

United States Senate
WASHINGTON, DC 20510

May 4, 2017

The Honorable Kathleen Tighe
Inspector General
Department of Education
400 Maryland Ave, SW
Washington, DC 20202

Dear Inspector General Tighe:

We write to request that you inspect and examine the Department of Education's (ED) decision to delay key implementation deadlines of the Gainful Employment (GE) rule.

On March 6, 2017, the Department of Education announced it was delaying critical deadlines for schools to comply with two requirements under the GE regulations finalized in 2014.¹ These rules specify how ED determines whether career education programs are meeting the *Higher Education Act* requirement that they "prepare students for Gainful Employment in a recognized occupation."² This delay pushes two deadlines back by almost three months—the deadline for when schools must submit appeals to their earnings data and the deadline for when schools must comply with the rule's disclosure requirements.

These rules help ensure that career preparation programs with access to federal student aid are not saddling their students with mountains of debt for degrees and credentials that will not help students get jobs. The Department issued these rules to prevent the federal government from pouring taxpayer dollars into career education programs that fail to prepare students for good paying jobs while loading them up with unsustainable student loan debts.

In January, the Department published final Debt-to-Earnings rates for all GE programs, which relied on program completers data submitted by each school and earnings data in federal databases. Schools had multiple opportunities to challenge their data before the January release, and failing schools have yet another opportunity to submit challenges to their data. Failing schools had to notify the Department by January 23rd of their intent to file an alternate earnings appeal to their data, and these schools previously had until March 10th to submit those final appeals. Schools also had to complete a new disclosure template by April 3rd that would have required schools to disclose critical pieces of consumer information to students, including a program's completion rate and whether a program is currently in failing status. Both the March and April deadlines have been delayed until July 1st.

¹ Mahaffie, L. "Gainful Employment Electronic Announcement #105 - Additional Time for Submission of an Alternate Earnings Appeal and to Comply with Gainful Employment (GE) Disclosure Requirements." Federal Student Aid. U.S. Department of Education (March 6, 2017). Online at:

<https://ifap.ed.gov/eannouncements/030617GEAnnounce105AddtlSubTimeAEAandGEDisReq.html>.

² 20 U.S. Code § 1002. "Definition of institution of higher education for purposes of student assistance programs." Online at: <https://www.law.cornell.edu/uscode/text/20/1002>.

The Department's only stated justification for these delays was to allow the Department to "further review the GE regulations and their implementation."³ But the delays appear to be a thinly veiled attempt to let poorly performing colleges that could potentially face penalties under the GE rules off that hook. For-profit colleges have aggressively lobbied against these rules, and have used every available tactic to delay, halt, gut, or scuttle the rules both in Congress and at the Department of Education. Now, the Department has delayed both of these critical deadlines with no stated rationale other than the need for "further review."

In her confirmation hearing, Secretary DeVos refused to commit to enforcing the GE rules. We are concerned this delay is unnecessary and may be the beginning of a politically driven attempt to permanently delay implementation of GE rules. We are additionally concerned that we have been unable to get direct answers from Secretary DeVos on the GE rules, since she has not responded to any of our letters on this matter.


We, therefore, ask that you inspect and examine the Department's decision to delay these rules, the need for additional review, and the scope and timeline for this review. We ask that this inspection include:

1. Which individuals at the Department were responsible for the decision to delay compliance deadlines in the rules and whether those individuals have conflicts of interest that may have influenced this decision,
2. Whether decision-making officials at the Department met or spoke with individuals or organizations that have previously lobbied to amend, delay, or halt the final Gainful Employment rules,
3. The full, non-public rationale for this decision, and the extent to which the decision was justified based on the facts available,
4. The practical impact of this delay on the rule's implementation and on the rule's purpose and effectiveness,
5. The extent to which the decision making process regarding the delay and the announcement of the delay were consistent with the Administrative Procedures Act and with Department rules, processes, and precedent,
6. What actions regarding implementation of the rule would constitute a violation of the Administrative Procedures Act, and,
7. The scope of any "further review" of this regulation, and the extent to which this initial delay has resulted in further delays and modifications to the rule.

³ Mahaffie, L. "Gainful Employment Electronic Announcement #105 - Additional Time for Submission of an Alternate Earnings Appeal and to Comply with Gainful Employment (GE) Disclosure Requirements." Federal Student Aid. U.S. Department of Education (March 6, 2017). Online at: <https://ifap.ed.gov/eannouncements/030617GEAnnounce105AddtlSubTimeAEAandGEDisReq.html>.

We encourage you to thoroughly review and examine internal emails, memoranda, internal policy documents, meeting agendas and minutes, meeting guest lists, and emails between Education Department officials and other federal agencies or the White House, as necessary, in the course of this inspection. Please notify us if you have any further questions. We look forward to your prompt response.


Sincerely,



Elizabeth Warren
United States Senator



Richard J. Durbin
United States Senator



Sherrod Brown
United States Senator