

HAS THE
DEPARTMENT
OF EDUCATION
ALREADY MADE UP ITS MIND?

Despite public hearings and thousands of letters decrying the gainful employment rule, the department seems dead set on enforcing new regulations on for-profit schools

By Kevin Kuzma, Editor



The letters came every day for three months, manifesting the controversy in plain block type and formal salutations. The U.S. Department of Education was inundated with words condemning its newest proposed rule. Normally, rule changes aren't the subject of much

excitement. Sometimes they stir a little controversy, but nothing like this. There was a major backlash to be dealt with, and fast.

Acting on directives from the Obama administration, the department introduced its gainful employment rule months ago, in April. As originally proposed, the most controversial rule in the department's history would eliminate programs at for-profit institutions in which their graduates' debt service-to-income ratio exceeded 8 percent of their total income, or 20 percent of their discretionary income.

The immediate response among educators and executives in the for-profit education realm was less than enthusiastic. During the negotiated rulemaking stages last year, the department took its wobbly first step down the gainful employment path. The rulemaking stages were the first opportunity for for-profit leaders to have a say on the proposed rule, but those conversations between the department and the sector were fruitless since there was no

real data to be debated. This set up the vehement responses that came during the official open comment period for the gainful employment notice of proposed rulemaking, 90 days that delivered to the department some 90,000 letters. The majority fervently opposed the department's proposed measures. Too deep into its own controversy to change direction, Secretary of Education Arne Duncan knew he had only one choice: push the rule back.

Postponing the original ruling date was the first sign that the department would be forced to take a different course of action in regard to gainful employment. Gainful employment was unlike any other rule, so the road to seeing it through would require some extraordinary steps. Those steps have included delaying a ruling on the measure and a series of underwhelming public hearings.

The fear, though, within for-profit education, is that the department is secretly advancing the rule according to plan. Some industry leaders believe the plan is being followed to a T and the Department of Education is simply going through the motions before approving gainful employment as-is. The rule is undeniably part of an agenda related to a presidential administration that has, at times, seemed intent on pushing through



its agenda without considering the views of opponents. And public hearings held earlier this month pushed this belief to the extreme. The department seems to have its mind already made up on gainful employment.

Public posturing

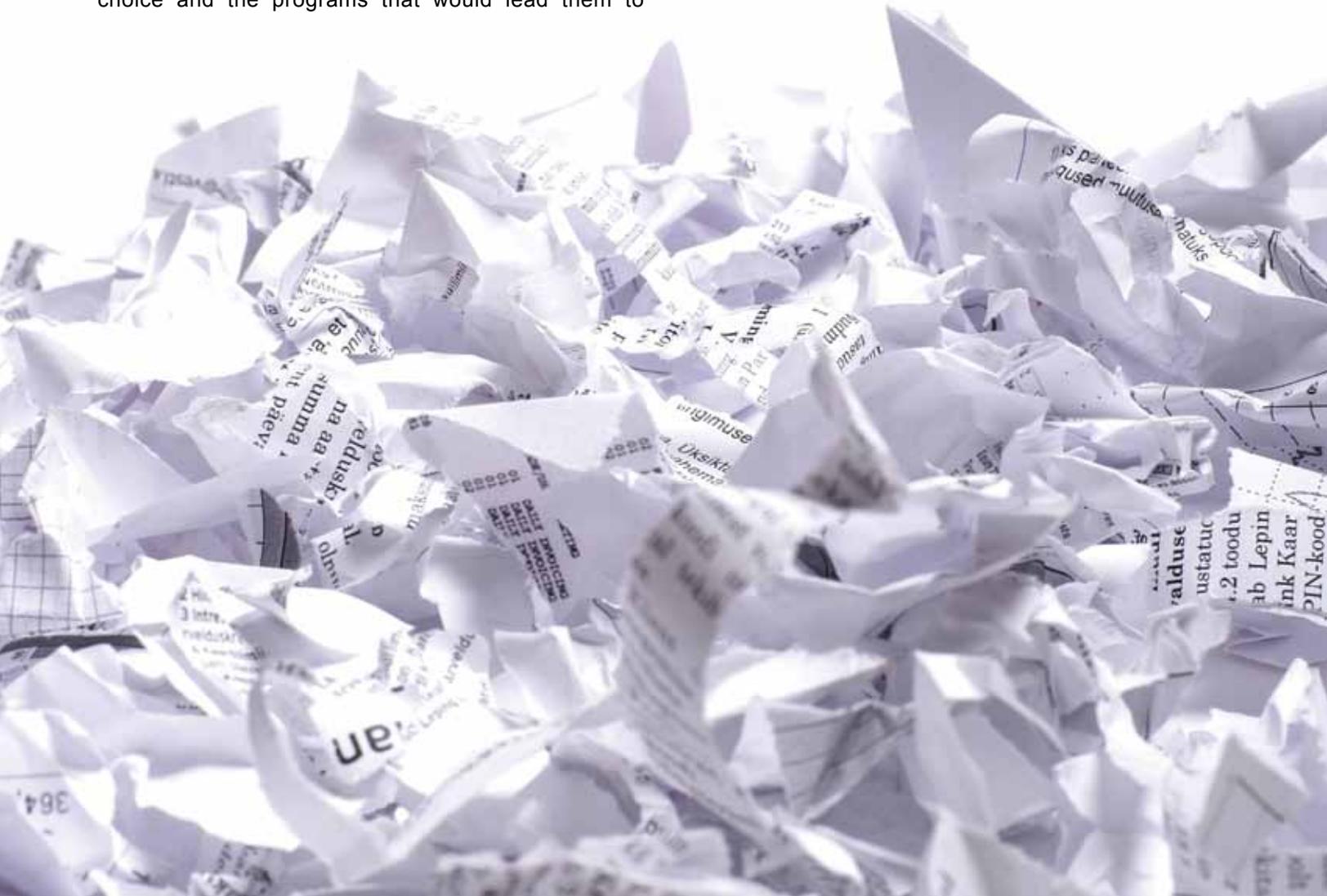
Publicly, the Department of Education has gone to great lengths to show it's trying to include input from everyone who has an opinion on the matter. The rule delay was the first indication, and Secretary Duncan admitted there was no way the department could read the letters and give them proper consideration while sticking to the original timeline. But is the Department of Education going to such lengths to truly consider input from for-profit schools? Or is the department's agenda set and its actions a bluff to make it appear as though for-profit schools were heard from but ultimately overruled?

