data is based on each school's current school type. For example, if a for-profit school was converted to a non-profit school, the borrower's claim would be associated with a non-profit school in the system, regardless of when they attended the school.

13. Has the Department been processing and responding to FOIA requests?

Response: Yes, the Department has been, and continues to, process and respond to Freedom of Information Act requests. In addition to the 2,385 FOIA requests processed in FY 2023, the Department processed 801 Privacy Act requests, 48 FOIA appeals and 24 Consultation requests from other federal agencies.

14. The DC Opportunity Scholarship Program (OSP) has been remarkably successful. Students receiving the scholarships are significantly more likely to graduate than similar students who applied for the scholarships but did not receive them. In recent years, 93 percent of OSP students graduated high school and nearly 90 percent went on to college. The program also scores well for both student safety and parental satisfaction. The average family income for DC OSP families is less than $25,000 per year, and 94 percent of students are African American or Hispanic. Given how well this program has served these families, why isn't the Biden administration doing more to protect and expand the program?

Response: The Administration has maintained funding of $17.5 million through the Congressional annual appropriation process, the same amount the program has received over the last 5 years.

15. In two notices published on April 28, 2023, your Department announced that the American History and Civics Education programs would prioritize awards to school programs catering to "underserved students." Your Department defines "underserved students" as (among other things) LGBT students. What are you doing to ensure that these rules don't encourage schools to provide inappropriate sexual content to young children?

Response: The Department works to improve the educational experiences of all students. The American History and Civics - Academies Program supports projects to raise student achievement in American history and civics by improving teachers' and students' knowledge, understanding, and engagement with these subjects, including principles of the Constitution, through intensive workshops with scholars, master teachers, and curriculum experts. This program is authorized by section 2232 of the Elementary and Secondary Education Act of 1965 (ESEA). The Department encourages applications to include strong partnerships and active, ongoing collaboration among eligible entities, local educational agencies (LEAs), and State educational agencies (SEAs) in their design and proposed implementation. Project activities should reflect the best available research and practice in teaching and learning for all students.

16. Your Department recently published a new notice about the American History and Civics Education National Activities program. Those priorities contain the option—but not the requirement—that students learn about the Constitution and Bill of Rights. In light of the abysmal History and Civics NAEP scores that were recently released, what is the Department doing to ensure there is an emphasis placed on students learning about the Constitution and Bill of Rights?

Response: The Department fully recognizes and respects that curriculum decisions are made at the State and local levels, not by the Federal Government, and does not mandate, direct, or control curricula through this competition. Rather, through the FY 2023 competition, the Department placed an emphasis on the teaching of the Constitution and Bill of Rights with a 5-point competitive priority, which gives applicants the option to apply for additional points if they propose programs to educate students about the history and principles of the Constitution of the United States, including the Bill of Rights.

17. If female athletes are sidelined from participation in women's sports or denied awards or other recognition only because a male who self identifies as a girl competes in this sport, does this constitute sex discrimination under Title IX?

Response: OCR cannot offer opinions about how Title IX applies to the hypothetical factual scenarios raised by this question because whether a particular scenario constitutes sex discrimination under Title IX requires case-by-case determinations, considering all relevant facts and circumstances. However, OCR will evaluate complaints it receives and make fact-specific determinations, as appropriate. OCR evaluates whether a recipient provides equal opportunity to male and female students by evaluating whether students, regardless of sex, have an equal opportunity to access the recipient's athletic program as a whole. *See* 34 CFR 106.41(c).

18. Please provide the following information:

    a. Budgeted and expended amounts for all Section 117 activities in each of FY 2021 and FY 2022.

    Response: Section 117 activities are conducted by manual processes. Any associated costs would be for the personnel compensation and benefits for the staff related to this work for FYs 2021 and 2022. As such, the Department does not distinguish funds related to this particular activity in the budget.

    b. Budgeted and expended amounts for all Section 117 activities in FY 2023 through the date of this letter (April 5th).

    Response: Section 117 activities are conducted by manual processes. Any associated costs would be for the personnel compensation and benefits for the staff related to this work for FY 2023. As such, the Department does not distinguish funds related to this particular activity in the budget.

c. The number of Full Time Equivalents ("FTEs") budgeted for Section 117 activities in FY 2023.

Response: See response to items e – h below.

d. The proposed FY 2024 budget for Section 117 activities.

Response: Federal Student Aid is looking to automate processes related to Section 117. Costs for modernization of this work are still being assessed and were not included in the FY 2024 budget.

e. The number of FTEs to carry out Section 117 activities in the proposed FY 2024 budget.
f. The number of FTEs designated to carry out Section 117 enforcement and investigative activities in the proposed FY 2024 budget.
g. The number of FTEs who are performing Section 117 enforcement activities.
h. The number of FTEs who are investigating the compliance of institutions of higher education with Section 117.

Response: Across the Department, there are 41 staff who have a role in the Department's work on section 117 activities, in addition to other duties these staff may have.

i. The Department's Section 117 website designates only four institutions with investigations or requests as closed under the category "Notices of Investigation and Records Requests" (Georgetown University, Texas A & M University, University of Texas, and University of Alabama).
j. Provide a detailed status report on each of the following institutions of higher education listed under "Notices of Investigation and Records Requests" that appear on the Department's web site:
    i. Cornell University
    ii. State University of New Jersey
    iii. Massachusetts Institute of Technology
    iv. University of Maryland
    v. Harvard University
    vi. Yale University
    vii. Case Western Reserve University
    viii. Fordham University
    ix. Stanford University
    x. Auburn University
    xi. Florida State University
    xii. Georgia State University
    xiii. University of Nevada, Las Vegas
    xiv. University of New Mexico

xv. University of Wisconsin-Milwaukee

Response: The Department has concluded five inquiries concerning institutional compliance with Section 117: University of Nevada, Las Vegas (UNLV), concluded on April 14, 2023; University of Wisconsin-Milwaukee (UWM), concluded on August 31, 2023; University of Maryland (UMD), concluded on September 15, 2023; University of New Mexico (UNM), concluded on March 20, 2024; and Cornell University, concluded on March 25, 2024. During the course of the investigations, the Department engaged with the institutions to discuss and provide technical assistance concerning Section 117 requirements and to request updated or corrected reporting as appropriate, based on the Department's review. The Department closed each of the five inquiries after a review of information submitted in response to the Department's requests, the institution's statutorily required disclosure reports, and, where appropriate, implementation of a corrective action plan.

Each of the institutions has also taken steps to implement procedures and systems designed to address and achieve compliance with the disclosure requirements of Section 117.

The Department's work on these investigations illustrates its commitment to ensuring compliance with Section 117. We are actively engaged with the remaining 10 institutions with open investigations[1], conducting in-depth reviews of information that they have submitted pursuant to the inquiries, as well as their disclosure reports and internal Section 117 policies and procedures; identifying specific areas of concern; providing technical assistance; and making determinations about whether corrective action in the form of updated or corrected reporting is necessary.

19. In an August 16, 2022 letter from Terry Hartle (Senior Vice President of the American Council on Education) to Lisa Brown (General Counsel of the Department), Richard Cordray (Chief Operating Officer of the Office of Federal Student Aid), and Melanie Muenzer (Chief of Staff in the Office of the Under Secretary), Mr. Hartle thanks Ms. Brown, Mr. Cordray, and Ms. Muenzer for providing an "update on the Department of Education's (ED) efforts around Section 117 and answers to questions from our institutional members during our virtual meeting on June 23, [2022]." The letter further states, "The information and presentation by your [ED] teams [were] helpful, and . . . . [w]e were pleased to learn that ED plans to close the outstanding Section 117 investigations that remain open; that ED will address the concerns and issues with the existing reporting portal; and that Section 117 management will be transferred back to Federal Student Aid (FSA)."
    a. Provide the names of the schools with Section 117 investigations that have been closed (as noted in the letter) and the rationale for the closure.

