

July 19, 2024

Director Hampton Dellinger  
U.S. Office of Special Counsel  
1730 M Street, NW  
Suite 218  
Washington, DC 20036

**Re: Hatch Act Complaint Against Secretary of Education Miguel Cardona**

Dear Director Dellinger:

The Defense of Freedom Institute for Policy Studies (“DFI”) is an independent organization dedicated to defending and advancing freedom and opportunity for every American family, student, entrepreneur, and worker and to protecting the civil and constitutional rights of Americans at school and in the workplace. DFI contributes its expertise to education policy and legal debates and conducts oversight of the U.S. Department of Education (the “Department”) to inform these debates and educate the public on the Department’s programs and activities. DFI writes because we are deeply concerned that Secretary of Education Miguel Cardona has violated the Hatch Act on at least three occasions in the last week.

The Hatch Act governs political activity of federal civilian executive branch employees and prohibits covered employees from using their official authority or influence for the purpose of interfering with an election.<sup>1</sup> Covered employees are prohibited from engaging in political activity while on duty or in a government office or building.<sup>2</sup> In accordance with this prohibition, an employee may not use

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<sup>1</sup> 5 U.S.C. §§ 7321-7326.

<sup>2</sup> 5 U.S.C. § 7324.



his title or position while engaging in political activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office.<sup>3</sup>

On or about July 14, 2024, on the eve of the Republican National Convention and during the heat of the 2024 presidential campaign, Secretary Cardona sent an email<sup>4</sup> from his official agency email account to several hundred thousand Title IV student loan borrowers. In the email, which included the Department's official seal, he thrice cited "Republican elected officials" as the reason for the Department's delay in cancelling certain student loans pursuant to the agency's Saving on a Valuable Education (SAVE) debt cancellation program.<sup>5</sup> Specifically, the Secretary stated as follows:

In recent weeks, several federal courts have issued rulings in lawsuits brought by **Republican elected officials** who are siding with special interests and trying to block Americans from accessing all the benefits of the most affordable student loan repayment plan in history—the SAVE (Saving on a Valuable Education) Plan.

The Secretary went further:

President Biden and I are determined to lower costs for student loan borrowers, to make repaying student debt affordable and realistic, and to build on our separate efforts that have already provided relief to 4.75 million Americans - no matter how many times **Republican elected officials** try to stop us.

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<sup>3</sup> 5 C.F.R. § 734.101.

<sup>4</sup> Exhibit 1 (U.S. Department of Education Email from Secretary Cardona to Andrew re: *The Recent Federal Court Decisions on The Saving on a Valuable Education Income-Driven Repayment Plan*).



Secretary Cardona concluded the email with a final salvo against Republicans:

While we disagree with the **Republican elected officials'** efforts here to side with special interests and block borrowers from getting breathing room on their student loans, President Biden and our Administration will not stop fighting to make sure Americans have affordable access to the lifechanging opportunities a higher education can provide.

On July 18, 2024 (the last day of the Republican National Convention), Secretary Cardona engaged in another anti-Republican diatribe in response to a *Politico*<sup>6</sup> inquiry about the Department's unsuccessful defense against lawsuits filed by numerous state attorney generals seeking to enjoin the SAVE plan:

It's shameful that politically motivated lawsuits waged by **Republican elected officials** are once again standing in the way of lower payments for millions of borrowers.

Secretary Cardona shared that same sentiment in a post<sup>7</sup> on his official Department X account earlier today, July 19, 2024:

It's shameful that politically motived **Republican elected officials** are once again standing in the way of lower payments for millions of borrowers.

The Secretary's repeated use of agency resources to demean, criticize, and disfavor a political party and its elected officials just before, during, and right after

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<sup>6</sup> Exhibit 2 (Rebecca Carballo, "Education Department freezes student loan payments for 8M borrowers," *Politico*, July 18, 2024).

<sup>7</sup> Exhibit 3 (July 19, 2024, X post by Secretary Cardona).



that party's national convention--only months before Election Day in a hotly contested presidential race--constitutes political activity that violates the Hatch Act. The timing (just before, during, and after the GOP convention a few months before Election Day), the frequency (three incidents in a single week), and the content (gratuitous citations to partisan affiliation calculated to harm electoral chances) demonstrate that the Secretary, in his official capacity, has illegally used agency resources (departmental email, seal, staff, and a social media account) to generate opposition to the Republican Party and its candidates and elected officials.

Making these references in these ways constitute political activity that violates the Hatch Act. Because Secretary Cardona made the statements in his official capacity using Education Department resources, he violated the Hatch Act prohibition against using one's official authority or influence to interfere with or affect the result of an upcoming election (here, the elections scheduled for November 5, 2024). The purpose of the Secretary's partisan communications is to discourage voters from voting for a particular party.

DFI urges the Office of Special Counsel to open an investigation into the Secretary's activities and issue appropriate discipline against the Secretary. We also ask that OSC conduct an audit of the Secretary's compliance with the Hatch Act since his appointment to the Cabinet.

We appreciate your attention to this complaint.

Yours very truly,

*Robert Eitel*

Robert S. Eitel  
President & Co-Founder

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## The Recent Federal Court Decisions on The Saving on a Valuable Education Income-Driven Repayment Plan

Andrew,

In recent weeks, several federal courts have issued rulings in lawsuits brought by **Republican elected officials** who are siding with special interests and trying to block Americans from accessing all the benefits of the most affordable student loan repayment plan in history – the SAVE (Saving on a Valuable Education) Plan. I know these rulings can be confusing for borrowers, and it remains our top priority to provide clarity to you and continue our work to make higher education more affordable and accessible for more students from all walks of life.

