



GAO: Bush-era rules helped schools evade banned practices

By Mike Lillis - 10/10/10 03:02 PM ET

Bush-era rules defanging the Education Department have helped for-profit schools evade a federal ban on some recruitment and lending practices, according to a new government report.

The issue has gained wide attention in recent months as Education officials have proposed new restrictions on for-profit schools designed to ensure that their students can pay back the billions of dollars in federal loans they take out each year. Nearly one-third of for-profit schools specialize in training healthcare professionals.

Bolstering the administration's case, the Government Accountability Office (GAO) issued a report Thursday indicating that 2002 rules scaling back the Department of Education's enforcement policies have made it more difficult for the agency to punish those violating a ban on incentive payments to recruiters and loan officers.

The eight-year-old rules, GAO wrote, led to "an increased burden on Education to prove a violation and lessened associated financial penalties (fines and settlement payments)."

"As a result, it became more difficult for Education to prove a school violated the incentive compensation ban and schools ultimately paid smaller penalties."

The report wasn't overlooked by Sen. Tom Harkin (D-Iowa), chairman of the Senate education committee, who's been a leading supporter of administrative efforts to rein in the for-profit education industry amid allegations that aggressive recruiting, shady marketing practices — even fraud — are common tactics for securing enrollment and federal aid.

"The GAO report makes clear that the Bush Administration failed to protect students from aggressive marketing by weakening regulation and oversight of for-profit college recruitment efforts," Harkin said in an email.

"This report, combined with GAO's recent undercover work that found abusive and deceptive practices at all 15 colleges visited, underscores the need for the Department of Education to close the loopholes that have allowed for-profit college recruiters to take advantage of far too many American students."

At issue is a 1992 law prohibiting schools from paying bonuses, commissions or other financial incentives based — either directly or indirectly — on the success of recruiters and loan officers to secure enrollments

and financial aid. The law was a response to congressional concerns that some for-profit schools were recruiting students who weren't qualified for a higher education — while securing federal loans that many students couldn't afford to pay back.

Ten years later, the Bush administration tweaked the rules with two separate guidances. First, its "safe-harbor" regulation defined 12 circumstances under which schools could adjust recruiters' payments without violating the ban on incentive compensation. And second, it issued an internal guidance — the so-called Hansen memo — indicating that violators of the those law would face fines, but not the more threatening punishment of losing access to federal financial aid.

That memo was written by William Hansen, then under secretary of education.

In its new report, GAO notes that the changes softened the power of Education officials' to enforce the incentive compensation rules.

"Fines are often significantly smaller dollar amounts than liabilities, which require a school to pay back federal student aid funds related to a violation," GAO wrote. "In addition, when assessing a fine, the burden of proving a violation is on Education. In contrast, when Education identifies a liability, the burden is on the school to prove its compliance."

GAO also reported that, of the 32 schools found to violate the incentive compensation rules between 1998 and 2009:

- Twenty-five were required to cease paying bonuses to recruiters, but only two of those 25 were also required to pay a fine.
- Six were not asked to take any corrective action because either the school closed before the violations were substantiated (three cases); or the school lost access to federal aid for other reasons before the violation was substantiated (two cases); or the arrival of the safe-harbor rule made the school's incentive compensation program acceptable (one case).
- And one of the 32 (the Computer Learning Center) was found to have misspent \$187 million in federal aid; the school closed and filed for bankruptcy, paying the government \$16.3 million of that liability, GAO noted.

In June, the Education Department proposed a series of new rules targeting for-profit schools, including the elimination of the 12 safe harbors. The administration says those exceptions "violate the spirit of the law."

Many leaders in the for-profit education industry, however, says the proposed safe-harbor rule goes too far. Randy Proto, CEO of the American Institute, a New York-based company that runs schools in Florida, New Jersey and Connecticut, said the safe-harbor rule allows schools to know what behaviors are permissible (or not) under the law. Eliminating those guidelines, he warned, "will make implementation of the law more vague."

"That doesn't really engender a culture of compliance," Proto said Saturday in a phone interview. "It more engenders a culture of fear."

Source:

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