Response: As indicated above, five of the investigations have been closed: UNLV, UWM, UMD, UNM, and Cornell. The Department is actively working on the remaining investigations. Investigations are closed following the Department's review of information submitted pursuant to the inquiry and the institution's statutorily required disclosure reports. Based on the Department's findings as a result of these reviews, and following technical assistance concerning Section 117 requirements, as necessary, the Department requires the institutions to make updated or corrected disclosures and may work with the institution on a corrective action plan prior to closing an investigation.

[1] These institutions are Auburn University, Case Western Reserve University, Florida State University, Fordham University, Georgia State University, Harvard University, Massachusetts Institute of Technology, Stanford University, Rutgers University, and Yale University.

b. Provide a detailed description of the specific "concerns and issues with the existing reporting portal."

Response: Institutions have identified certain limitations and challenges with respect to their experience with the current reporting portal. They have suggested various improvements to the portal including, for example, adding functionality that enables users to "bulk upload" detailed information for multiple transactions and adding functionality that enables users to access, review, and edit previously submitted information. We have been evaluating our ability to make improvements to the user experience with the current reporting portal as well as other ways to address some of the technical feedback received from institutions, and we have made some system enhancements to improve the functionality of the reporting portal. The Department is continuing to assess how to improve the portal to make it easier on institutions, while still protecting information security and data integrity.

c. Provide the reason(s) for, and the legal authority under which, "Section 117 management . . . [has been or is being] transferred back to Federal Student Aid (FSA)," and if the transfer has occurred, when it occurred, and the number of FTEs transferred.

Response: The Department believes that it is advisable for a single office to assume primary responsibility for Section 117 and that Federal Student Aid (FSA) is the appropriate office within the Department to serve in that role. In introductory remarks during a June 2022 webinar, the Department indicated that it would restore primary responsibility for the administration of Section 117 to FSA. The Department reiterated those organizational responsibilities in December 2022 in connection with FSA seeking approval from the Office of Management and Budget (OMB) for a new information collection request for Section 117. Staff in FSA will consult and coordinate as necessary with other offices in the Department, relying on the collective expertise of the entire Department. In particular, FSA will continue to work closely with the Department's Office of General Counsel (OGC) on enforcement of Section 117, with OGC attorneys continuing to work on resolving any pending investigations and advising FSA on compliance more generally. Similarly, FSA will continue to work with the Department's Office of the Under Secretary and the Office of Postsecondary Education to conduct outreach to institutional and other stakeholders and engage with them on Section 117 as well as various other issues associated with research security and integrity.

FSA is well positioned to lead and coordinate the Department's efforts relating to Section 117. First, FSA has consistently been the office within the Department responsible for the systems used to collect data pursuant to Section 117. The Section 117 webpage was recently transitioned to FSA's website. As noted below, FSA is currently evaluating its ability to make improvements to its reporting portal.

Second, FSA already collects data and information from the approximately 6,000 institutions of postsecondary education that participate in the programs of student financial aid under Title IV of the Higher Education Act of 1965 (HEA). Given that many institutions already submit financial and other data to FSA, Section 117 reporting aligns with the types of responsibilities assumed by FSA for other programs administered by the Department. For example, FSA collects and analyzes student information through the Free Application for Federal Student Aid (FAFSA), institutional program and operational data through the Application for Approval to Participate in the Federal Student Aid Programs, and institutional financial data through the eZ-Audit system.

Third, FSA has significant audit and review expertise involving institutions of postsecondary education. As part of its current duties, FSA routinely conducts program reviews to confirm that an institution meets requirements for institutional eligibility, financial responsibility, Clery Act compliance, and administrative capability. FSA's ability to develop a programmatic approach to oversight and compliance is more likely to lead to widespread adoption by institutions of systematic processes for Section 117 reporting and compliance.

d. In the August 16 letter, Mr. Hartle states. "[ACE] would like to follow up regarding the need for timely changes to the reporting portal." Identify in detail the need for any "timely changes to the reporting portal," as well as any changes made.

Response: See above response to question b.

20. Please provide a detailed explanation of the specific actions the Department has taken between January 21, 2021, and the present to enforce the Notice of Interpretation of November 13, 2020 ("The Department's Enforcement Authority for Failure to Adequately Report Under Section 117 of the Higher Education Act of 1965, as Amended").

Response: The Notification of Interpretation entitled *The Department's Enforcement Authority for Failure to Adequately Report Under Section 117 of the Higher Education Act of 1965*, *as Amended,* was published in the Federal Register on Nov. 13, 2020 (85 FR 72567, 68). That Notification of Interpretation is clear that "the Department has authority to implement a range of corrective measures for an institution that violates its [Program Participation Agreement], including termination of the institution's Title IV participation."

On January 9, 2023 and June 14, 2023, the Department published Electronic Announcements [General-23-02 and General-23-48] that notified schools that Section 117 of the Higher Education Act of 1965, as amended (20 U.S.C. 1011f), provides that institutions of higher education (IHEs) must file a disclosure report with the Secretary of Education whenever the institution is owned or controlled by a foreign source or receives a gift from or enters into a contract with a foreign source, the value of which is $250,000 or more, considered alone or in combination with all other gifts from, or contracts with, that foreign source within a calendar year, and advised institutions that the failure to comply with the reporting requirement could result in enforcement action. By its terms, "enforcement action" includes all of the Department's enforcement options, up to and including termination of Title IV eligibility. Additionally, in an effort to further clarify reporting requirements for IHEs, on November 29, 2023, the Department published an FAQ document to provide information and operational guidance on Section 117.

21. Please provide a list of all Section 117-related Program Participation Agreement (PPA) enforcement actions the Department has taken between January 21, 2021, and the present, including the withholding of Title IV student aid.

Response: While the Department has not opened any enforcement actions, if we encounter knowing or willful noncompliance, we will consider all available tools to secure compliance. Historically, the Department has found that compliance errors have not been willful and can be addressed through voluntary action by the institution. However, where appropriate and necessary, the Department will consider pursuing the range of corrective measures available under Title IV. These tools include a referral to the Department of Justice to bring a civil action against the noncompliant institution, if appropriate.

22. Is the Office of Enforcement within Federal Student Aid the office that is charged with enforcing Section 117? If it is not such an office, please name the office charged with enforcing Section 117.

Response: The primary organizational unit in Federal Student Aid that is responsible for Section 117 data collection and enforcing compliance is the Clery Group, which is part of the Office of Partner Participation and Oversight.

23. Please provide all ethics pledges, ethics pledge waivers, ethics agreements, and any outside activity requests pertaining to Department officials who performed work on the *Sweet v. Cardona* settlement agreement or BDR matters, including but not limited to those pertaining to Deputy General Counsel for Postsecondary Education Toby Merrill.

Response: The Department has responded to this document request and will continue to work with committee staff on any follow-up, if needed.

24. Please provide all documents and communications regarding any decision by any Department official to recuse or decline to recuse such official from work related to the *Sweet v. Cardona* case or BDR matters, including any such decision by Deputy General Counsel for Postsecondary Education Toby Merrill.

Response: The Department has been producing documents related to Borrower Defense to the committee separately from this document.

25. With specificity, cite the statements in the Independent Auditors' Report related to the "material weakness" with which the Department partially and fully, respectively, concurs. With respect to statements with which the Department only partially concurs, please describe why the Department does not fully concur.

