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EDU UPDATE – JULY 2017

July 2017 EDU Update

By Suzanne Palmer, VP of Government Relations - Blue Chair LLC

This month we're taking a look at recent actions by the Trump Administration, a Federal District Court, and 19 States Attorneys General surrounding Borrower Defense and Gainful Employment.

American Association of Cosmetology Schools v. DeVos

On June 28, 2017, a federal district court judge issued an order partially blocking enforcement of the Gainful Employment (GE) rule for the American Association of Cosmetology Schools, which sued the U.S. Department of Education (the Department) in February to halt the regulation. The judge ordered that the cosmetology schools be given more flexibility in filing appeals of earnings data and that the Department must give those schools more time to file appeals. The order applies only to American Association of Cosmetology Schools programs and was written to avoid "upending the entire GE regulatory scheme."

Following the court ruling, the Department announced on June 30th that it will extend a deadline to file alternate earnings appeals. The Department indicated that within 30 days it would set new deadlines for alternate earnings appeals.

Gainful Employment Delay

Just weeks after announcing that borrower defense would be suspended and GE would be renegotiated, U.S. Department of Education Secretary Betsy DeVos also announced late on Friday, June 30th that she was delaying key provisions of the existing GE rule that were set to go into effect July 1, 2017 citing promises of a "regulatory reset." The Department will give schools until July 2018 to disclose information, including graduate employment rates or debt levels to prospective students. This is a year later than originally scheduled.

More Lawsuits

On July 6th, a group of 19 Democratic state attorneys general filed a lawsuit against Secretary DeVos for delaying implementation of the borrower defense rule. The complaint, filed in U.S. District Court, accuses the Department of violating federal rule-making laws by delaying the updates to the regulation.

The state attorneys case could be bolstered by a recent appeals court ruling striking down the Environmental Protection Agency's (EPA) suspension of new emission standards on oil and gas wells. The EPA used similar reasoning as the Department in delaying the regulation, but the court said that while the agency could reconsider the rule, it could not delay the effective date while seeking to rewrite the statute.

In a separate but related case, Public Citizen and the Project on Predatory Student Lending also filed suit against Secretary DeVos for delaying the borrower defense rule. The consumer groups are suing on behalf of former students of a for-profit school who previously filed a motion to intervene in the California lawsuit to block the rule.

Hearings on Upcoming Negotiated Rulemaking and Comment Period

Finally, on July 10th the Department began the first of two public hearings to hear comments associated with the upcoming negotiated rulemaking (neg reg) process for borrower defense to repayment and GE.

Speakers offered both criticism and praise for the Department's decision to renegotiate borrower defense and GE. While weariness was expressed at the idea of renegotiating rules that took many years and much legal wrangling to complete, speakers representing for-profit, private and community college sectors offered the viewpoint that the metrics should apply to all schools.

A speaker who was a member of the 2013 gainful employment negotiated rule-making committee, Marc Jerome, President of Monroe College, said the Department should stay focused on the data going forward. He said the "silence is deafening" when it comes to the issue of why gainful employment metrics aren't applied to all sectors of higher education. "When you look at data across all of higher education, outcomes for low-income students — whether its graduation rates, or student debt or earnings — are generally abysmal," Jerome said. "And what's happened is the focus on one particular subset of colleges has caused both the entire journalistic community and some of the regulatory community to forget that **the Department has responsibility for protecting all students.**" Meanwhile, David Baime, with the American Association of Community Colleges, argued that the cost of compliance with gainful employment has been burdensome for many public two-year institutions.

The second hearing was held on July 12th. A Department of Education official said the Department anticipates that the borrower defense negotiating committee and GE negotiating committee will begin negotiations in November and December, respectively. A recap of the July 12th hearing will occur in the August EDU Update.

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Suzanne has more than a decade of government relations, advocacy and postsecondary education experience. Former Director of Government Relations at the Association of Private Sector Colleges and Universities (APSCU), she has also worked closely with key veteran service organizations and federal agencies on policies and initiatives to improve the education and educational outcomes of military and veteran students.

