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U.S. Department of Education Issues Proposed Regulations Aimed at Increasing Transparency and Financial Responsibility

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On May 17, 2023, the U.S. Department of Education ("Department") released proposed regulations spanning over a thousand pages which seek to "establish the strongest set of safeguards ever to protect students from unaffordable debt or insufficient earnings from career training programs, along with new measures to increase transparency across all postsecondary programs" and to "promote transparency, competence, stability, and effective outcomes for students in the provision of higher education."

The proposed regulations will affect the "areas of financial transparency and gainful employment ('GE'); financial responsibility; administrative capability; certification procedures; and Ability to Benefit ('ATB')." Today, the proposed regulations were published in the Federal Register and the public is invited to submit comments for thirty (30) days. The regulations, if finalized by November 1, 2023, will go into effect on July 1, 2024.

Per the Department's press release, the proposed regulations would put in place "the strongest-ever GE rule, which would terminate access to Federal financial aid for career training programs that routinely leave graduates with unaffordable debt burdens or with earnings that are no higher than workers without any education beyond high school." The proposed rules require that programs covered by the GE rule meet certain performance standards on two measures to maintain access to Federal financial aid. First, graduates must be able to "afford their yearly debt payments. In particular, the share of their annual earnings needed to devote to paying their debt (i.e., their "debt-to-earnings ratio") must be equal to or less than 8%, or equal to or less than 20% of their discretionary earnings (i.e., their annual earnings above 150% of the Federal poverty guideline)." Second, "at least half of graduates have higher earnings than a typical high school graduate in their State's labor force who never pursued a postsecondary education." Programs would be assessed separately on each metric, and those that fail at least one metric would need to warn students that the program is at risk of losing Federal aid. Programs that fail to meet the standards on the same metric twice in a three-year period would lose access to Federal aid.

The Department's Fact Sheet on the proposed GE rule states, "Out of approximately 32,000 GE programs in total, about 1,800 are projected to fail at least one of the two financial-value metrics. The Department estimates that this proposed rule would protect more than 703,000 students per year from attending these failing career training programs. These students constitute about 24% of those receiving Federal student aid to enroll in GE programs annually."

Additionally, the proposed regulations include provisions intended to "increase transparency on student debt, college costs, and post-graduation earnings for students attending all types of undergraduate and graduate programs." A new disclosure website hosted by the Department would provide students with information about the financial value of undergraduate and graduate degree programs. The new website would also include information such as program costs (including tuition and fees, books, supplies, etc.), non-Federal grant aid, loan burdens, earnings of completers, and, if applicable, licensure success exam pass rates. Institutions receiving Federal aid would be required to provide a link to this new website. Students would also be required to acknowledge that they have seen this information prior to disbursement of Federal financial aid if they are enrolled in or planning to enroll in a program that "consistently leaves students with unaffordable debt."

The Department released a separate Fact Sheet on the proposed rules which strengthen the Department's oversight authority and monitoring of colleges and universities. "These proposals would allow the Department to more easily secure financial protection from institutions when they start to exhibit signs of financial struggle and allow us to add conditions to risky institutions' participation in the Federal financial aid programs to ensure greater oversight." The proposed regulations include the:

- Creation of new "mandatory triggers" which would alert the Department of a "risk" and "allow the Department to immediately seek financial protection or recalculate the institution's financial responsibility score to determine whether their financial condition has materially weakened;" and
- Creation of new "discretionary triggers" which would allow the Department to conduct a "case-by-case analysis to determine if additional protections are needed.

According to the Department, the proposed regulations will "enhance the Department's ability to identify events and conditions at institutions of higher education that indicate a significant risk to the financial health, including potential continued operation of the institution, and enable the Department to require financial protection when appropriate." The proposed regulations would also clarify the requirements for institutions to demonstrate their ability to participate in Title IV programs. These provisions would, amongst other things, "limit an institution from having a principal or affiliate whose misconduct or institutional closure contributed to significant liabilities to the Federal government" and "prohibit institutions from engaging in misrepresentation or aggressive and deceptive recruitment."

Finally, the proposed regulations amend the ATB regulations for students who lack a high school diploma or its equivalent.

This alert provides an overview of the proposed regulations. Nothing herein creates an attorney-client relationship between the sender and recipient. Cullen and Dykman LLP will continue to monitor developments and provide updates when available. If you have any questions on how the proposed regulations may impact your institution, please feel free to contact Dina Vespia at (516) 357-3726 or **dvespia@cullenllp.com**, Jennifer McLaughlin at (516) 357-3889 or **jmclaughlin@cullenllp.com**, Deirdre Mitacek at (516) 296-9136 or **dmitacek@cullenllp.com**.

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