Response: The Department is confident in the integrity of our programs and our financial operations, as well as their ability to ensure that taxpayer funds are spent appropriately and effectively. These efforts include ensuring that effective internal controls are in place for the underlying data that the Department relies on in our financial analyses.

The Department partially concurs with the statement in the FY 2022 Independent Auditors' Report that noted "Management's internal controls were not properly designed at an appropriate level of precision to address the relevance and reliability of the underlying data used to develop the take-up rate assumption used in the various loan program estimates." The Department does not fully concur with this statement because the processes and controls used to validate assumptions were properly designed and consistent with estimates used in previous years. However, given the inherent risks and challenges associated with integrating a brand-new program of such scope and magnitude into the financial portfolio at the end of the fiscal year, the Department does acknowledge that controls may not have operated as intended due to the lack of strictly comparable federal benefit programs.

26. With specificity, cite the statements in the Independent Auditors' Report with which the Department does not at least partially concur, and describe the reasons for the non-concurrence.

Response: There are no statements in the FY 2022 Independent Auditors' Report with which the Department does not at least partially concur.

27. All communications and correspondence, including but not limited to electronic mail ("email"), email attachments, texts, letters, memoranda, and other documentation and virtual meeting recordings of or between any of the following Department officials (during the period January 20, 2021, through the date the search for the records is conducted) involving assumptions and/or cost estimates for the Biden administration's student loan debt relief plan:

    a. Secretary of Education Miguel Cardona
    b. Under Secretary James Kvaal
    c. Deputy Secretary Cindy Marten
    d. Federal Student Aid Chief Operating Officer Richard Cordray
    e. Deputy Under Secretary and Chief Economist Jordan Matsudaira
    f. Acting Assistant Secretary for the Office of Finance and Operations and Delegated to Perform the Functions and Duties of the Chief Financial Officer Denise L. Carter
    g. Assistant Secretary for the Office of Postsecondary Education Nasser Paydar
    h. Director of Budget Service Larry Kean
    i. Chief of Staff Sheila Nix
    j. Deputy Chief of Staff for Policy and Programs Scott Sargard
    k. Deputy Chief of Staff Donna Harris-Aikens
    l. Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Communications and Outreach, Kelly Leon

    Response: The Department responds to requests for documents directly with the committee, separately from this document. Contact the Office of Legislation and Congressional Affairs at (202) 401-0020 for information about the status of this request.

<u>Rep. Joe Wilson (R-SC)</u>

It is said, as cited by Ranking Member Bobby Scott, that educational opportunities in America are unchanged for decades. I believe this is due to unrealistic federal interference. I have faith in elected local school boards. I believe the Department of Education should be abolished to benefit students, families, and educators.

Gainful Employment Rule

Two years ago, when you appeared before this committee you unconditionally supported the concept that the Department should hold all postsecondary institutions equally accountable. In March 2022, the Department published an issue paper during Negotiated Rulemaking that would recreate the Gainful Employment Rule, applicable only to propriety education and non-degree credential programs. In effect, with your current bifurcated approach, you are not providing students with the assurances they deserve before they spend their time and money pursuing any degree or credential-whether from a proprietary college, a nondegree credential program, or non- profit college. Indeed, just five percent of students are enrolled at institutions that would be subject to this proposal which leaves the vast majority of students unprotected from programs that provide little or no financial value and burdened with catastrophic debt.

1. Given the Department apparently has the authority to create universal accountability across all schools, and given your prior statement, why has the Department proposed an incomplete accountability framework?

Response: The Department does not agree that it has clear authority to establish comparable accountability requirements for all types of programs and institutions that participate in the federal student aid programs. Programs offered at proprietary institutions of higher education (IHEs) and non-degree programs offered at public and non-profit IHEs are required by statute to prepare students for gainful employment in recognized occupations.[2] That statutory language provides the basis to set program eligibility requirements based on average program earnings compared to student debt for those programs or to the average earnings for students who did not complete a postsecondary education program.[3] No comparable statutory basis exists to set program eligibility requirements for degree programs offered at public and non-profit IHEs. The Department has used its authority to disclose program earnings outcomes for all programs that are large enough to support that data and is providing that information under a transparency framework to support students and families making better-informed decisions about the postsecondary educational programs in which the students enroll.

Charter Schools

Mr. Secretary, a 2022 national survey conducted by The Harris Poll found that 81% of parents support expanding the number of slots in existing public charter schools in their area and 78% want more public charter school offerings in their area. Even among parents who might not choose to enroll their own children in a charter school, 84% agree that charter schools should be available to the families who would choose them.

2. Mr. Secretary, I'm concerned about charter schools' access to facilities. Are you aware that access to facilities is the top cost for charter schools to open or expand?

Response: The Department's Charter Schools Program includes two funding streams designed to support facilities-related costs. The Credit Enhancement for Charter School Facilities Program (CE) provides support for charter schools to acquire or renovate facilities, and the State Charter School Facilities Incentive Grant (SFIG) Program provides matching funds for States that provide funding for charter school facilities on a per-pupil basis. Additionally, between September 2021 and March 2022, the National Charter School Resource Center (funded by the Department's Charter Schools Program) conducted the National Charter School Facility Survey to document specific challenges and needs that charter schools across the country face when acquiring, using, and maintaining their facilities. The survey also included questions about the impacts of the COVID-19 pandemic on school facility funding and

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[2]See HEA § 102(b)(1)(A)(i) and (c)(1)(A); 20 U.S. C. § 1002(b)(1)(A)(i) and (c)(1)(a).

[3]See "(b)Proprietary institution of higher education. (1) Principal criteria. For the purpose of this section, the term 'proprietary institution of higher education' means a school that—(A)(i) provides an eligible program of training to prepare students for gainful employment in a recognized occupation;" and "(c) Postsecondary vocational institution. (1) Principal criteria. For the purpose of this section, the term 'postsecondary vocational institution' means a school that—
(A) provides an eligible program of training to prepare students for gainful employment in a recognized occupation;"

operations. The study examined the characteristics and conditions of charter school facilities, schools' access to and ownership of those facilities, and schools' use of facility funding and financing. The main findings of the survey include:

- Most charter schools have been in their facilities for about a decade (or since opening) and plan to remain there for the next decade (68%).
- Permanent buildings are in better condition than temporary or portable buildings, though Title-I schools more frequently rated their permanent buildings as poor or fair. Schools' energy management systems were most often reported as being in poor or fair condition; exterior lighting, security systems, and interior finishes (such as trim) were most frequently reported as features the school facility did not have.
- Approximately 74% of schools reported good or excellent conditions of their permanent buildings; about 25% reported fair or poor conditions.
- A higher percentage of non-Title I schools rated the conditions of their permanent buildings excellent, 13 percentage points higher than the rating of Title I schools.
- School facilities owned by charter management organizations (CMOs) and education management organizations (EMOs) most often rated their permanent facilities as good or excellent (85%), while those facilities owned by an unrelated nonprofit organization or government entity other than the State or school district more frequently rated their facilities as poor or fair (40%).
- About a quarter of schools in the survey don't think their current facilities meet the school's programmatic needs and do not currently have plans to construct or acquire new space.
- On average, schools repaying a mortgage reported that expenses related to facility costs account for 19% of their annual budget and schools paying rent reported that expenses related to facility costs account for 13% of their annual budget.
- Approximately 84% of charter schools have annual facility mortgage/debt or lease/rental expenses.
- Among schools with mortgage or rental expenses, about 32% don't have financing. Schools receive information about facility financing from commercial banks and State or local governments. Nonprofit lenders and private investors also provided information.