Let me be clear: President Biden and I are determined to lower costs for student loan borrowers, to make repaying student debt affordable and realistic, and to build on our separate efforts that have already provided relief to 4.75 million Americans – no matter how many times **Republican elected officials** try to stop us. **That's why our Administration will continue to implement the SAVE Plan to the fullest extent possible to help borrowers access lower monthly payments.**

Following the recent court decisions, the SAVE Plan is still available for borrowers to enroll in, and you can still benefit from the vast majority of its provisions. Individual borrowers making \$33,385 or less per year and families of four making \$70,200 or less will still benefit from \$0 monthly payments; all other borrowers can expect to save more than \$1,000 per year on loan payments under SAVE, and all borrowers enrolled in SAVE will be protected from their balances growing because of runaway interest if they are making monthly payments. Although the SAVE Plan's shortened time to loan forgiveness is on hold while the cases continue, we will keep fighting for those provisions and keep you updated with new developments that impact you.

**Starting this month, borrowers' undergraduate loan payments will be capped at 5% of their income because of the SAVE Plan.** Visit [StudentAid.gov/SAVE](https://StudentAid.gov/SAVE) to learn more and enroll in the plan.

Over the last month, as the Department calculated new, lower monthly payments for borrowers in the SAVE Plan, some borrowers might have been placed in a temporary, zero-interest forbearance while their new rates are being calculated. If this applies to you, your loan servicer will have reached out directly, and they will contact each borrower enrolled in SAVE with their new, lower payment amount and their next due date.

In addition to implementing these provisions of the SAVE Plan and vigorously defending the plan in court, the Biden-Harris Administration will also continue our

work alleviating the burden of student debt for millions of Americans. That includes canceling student debt for borrowers under the Public Service Loan Forgiveness program and making fixes to other income-driven repayment plans that were riddled with administrative errors long before our Administration. We are also continuing to pursue proposals for broader student debt relief through separate rulemaking that could benefit tens of millions of borrowers in the future.

While we disagree with the **Republican elected officials'** efforts here to side with special interests and block borrowers from getting breathing room on their student loans, President Biden and our Administration will not stop fighting to make sure Americans have affordable access to the lifechanging opportunities a higher education can provide. We will continue to put the needs of students and borrowers first, help borrowers access the support and resources they need, and make the promise of higher education a reality for more American families.

We'll keep fighting for you!

Sincerely,

A handwritten signature in blue ink that reads "Miguel A. Cardona". The signature is fluid and cursive, with the first name being the most prominent.

Miguel A. Cardona, Ed. D.  
Secretary of Education

400 Maryland Ave SW, Washington, DC 20202

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# Education Department freezes student loan payments for 8M borrowers

By Rebecca Carballo

07/19/2024 11:58 AM EDT

The Education Department will suspend student loan payments and interest for around 8 million borrowers after a Thursday court order blocked the Biden administration's latest repayment program.

Agency officials said they would freeze the loans of borrowers enrolled in the program, known as SAVE, until appeals finish winding [through the courts](#). The plan lowers monthly payments for almost all enrolled and offers loan forgiveness for certain long-time borrowers. The order further upends President Joe Biden's promise to tackle high loan payments for students weighed down by debt.

"It's shameful that politically motivated lawsuits waged by Republican elected officials are once again standing in the way of lower payments for millions of borrowers," U.S. Secretary of Education Miguel Cardona said in a statement. He warned the order would have "devastating consequences for millions of student loan borrowers crushed by unaffordable monthly payments if it remains in effect."

Federal district judges in Kansas and Missouri [blocked key provisions](#) of the plan in June. But a federal appeals court put that decision on hold in July and allowed the Biden administration to move ahead with its lower monthly payments. [Thursday's unsigned order](#), from the 8th Circuit Court of Appeals, completely blocks the program for an unclear length of time.

Critics argue the plan amounts to government overreach and unfairly burdens taxpayers.

"The chaos and destruction this administration is inflicting on the nation's student loan system is unprecedented," House Education and Workforce Committee Chair [Virginia Foxx](#) (R-N.C.) said. "Is it hubris, ignorance, or indifference that encourages the Biden administration to move forward with an illegal agenda that has dangerous repercussions?"

This isn't the first time the Education Department froze payments because of lawsuits. Officials paused about [3 million borrower payments](#) in June after a federal judge in Kansas blocked the administration from reducing them, a part of the plan set to take effect in July. An appeals court later reversed the decision. But the department has paused those borrowers' payments again, along with others in the program. Officials have not yet said when the freeze will take effect.

Mike Pierce, the executive director and co-founder of the Student Borrower Protection Center said the department had few other options. "It's the only way you can be sure you're not violating this court order," he said.

2:50

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**Secretary Miguel Cardona**   
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**Yesterday's ruling from the 8th Circuit blocking President Biden's SAVE plan could have devastating consequences for millions of student loan borrowers crushed by unaffordable monthly payments if it remains in effect.**

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**It's shameful that politically motivated lawsuits waged by Republican elected officials are once again standing in the way of lower payments for millions of borrowers.**

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**Secretary Miguel Cardona** @Sec... · 6h ...

**Borrowers enrolled in the SAVE Plan will be placed in an interest-free forbearance while our Administration continues to vigorously defend the SAVE Plan in court. The Department will be providing regular**

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