

Eitel, Robert

From: Eitel, Robert
Sent: Monday, May 22, 2017 3:55 PM
To: Venable, Joshua
Cc: Lee, Ebony; Manning, James; Riemer, Jeffrey (Justin)
Subject: FW: Barrower Defense to Repayment Rule
Attachments: Manning letter re BDTR suit v2 - Signed LH.pdf 1.pdf

FYI— CAPPs (the California proprietary sector group) will file a complaint against ED concerning the BDR regulations that take effect on July 1. We can discuss more during our 4:00 meeting today.

From: Robert Johnson [mailto:robert@cappsonline.org]
Sent: Monday, May 22, 2017 3:50 PM
To: Manning, James
Cc: Eitel, Robert
Subject: Barrower Defense to Repayment Rule

Dear Mr. Manning

Attached please find a pre-litigation notice letter that will shortly be hand delivered to your office. We are most anxious to work with the Department and the Administration in resolving what we believe are some serious overreaches in the current proposed regulations, written by the previous Administration. We take this action reluctantly, but given the July 1 implementation date of these regulations we simply can wait no longer.

We look forward to working with you to reach a mutually satisfactory solution to those complicated and serious issues.

Regards, Robert Johnson

Robert Johnson
CAPPs Executive Director
2520 Venture Oaks Way #170
Sacramento Ca. 95833
(916) 447-5500
www.Cappsonline.org
Annual Conference: San Diego Hyatt @ Mission Bay: October 11-13, 2017



May 22, 2017

Via Hand Delivery and E-Mail james.manning@ed.gov

James Manning
Senior Advisor to the Under Secretary and Acting Under Secretary
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Re: Borrower Defense to Repayment Rule

Dear Mr. Manning:

I write on behalf of the California Association of Private Postsecondary Schools (CAPPS), www.cappsonline.org, a non-profit association of mostly accredited, Title IV eligible, colleges and universities located primarily in California. Our members offer a wide range of credentials, from certificates, associates degrees, master's degrees, Ph.D.'s and professional degrees. Nearly all of CAPPS' approximately 150 members offer curriculum driven educational programs designed to prepare students for occupations. Most of CAPPS' members are smaller institutions, averaging less than 400 students. CAPPS' institutions train future information technology and allied health occupation workers such as nurses, ultrasound technicians, emergency medical technicians, accountants, IT professionals, and other individuals in numerous other occupations. Neither the local nor the national economy would function without the educated and trained workers in the career areas that our Association Members offer.

As you are aware, during the final days of the Obama Administration the U.S. Department of Education published the "Borrowers Defense to Repayment" (BDTR) Rule. These far-reaching regulations, which cover 164 pages in the Federal Register, will significantly and negatively affect all sectors of higher education and the students that they serve.

To be clear, CAPPS supports thoughtful, appropriate regulation of the postsecondary education sector and its mission includes working with its members to foster a strong culture of compliance. CAPPS also supports providing appropriate relief to students who have been victims of fraud, as a portion of the BDTR Rule purportedly aims to do. The BDTR Rule, however, goes far beyond aiding students who have been the victims of fraud, and instead imposes a massive, costly, unnecessary and harmful regulatory intrusion into all sectors of higher education. By the Department's own estimates, the rule will cost colleges and universities nearly \$1 billion per year and the ten-year impact on the public fisc is estimated to be \$14.9 billion. We contend that many of these regulations are unlawful and exceed the Department's statutory authority.

★ REPRESENTING CALIFORNIA'S PRIVATE POSTSECONDARY SCHOOLS SINCE 1985 ★

2520 Venture Oaks Way ★ Suite 170 ★ Sacramento, CA 95833
(916) 447-5500 ★ info@cappsonline.org ★ www.cappsonline.org

We fully appreciate and support the President's charge to the Administration to help rid our economy from overly burdensome and unnecessary job-killing regulations: "Every regulation should have to pass a simple test ... Does it make life better or safer for American workers or consumers? If the answer is no, we will be getting rid of it — and getting rid of it quickly." We trust that the BDTR Rule is currently included in such review.