- State-level facilities policies that assist charter schools include:
    - Low or no-interest revolving loan funds for public charter school facility acquisition.
    - Per-pupil allocations for the ongoing maintenance and upkeep of school facilities.
    - Charter School Facility Task Forces to study facility access and condition disparities.
- District-level facilities policies that assist charter schools include:
    - Ensuring the availability of empty or under-used school facilities to public charter schools in need of facilities.
    - Including public charter schools in bond offerings.

<u>Rep. Elise M. Stefanik (R-NY)</u>

1. Foreign adversaries, like China and Russia, have taken actions to influence teaching, censor topics, and provide surveillance in U.S. institutions of higher education (IHE).
    a) Do you believe it is important to protect postsecondary education from the influence of foreign adversaries?

Response: The Department supports efforts to protect institutions of higher education against undue foreign influence. In particular, the Department supports efforts being undertaken by national security agencies to understand new and emerging threats by foreign adversaries that influence teaching, censor topics, or provide surveillance. These kinds of threats, often falling under the umbrella of transnational repression, pose a clear concern to colleges and universities. The Department is committed to sharing relevant information provided by national security agencies with stakeholders in higher education.

b) If so, why did you withdraw the rule requiring universities to disclose agreements from Confucius Institutes? How are you planning to mitigate the extremely concerning challenges posed by Confucius Institutes to IHEs moving forward?

Response: According to GAO's October 2023 report on the topic, the number of Confucius Institutes at U.S. universities has significantly declined since 2019, from nearly 100 to fewer than five. That same report also documented several steps that universities implemented to mitigate concerns or risks associated with hosting a Confucius Institute: 1) ensuring that exchange visitors had no decision-making authority on campus; 2) creating accountability for the U.S. director of the Institute to senior officials at the school; and 3) maintaining full control over Chinese language courses by the schools' academic departments or other appropriate units.

With nearly all Confucius Institutes closed at this point, the higher education community is focused on identifying new and emerging threats, in partnership with all relevant national security agencies. Colleges and universities can also apply the steps that GAO's report documented to mitigate risks from other international partnerships.

2. Under the previous administration, the Department opened 19 investigations into institutions that were potentially not in compliance with Section 117. Those investigations alone found $6.5 billion in previously unreported foreign money, including over $1 billion from anonymous donors from both China and Russia.

   a) How many investigations has the Department opened under your leadership?
   b) With the evidence uncovered by the Trump Administration, do you agree that colleges and universities have a history of noncompliance with Section 117 and troubling indifference to accepting large amounts of funding from foreign adversaries?
   c) For the investigations you closed, what is the process for filing that information and who has access to it right now?
   d) Given reporting that your Department has not opened any new investigations, and closed all the previously open ones, what is the Department's plan to mitigate foreign influence on institutions of higher education and ensure IHEs are in compliance with the law?

Response: The Department has not opened any additional investigations. However, this Administration opened one pending inquiry and continues to work to resolve previously opened investigations. When the Department becomes aware of possible noncompliance, we contact the school for additional information and to determine whether an investigation is warranted. The Department first seeks to address any failure to comply through voluntary action by the institution and has resolved several potential issues through this process. Our experience has been that institutions are willing to meet their statutory reporting obligations and are looking to the Department for help in understanding how to do so.

As such, the Department continues to serve as a resource to foster lawful reporting, but will also pursue enforcement action, up to and including termination of Title IV for noncompliance, if warranted.

The Department continues to work through the investigations opened by the previous Administration, thus demonstrating our commitment to ensuring compliance with Section 117. We have not closed all previously opened investigations and are actively engaged with the remaining 10 institutions with open investigations, conducting in-depth reviews of information that they have submitted pursuant to the inquiries, as well as their disclosure reports and internal Section 117 policies and procedures; identifying specific areas of concern; providing technical assistance; and making determinations about whether corrective action in the form of updated or corrected reporting is necessary. Information on closed investigations, as well as on open investigations, can be found at: Notices of Compliance Review and Records Requests | Knowledge Center.

Rep. Bob Good (R-VA)

1. With such patent violations of Title IX by Loudoun County in 2021, the Department of Education's Office of Civil Rights failed to open a Title IX investigation until April 5, 2023, nearly two years after the first sexual assault. As you know, under 34 CFR 100.7(a) and (c) and sections 401 and 402 of the Office for Civil Rights Case Processing Manual, the Department has full authority to launch a directed investigation or compliance review on its own initiative, without the necessity of the filing of a complaint by a student or parent or anyone else. Additionally, I sent you a letter along with other Virginia representatives in October 2021 asking you to investigate the assaults.

    a) Why did the Department of Education wait nearly two years before launching an investigation?

Response: In October 2021, OCR received a complaint alleging that Loudoun County Public Schools (LCPS) failed to respond appropriately to a report that a student was sexually assaulted in May 2021, which is one of the incidents referenced in your letter. OCR dismissed the complaint after we requested, but did not receive, a signed consent form from the student's parent. Additionally, the parents who reported that their child was sexually assaulted in May 2021 announced that they planned to file a federal civil action raising Title IX claims against the school district. OCR's case processing manual has long provided that we will not investigate claims that are pending before a court. We have since received, and opened for investigation, two complaints alleging that LCPS failed to meet its obligations under Title IX relating to sexual harassment.

    b) Will you release publicly all documents related to the decision to wait that long?

Response: Please reference the response above.

2. After the first assault in 2021—which took place when a boy in a skirt entered the girls'

bathroom—the Loudoun County School Board approved a policy that allows students to use locker rooms and bathrooms corresponding to gender identity. Your Department currently interprets Title IX to include gender identity.

a) How would you explain this interpretation of Title IX to the parents of these high school girls who were assaulted?
b) Under the Department's interpretation of Title IX, are female students like these two girls in Loudoun County required to accept any male in their locker rooms or restrooms?
c) What protections have you put in place to make sure something like the Loudoun County sexual assaults never happen again?

Response: Schools receiving federal funds have a responsibility under Title IX to ensure that all of their programs and activities are free from sexual violence or other sex discrimination, and schools must have policies and procedures that govern incidents of sexual harassment and assault. All students are subject to those policies. As the Department has affirmed many times, sexual violence can derail a student from receiving the benefits of their education. Anyone who believes that an educational institution that receives Federal financial assistance has discriminated against someone on the basis of sex may file a complaint with the Office for Civil Rights. The person or organization filing the complaint need not be a victim of the alleged discrimination but may complain on behalf of another person or group.

3. In the Committee hearing, you indicated that the Department would be willing to open an investigation into the threats and intimidation by the "Loudoun Love Warriors" against concerned parents in Loudoun County.
    a) When do you expect the Department to begin investigating?

Response: As stated in the hearing and in the response above, the Office for Civil Rights evaluates complaints that allege that an educational institution that receives Federal financial assistance discriminated against someone on the basis of race, color, national origin, sex, disability, or age. The Department received, and opened for investigation, two complaints alleging that Loudoun County Public Schools did not meet its obligations under Title IX relating to sexual harassment. Those investigations are ongoing.

Rep. Robert "Bobby" Scott (D-VA)

1. The Elementary and Secondary Education Act (ESEA), as reauthorized by the Every Student Succeeds Act (ESSA), contains key assessment and accountability requirements to ensure that states and school districts measure and address achievement gaps and target resources to the schools that need them most. Statewide assessments are one of the most important tools we have to measure and close existing opportunity and achievement gaps. Law requires that summative assessments provide data that is comparable across districts and schools within a state, aligned to state standards, and disaggregated by student group.

