

Moving Forward with a Defense to Repayment Regulation

June 7, 2016

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Process Matters!

- Take the time to do it right!
- Separate Defense to Repayment from the politics (on all sides!)
- Use the April 22, 2016 Department Letter to Accreditors as a guide:
 - Seek input and counsel
 - Separate regulation from good practice
 - Provide schools and students with appropriate guidance

Our Summary of the Negotiated Rule-Making Process

- We applaud the Department for seeking to define “Defense to Repayment Criteria.”
- We encourage the Department to return to its initial Borrower Defense draft.
- Do not allow the regulation to be used for, or hijacked by, those seeking to accomplish other goals not directly related to repayment.
- We must seek to find the right balance of access and accountability for both students and schools.

The Administration should protect Students, Schools and Taxpayers

- Most would say this regulation has worked well over the past 20 years.
- There are many issues related to Corinthian that go far beyond this regulation.
- Even so, no regulation should be designed based upon the experience – good or bad – of one institution.

Financial Responsibility

- If the goal is to ensure a school's financial ability to provide the education paid for through such loans, many regulations already exist with the State Licensing Agencies; the Department; and Accreditors.
- The Department's Program Participation Agreement in Title IV already requires annual audits of a school's finances.
- Heightened Cash Management tools enable the Department to manage distribution of Title IV funds.

Letters of Credit

- The proposed triggers for “letters of credit” needs to ensure that such triggers don’t create new financial problems!
- Gainful Employment Rates, law suits being filed, settlements (often to avoid further costs), 90/10 rates, Cohort Default rates, etc. should not be used to trigger letters of credit; or be accepted as evidence of misrepresentation!

Letters of Credit (continued)

- Letters of Credit should NOT be determined by State Attorney Generals, or trial lawyers. Ideologically motivated lawsuits cannot become the basis for managing Title IV programs!
- Only if a judge has ruled against a school, should such law suits serve as a trigger for lines of credit.

Lack of Student Protections

- “Borrower Defense” should not defraud a student twice:
 - A. Students should opt in, not have to opt out of a group so they are not used against their knowledge and will.
 - B. Requiring Class Action suits prior to Arbitration will limit recourse to ONLY those students enrolled in large institutions. Students at small institutions will have no protections or access to remedies because no trial lawyers will focus their energies on small schools.

Lack of Due Process

- The latest draft in Negotiated Rulemaking:
 - Does not give institutions the right to rebut claims or participate in fact-finding.
 - The Department acts as both judge and jury, with no outside, independent judgement.

Lack of Intent

- Protection from “Fraudulent Institutions” should not be used to destroy good institutions:
 - “Intent to defraud” needs to be defined.
 - Simple mistakes should not trigger massive liability.
 - Proof of harm should be required for misrepresentation claims.

Applies to Everyone

There is a misconception that exists where consumer “advocates” have convinced the non-profit and public schools that this regulation will not impact them. That is 100-percent inaccurate.

Dozens of institutions have admitted to falsifying information to the Department of Education and ratings magazines – these schools will potentially be subject to massive “Borrower Defense” claims.

- [University of North Carolina](#) – academic scandal
- [George Washington University](#) – falsified information for inflated US News and World Report ranking
- [Penn State University](#) – Sandusky scandal
- [Washington and Lee University](#) – inaccurate application reporting
- [Flager College](#) - falsified information for inflated US News and World Report ranking
- [Tulane University](#) - falsified information for inflated US News and World Report ranking
- [Claremont McKenna College](#) – SAT fraud
- [Villanova University](#) – Admissions fraud
- [University of Illinois](#) – Academic fraud
- [Bucknell University](#) – falsified information for inflated US News and World Report ranking
- [University of Mary Hardin-Baylor](#) – falsified information for inflated US News and World Report ranking
- [York College of Pennsylvania](#) – falsified information for inflated US News and World Report ranking
- [Emory College](#) – falsified information for inflated US News and World Report ranking

Potential Cost

- Currently we have total loan balance of \$1.2 Trillion
 - Even if just 1% of students file successful claims, the cost could be \$12 billion.
 - We need to get this right, rather than quick.
 - We need clarity, and due process.
 - We need to resist ideological agendas!