Simple math could prove to anyone that the department hadn't allowed itself enough time to consider the input from the letters. Legislators and civil rights leaders, including Rev. Jesse Jackson, expressed fears that the rule would limit access to higher education to minorities and women. For-profit school graduates took issue with how the rule would eliminate student choice and the programs that would lead them to

eventual career success. The department had a problem on its hands, and to publicly move forward with the rule without reviewing the letters would have further infuriated those who were already up in arms with the proposal. So, the department backed up the date on when it rules on gainful employment to January 2011.

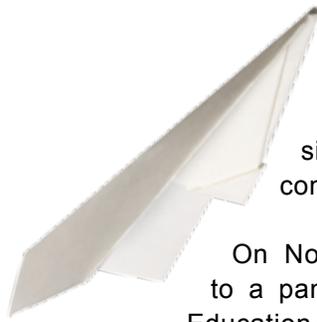
"I think the incredible response demonstrated the deep concern of the public over the adoption of the rule," said Dr. Art Keiser, Keiser University Chancellor and Board Chairman for the Association of Private Sector Colleges and Universities (APSCU). "Although I hope reason and logic will prevail, as of today, I don't believe the department will make major modifications to the proposed rule."

After pushing back the decision date, the Department of Education announced through the Federal Register that it would host a series of hearings on the gainful employment rule at its headquarters in Washington, D.C., as a follow-up to the official comment period. Given the venue and the guest list, the hearings seemed a prime place for some fireworks over the controversial rule. And, while those against the rule



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- Dr. Art Keiser
Keiser University Chancellor and Board
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took the podium and blasted the department to its various faces, what transpired from the department’s side was about as heated as a private conversation in a public library.

On Nov. 4-5, about 60 speakers presented to a panel comprised of three Department of Education representatives, which at times included Undersecretary James Kvaal. The group sat at a short table about 10 feet away from the presenters’ podium and noted before each session began that the panel might ask follow-up questions ... but they never did. Not once.

Graduates, educators, attorneys for civil rights groups, liberal commentators and speakers from associations of industries that hire career college graduates let loose barrages against the rule. They offered sound explanations and logical concerns regarding gainful employment. They spoke in firm voices, yet managed to address the panel respectfully. One after another, for a total of three-plus hours, they destroyed the foundation supporting the department’s rule.

Next speaker, please

Speaker after speaker finished his or her remarks, only to be greeted with this reaction from the panel: “Thank you; next speaker, please.” And there was hardly any space between the speakers’ words and that statement, whether delivered by Eduardo Ochoa, Assistant Secretary for Postsecondary Education, or Kvaal. The panel offered no rebuttals or clarifying questions.

The panels changed by the session – and sometimes at mid-session.

Kvaal was particularly hard to pin down. He started each two days’ morning sessions, and then turned his seat over at the first intermission during both sessions he led. Secretary Arne Duncan? He never made an appearance.

Granted, public hearings are not like congressional hearings with a back-and-forth between the government officials and the witnesses. They are just set



A CHANCE TO SPEAK

More than 60 speakers stepped to the podium during the gainful employment public hearings hosted by the Department of Education in Washington, D.C., Nov. 4-5. *Career College Central* was there tweeting just about every word. Here are some of the top tweets summarizing our thoughts, and comments from the occasionally vitriolic addresses:

Tony Guida, EDMC: GE would have a negative and significant impact on our low-income, minority students.

Christopher Bar, Illium College: We have serious concerns about the inequity of GE.

Ben Burton, Ivy Tech: Requiring additional layers of federal approval on new programs is unnecessary and redundant.

Regency Beauty Institute: Make the sole metric debt-to-earnings ratios based on BLS data.

Is anyone in favor of gainful employment? If so, they aren't here to show their faces this morning.