States that seek to explore innovation in their assessments have the option of requesting demonstration authority through the Innovative Assessment Demonstration Authority (IADA), however any innovative assessments must produce data that are comparable as required by law. The intent of Congress was that parents whose children attend schools in school districts participating in an IADA pilot can compare the assessment results for that school district to non-participating school districts within the same state, which is why the requirements around comparability are so important.

a. The Department recently solicited comments on whether changes to IADA regulations, including changes to current regulatory options to meet “comparability”, are needed to encourage states to participate in IADA. The Department must recall that in making any changes to state’s options to meet “comparability”, such changes to these options should be within the limitations set forth in Section 1204(e)(2)(A)(iv) of the ESEA to measure whether all students are meeting grade level expectations, among other things. How will the Department ensure that any changes to current regulations meet this requirement?

Response: The Department is committed to upholding the comparability requirements of the ESEA; in fact, our Request For Information directly cited the statutory requirement when soliciting feedback. As noted in our Dear Colleague Letter on IADA from November 2023, we are committed to helping States think about how to evaluate comparability of the existing statewide assessment and the IADA assessment within the parameters of the statute.

b. Further, the Department should assess whether it can provide any information or resources otherwise within the confines of ESEA to help States explore innovation to its assessment systems. What are ways the Department could support States seeking to develop innovation in statewide assessment systems that are outside of regulatory changes to IADA but within the requirements of ESEA?

Response: The Competitive Grants for State Assessment (CGSA) program provides funds to State educational agencies to support improvements to statewide assessment systems. On March 8, 2024, the Department released a notice inviting applications for the CGSA competition, which includes a priority for States to receive funding for up to 24 months of planning to apply for an IADA grant. 89 FR 16750. States may apply for an IADA planning grant now. The Department also assists States by providing technical assistance through a range of opportunities, including through conferences and technical assistance centers, such as the National Center on Educational Outcomes.

2. State accountability systems provide important information on student academic outcomes and help educational decision makers identify and assist low-performing schools. These systems have been in place for many years and were updated to reflect the passage of the Every Student Succeeds Act (ESSA). However, due to the COVID-19 pandemic, states had to make significant changes to their accountability systems, known as amendments or addenda to consolidated state plans. These changes were to be limited to one or two years, depending on the circumstances in the state, and our expectation is that states will resume implementing the accountability systems the Department approved before the pandemic. Meeting the goals of ESSA is critically important, especially for our nation’s most vulnerable children who experienced significant learning loss during the past few years. Thus, as we are emerging from the pandemic, what steps is the

Department taking to ensure that states implement robust systems to address this learning loss and improve the education of our nation's schoolchildren, especially those who are most vulnerable?

Response: The Department approved States' short-term changes to their accountability systems to account for missing or incomplete data during the pandemic. The Department reviewed each proposed change to ensure that it was consistent with the ESEA requirements for State accountability systems. States are encouraged to consider whether their accountability systems are meeting their intended outcomes or whether they would like to make changes. For any change proposed, the Department will ensure that it meets all applicable ESEA requirements.

Rep. Raul M. Grijalva

Title I

1. Secretary Cardona, the Every Student Succeeds Act (ESSA) Title I is a vital program that helps to support children and youth living in poverty access a high-quality education and meet challenging state academic standards. Title I funding supports an estimated 260,000 students living in poverty in Arizona and millions across the country. This funding is used to implement curricular interventions and programing that provide these students with the opportunity to seek a bright future. I'm concerned about the impact of proposed budget cuts that would slash services to our country's most vulnerable students at a time when we need to be investing in them. Can you explain how proposed budget cuts would affect Title I programing?

Response: Any decrease in Title I funding would result in a cut of direct services to Title I schools—including reductions in the number of teachers, instructional support personnel, and other key staff from classrooms— and the students served by those schools. As students continue to recover from pandemic learning loss, these services are vital to provide them the support and resources they need to have access to a high-quality and equitable education.

Funding Cut

2. Secretary Cardona, access to a public education is a gateway to opportunity for millions of kids across the country. It is a mechanism for personal empowerment and social mobility. To ensure that this gateway is accessible to all kids, targeted programs provide support for vulnerable children, including those living in poverty, those experiencing homelessness, and those with disabilities. As you know, my Republicans colleagues have proposed a 22% across the board cut to our federal budget. What programs would be cut as a result of this and what would the impact be, particularly in regard to our country's most vulnerable children?

Response: At the time House Republicans put forth the proposal in early 2023, the Department estimated that a 22 percent reduction would cut approximately $4 billion in funding for schools serving low-income children, impacting an estimated 26 million students and reducing program funding to its lowest level in almost a decade—a cut equivalent to removing more than 60,000 teachers and specialized instructional support personnel from classrooms.

Middle School

3. Secretary Cardona, earlier this congress I introduced the Success in the Middle Act to better support the approximately 19 million young adolescents enrolled in the middle grades. This stems from a growing body of research that highlights the importance of focusing on this age group to address both lifelong educational and health outcomes. Neuroscience indicates that the majority of middle grade students are in a critical stage of brain development that promotes productive adulthood. Additionally, academic interventions at the middle grades level are most effective for addressing high school graduation rates, preparedness for college, and future achievement levels. Can you speak on the work that the Department of Education is doing to support middle grades students?

Response: The Bipartisan Safer Communities Act (BSCA) included $50 million for the Nita M. Lowey 21st Century Community Learning Centers (CCLC) with a focus on increasing attendance and engagement among middle school and high school students: https://oese.ed.gov/files/2022/10/21st-CCLC-BSCA-Memo.pdf

In addition, we've advocated the largest increases in Title I and distributed $130 billion in ESSER to States and districts to fit the needs of their local schools, including middle schools.

American Indian/Alaskan Native

4. Secretary Cardona, we know that American Indian and Alaskan Native populations were among the most academically vulnerable and under resourced groups even before the COVID-19 pandemic. And we know that the pandemic has disproportionately affected these populations.
   a. What steps has the Department is taken to support American Indian/Alaskan Native students through the pandemic?

Response: The Department administered a new program called the American Indian Resilience in Education (AIRE) program, a one-time discretionary grant competition authorized under ARP, to provide awards to tribal educational agencies (TEAs) designed to assist and encourage American Indian children and youth to enter, remain in, or reenter school at any grade level from Pre-K through grade 12, that include at least one of the activities authorized by section 6121(c) of the ESEA. Those activities include a broad range of direct services to American Indian children and youth, their teachers, and families. In addition to regular annual appropriations through the Alaska Native Education program ($45 million in FY 2023, up 23 percent from FY 2022), the Department also awarded $85 million made available through the ARP to support the unique educational needs of Alaska Native children during the COVID-19 pandemic. These projects not only helped provide reliable high-speed internet, devices, and software applications to learners who previously did not have access to those technologies, but also provided critical wrap-around supports to Alaska Native students.

   b. How does the Department work with the Bureau of Indian Education (BIE) to support American Indian/Alaskan Native students?

Response: The Department awarded $1.8 million to BIE-operated schools and $5.2 million to BIE-funded, tribally controlled schools in FY 2023. Additionally, all Title VI, Part A formula grantees in FY

2019 were granted a 12-month no-cost extension for funding flexibility. We also work closely with the BIE to support its implementation of ESEA programs. Due to long-standing challenges implementing Title I, Part A, the Department and the BIE have a corrective action plan (CAP) that has been in place for a number of years. We hold bi-monthly meetings to discuss the CAP and provide support as the BIE addresses the challenges. In the past year, the BIE has implemented its accountability system to identify schools for improvement. We are continuing to work with the BIE as they develop their school improvement plans and publish report cards. In addition to Department staff supporting the BIE, we also have funded additional expert support through the Department's Comprehensive Centers program, providing supplemental funding for a regional center to provide technical assistance to the BIE.

