

Congress of the United States
U.S. House of Representatives
Washington, DC 20515

March 12, 2024

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

Dear Secretary Cardona:

As Chairs and senior members of the Committee on Education and the Workforce, which has broad oversight over education and workforce issues,¹ and the Committee on House Administration, which has broad oversight of our nation’s federal election law (together, “Committees”),² we are deeply troubled following the Biden Administration’s (“Administration”) February 26, 2024, announcement that Federal Work-Study (“FWS”) funds can be used to support the Biden Administration’s campaign efforts during the 2024 election cycle.³

The Department of Education’s (“the Department”) currently stated position about the use of FWS funds under the *Higher Education Act of 1965* and regulations is at odds with the Department’s interpretation just two years ago,⁴ despite no underlying changes to the regulations or law governing the FWS program. If taxpayer dollars could be used to fund get-out-the-vote (“GOTV”) activities, it would be highly irregular for such authority to flow through the FWS program. This is particularly true in light of the House Conference Report to the Higher Education Opportunity Act of 2008, in which House and Senate conferees agreed to strike any reference to “voting” as a permissible use of FWS funds for “increas[ing] civic participation.”⁵

¹ Rules of the United States House of Representatives, Rule X(e)(6), <https://rules.house.gov/sites/republicans.rules118.house.gov/files/documents/Rules%20and%20Resources/118-House-Rules-Clerk.pdf>.

² Rules of the United States House of Representatives, Rule X(k)(12), <https://rules.house.gov/sites/republicans.rules118.house.gov/files/documents/Rules%20and%20Resources/118-House-Rules-Clerk.pdf>.

³ U.S. Department of Education Guidance Letter, *Use of Federal Work-Study Funds for Voter Registration* (Feb. 26, 2024), GEN-24-03, <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2024-02-26/use-federal-work-study-funds-voter-registration>. See also *Kamala Harris: Biden Admin Now Paying College Students To Register Voters, Work At Polls*, Daily Wire News (Feb. 29, 2024), <https://www.dailywire.com/news/kamala-harris-biden-admin-now-paying-college-students-to-register-voters-work-at-polls>.

⁴ M.D. Kittle, *Feds Will Pay Students Your Tax Dollars To Help Reelect Biden, In Latest ‘Bidenbucks’ Scheme*, The Federalist (Feb. 29, 2024), <https://thefederalist.com/2024/02/29/feds-will-pay-students-your-tax-dollars-to-help-reelect-biden-in-latest-bidenbucks-scheme/>.

⁵ H. R. REP. NO. 110-803, at 530-531 (2008) (Conf. Rep.) (“The Senate recedes with an amendment to strike ‘**such as voting or running for elected office**’, and to make civic education activities permissible.”) (emphasis added). The text as adopted by the conferees reads: “(e) CIVIC EDUCATION AND PARTICIPATION ACTIVITIES.—“(1) USE OF FUNDS.—In any academic year to which subsection (b)(2)(B) applies, an institution shall ensure that funds granted to such institution under this section are used in accordance with such subsection to compensate (including compensation for time spent in training and travel directly related to civic education and participation activities) students employed in projects that—“(A) teach civics in schools; “(B) raise awareness of government functions or resources; or “(C) increase civic participation ~~such as in voting or running for elected office.~~”

In addition to this action appearing to be partisan and political, your new interpretation raises serious legal questions, and we urge the Administration to retract its recent memorandum.⁶

Additionally, when Congress enacted the *Help America Vote Act of 2002* (“HAVA”), it created the Election Assistance Commission (“EAC”), the only federal agency with an election administration focus, and authorized and appropriated certain payments to states to help them improve the administration of federal elections.⁷ If Congress had authorized taxpayer dollars to be used for get-out-the-vote activities, it likely would have done so in a clear way in HAVA, not through broad language like the FWS’s “public interest” requirement.⁸ In fact, the EAC, the federal agency tasked with overseeing HAVA’s implementation and ensuring its funds are used lawfully, has ruled that HAVA funds *cannot* be used for get-out-the-vote activities.⁹

For Americans to have confidence not only in their elections but also in their federal government, taxpayer dollars should not be used for political ends like get-out-the-vote activities or targeted voter registration drives. As we approach a presidential election this November, we must take steps to bolster voters’ confidence in our election systems and processes so they can have faith in the results. Unfortunately, the Department’s plan to use FWS funds to support the Administration’s campaign efforts seems designed to heighten voters’ already existing distrust in the system in a time when we can least afford it.

We believe that every eligible American who chooses to vote must have the opportunity to vote, that every lawful vote must count, and increased voter registration and participation are goals we share. However, our system requires that all departments and agencies comply with federal law. The FWS program requires work performed by students who are employed by federal, state, or local public agencies, or a private nonprofit organization to “be in the public interest”¹⁰ and cannot involve any “partisan or nonpartisan political activity or . . . [an activity] associated with a faction in an election for public or party office.”¹¹ It is difficult to square these provisions of what is and is not “in the public interest” with the Department’s current position.