We write to you today, however, because the effective date of the BDTR Rule, July 1, 2017, is less than six weeks away. By that date, among other things, the Rule would require most for-profit institutions to provide students and prospective students with a Department-provided warning regarding loan repayment rates, all institutions to provide former and current students with notices with respect to the unenforceability of pre-dispute arbitration provisions and class action waivers, and all institutions to self-report on a number of new financial "triggers" that would likely require posting of letters of credit and other forms of security to the Department. The increased compliance costs and the dramatically escalated threat of baseless claims and litigation, both before the Department and in court, will be crippling for many schools. The impact of these requirements will also be harmful to the reputations of the institutions and will create widespread confusion as the notices with respect to arbitration clauses and class action waivers violate the Federal Arbitration Act. Not surprisingly, the Rule is expected to negatively affect new and continuing enrollments and cause significant economic harm to institutions. The chain of events that will begin on July 1 will ultimately hurt students, whose institutions will be impacted despite strong demand for their programs and good student outcomes.

The self-executing nature of the BDTR Rule on July 1 has created the threat of significant and immediate irreparable harm to the schools that CAPPS represents. Therefore, CAPPS feels that it has no choice but to challenge the BDTR Rule in federal court and seek a preliminary injunction to enjoin the Rule. Our suit will be filed as early as this week.

In addition to providing the Department with advance notice of the filing of a lawsuit, we wanted to let the Department know that our primary goal in filing the lawsuit is to pause the real and immediate effects of the current BDTR Rule so that the Department can fully review and address the Rule's significant legal and public policy shortcomings.

We truly would like to work with the Department to ensure that the purposes of the borrower defense statute are fulfilled and appropriate relief is available to aggrieved students, without the unnecessary regulatory burdens and overreach that is the hallmark of the current BDTR Rule. We are and will remain open to a variety of amicable solutions to prevent the harm that the Rule will cause on July 1.

Should the Department wish to discuss this matter further please let me know.

Sincerely,

(b)(6)

Robert Johnson
Executive Director

cc: Robert Eitel, Senior Counselor to the Secretary – via email only

★ REPRESENTING CALIFORNIA'S PRIVATE POSTSECONDARY SCHOOLS SINCE 1985 ★

2520 Venture Oaks Way ★ Suite 170 ★ Sacramento, CA 95833
(916) 447-5500 ★ info@cappsonline.org ★ www.cappsonline.org

Eitel, Robert

From: Eitel, Robert
Sent: Tuesday, June 06, 2017 11:14 AM
To: Goad, Robert; Bailey, Nathan
Subject: Fwd: Follow up on Borrower Defense Litigation/Interim Final Rule
Attachments: Sectin 705 Notice on BD.docx; ATT00001.htm

FYI

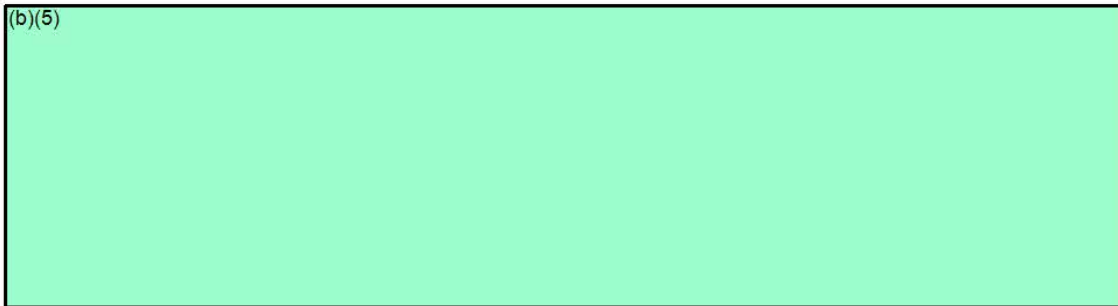
Sent from my iPhone

Begin forwarded message:

From: "McFadden, Elizabeth" <Elizabeth.McFadden@ed.gov>
Date: June 6, 2017 at 11:04:49 AM EDT
To: "Manning, James" <James.Manning@ed.gov>, "Eitel, Robert" <Robert.Eitel@ed.gov>, "Smith, Kathleen" <Kathleen.Smith@ed.gov>, "Mahaffie, Lynn" <Lynn.Mahaffie@ed.gov>
Cc: "Menashi, Steven" <Steven.Menashi@ed.gov>
Subject: Follow up on Borrower Defense Litigation/Interim Final Rule

All -

(b)(5)



Thanks, and please let me know if you have any questions.

Elizabeth

Elizabeth A. M. McFadden
Deputy General Counsel for Ethics, Legislative Counsel,
and Regulatory Services
U.S. Department of Education
elizabeth.mcfadden@ed.gov
202-401-6307