School Librarians

5. I'm concerned about the declining number of school librarians, and the declining percentage of schools that have a school library. 2.5 million students are enrolled in districts where there are no school libraries, 1 out of 10 schools in America don't have a library, and 30 percent don't have a full-time school librarian. We know that school libraries make a significant, positive impact giving kids the skills and inspiration needed to become proficient and enthusiastic readers. What can we do to ensure that all students have access to an effective school library? What is the Department doing to support school libraries and school librarians?

Response: All students should have access to an effective school library and books of their own. In support of this goal, the Department administers the Innovative Approaches to Literacy (IAL) discretionary grant program. Through IAL, the Department promotes innovative literacy programs that support the development of literacy skills in low-income communities, including programs that (1) develop and enhance effective school library programs, which may include providing professional development for school librarians, books, and up-to-date materials to high-need schools; (2) provide early literacy services, including pediatric literacy programs through which, during well-child visits, medical providers trained in research-based methods of early language and literacy promotion provide developmentally appropriate books and recommendations to parents to encourage them to read aloud to their children starting in infancy; and (3) provide high-quality books on a regular basis to children and adolescents from low-income communities to increase reading motivation, performance, and frequency.

IAL received a Congressional appropriation of $30 million for FY 2023, an increase of $1 million from the FY 2022 enacted level. For FY 2024, the program again received a Congressional appropriation of $30 million, or level funding. During FY 2023, the Department awarded $7.7 million in new IAL awards and $22.1 million in continuation awards to the FY 2021 IAL grant cohort. For the FY 2023 grant competition, both absolute priorities centered on projects that are carried out in coordination with school libraries. For an applicant to be eligible for the peer review process, they were to address at least one of the absolute priorities in their grant proposals. In order to support continuation awards for grants awarded in FY 2021 and 2023, as well as approximately $11 million in new awards, the President's FY 2025 budget request includes $30 million for the program.

Book Bans

6. Mr. Secretary, I appreciate your leadership in speaking out about the growing problem of book bans. The American Library Association has been compiling data about library

censorship for more than 20 years, and last year had highest number of censorship reports on record. People tried to remove more than 2,500 different books from libraries around the country. Most of the targeted books were written by or about people of color and LGBTQ people. In addition to targeting individual books, there have been several proposals to expand censorship of library materials in state legislatures, and even in Congress. Mr. Secretary, in your view, why are book bans a problem, and what can we do about it?

Response: When students see themselves and their life experiences reflected in the books they read—for example, through authors or characters they can identify with—it has real impacts on their sense of belonging and increases their literacy and that of all students.

By contrast, when book bans target specific communities, they may violate students' civil rights. To address this challenge, the Department's Office for Civil Rights (OCR) enforces the federal civil rights laws within our jurisdiction, as applicable. In addition, OCR brought on Deputy Assistant Secretary Matt Nosanchuk, who serves as the Department's coordinator on responding to book bans. Matt has been holding trainings for various education stakeholders to help them navigate their duty to provide equal access to education and a supportive learning environment for all.

Student Civil Rights

7. Mr. Secretary, your Department is responsible for enforcing civil rights laws that protect students from discrimination. As book bans are proliferating across the country, we know that schools are disproportionately removing books by or about people of color and LGBTQ people from the reading choices in school libraries. From a civil rights perspective, and in terms of ensuring that all students can learn in welcoming and supportive environments, does this concern you?

Response: In enacting our federal civil rights laws, Congress promised, to every student whose school receives federal financial assistance, an educational environment free from discrimination based on race, color, national origin, sex, disability, and age. When schools remove books in a way that targets specific communities and deprives students of equal access to their education in violation of these civil rights guarantees, such as by creating a hostile environment, that concerns me profoundly. At the Department, we are committed to ensuring that all students have nondiscriminatory access to education, which is essential for students to thrive.

Rep. Frederica S. Wilson

1. In 2021, I hosted a briefing with the Bard Prison Initiative, highlighting the importance of higher education in reducing recidivism amongst formerly incarcerated individuals.
    a. With Pell Grant eligibility for incarcerated individuals arriving in July, how will the Department ensure equitable and widespread access to these newly available funds?

Response: The Biden-Harris Administration believes that the final regulations published on July 1, 2023, are the foundation to ensure equitable and widespread access to high-quality prison education programs. The Department has been engaged in efforts to provide as much policy guidance and outreach to the community as possible. These efforts include:

- Establishing and answering questions through the pep@ed.gov mailbox and continuously publishing new and relevant public Q & A's to the Office of Postsecondary Education (OPE) website;
- Establishing the Prison Education Program (PEP) team, which consists of members from the Office of Postsecondary Education, Federal Student Aid, the Office of General Counsel, and the Office of Career, Technical, and Adult Education to address policy issues and provide continuous guidance. The guidance consists of numerous factsheets, guidance documents, and Dear Colleague Letters;
- Conducting regular webinars and over a dozen presentations and meetings with institutions, accreditors, and other entities to inform stakeholders, answer questions, and provide guidance;
- Meeting with stakeholders regularly;
- Attending conferences, conducting site visits, and attending graduations to highlight the importance and impact of existing Prison Education Programs; and
- Collaborating through bi-weekly meetings with the Department of Justice.

2. Secretary Cardona, as you may know, the President's FY24 budget proposal requested an increase for HBCUs. As a proud alumna of Fisk University, I know firsthand how HBCUs educate our young adults for their respective careers and future endeavors.
    a. As students continue to navigate their educational journey post-pandemic, could you elaborate on the Department's responsibility for ensuring adequate and sufficient funds are made available for those institutions?

Response: HBCUs contribute significantly to our nation and their local economies, and they generate jobs in the rural and urban communities they serve. They have accomplished this despite generations of underfunding. The Biden-Harris Administration remains a strong advocate for ensuring that these invaluable institutions receive the support they need and deserve.

Since taking office, the Biden-Harris Administration has provided unprecedented support for HBCUs, including $7.3 billion in cumulative investment from the Department of Education alone. This includes investments to address campus safety and security. In addition to the proposed increase for HBCUs specifically, President Biden's proposed FY 2025 budget also includes other game-changing funding for HBCUs and their students including:

- $100 million for Research Infrastructure (HBCUs, Tribally Controlled Colleges and Universities, and Minority Serving Institutions)
- $30 billion over 10 years in subsidized tuition for students from families earning less than $125,000 enrolled at HBCUs, TCCs, and MSIs.
- Up to two years of free community college – there are 11 Historically Black Community Colleges

The Department also advocates equitable State funding for these important institutions. In September 2023, Secretary Cardona and the Secretary of Agriculture, Thomas Vilsack, sent letters to 16 Governors emphasizing the over $12 billion disparity in funding between land-grant HBCUs, established under the Second Morrill Act (1890), and their non-HBCU land-grant peers in their States. Each letter outlined the amount that each State's 1890 land-grant HBCUs had been underfunded per student between 1987 and 2020 and offers a suggestion on possible remedies.

3. A 2018 Government Accountability Office report found that Black boys are disproportionately suspended, expelled, referred to law enforcement, and subjected to corporal punishment. Additionally, the Department's Civil Rights Data Collection has shown persistent disparities in the use of exclusionary discipline. In 2014, the Obama Administration published cross-agency guidance, which was intended to support schools in reducing racial disparities in the administration of school discipline, but the Trump Administration later rescinded it.

    a. Secretary Cardona, does the Department plan to reinstate and improve upon the 2014 school discipline guidance? Precisely, how does the Department plan to address discipline disparities?