The Department’s Dear Colleague Letter (DCL) specified four programs that the Department believes are authorized under the FWS Program. Those include “supporting broad-based get-out-the-vote activities, voter registration, providing voter assistance at a polling place or through a voter hotline, or serving as a poll worker.”¹² When taxpayer dollars are solely responsible for students engaging in these activities in the face of the Administration’s ongoing reelection campaign, the appearance of impropriety should have been more than enough for the Department not to move forward with the DCL.

Notably, the DCL leaves the definitions of “broad-based get out the vote activities,” “voter registration,” “providing voter assistance,” and “serving as a poll worker” open to interpretation. The Committees are not alone

⁶ U.S. Department of Education Guidance Letter, *Use of Federal Work-Study Funds for Voter Registration* (Feb. 26, 2024), GEN-24-03, <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2024-02-26/use-federal-work-study-funds-voter-registration>.

⁷ 52 U.S.C. § 20901

⁸ See 34 CFR § 675.22(a). In fact, taxpayer dollars being authorized to fund partisan get-out-the-vote activities might be a “major question”, requiring clear congressional authorization as it would be highly unusual and ahistorical for taxpayer dollars to be used to benefit a political party. See *West Virginia v. EPA*, 142 S. Ct. 2587, 2614 (2022).

⁹ Funding Advisory Opinion FAO-08-005, U.S. Election Assistance Commission, available at https://www.eac.gov/sites/default/files/document_library/files/FAO-08-005_EAC_1.pdf.

¹⁰ 34 CFR § 675.22(a).

¹¹ *Id.* at § 675.22(b)(5).

¹² *Supra* note 7, *Use of Federal Work-Study Funds for Voter Registration*.

in raising concerns about lack of stable definitions for key terms with respect to ostensibly permitted uses of taxpayer funds in the elections space. In fact, the EAC's lack of official definitions for equivalent terms so concerned the EAC's independent inspector general that that office recently released a management advisory, warning the EAC that "there is a risk that unallowable activities may be taking place because the terms 'voter registration,' 'voter education,' and 'get-out-the-vote' (GOTV) are not defined in [the EAC's governing statute, and] EAC has not adopted its own formal definitions."¹³ In any event, Congress has otherwise provided definitions for "GOTV" and "voter registration activity"—terms that it associates with political party activity.¹⁴ Further, the states have defined what it means to "serv[e] as a poll worker", and state and federal law have defined what it means to "provid[e] voter assistance," but neither of these activities is inherently non-partisan.¹⁵ More specifically, a recent report from the National Conference of State Legislatures explains that "48 states mandate a specific political party makeup of poll workers."¹⁶ Further, because federal law requires that "a voter who is blind or has another disability [be permitted to] receive assistance from a person of the voter's choice . . .", it is not unreasonable to expect that many such Americans may choose a partisan poll worker serving at the individual's polling location.¹⁷ Taken alone, the activities newly permitted by the DCL may seem beneficial, but when they are funded with taxpayer money, the risk of government tipping the scales in favor of a candidate, position, or party reaches new and concerning heights.

Indeed, a photo posted by Vice President Harris on X (formerly known as Twitter) hours before the program was officially announced, only serves to illustrate further the risk that these activities may be abused for partisan ends.¹⁸ The photo included an individual she described as a "nonpartisan poll worker" eligible to participate in the FWS program; yet, it was later revealed that the individual is actually a staff member at the Alliance for Justice and formerly worked for the American Civil Liberties Union of Georgia.¹⁹ While both organizations may operate under the tax code as "nonpartisan" groups, they are certainly not neutral. Americans are well aware that both groups have very strong, left-leaning ties. As such, voters cannot trust that this new program will not run afoul of federal law or be used by partisan students to help their political party win an election.

¹³ *Management Advisory: Define voter registration, voter education, and get-out-the-vote*, Office of Inspector General, U.S. Election Assistance Comm'n (Dec. 12, 2022), <https://oig.eac.gov/reports/other/management-advisory-define-voter-registration-voter-education-and-get-out-vote>.

¹⁴ See 52 U.S.C. § 30101(20). GOTV activity includes "[e]ncouraging or urging potential voters to vote, whether by mail (including direct mail), e-mail, in-person, by telephone (including pre-recorded telephone calls, phone banks and messaging such as SMS and MMS), or by any other means[.]" 11 C.F.R. § 100.24(a)(3). "Voter registration activity" includes "[e]ncouraging or urging potential voters to vote, whether by mail (including direct mail), e-mail, in-person, by telephone (including pre-recorded telephone calls, phone banks, and messaging such as SMS and MMS), or by other means." 11 C.F.R. § 100.24(a)(2). The Federal Election Commission defines "get-out-the-vote activity" as a type of "federal election activity", "a specifically defined term of art for activity by state, district or local party committees and organizations." *Definition of Federal Election Activity*, Federal Election Comm'n, <https://www.fec.gov/help-candidates-and-committees/making-disbursements-political-party/definition-federal-election-activity-fea/>.

