



TREADING WATER



Amid controversy and missteps,
the Department of Education is in over their heads

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Although a Department of Education (ED) report released this past August revealed that the career college sector experienced record enrollment of 3.2 million students, an 11.8 percent market share for the 2008-09 academic year, 2010 has been an incredibly tumultuous year for the sector. It started off with the failed negotiated rulemaking committee delivering a set of 14 nonbinding recommendations to the ED that, among other things, sought to eliminate incentive compensation, regulate marketing practices and limit student debt in the sector. While the sector appeared to be willing to swallow most of the proposed new regulations, the effort to limit student debt through the highly controversial gainful employment rule has received much criticism and pushback.

The political pressure intensified by summer as Congress held a series of hearings intended to harangue the for-profit sector for its supposed abuse and waste of the federal financial aid programs. These hearings were themselves controversial. For instance, Steve Eisman, whose occupation as a short seller is a conflict of interest since he likely stands to benefit financially from new regulations on the sector, was invited to testify against the sector.

As perhaps little more than a formality, the ED held a series of hearings on gainful employment in November after having received more than 90,000 comments in response to its latest proposal. Kevin Kuzma, Editor of *Career College Central*, likened the demeanor of

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ED representatives during these hearings to "sheer arrogance – maybe ambivalence – and what seemed like complete disinterest," suggesting that the ED had already "largely made up its mind on the gainful employment issue."

The ED's latest proposal would impose a two-part test to determine whether a program could maintain Title IV eligibility. If instituted in its current state, either of the following two conditions would make a program ineligible for federal financial aid: 1) it graduates carry a debt-to-earnings ratio above 12 percent of total income (or 30 percent of discretionary income); or 2) fewer than 35 percent of students are paying down the principle of their student loans. (There are also some partial and full eligibility conditions that I will not mention here.)

Adding controversy to the series of events this year, there has been recent speculation that the ED leaked information on its proposed gainful employment rules to "supporters of the rules and investors who stood to benefit," prior

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to officially announcing them. Senators Richard Burr, R-NC, and Tom Coburn, R-Okla, recently called for an independent investigation of the matter in an attempt to provide "transparency surrounding the actions taken by department officials and those who stand to benefit financially from the regulations." This was following a Freedom of Information Act request filed in July by Citizens for Responsibility and Ethics in Washington (CREW) that sought details of the communication between ED officials and outside groups. Executive Director of CREW, Melanie Sloan, suggested that "many of those advocating for regulation seem to have a financial interest ... it shakes your faith that the problems they're identifying are real." Lanny Davis, an attorney and self-proclaimed liberal Democrat, wrote in a column for the Huffington Post:

"So many actions, or omissions, by the DOE have left a strong impression of bias – of a stacked deck by the ED targeting just "for-profit" career colleges, ignoring or distorting facts and data, choosing non-transparency over transparency, and an unavoidable impression of anti-business, anti private sector animus."

In addition to the controversy surrounding gainful employment and its unfair targeting of the for-profit sector, a study from the Parthenon Group estimated that "college instructional programs serving about one million college students would become ineligible for federal student loans and about 400,000 would likely drop out of college as a result of the rule." Given that the affected programs largely serve socioeconomically disadvantaged and minority students, the regulation would have a disparate impact on these populations. As a result, many politically important minority leaders (including some members of the

Congressional Black and Hispanic Caucuses, Reverends Jesse Jackson and Al Sharpton, and the National Black Chamber of Commerce) have announced opposition to the gainful employment rules.

With so much controversy and opposition surrounding gainful employment, will the Obama administration proceed with implementing the rules? If this administration is in fact engaged in "a war against capitalism" as some have suggested, then perhaps gainful employment is a done deal and nothing is going to change that. A growing chorus, however, is signaling to Washington that gainful employment is a sour apple and, as Davis has suggested, it is time for the ED to hit the reset button on gainful

employment and let Congress write legislation addressing student debt and financing that pertains to all institutions of higher education, not just the for-profits.

I largely agree with Davis and believe that the ED is in way over its head in trying to regulate colleges out of business using statistical measures that it has trouble calculating correctly. In mid-November, for example, the ED admitted that a "programming error" resulted in it undercounting student loan defaults in its monthly reports due to the exclusion of loans purchased from private lenders. Do we really want to put the future of private career colleges, or any business for that matter, in the hands of federal bureaucrats who will use potentially flawed data and methodologies to determine whether a college can continue to exist?

Given that the American people just elected a new Congress, I believe that the ED needs to forfeit its efforts to further impose strict new regulations on the for-profit sector, or all of higher education for that matter. It should instead leave the matter to our elected representatives, whom we can hold accountable with our vote for their decisions. The American people deserve to be represented in such matters by their elected officials – that is after all the purpose of democracy. 🇺🇸



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