



PROTECT the PUBLIC'S TRUST

VIA ELECTRONICAL MAIL

July 23, 2024

Hampton Dellinger
Hatch Act Unit
U.S. Office of Special Counsel
1730 M Street NW, Suite 218
Washington, DC 20036
Fax: (202) 254-3700
hatchact@osc.gov

The Honorable Sandra D. Bruce
Inspector General
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Re: Request for investigation into Hatch Act violations by Secretary of Education Miguel Cardona

Dear Mr. Dellinger and Inspector General Bruce:

On July 10, 2024, Secretary of Education Miguel Cardona sent an email to recipients of federal student loans containing politically charged attacks against Republican elected officials. (Examples of this email are attached as Exhibits A and B). At the time of the email, the general election for federal office holders, including at that time Secretary Cardona's boss, President Joe Biden, was less than four months away – with party nominating conventions set to occur in subsequent weeks.

By all accounts, the email was little more than a campaign communication masquerading as an official update. Throughout the email, Secretary Cardona disparagingly referred to Republican elected officials as “siding with special interests and trying to block Americans from accessing all the benefits of the most affordable student loan repayment plan in history” and promoted President Biden as “fighting” for the recipients. There is absolutely no basis for a reference to political affiliation or reference to the President fighting for recipients other than to expressly advocate for the election or defeat of partisan candidates for elected office. As such, it was plainly partisan political activity, made with the trappings of an official communication paid for with government resources.

Pursuant to your authority under 5 U.S.C. § 1216(a)(1), we request that the Office of Special Counsel promptly investigate Secretary Cardona's conduct as a potential Hatch Act violation based on his use of his official position and federal agency resources to advocate for



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President Biden's re-election and the defeat of his political opponents, and that Inspector General Bruce investigate the misuse of government resources for partisan political ends.

I. Who We Are

Protect the Public's Trust is a group of retired and former public servants dedicated to the idea that public service is a public trust. Too often, we have seen high level public servants play fast and loose with the rules that other government officials have to live with, creating the perception of a two-tiered system and resulting in an unprecedented dip in trust in our elected officials. We believe that the American people deserve a government that is impartial, free from conflicts of interest, and operates without political interference or favoritism. Our goal is to ensure our nation fulfills that promise.

II. Background

Secretary Cardona has led the Department of Education since March 2, 2021. One of his duties leading the Department is administrating federal student loan programs. Under the pretext of updating recipients of federal student loans about "recent Federal Court decisions that affect student loan borrowers," Secretary Cardona sent out a mass-email to federal student loan recipients attacking the Republican political opponents of President Biden and Vice President Kamala Harris, singling them out despite bipartisan opposition to his student loan forgiveness plans, and promoting President Biden and Vice President Harris in advance of the November 5th election.

In the email, Secretary Cardona politically juxtaposed President Biden and Vice President Harris with Republican elected officials, framing President Biden as diligently working to help student debtors and framing Republicans as maliciously trying to block him from doing so:

Let me be clear: President Biden and I are determined to lower costs for student loan borrowers, to make repaying student 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.

...

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.



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Alongside Secretary Cardona's campaign-style rhetoric promoting President Biden's and Vice President Harris's policies and denigrating Republicans, Secretary Cardona also described the Biden-Harris Administration's management of the SAVE Plan in distinctly political terms resembling a political advertisement:

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.

...

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.

Secretary Cardona sent this email with less than four months left before the November 2024 General Election in which President Biden and "Republican elected officials" are candidates.

III. The Law

The Hatch Act prohibits federal executive branch employees from using their official authority or influence to interfere with or affect the result of an election.¹ The Act applies to any individual, other than the President or Vice President, "employed or holding office in . . . an Executive agency other than the Government Accountability Office."²

Under the Hatch Act, a federal employee may not "use his official authority or influence for the purpose of interfering with or affecting the result of an election."³ This includes an official "[u]sing his . . . official title while participating in political activity."⁴ Under federal regulations, "political activity means an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group."⁵

Guidance issued by the Office of the Special Counsel specifically states that covered employees may not "[u]se any email account or social media to distribute, send, or forward

¹ 5 U.S.C. § 7323 (a)(1).

² 5 U.S.C. § 7322(1)(A).

³ 5 U.S.C. § 7323(a)(1); 5 C.F.R. § 734.302(a).

⁴ 5 C.F.R. § 734.302(b)(1).

⁵ 5 C.F.R. § 734.101.



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content that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group” while on duty.⁶

The penalty structure for violations of the Hatch Act by federal employees includes removal from federal service, reduction in grade, debarment from federal employment for up to 5 years, suspension, reprimand, or a civil penalty up to \$1,000.⁷

IV. Analysis

Secretary Cardona’s email is little more than a campaign press release masquerading as an official Department communication. As such, it violates the Hatch Act’s restrictions on partisan political activity.

Secretary Cardona’s email is an official use of both his position and government resources. It was sent from an official government email account. It was signed by Secretary Cardona using his official title as Secretary of Education. It included the Department of Education’s seal. And it was sent to a Department of Education email list targeting recipients of federal student loan benefits.

The language and context of Secretary Cardona’s email classify it as activity directed at the success or failure of a political party and candidate.

