



For-Profit Colleges Challenge Education Department's Rules

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The Association of Private Sector Colleges and Universities is taking on the Department of Education. The organization, which represents some 1500 for-profit education institutions, filed its second lawsuit this year to contest the agency's new regulations aimed at career colleges. The ASPCU won one and lost two in the first suit, and is currently appealing the rulings against it. The most recent suit, filed last week in federal district court in D.C., challenges the DOE's "gainful employment" rule (as well as two related regulations).

The rule requires colleges to demonstrate that at least 35 percent of students are repaying their loans, or that loan repayments do not exceed either 30 percent of students' discretionary income or 12 percent of their total earnings. Schools failing to meet all of these requirements in three out of four years will no longer be able to accept student payment with federal loans.

In a hefty complaint, ASPCU attacks the rule on a number of grounds, contending flaws in the regulatory process and agency overreach. The complaint notes that the DOE's Inspector General is investigating problems with the rulemaking, while members of Congress have called for congressional investigations and review by the DOJ and the SEC regarding allegations of insider trading involving DOE officials. And the complaint's allegations come a day before the Daily Caller's release of an email suggesting potential witness tampering by Senator Tom Harkin's office during congressional hearings into (or rather, against) for-profit education institutions.

Never mind the questions of impropriety...From a policy perspective, two of the more interesting arguments in the complaint involve the gainful employment rule's anticipated consequences:

(1) The rule could lead to an unfair and disparate impact on prospective students from low-income, minority and other traditionally underserved student populations. APSCU argues that the rule, which ties federal funding to the financial success of graduates, will force institutions to restrict enrollment, eliminating education opportunities for those students least apt to obtain profitable jobs post graduation. Those most affected likely will be students from economically underserved areas "because it is those student populations who are the most at risk for failing the Department's arbitrary tests."

This potential consequence demonstrates the importance of carefully analyzing the impact of any new law or regulation while in the drafting phase. Certainly advocates of the gainful employment rule have the intention of helping traditionally underserved



students; they are undoubtedly thinking of those students when devising a rule to address the problem of students being saddled with unreasonable debt. But this rule may have unintended consequences. Students won't have to worry about student loan debt when deprived of the opportunity to invest in an education.

(2) The rule will bind educational institutions to the future employment decisions of their graduates, decisions that are beyond the institutions' control. The gainful employment rule ties access to federal funding to graduates' actual repayment of federal loans or to their ability to repay those loans (the latter being a reflection of how much money the graduate makes in their post-education career). The tricky part is, colleges do not have power over a graduate's actions – they can't control whether a graduate defers loan repayment where able, defaults, or ... backpacks across Europe instead of accepting a lucrative job.

Educational institutions prepare students for employment; they cannot guarantee employment (a thing impossible, especially in this economy) or compel employment. The gainful employment rule puts colleges in the untenable position of warranting students' future behavior. Such an obligation would be problematic in the context of a voluntary agreement between parties; with a federal mandate, it places the schools in an impossible position.

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