¹⁵ *Report: Election Poll Workers*, Nat'l Conference of State Legislatures (June 17, 2020), <https://www.ncsl.org/elections-and-campaigns/election-poll-workers>. See, e.g., Guidelines for Assistance to Voters, N.C. State Board of Elections (Oct. 31, 2020), <https://www.ncsbe.gov/news/press-releases/2020/10/31/guidelines-assistance-voters>; *The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities*, U.S. Dept. of Justice (Feb. 28, 2020), <https://www.ada.gov/resources/protecting-voter-rights/>.

¹⁶ *Report: Election Poll Workers*, Nat'l Conference of State Legislatures (June 17, 2020), <https://www.ncsl.org/elections-and-campaigns/election-poll-workers>.

¹⁷ *Id.*

¹⁸ Vice President Kamala Harris (@VP), X (formerly known as Twitter), (Feb. 27, 2024, 9:53 A.M.), <https://twitter.com/VP/status/1762491168917516552>.

¹⁹ Lawrence Richard, *Kamala Harris praises 'nonpartisan poll worker,' which immediately backfires when people learn who he is*, Fox News (Feb. 29, 2024), https://www.foxnews.com/politics/kamala-harris-praises-nonpartisan-poll-worker-immediately-backfires-people-learn-really?intcmp=fb_fnc&intcmp=fb_fnc.

To assist the Committees in their oversight activities, please provide responses to the following questions (instructions attached) and requests for documents no later than March 26, 2024:

1. In the 2024 DCL, the Department indicates that the letter is a clarification of an April 21, 2022, DCL. Does the 2024 DCL replace the 2022 DCL or is it simply a clarification of its position related to voter registration activities by public entities for purposes of FWS employment?
2. Provide all internal memos, reports, and information that discuss the Department's decision to issue the 2024 DCL.
3. Provide all internal memos, reports, and information regarding requests to review and clarify the Department's position with respect to employment of FWS students in voter registration activities by public entities.
4. How does the Department define "political activity" under 34 CFR § 675.22(b)(5)? What is the basis for that definition? What steps is the Department taking to ensure FWS funds are not used to support "political activity"?
5. Who did the Department consult or seek guidance from in promulgating and developing the 2024 DCL?
 - a. Please list all internal or external entities involved in developing the policy change described in the 2024 DCL, including any elected or non-elected elections officials, elections administration-related trade organizations, and/or any no-profit, tax-exempt, or political organizations.
 - b. Does the policy change described in the 2024 DCL relate in whole or in part to any plan developed by any executive branch department or agency pursuant to President Biden's Executive Order on Promoting Access to Voting?²⁰
 - c. If yes, please provide a copy of such plan(s).
6. Provide an in-person briefing to us on the Department's decision to issue the 2024 DCL no later than two weeks after the date of this letter. Providing the briefing materials 5 days prior to the briefing will enable us to ask questions specific to the information provided.

Americans deserve, and the law requires, a government that in the face of the Administration's reelection campaign, is above reproach and does *not* use public funds to help it get reelected. Unfortunately, through the Administration's DCL and through its turning federal agencies into voter registration centers, Americans should have serious concerns about the even-handedness of election administration in these circumstances. As such, the Committees urge the Administration to retract its recent letter allowing taxpayer dollars to fund get-out-the-vote activities.

²⁰ Exec. Order No. 14019, 86 Fed. Reg 19569 (Mar. 7, 2021). *See also* Letter from the Hon. Virginia Foxx, the Hon. Bryan Steil, et al., to the Hon. Miguel Cardona re: Executive Order 14019 (June 15, 2022), https://mcusercontent.com/67fba463240fdd948eb636b35/files/7870225a-950a-dd34-35a8-ae22432e3fdc/06.15.22_Letter_to_ED_RE_Promugation_of_Promoting_Access_to_Voting_EO.pdf.

The Honorable Miguel Cardona

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If you have any questions or concerns, please email Kent Talbert, Investigative Counsel with the Committee on Education and the Workforce, at Kent.Talbert@mail.house.gov, and Caleb Hays, General Counsel and Deputy Staff Director, Committee on House Administration, at Caleb.Hays@mail.house.gov.

Sincerely,



Virginia Foxx
Chairwoman
Committee on Education and the Workforce



Bryan Steil
Chairman
Committee on House Administration



Mary Miller
Vice Chair
Committee on Education and the Workforce



Laurel Lee
Chair, Subcommittee on Elections
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