

Court Strikes Down DOE's Efforts to Block Its Own Regulations From Taking Effect

BY ROBERT G. YOUNG • OCTOBER 29, 2018

In 2016, the Department of Education ("DOE") published a series of regulations, known as the "Borrower Defense Regulations," designed to provide additional protections to student borrowers (including a ban on class action waivers and mandatory arbitration as a condition of a student loan). The regulations were to become effective on July 1, 2017. However, just before the effective date, a group of schools in California filed a lawsuit challenging certain aspects of the regulations. DOE then issued a stay of the effective date of the regulations, ultimately pushing the effective date out to July 1, 2019.

Two students and a group of states filed lawsuits to strike down DOE's delay of the implementation of the regulations. On September 12, 2018, the United States District Court for the District of Columbia agreed with the students and the states and decided that DOE did not have the authority to postpone the effective date of the regulations. In fact, the Court described DOE's action as "the hallmark of arbitrary and capricious decision-making." In particular, the Court noted that the DOE attempted to justify its action by relying on the California schools' lawsuit; however, that lawsuit challenged only a portion of the regulations, whereas the DOE's action would have had a much broader impact. The Court also noted that DOE failed to explain the inconsistency with its prior position (during the initial rulemaking in 2016) that it had the legal authority to issue the Borrower Defense Regulations with its current position that the legal authority to issues those regulations was in doubt.

The Court subsequently ordered DOE's stay to be vacated (meaning that the regulations could take immediate effect). The DOE already has proposed new regulations, which are working their way through the administrative approval process.

Client Tip: Institutions should continue to monitor developments on the Borrower Defense Regulations. The continually shifting landscape could present a compliance nightmare, both for institutions and students.

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