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The President's New Campus Free Speech and College Cost Executive Order: What University and College Administrators Need to Do

On March 21, 2019, President Trump signed an **Executive Order** entitled “Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities.” Its stated purpose is to make college education “more affordable, more transparent, and more accountable.” Though much of the media’s attention has focused on the free speech portions of the Executive Order, its primary purpose is to begin a process of reforming federal student loans. This GT Alert discusses the elements of the Executive Order and what colleges and universities may need to do.

Reformation of Federal Financial Assistance

The federal government is a substantial provider of financial assistance to students attending colleges and universities through its many undergraduate and graduate loan programs and grants. As many parents of college and graduate students can attest, the cost of a college education, and graduate school, especially at private institutions, is an enormous burden, and the Executive Order notes that tuition and other expenses are increasing at rates exceeding the consumer price index. This debt burden, which follows students for many years, may be a drag on our overall economy, as it limits income available to younger persons who are beginning their careers and families.

The Executive Order indicates that a cause for these cost increases may be that colleges have little incentive to limit them if they are insulated from the effects of student loan defaults. Also, students may not have sufficient information as to the costs and employment benefits of a particular course of study or degree program, and may obtain degrees that cannot realistically support their debt load post-graduation. Failure to graduate within a program's expected time periods is another cost factor.

The Executive Order starts a process whereby the Secretary of Education, in consultation with other federal agencies, must provide a report to the president by Jan. 1, 2020, that will identify the reasons for high college costs, provide policy options that will share "the risk associated with Federal student loan debt among the Federal Government, institutions, and other entities" and for "reforming the collections process for Federal student loans in default." Though specific policies are not stated in the Executive Order, the Secretary of Education will likely explore whether colleges and universities should be liable for student loan defaults. Further, the Executive Order indicates that the secretary may recommend that colleges be given a role in the collection of student loan defaults.

Another requirement is that by Jan. 1, 2020, the Department of Education, Office of Federal Student Aid, must create a confidential website so that students and their parents, if applicable, will be able to see their loan balances, payments, and repayment options in real time.

The Education Department's College Scorecard website will also be expanded and updated annually to include data for estimated median earnings, median Stafford loan debt, median Graduate PLUS loan debt, and student loan and repayment rates on a program basis. Further, the Executive Order calls on colleges to provide information to the Secretary of Education showing their efforts to promote timely student graduation. Though colleges already gather some of this data, the institutions will likely need to devote greater resources to accumulating, compiling, and transmitting data, as well as become more involved in the post-graduate employment experiences of their graduates.

Promotion and Protection of Free Speech

The second purpose of the Executive Order is to promote and enhance free speech on campuses. This is to be accomplished by encouraging public institutions to comply with their duties under the First Amendment to the U.S. Constitution. For private institutions, the Executive Order reminds them to abide by their free speech policies.

Exactly how the Executive Order will encourage and protect free speech is not stated. However, it creates a link between federal funding, the vast majority of which is grants, from the Departments of Defense, Interior, Agriculture, Commerce, Labor, Health and Human Services, Transportation, Energy, Education, and the Environmental Protection Agency, the National Science Foundation and NASA, and the protection and promotion of free speech on campuses. (Federal student loan programs are expressly excluded from this list.) Whether federal funding will be conditioned on adherence to the First Amendment for public institutions and on self-imposed policies for private colleges is not expressly stated. Given that First Amendment rights are not absolute and are subject to some limitations based upon U.S. Supreme Court precedents, it is unclear how a college will be measured as to its promotion of free speech, which is a policy, to varying degrees, of all higher learning institutions in the United States. In any event, we can expect court challenges if the federal government seeks to implement punitive regulations that bar institutions from federal funding.

Conclusion

The new Executive Order starts a process for the reformation of the federal student loan program. How that process plays out cannot be predicted. Colleges and universities must realize that more will be expected of them in financing and collecting student loans, including perhaps some liability for defaults and collection. At a minimum, institutions will have to gather, collect, and transmit to the federal government more information about their former students, and this will require a further allocation of resources.

As for free speech, the Executive Order implies that the federal government may use its enormous financial powers to sanction institutions that do not promote and protect free speech. Because the Executive Order does not provide any details, institutions for now need only review their free speech policies to determine if they actually promote or limit free speech.

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