Belinda Keiser: GE would limit student choice and cripple our country's ability to compete.

Ian Gill, International Academy of Design & Technology: Come to our graduations/see parents' overwhelming pride.

Joe Hardiman, Le Cordon Bleu: I know the industry. I know our students. I know we provide the education they need.

National Latino Coalition: In the Latino community, career colleges are highly valued and a popular choice.

Not a single question from the DOE panel. No exchanges. No comments. These people came a long way to hear themselves talk.

Stone Stossic, Bryant and Stratton:

We've hesitated on developing more urban core campuses due to GE.

The final session is about to start. Like yesterday, it looks like Kvaal is gonna miss this later hearing, too.

Bob Collins, Apollo Group: Any good public policy should be applied broadly.

Chef Carolyn Mason: Attending a 4-year school was not an option for me.

Lisa Miracle, Madison Adult Career Center: Students who may not otherwise step foot on a college campus come to us.

Miracle: Ohio's lost 400,000 jobs. When education is so important, I don't want to see programs lost.

National Black Chamber of Commerce: We believe this rule discriminates against minority students. It's an inappropriate response.

Deviv Fernandez, former civil rights advocate: Education is the pillar of our working class.

National Restaurant Association: Concerned with the potential elimination of culinary arts programs.

Lanny Davis: Our schools provide a clear path for non-traditional students. Put an amber light on. Do a scalpel approach, not a broad hatchet.

Harris Miller, APSCU: Students who graduate from schools with higher debt-to-income ratios have lower defaults.

So, now what, DOE? You've read the letters. You heard the comments. Either pull the plug or start re-drafting.

piece presentations. But the department said nothing substantial, and the lack of reaction on the department's behalf had several presenters and audience members wondering if the department's perceived rudeness was a comment on the importance – or lack thereof – of the hearings.

If the department's intentions were in the right place, the panelists didn't offer enough dialogue to discount the negative feelings that might be building. Their demeanor created an impression among many in the for-profit crowd in the audience: sheer arrogance – maybe ambivalence – and what seemed like complete disinterest.

Despite extraordinary measures, the sentiment still lingers: the department hasn't been openly exchanging information and feedback with for-profit schools throughout the process until recently. Harris Miller, President of APSCU, said that, theoretically, back-and-forth conversations with the department should have begun before the public hearing phase, during the negotiated rulemaking stages in late 2009 and January 2010. He said those exchanges didn't

occur "in large part because no one had any real data, so the battle was simply ideological. There is still a huge ideological component to the debate, but at least there are some (indisputable) facts on the table."

Miller said a meeting he had with Duncan and his staff this month lasted well over the allotted timeframe and offered more "substantial" conversations than his previous meetings with the Secretary.

"We've managed to convince them that gainful employment is a big risk; that hundreds of thousands of students would be affected if these programs are lost," Miller said. "The DOE says that students will find alternatives. But there aren't that many alternatives. They argue that it's okay if these programs are lost, but the data certainly doesn't support that conclusion."

The matter comes down to authenticity. In January, when the final language of the rule is released, it will be clear to the for-profit sector exactly how much their input factored into the final rule. The mid-term election shook up some power in Washington. The Republicans will control the House of Representatives,



WHAT'S ARNE SAID?

Open exchanges between the for-profit sector and the Department of Education have been limited and, according to those involved, only recently become substantive. While pushing the rule forward, Secretary Arne Duncan has made time to be interviewed and to submit letters about his position on the rule and its progress. Here's a sampling of some quotes:

"We share a goal of ensuring that all Americans get the education and training needed to find meaningful and rewarding work. Every institution of higher education is our partner in that effort."

Department of Education Press Release
Oct. 28, 2010

"We put on the table for discussion a number of suggestions, including re-examining the relationships between student debt and potential earnings in the occupation students are being trained for, the rates of students completing a program and getting jobs, and the rates of students repaying federal loans. Unfortunately, the negotiators did not reach complete agreement on a proposal. Indeed, the representatives of those schools most affected by the gainful employment rule declined to negotiate on these proposals."

AOL News
April 21, 2010

"These schools – and their investors – benefit from billions of dollars in taxpayers' subsidies, and, in return, taxpayers have a right to know that all of these programs are providing solid preparation for a job."

Department of Education Press Release
July 23, 2010



“We’ve managed to convince them that gainful employment is a big risk; that hundreds of thousands of students would be affected if these programs are lost.”

- Harris Miller

President of the Association of Private Sector Colleges and Universities

which means some of the career college sector’s biggest champions will be in positions to protect its interests. Incoming House Speaker John Boehner, R-Ohio, in particular is considered an ally to the for-profit sector since earlier this decade he led an effort to eliminate provisions in federal law that hindered for-profit schools.

On the legislative front, the shift in power in the House will toughen the Obama administration’s chances of forwarding legislation targeting the sector. The changeover in power also might complicate the administration’s plans to finalize gainful employment. And while what happens with the rule is on the forefront of everyone’s minds, the sector will indefinitely need to continue working with the Department of Education for the long term. The relationship might be improved if one were willing to listen to the other. If one side doesn’t already have its mind made up, the process might go a little smoother. ■

