

Advertisement



News

Showdown in the Offing

December 23, 2010

WASHINGTON -- Three years ago, Congress stopped then-Education Secretary Margaret Spellings dead in her tracks. Cheered on by college leaders, Senator Lamar Alexander and other lawmakers -- irked by the Education Department's aggressive attempts to regulate higher education accreditation and by what they perceived to be the executive branch's encroachment on their turf -- **took several legislative steps** that **effectively blocked the department** from issuing **new rules** on student learning outcomes.

The players and the issues have changed, but signs are emerging that a similar showdown could unfold early next year over the Obama administration's plan to require for-profit colleges and other vocational programs to prove that they prepare their graduates for "gainful employment." Exactly how such a showdown would shake out is hard to predict, but the likelihood of it taking place grew significantly in recent days.

Citing what he called the "extraordinary bipartisan nature of opposition in Congress" to the Obama administration's regulatory approach to for-profit colleges, the incoming chairman of the House of Representatives education committee said in an interview this week that lawmakers would pursue legislation aimed at stopping Education Secretary Arne Duncan from putting in place the department's complex proposal to assess the quality of vocational programs based largely on the ability of former students to repay their student loans.

"We -- and here I'm talking about a lot of members of the House, in a bipartisan way -- think the secretary needs to change his approach," said Representative John Kline, the Minnesota Republican who will head the House Committee on Education and Labor when the 112th Congress convenes in January. "We are hopeful that he will look at [our concerns] and go back and talk to his folks, and that he will change his approach. But it is also true that we have talked about various legislative solutions that we would be willing to take up if he doesn't."

The comments from Kline, which amplified statements he made to a reporter from Bloomberg last week, are the clearest signal yet that for-profit college officials have found a receptive audience in Congress to their vocal (and well-funded) critiques of the gainful employment regulations through **direct lobbying of lawmakers** and **an all-out advertising blitz** (including, it should be noted, on *Inside Higher Ed*).

Kline declined to say what kinds of legislative strategies Republican leaders in the House might undertake, but asked by a reporter if Alexander's 2007 tactic on accreditation might be a model -- using the appropriations process to stop implementation of the policy -- he did not demur.

Administration officials challenge Kline's suggestion that there is broad bipartisan unhappiness with the Education Department's regulatory tactics; they insist that most Democrats continue to support the gainful employment approach, and freely imply that those who don't have been influenced by campaign contributions from for-profit colleges.

But there is widespread agreement that with a majority in the House in the new Congress, Republican critics of the administration will be able to get some kind of legislation to stop the rules through that chamber, especially with **the surprising criticism** leveled at the rules by reliably partisan Democrats like Representative Timothy Bishop of New York. The top Democrat on the education panel, Representative George Miller of California, has also been notably silent about the administration's approach to for-profit colleges.

But even if critics of gainful employment rules were to get legislation through the House, getting such a measure through the Senate and around a veto by President Obama is another matter entirely.

That's not only because Senator Tom Harkin, the Iowa Democrat who has vigorously criticized for-profit colleges through a series of hearings this summer and fall, shows no signs of backing down (he gave [a forceful speech](#) on the floor of the Senate late last week in which he promised his own legislation to toughen regulation of the sector). Harkin also heads the subcommittee of the Senate Appropriations Committee that allocates funds for education, health and labor programs, and will hold that position in the 112th Congress, since Democrats retain control of the Senate. Any attempt to use a spending bill to stop gainful employment would have to come through him and that panel, and they can be counted on to try to stop it.

But the lame-duck Congress's [passage this week](#) of a continuing resolution to fund the federal government's operations through March 4 means that the new Congress will have to pass a measure by then to finance federal spending for the remainder of the 2011 fiscal year. Congress is likely to make some tough decisions in that budget, with Republicans promising to start slashing federal discretionary spending, and a pending shortfall in the budget for the Pell Grant Program that could require the cutting of other programs to fill it.

One possible scenario has House Republicans putting forward 2011 budget legislation in early March that would cut the Pell Grant Program or slash Head Start or other Democratic priorities -- but would soften those stances in exchange for an amendment to the legislation that gutted gainful employment? Republican Congressional aides almost seemed to relish putting Senate Democrats facing reelection in 2012 in the potentially difficult position of having to choose between a Pell Grant cut and the department's approach to gainful employment.

A similar dilemma could face President Obama on the question of a veto of such legislation, if it were to get through the Senate. While the gainful employment rules have clearly been the department's top priority in recent months, and remain a central focus, the administration's key education policy goal for the next two years will be renewal of the Elementary and Secondary Education Act.

Advocates for for-profit higher education are hoping that President Obama and Secretary Duncan will so covet Republican support on No Child Left Behind that they will be willing to compromise on other priorities -- including gainful employment. But Democrats play down the prospect that the administration would "bargain away" gainful employment, as one aide put it, for Republican cooperation on the K-12 legislation.

The Congressional Agenda, Beyond 'Gainful'

In this week's interview with *Inside Higher Ed*, Kline, the incoming chairman of the House education panel, said it was unlikely that Congress would undertake major higher education legislation, given that the last renewal of the Higher Education Act is just [two years in the rearview mirror](#). "I don't see any rush to make changes to that legislation, given that our plate's pretty full with other things," Kline said.

The committee is likely to spend some time, he said in response to a question about Pell Grants, figuring out what to do about the program's exploding costs -- "that's a tough nut, but I'm sure there'll be discussions."

To an open-ended question about "what else" might be on the committee's agenda, the Minnesota Republican gave the answer that leaders in traditional higher education probably expected (and loathe) to hear.

"We think -- I certainly think -- that it would be helpful when students head off to college that they have some basic information that they often don't have now: what's this going to cost, what's the [loan] repayment at that school, the expected graduation rate, the placement rate if I go into certain fields," Kline said. "One fallout from the gainful employment discussion is that a lot of the things people are pushing the for-profits for would be useful for all students to have, whether they're going to a land-grant or a private college, to a for-profit or a nonprofit.

"I think we'll be likely to look at getting students that kind of information."

— **Doug Lederman**