

News

As the Regulatory World Spins

May 4, 2011

WASHINGTON -- It's hard to know whether officials at the U.S. Education Department are masochists or sadists (they'd probably just say they're doing their jobs). But just as the department took steps late Monday to wrap up one regulatory process that has been painful for colleges and the agency alike, it set in motion another.

The idea that the department is close to completing the two-year-long process of crafting new rules to ensure the integrity of federal financial aid programs may be wishful thinking for the department (and, perhaps, for some of us who have followed its ins and outs religiously). Several of the rules remain enormously contentious, and college leaders are still asking the courts and Congress to try to stop them.

But Education Department officials continue to send signals that they have no intention of backing away from the most controversial of the regulations -- the one that would require colleges that offer vocational programs to show that they are preparing students for "[gainful employment](#)." On Tuesday, a department spokesman confirmed that the agency had sent a revised version of the regulation to the White House Office of Management and Budget for its review, which should start the clock for a final release of the rule.

For-profit colleges vehemently challenged a draft version of the gainful employment regulation last fall, and [officials of the institutions have sued](#) to block the department from promulgating a new version, and [urged Congress](#) to block it, as well. Critics of the rule, which would establish a set of new metrics (largely focused on loan debt and repayment) to gauge programs' success in educating graduates, have complained that it would unfairly pick on their institutions and deny access to college for many students, particularly those from disadvantaged backgrounds. In [a statement Tuesday](#), a lobbying group for for-profit colleges assailed the news that the department was proceeding with the rule.

The critics have hoped that their pressure, even if it fails to fend off the new regulation, will lead the department to significantly alter it, ideally by abandoning the measure that would judge programs' value in part by linking graduates' incomes to their levels of student debt.

But the department, backed by many groups that represent nonprofit colleges or advocate on behalf of low-income students, indicated last month that it had no intention of ditching the debt-to-income ratio in the revised version of its gainful employment regulation. Under an agreement between the Education Department and the Social Security Administration, which was released as part of an inquiry by Sen. Orrin Hatch (R-Utah), the Social Security agency will provide the Education Department with income data on vocational programs' actual graduates beginning next year -- information that the agency would need to carry out the debt-to-income approach.

So while department officials might adjust the ratios the agency uses in the new version of the regulation, it is "fair to say" that the agreement with the Social Security Administration shows that the Education Department will not abandon the debt-to-income approach altogether, a department spokesman said Tuesday.

Another Round of Rule Making?

With the rules on program integrity not even in the rearview mirror yet, Education Department officials [said Tuesday](#) that they would [contemplate drafting new regulations](#) on teacher preparation and student loans and solicit ideas this month for steps the agency might take to improve college completion.

The department's announcement said it would hold three public hearings and a series of roundtable discussions in conjunction with those hearings. In an interview Tuesday, David A. Bergeron, deputy assistant secretary of policy, planning and innovation, said that the department was likely to consider drafting new regulations for student loan programs, including policies for forgiving the loan debt of students with "total and permanent disabilities," which have come under scrutiny in [several investigative news articles](#).

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The roundtable discussions are designed, the department's announcement said, to "inform our postsecondary education policies in three key areas -- teacher preparation,... college completion, and First in the World," a competitive grant program that President Obama's 2012 budget proposes creating to improve college completion, access and quality.

Bergeron said the department would not begin these discussions with the intention of eventually producing regulations in areas such as college completion. "But once you get out and talk to people," he said, "anything's possible."

— **Doug Lederman**

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