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State AGs Intervene in For-Profit College Accreditor Lawsuit

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The attorneys general from five states and Washington, D.C. recently filed a motion to intervene in a federal lawsuit involving the Accrediting Council for Independent Colleges and Schools ("ACICS"), which is pursuing a case against the U.S. Department of Education ("DOE") following the DOE's decision to terminate the national accreditor in December 2016.

ACICS, founded in 1912, is a nonprofit educational corporation that, prior to the DOE's decision, was recognized as an independent and autonomous national accrediting body. ACICS accredited approximately 245 institutions of higher education, most of those institutions being for-profit entities. In December 2016, the DOE and an independent advisory board deemed ACICS "incapable of rectifying years of lax oversight of troubled for-profit colleges" like Corinthian Colleges and ITT Technical Institute, and ended ACICS's participation in the federal student aid program. ACICS filed suit against the DOE and, while the federal judge rejected ACICS's motion for a temporary restraining order, the next hearing in the case against the DOE is scheduled for early February 2017.

The attorneys general of Illinois, New York, Maryland, Maine, Massachusetts, and the District of Columbia, according to their motion, believe that the states' interests have been ignored in the case thus far and contend that only the interests of the federal government and the accrediting agencies have been adequately represented. The state representatives explain that, while accrediting agencies are federally regulated, they affect states more significantly because colleges and universities fall under state law and jurisdiction. In the attorneys' motion, they assert that "[a]n accreditor's failure to verify program quality at its accredited educational institutions jeopardizes the effectiveness of state enforcement efforts and regulations, exposing each state's students to subpar educational programs that provide little value, but for which each student may borrow tens of thousands of dollars through effectively non-dischargeable federal student loans."

The attorneys general have been vigilant in reviewing the operations of for-profit colleges over the last few years, concerned that these types of institutions, which often possess low graduation rates and low post-graduation employment rates, take advantage of low-income students and leave state taxpayers responsible for the public loans that students take out to attend such institutions. Further underscoring this point, Illinois Attorney General Lisa Madigan stated that for-profit schools "churn out worthless degrees" that leave students "without jobs in their field but saddled with mountains of debt." Madigan asserts that ACICS gave legitimacy to such for-profit schools and believes that "ACICS should not be allowed to accredit schools and give students the false impression that a school will credential them for a career." The attorneys general also emphasized that ACICS has displayed a grave lack of oversight over the colleges and universities it accredits and consistently failed to "take action in response to public enforcement actions by state law enforcement."

Responding to the criticism from the respective state attorneys general, consumer groups, and lawmakers, ACICS allegedly increased the frequency of its on-site evaluations, removed board members with potential conflicts of interest, brought in new leadership, and improved enforcement actions. "The agency has undergone serious and sustained critical review, renewal, and reinvention for a markedly strengthened accreditation process," said ACICS interim president Roger J. Williams in an email, adding that allowing ACICS to continue would offer a more "beneficial outcome" for students.

However, these efforts have not appeared to subdue objections to the inclusion of ACICS as a national accreditor. As the skepticism of ACICS and other similar entities grows, for-profit colleges and universities accredited by such organizations will likely remain under close scrutiny. Administrators, employees, and students associated with such institutions should remain informed of developments in this case and other cases involving similar accreditation agencies.

If you have any questions or concerns regarding education-related issues, please contact Hayley B. Dryer at HDryer@cullenanddykman.com or at 516-357-3745. Thank you to Bridget Hart, a law clerk at Cullen and Dykman, for her assistance with this blog post.

*Please note that this is a general description of law and does not constitute legal advice.