Response: As you know, OCR enforces several civil rights laws, including Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin by programs or activities that receive federal financial assistance. OCR enforces these laws vigorously with respect to recipients of its federal financial assistance to combat discrimination in schools, including in student discipline, through the investigation and resolution of complaints or compliance reviews and by publishing and widely disseminating documents informing school districts of their legal obligations under these laws.

On May 26, 2023, OCR and the U.S. Department of Justice's Civil Rights Division (Departments) jointly released a Resource on Confronting Racial Discrimination in Student Discipline. The Resource provides examples of the Departments' investigations of such discrimination over the current and two most recent presidential administrations, reflecting the continuity in the Departments' enforcement practices over time and the continuing urgency of ensuring nondiscrimination in student discipline in our nation's schools. The Resource describes how the Departments resolved investigations of 14 school districts in 10 States – Alabama, Arizona, California, Delaware, Maryland, Minnesota, North Carolina, Ohio, Oklahoma, and Utah. These investigations, conducted under Title VI and its implementing regulations, involved concerns of discrimination in schools' use of out-of-school suspensions, expulsions, school-based arrests, referrals to law enforcement, involuntary discipline transfers, informal removals, and other discipline against Black, Latino, and/or Native American students. Several investigations involved multiple statutes, illustrating how legal protections for students may intersect. The Resource also demonstrates ways in which school districts can take steps to proactively improve their administration of student discipline.

Additionally, in March 2023, ED's Office of Planning, Evaluation and Policy Development released a document outlining Guiding Principles for Creating Safe, Inclusive, Supportive, and Fair School Climates. In May 2023, ED's Office of Elementary and Secondary Education (OESE), Office of Safe & Supportive Schools Technical Assistance Centers released a series of fact sheets on how school leaders and members of school communities can support students' social, emotional, behavioral, and academic well-being and success. They are:

- Supporting Students' Social, Emotional, Behavioral, and Academic Well-Being and Success: Strategies for Student and Teacher Support Teams

- Supporting Students' Social, Emotional, Behavioral, and Academic Well-Being and Success: Strategies for Educators and School-Based Staff
- Supporting Students' Social, Emotional, Behavioral, and Academic Well-Being and Success: Strategies for Schools to Enhance Relationships with Families; and
- Creating and Sustaining Discipline Policies that Support Students' Social, Emotional, Behavioral, and Academic Well-Being and Success: Strategies for School and District Leaders.

OESE produced a webinar series on the Guiding Principles for Creating Safe, Inclusive, Supportive, and Fair School Climates document and each fact sheet. Additionally, the Bipartisan Safer Communities Act (BSCA) expands vital mental health services and provides additional support for States and districts to design and enhance initiatives that will promote safer, more inclusive, and positive school environments for all students, educators, and school staff. The BSCA includes $1 billion through Title IV, Part A of the ESEA for SEAs to competitively award subgrants to high-need LEAs to establish safer and healthier learning environments. The Department has provided support and resources to schools and communities regarding the BSCA through the publication of an FAQ document, a webinar series entitled "Building Stronger Connections," and additional information.

4. Secretary Cardona, many students have experienced significant trauma over the last few years because of the COVID-19 pandemic, especially students in economically distressed communities. According to a 2019 Government Accountability Office (GAO) study, schools that adopt a trauma-sensitive approach report many positive outcomes, including decreased disciplinary actions, improvements in school climate, and better relationships between teachers and students and among students.

    a. How are states and districts using American Rescue Plan funds to implement trauma-informed practices and support students' social and emotional needs?

Response: Across the country, States and school districts have been using American Rescue Plan Act funds to address the mental health of students and support their social emotional and academic needs. For example:

- Davis School District (Utah) used ESSER dollars for a teen center to support the 1,300 students who have experienced homelessness or displacement during the pandemic. Teen centers provide students with a safe place to shower, do laundry, study, catch up on learning, receive one-on-one assistance from family service workers, and access critical resources. In addition, Davis School District used ESSER funds to provide support for nursing services and 3 additional personnel to support students with mental and physical health issues.
- Laramie County Schools (Wyoming) used ESSER funds to place behavioral intervention specialists (a combination of social workers, counselors, and teachers) into every school in the district.
- Rochester City School District (New York) used ESSER funds to ensure that every school has at least one full-time counselor. The district implemented a comprehensive school counseling plan and used ESSER dollars for an initiative, which aims to address student behavioral health challenges and build positive relationships at school.
- Winston-Salem/Forsyth County Public Schools (North Carolina) used their ESSER ARP funds to add robust mental health supports, including 30 licensed social workers, to their schools, as well as

a social-emotional program in every school, and provided professional development to educators on trauma-informed practices. To support students with the greatest need, the district hired mentors for one-to-one supports.

- Jefferson Parish (Louisiana) used ESSER dollars to provide registered nurses, social workers, and school counselors in schools. Social workers work in small groups with students who exhibit disruptive behaviors to help them move forward emotionally and academically. Educators have reported that students who participate in these small groups exhibit more engagement and academic success in classrooms.
- To support mental health and well-being, Duval County Public Schools (Florida) used ESSER dollars on telehealth services, which provided medical support services and mental health supports to students, including nursing supports and mental health counselors. This program helped keep students in school due to the flexibility and quick service of virtual mental and physical healthcare; 11,000 students used the telehealth services in the 2022 school year (SY). The district also supported the mental health of its employees.

5. In the 2015-2016 school year, only half of the nation's public schools had a full-time registered nurse (RN) on staff. I sponsored the One School, One Nurse Act of 2023 to ensure every elementary and secondary school has a full-time registered nurse available.
    a. Can you discuss how states and districts utilized ARP ESSER funds to increase their school nurse workforce?

Response: The data collection and reporting requirements that the Department of Education put in place under the COVID-relief programs provide the public with an understanding of how States and local educational agencies are spending the historic levels of emergency funding provided by the ESSER, GEER, and EANS programs. The resulting reports are descriptive in nature – they detail key categories of fund use (such as meeting students' academic needs, ensuring operational continuity, and supporting mental health services); numbers of students served; and, over time, how these investments support individual student groups, including those most impacted by the pandemic. Importantly, these data will not support causality inferences between the services and supports provided by COVID-relief programs and student outcomes.

Data collection will cover six years of reporting, spanning from March 2020 to SY 2024-2025. Beginning with the Year 4 collection covering the 2022-2023 SY that grantees are reporting in the spring of 2024, local educational agencies (LEAs) will respond to the following with respect to ESSER funds:

I. Indicate the total number of ***these specific positions*** supported with any of the ESSER funds for the following positions for the reporting period. Support indicates salaries and/or benefits were partially or fully paid with ESSER funds. *(Note, ESSER refers to ESSER I, ESSER II, and ARP ESSER funds and includes both mandatory subawards and SEA Reserve awards):*
    - Special educators and related service personnel
    - Paraprofessionals
    - Bilingual or English as a second language educators
    - School counselors, school psychologists and/or social workers
    - Nurses

- Short term contractors
- Classroom educators, not covered by previous categories
- Support personnel, not covered by previous categories
- Administrative staff, not covered by previous categories

II. Please provide the count of FTE staff assigned to serve each school in this LEA, regardless of funding source, as of September 30, 2022 *(For example, if one full-time nurse is shared equally by five schools within an LEA, allocate 0.2 FTE to each school served. These data will be merged with school membership data to calculate staff-to-student ratios for the 2022-23 school year.)*:
- Special educators and related service personnel, including paraprofessionals
- Bilingual educators or English as a second language educators
- School counselors, social workers, or school psychologists
- Nurses

Accordingly, the resulting data will not indicate how many of these staff were *hired* through ESSER funds exclusively, only those supported. The Department estimates that these data will be publicly available in 2025.

