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Education Department Guts Rule Protecting Students and Taxpayers *Opens Floodgates for For-Profit Colleges to Reinstate their Worst Programs and Practices*

Oakland, CA – Today the U.S. Department of Education [announced](#) further action illegally gutting the gainful employment regulation by allowing all failing programs to enroll students without warning them, allowing all programs to appeal ratings based on data that may significantly overstate the actual earnings of their graduates, and giving Secretary DeVos wide discretion to change a program’s rating. The Department has taken this action without going through the [legally required](#) process for amending regulations.

“Anyone who cares about students, veterans, taxpayers, or the rule of law should be deeply troubled by today’s action,” said **Pauline Abernathy**, TICAS Executive Vice President. “These unilateral changes illegally gut the gainful employment regulation, opening the floodgates for schools to use federal taxpayer funds to enroll students in failing programs and reinstate low-quality programs and predatory practices.”

Finalized in 2014 and in effect since 2015, the gainful employment regulation requires schools to give prospective students key information about costs and outcomes of career education programs at for-profit, public, and nonprofit colleges, ends federal funding for programs that consistently leave students with debts they cannot repay, and allows colleges to appeal if they believe program graduates earn more than federal data indicate. The regulation is the product of extensive expert input and analysis, negotiated rulemaking, and public comment. [Two different](#) federal district courts have reviewed and upheld the regulation in its entirety, and it was [unanimously affirmed](#) by the U.S. Court of Appeals for the D.C. Circuit by judges appointed by presidents Reagan and Clinton. More recent [data](#) and [studies](#) have only strengthened the evidence base for the regulation.

The rule gives schools the opportunity to promptly appeal program rates if they believe graduates earn more than federal data indicate, either by conducting a survey of their graduates or by using a state database. However, in addition to extending the deadlines for appeals, today’s action eliminates key standards to ensure appeals are based on data that are representative of the earnings of program graduates, giving the Secretary wide discretion to determine whether data are reliable. As a result, failing programs will be able to continue to enroll students without warning them, and may avoid sanctions entirely based on data that could significantly overstate the earnings of graduates by excluding those with no or low earnings.

As detailed in the table below, today’s changes to the rule’s accountability standards come on the heels of the Department’s [recent action delaying for a year](#) the rule’s requirement that students be given [key cost and outcome data](#) before they enroll in federally funded career education programs. The Department has taken no actions to produce new annual program rates, as required by the regulation, and admits it does not have [any timetable](#) for doing so. Neither does it appear to have taken action to enforce the requirement that the relevant program websites include a prominent link to the improved consumer information template. It has announced it will convene a negotiated rulemaking panel to develop proposed changes to the gainful employment rule in December.

“The Department may intend to dismantle student and taxpayer protections by rewriting the regulations, but until new rules are finalized and in effect, the current rule is the law of the land,” said **Debbie Cochrane**, TICAS Vice President. “The Department has both a legal and moral responsibility to implement the rule with integrity and fidelity.” A June 2017 court filing by the Trump Administration in *AACS vs. DeVos* correctly states that "the prospect of future rulemaking has no bearing on the validity of the current gainful employment regulations, which remain in effect unless and until they might be revised."

Trump Administration Changes to the Gainful Employment Regulation

Affected Component of the Gainful Employment Regulation	DeVos/Eitel Actions
<u>Announced June 30, 2017:</u>	
Template with program cost and outcome information must be provided to students before they enroll or register	Delayed until July 1, 2018
Ads and promotional materials must have clear link to disclosure template	Delayed until July 1, 2018
<u>Announced August 17, 2017:</u>	
Programs must file notice of intent to appeal within 14 days of being notified they failed or are in the zone (i.e., by January 23, 2017)	Schools given 50 more days (until October 6, 2017) to say they will appeal
Programs must file appeals within 60 days of being notified they failed or are in the zone (i.e., by March 10, 2017) Failing programs that are appealing do not have to provide warnings to students until appeals are resolved	Delayed on March 6 until July 1, 2017, then today delayed until February 1, 2018 Programs that intend to say they intend to appeal do not need to give warnings either
Appeals must be based on surveys or state data including at least 50% of program graduates. State data must include at least 30 graduates.	No minimum percentage or numbers. Secretary to determine what is reliable.
Appeals based on surveys with fewer than 80% of graduates must demonstrate the respondents are representative (i.e., must conduct non-response bias analysis and meet certain standards)	Retained but Secretary to determine what is reliable

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