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Familiar Arguments and Nuanced Critiques Are Voiced at Hearing on Controversial Rule

By Goldie Blumenstyk

Washington

At an unusual public hearing on Thursday, a parade of critics of the U.S. Department of Education's planned "gainful employment" regulation decried the proposal as "anti-business" and "illogical, unfair, and beyond the agency's authority," while supporters of the rule backed it as a "necessary and important safeguard" that, if anything, needed to be made even tougher.

The comments came during the first of two days of meetings the department is holding to hear, in person, from some of the 90,000 or so people and organizations that submitted a record number of comments about the proposed rule. The next session is tomorrow.

As proposed, the regulation could eliminate federal financial aid for career-focused programs at for-profit and nonprofit colleges where high proportions of students are not repaying the principal on their student loans or end up with excessive debt loads for the salaries they can earn. The proposed regulation has been the focus of intense debate, heated lobbying, and some high-profile media campaigns by the for-profit-college industry.

At the sessions on Thursday, most speakers used their five minutes at the podium to politely but pointedly revisit some of those same issues.

'A Perverse Incentive'

Sheryl Moody, a regulatory lawyer for a college company called Anthem Education, with 23 institutions in 15 states, questioned the department's decision to base the regulation in part on the numbers of students who were repaying principal on their loans. "If you wanted to measure student-loan defaults, you would have used the cohort default rate," she said.

Advocates of the regulation say the use of repayment data is more reliable than the default data because the "default management" activities of for-profit colleges can obscure how many students are able to repay their loans. At the session on Thursday, Justin Draeger, president of

the National Association of Student Financial Aid Administrators, warned that using repayment data as the standard could "introduce a perverse incentive" to discourage students from making use of student-loan options like income-based repayment plans or deferrals and forbearances.

Meanwhile, the legislative director of the United States Student Association, Getachew Kassa, urged department officials to add a provision to the regulation that would send students warnings directly from the government if they were enrolled in programs whose students were found to end up with high debt relative to their income.

Angela Peoples, the policy and advocacy manager for Campus Progress, an arm of the Center for American Progress, said the loan-repayment standard in the proposed regulation was too lax because it would still allow programs to continue even if more than half of its former students were not repaying their loans.

Rule Covers Nonprofits as Well

For-profit colleges have been most active in opposing the rule, but according to Terry W. Hartle, senior vice president for government and public affairs at the American Council on Education, it could actually cover about 53,000 programs, of which 80 percent are at nonprofit and public colleges.

Speaking for the council and 58 other higher-education organizations, he suggested the department consider several exemptions to streamline the paperwork for institutions and the department itself. Those exemptions, he said, should go to institutions where programs that specifically train students for gainful employment make up less than 5 percent of all offerings, and also to programs where levels of borrowing are low.

The department also heard on Thursday from business leaders, including representatives from the U.S. Chamber of Commerce, who called for the regulation to be withdrawn altogether, and from the leaders of hospitality-industry associations from South Carolina and Nevada, who said the rules would hit hard at culinary programs from which many of their members draw employees.

David Bergeron, acting deputy assistant secretary for policy, planning, and innovation at the department, said the sessions were helpful. "We heard some things we hadn't heard before," he said, during a break. But he gave little hint as to whether the comments would result in changes in the final regulation, expected to be published in early 2011 and, barring a court challenge (which

several critics have already hinted at), go into effect in July 2012.

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