6. Secretary Cardona, the Every Student Succeeds Act (ESSA) Title I Part D is an important program to help support children and youth who are neglected, delinquent, or at-risk by investing in educational services for these students, providing them with services to successfully transition from institutionalization in juvenile justice facilities to further schooling or employment, and preventing youth who are at-risk from dropping out of school. The COVID-19 pandemic especially impacted this population of students.

   a. What measures is the Department taking to ensure they have complete and accurate data from Title I Part D grant recipients?

Response: The Department has made intensive efforts to improve the accuracy and completeness of data reported on the Title I, Part D program. States face a number of challenges in reporting data on participation in Title I, Part D programs, particularly relating to student outcomes over time. Some States have laws preventing the tracking of student data when youth leave correction systems. This is designed to protect privacy and minimize stigma, but the result is that many States are unable to track outcomes for students served by Title I, Part D over time.

The program serves a population that is uniquely hard to assess because its participants are often outside of regular public school systems. Additionally, the quality of data is limited by State capacity. States receive little funding for program administration and State coordinators for this program typically manage this program in addition to other programs. In addition, turnover for SEA staff working on this program is often higher than in other Federal programs, which provides a challenge in building staff capacity and ensuring stability.

We also review annually the data submitted by States as part of the EDFacts and Consolidated State Performance Review (CSPR) data collections and provide feedback to the States. We recently revised the Title I, Part D data collected in EDFacts and the CSPR, which will be reflected in this year's data collection. These changes focus on reducing burden, clarifying definitions, and providing options to better allow States to report more complete and accurate data. We updated the categories of programs that are reported because some of the previous categories were outdated and did not reflect current practices. This will provide us with better data about the types of programs that receive funding. Additionally, we provided an option to use statewide assessment data to report on the achievement of students in Title I, Part D funded programs.

Our team works with its technical assistance provider, the Neglected or Delinquent Technical Assistance Center (NDTAC), to provide State coordinators with training on data collection and use of data in our annual program directors meeting and other avenues. NDTAC has also developed a data dashboard to give States a greater understanding of the program data and how it can be used. NDTAC and the Department collaborated on a series of communities of practice and offered "office hours" that were focused on data-collection challenges and best practices by States.

b. How is the Department ensuring that states are carrying out their Title I Part D plans, and what oversight is the Department conducting over states' implementation of these programs?

Response: In School Year 2022-23, the Department implemented a new monitoring protocol for Title I, Part D grantees that includes questions relating to how States are carrying out their approved Title I, Part D plans. We provided several training sessions on our monitoring protocol and process and monitored four States in FY 2022. Our monitoring protocols and final reports are posted on the Department's website (see: https://oese.ed.gov/offices/office-of-formula-grants/school-support-and-accountability/performance-review/).

Rep. Jamaal Bowman

1. Given the fact that in 2015-2016 ELs 4-year graduation rate was only 67%, compared to 85% for their non-EL peers (a gap that we saw widen since the beginning of the COVID-19 pandemic), do you believe the President's FY24 Budget request of $1.2 billion in Title III funding is enough to support our states and LEAs in addressing these gaps? What other support from Congress is needed to fully address inequities in opportunities and outcomes between Els and their non-EL peers?

Response: English Learners (ELs) are emergent multilingual students navigating the process of learning one or more languages, which carries tremendous value in today's global economy. The most recent data indicate that the graduation gap for ELs has lessened. In 2022, the graduation rate for ELs was 72 percent compared to 86 percent for all students. However, as noted in your question, gaps remain between ELs and their non-EL counterparts, particularly with regard to access to advanced coursework. According to the 2017-2018 Civil Rights Data Collection, ELs were three times less likely than their non-EL classmates to be enrolled in advanced placement courses, two times less likely than their non-EL classmates to be enrolled in International Baccalaureate courses, and three times less likely than their non-EL classmates to be enrolled in dual enrollment courses when offered by their schools.

The Department is working to address these disparities. Most recently, the Department proposed a new Center on English Learners and Multilingualism as part of the Comprehensive Centers Program. This proposal would create a new center that is focused on increasing technical assistance for state educational agencies and local educational agencies to better meet the needs of ELs. The Department also released final priorities for the National Professional Development (NPD) program, under Title III of the Elementary and Secondary Education Act of 1965, which prioritize bilingual and multilingual teachers to build a strong pipeline of high-quality educators into the profession. Finally, the Department continues to advance our support for educators, parents of ELs, and providers through the publication of the English Learner Family Toolkit and the Newcomer Toolkit, which highlight best practices for meeting the academic and non-academic needs of ELs and newly arrived students.

To further support ELs, the President's FY 2025 budget request includes an increase in Title III appropriations of $50 million above the FY 2024-enacted level to support high-quality language instructional educational programs, teacher professional development, and strong parent and family engagement.

2. How is your Department working to support teachers, students, and equitable access to high quality education in the context of the potential positive and negative impacts that rapidly developing AI technology may have on education?

Response: Building on expert panels and public listening sessions beginning in 2020, the Department released seven recommendations in our May 2023 report "Artificial Intelligence and the Future of Teaching and Learning: Insights and Recommendations", which are grounded in the theme of equity. This report, which is mentioned in President Biden's Executive Order 14110 on *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*, is a foundational source that will inform other resources to ensure nondiscriminatory uses of artificial intelligence (AI) in education. This report includes three recommendations specific to the question of access to high-quality education:

- **Inform and Involve Educators.** The Department will release a toolkit (Spring 2024) for district leaders to improve AI implementation and purchasing decisions. Leaders will be able to assemble technical support modules into a sequence that fits their needs and context.
- **Prioritize Strengthening Trust.** The Department plans to engage and collaborate with industry and education leaders to release a developer's guide (Spring 2024) that includes sections on designing for education, equity and civil rights, safety and security, evidence building, and strengthening trust. Within each of these areas, the guide provides core considerations to safely and

effectively develop AI-enabled educational technology tools and resources.

- **Guidelines and Guardrails.** The Department is working to identify and inventory opportunities to mitigate education-specific AI risks through rulemaking within the Department's current authorities, revised grant priorities, and enforcement through relevant Department offices including the Office for Civil Rights, the Student Privacy Policy Office, and the Office of Special Education and Rehabilitative Services.

The Department's recent AI work focused on K-12 education, but over the next year we plan to develop AI resources (Fall 2024) for technology implementation leaders who are deploying AI systems at institutions of higher education, including their impact on learning opportunities, career pathways, and progression toward a degree, such as access, affordability, student services, and instruction.

3. In October 2022, the White House announced actions across the Federal Government to protect and support the American people in the use of automated systems like Artificial Intelligence, including that the Department of Education will release recommendations on the use of AI for teaching and learning. Do you have any updates on your Department's AI recommendations?

Response: In May 2023, the Department released a new report, Artificial Intelligence and the Future of Teaching and Learning: Insights and Recommendations, summarizing the risks and opportunities related to AI in teaching, learning, research, and assessment. The report recognizes that AI can enable new forms of interaction between educators and students, help educators address variability in learning, increase feedback loops, and support educators. It also underscores the risks associated with AI—including algorithmic bias—and the importance of trust, safety, and appropriate guardrails. The report provides seven recommendations for policy action targeted to education leaders.