First, Secretary Cardona’s email was sent in the context of the 2024 election. The 2024 general election is less than four months away and the campaign for federal offices, including the presidency, is well under way. To wit, President Biden and President Trump—at the time of the letter, the presumptive major party nominees—had already held their first televised debate. Moreover, the Republican National Convention began on July 15, 2024, less than a week after Secretary Cardona’s email.

Second, the email concerns a subject matter that had become a campaign issue. For example, President Biden’s campaign website included a section on student loan forgiveness.⁸

Third, Secretary Cardona specifically places his email in a partisan political context by referring to “*Republican* elected officials” at least three times in a two-page email. The specific reference to “Republican” officials makes explicitly clear that this email is not merely stating the Department’s policy position. It was seeking to score political points in favor of President Biden at the expense of his Republican political opponents. There is simply no objective government justification for referencing party affiliation outside of electioneering purposes.

Fourth, Secretary Cardona’s email draws a contrast between “Republican elected officials,” who are portrayed negatively, and “President Biden” and the “Biden-Harris

⁶ See *Federal Employee Hatch Act Information*, Office of the Special Counsel, <https://osc.gov/Services/Pages/HatchAct-Federal.aspx#tabGroup12>.

⁷ See 5 U.S.C. § 7326(1)-(3).

⁸ <https://joebiden.com/studentloans/>.



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Administration,” which are portrayed positively. For example, the email claims “Republican elected officials” are “siding with special interests” at least twice. Tellingly, this echoes the language President Biden used on his campaign website, which claimed “Republican elected officials and special interests sued to stop” his student loan forgiveness plan.⁹

This is contrasted with President Biden, and the Biden-Harris Administration, which the email claims “is determined to lower costs for student loan borrowers” and “fighting to make sure Americans have affordable access to the lifechanging opportunities education can provide.” Secretary Cardona further characterized President Biden as “determined to lower costs for student loan borrowers [and] to make repaying student debt affordable and realistic” and characterized the Biden-Harris Administration as “put[ting] the needs of students and borrowers first, help[ing] borrowers access the support and resources they need, and mak[ing] the promise of higher education a reality for more American families.”

The partisan nature of the email is even further exposed when one considers that opposition to the Biden-Harris Administration’s student loan forgiveness plan is bipartisan. Recently Democratic senators joined Republicans in a vote to repeal a student loan forgiveness plan implemented by President Biden and Vice President Harris.¹⁰

In short, Secretary Cardona used his official position and government resources to send an email to an official government email list that is explicitly partisan and functionally indistinguishable from President Biden’s campaign materials. This is partisan political activity that is prohibited by the Hatch Act and a misuse of government resources and position that are prohibited under federal ethics rules.

V. Conclusion

Secretary Cardona’s email is precisely the sort of politicking by government officials that federal laws such as the Hatch Act were enacted to prevent.

The context of this email requires immediate investigation. Unlike other recent Hatch Act violations, the nature of this email appears premeditated. This was not an off the cuff comment at a press conference. It was prepared, edited, and sent, presumably, to hundreds of thousands of recipients. Worse, those recipients are individuals who do business with the government and are thus in a vulnerable position relative to the Department of Education.

Moreover, it is highly unlikely that Secretary Cardona personally typed and sent the email in question. Other Department of Education employees were likely involved, whether voluntarily or involuntarily. Thus, it appears that Secretary Cardona not only misused his title and official email lists, but also government staff time.

⁹ See <https://joebiden.com/studentloans/>.

¹⁰ Adam S. Minsky, “These Democrats Just Joined Republicans To Repeal Student Loan Forgiveness”, Forbes (Jun 1, 2023), <https://www.forbes.com/sites/adamminsky/2023/06/01/these-democrats-just-joined-republicans-to-repeal-student-loan-forgiveness/>



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We ask the Office of Special Counsel and the Office of the Inspector General to immediately investigate these allegations, prevent Secretary Cardona from further misuse of his authority to influence the results of the election, and impose penalties as appropriate to reassure the American public that this conduct will not be tolerated. There should not be a two-tiered system of government ethics that subjects prominent White House and Executive Branch Agency officials to a lower standard of scrutiny than other average public servants.

Sincerely,

Michael Chamberlain
Director
Protect the Public's Trust

Exhibit A

Subject: The recent Federal Court decisions that affect student loan borrowers
Reply-To: Secretary of Education Miguel Cardona <noreply@studentaid.gov>

[Click here to view this email as a web page.](#)



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

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 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

If you do not want to receive future FSA informational emails, [unsubscribe](#).

Exhibit B



[REDACTED]@gmail.com>

The recent Federal Court decisions that affect student loan borrowers

1 message

Secretary of Education Miguel Cardona <noreply@studentaid.gov>
Reply-To: Secretary of Education Miguel Cardona <noreply@studentaid.gov>
To: [REDACTED]@gmail.com

Wed, Jul 10, 2024 at 11:32 PM

[Click here to view this email as a web page.](#)



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

[REDACTED]

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.

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We'll keep fighting for you!

Sincerely,



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

[400 Maryland Ave SW, Washington, DC 20202](#)

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