



June 25, 2024

The Honorable Miguel Cardona
Secretary
United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Cardona:

Yesterday, two federal judges issued two different orders temporarily blocking components of the Saving on a Valuable Education repayment plan (the SAVE Plan).¹ These court orders prevent millions of people from accessing lower monthly payments and will block hundreds of thousands of borrowers from student debt relief in the weeks ahead.² Both orders are preliminary—no court has ruled on the legality of SAVE. Yet these orders present an unprecedented operational challenge for the student loan system—once again placing every American with a student loan at risk. In response, we are writing today to urge you to suspend all monthly payments, interest charges, and debt collection for all student loan borrowers across the student loan system.³

¹ See Memorandum and Order, *Alaska et. al. v. U.S. Department of Education* (D.KS 2024), <https://storage.courtlistener.com/recap/gov.uscourts.ksd.151881/gov.uscourts.ksd.151881.76.0.pdf>; and Memorandum and Order, *Missouri v Biden* (E.D.MO 2024), <https://storage.courtlistener.com/recap/gov.uscourts.moed.211135/gov.uscourts.moed.211135.35.0.pdf>.

² *Id.*

³ For a discussion of the legal basis for the President to instruct the Secretary to suspend monthly payments, see University of California Student Loan Law Initiative, *HEA Authority and Extending the Payment Pause* (May 3, 2023), <https://www.slli.org/memo-hea-authority-and-extending-the-payment-pause>. Readers should note that this legal analysis was drafted prior to the Supreme Court's decision in *Biden v. Nebraska*; however, as the Supreme Court was asked to interpret the term "modify" in the HEROES Act, which has a separate legal and functional meaning, this decision has no binding effect on the Secretary's authority to "modify" the payment schedule with respect to an individual or group of student loans under the Higher Education Act. However, in *Nebraska*, Chief Justice John Roberts' discussion of the historical and current use of the term "modify" elsewhere in law bolsters the case that the use of the Secretary's power under the Higher Education Act in this manner is consistent with the Supreme Court's view. See also 20 U.S.C. § 1082(a)(4). Moreover, the analysis cited above contemplates the limitations on the definition of "modify" as described in *MCI Telecommunications Corp. v. American Telephone & Telegraph Company, et. al.*, 512 U.S. 218 (1994), which remains the governing standard even after *Nebraska*.

Today, nearly 8 million people are currently enrolled in SAVE—approximately 1-in-5 borrowers repaying a Direct Loan.⁴ These borrowers chose to enroll in SAVE based on promises you and President Biden have both made about lower monthly payments and future debt relief, features now blocked by these court orders.⁵ These court orders will lead borrowers to immediately ask basic questions about the state of their student loans and the terms of their repayment, including:

- Are their current student loan bills accurate?
- How much interest are they being charged?
- Will the amount they are obligated to pay today remain the amount they must pay tomorrow or in three months?
- How long must they make monthly payments until they are debt free?

At this point, due to these blatantly political lawsuits, it appears that the Department of Education does not have answers to these simple questions.

Further, these cases come at a time during unprecedented uncertainty and confusion for borrowers. Millions of borrowers across the student loan system have already experienced a wide range of servicing failures, including missing bills, incorrect payment amounts, and hours-long wait times to reach customer service—a set of failures that disproportionately harm those borrowers serviced by MOHELA.⁶ At the same time, due to multiple, simultaneous servicing platform transitions and servicing transfers, millions of borrowers have been forced into a holding pattern—preventing them from being able to get basic information from their servicer and even accessing their student loan records. The student loan system has proven that it cannot quickly adapt to changing circumstances without causing widespread harm to people with student debt.

Taken together, these court orders and the current state of the broken student loan system present an obstacle that the Education Department’s Office of Federal Student Aid (FSA) cannot overcome. If the student loan system cannot be relied upon to honor borrowers’ rights under the law, then it is incumbent upon you to direct FSA to suspend student loan bills, effective immediately until these court orders no longer pose a risk to all borrowers’ rights under the law. This emergency action should mirror the same terms included in the pandemic-era payment pause—halting interest charges and debt collection while offering credit toward debt cancellation under Public Service Loan Forgiveness and Income-Driven Repayment.

⁴ SBPC analysis of Federal Student Aid data. See, U.S. Department of Education, Office of Federal Student Aid, *Federal Student Loan Portfolio: DL Portfolio by Repayment Plan* (accessed June 24, 2024); <https://studentaid.gov/sites/default/files/fsawg/datacenter/library/DLPortfolioByRepaymentPlan.xls>.

⁵ See supra note 1.

⁶ See, e.g. Office of Senator Elizabeth Warren, *Warren Leads Growing Coalition of Senators Urging Dept. of Education to Hold Student Loan Servicer MOHELA Accountable for Its Failures* (2024); <https://www.warren.senate.gov/newsroom/press-releases/warren-leads-growing-coalition-of-senators-urging-dept-of-education-to-hold-student-loan-servicer-mohela-accountable-for-its-failures>. (“Given the sheer scope of MOHELA’s documented billing errors, poor customer service record, and other problems, alongside the company’s decision to avoid public and private accountability at every turn, ED should take further action to hold MOHELA responsible for its harms and to protect borrowers from future abuses”).

Thank you for continuing to fight for working people with student debt. We stand ready to assist you in carrying out this emergency action—communicating with borrowers about their rights and holding student loan companies accountable when things do not go according to plan.

Sincerely,

Randi Weingarten
President
AFT

Mike Pierce
Executive Director
Student Borrower Protection Center