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ACICS Files Suit to Overturn Loss of Recognition

December 16, 2016

On December 12, 2016, US Secretary of Education John King issued his final – and expected – decision denying the appeal filed by the Accrediting Council for Independent Colleges and Schools ("ACICS") and terminated its status as a federally recognized accrediting agency. With no opportunity for further administrative appeal, ACICS filed a complaint and motion for a temporary restraining order in the US District Court for the District of Colombia late last night alleging that the termination decision was arbitrary and capricious, an abuse of discretion, and unsupported by record evidence in violation of the Administrative Procedure Act governing federal agencies. As of this post, no time has been set for a hearing on this request, but due to the nature of the immediate harm that will result from this decision, we expect it will occur in the very near future.

Absent a Court order, Secretary King's termination decision is final and not stayed while ACICS's appeal is pending. Because federally recognized accreditation is required for institutions to participate in Title IV federal student aid programs administered by the Department of Education ("ED" or "the Department") under the Higher Education Act of 1965, as amended, Secretary King has exercised his discretion to allow institutions currently accredited by ACICS to continue their participation in federal student aid programs under a Provisional Program Participation Agreement Addendum ("PPPAA") for a maximum of 18 months following the date of his decision. Regardless of the current status of any existing Program Participation Agreement with the Department (except for those institutions that currently participate pursuant to a month-to-month agreement, which will remain unchanged), all institutions that rely on ACICS accreditation to establish eligibility for their students to receive Title IV financial aid have been directed to sign the PPPAAs. If they do not do so within 10 days of the receipt of the PPPAA, eligibility will cease as of the end of this month.

As described by the Department in a summary posted on its website when the Secretary's decision was announced, the terms and conditions of the PPPAAs include a number of benchmarks that ACICS schools must meet in transitioning to another accreditor as well as various interim disclosure and reporting requirements that must be met in order to retain Title IV participation during the 18-month window. Examples include, but are not limited to:

- Restrictions on certain institutional changes, approval for which the Department will grant "only in limited circumstances";
- Submission of teach-out plans;
- Notifications and disclosures to students regarding implications for their ability to sit for licensing or certification exams;
- Continued state authorization to operate;
- Reporting of any lawsuits, arbitrations, and investigations; and
- Engagement of third-party auditors to review "key data and compliance indicators," such as fiscal information and student achievement data, and confirmation of required disclosures.

In addition, if an institution under a PPPAA does not have an in-process application accepted by another accrediting agency by June 12, 2017, or no completed site visit by October 10, 2017, Title IV eligibility will be terminated for students enrolled after specified dates. Notably, the school will also need to post a letter of credit in "an amount determined by the Department," but no detail was provided regarding the possible amount.

In what could be considered an unprecedented display of speed and coordination, the Department began distributing the PPPAAs to all ACICS schools on December 14. Although the Department asserts on its website summary that, while under PPPAAs, "the Secretary will deem institutions to hold recognized accreditation" in order to avoid serious consequences such as loss of state licensure, this does not necessarily mean that state licensure and authorization agencies, programmatic accreditors, and others entities responsible for enforcing requirements share that view. ACICS is no longer a federally recognized accreditor under the law, regardless of what the Secretary "deems" for purposes of Title IV participation. Thus, as forecasted in the previously posted summary, the actual terms of the PPPAAs include requirements regarding what an institution must do if, as a result of ACICS's loss of federal recognition, the institution loses its authorization to operate and grant

educational credentials or its students become ineligible to sit for any licensing or certification exam related to their educational programs.

We continue to closely monitor developments and reactions related to the latest ACICS action, so please do not hesitate to let us know if you would like to discuss.

See prior alerts on this subject, including a more detailed analysis of the legal basis for the Secretary's authority with respect to PPPAs

Implications of Potential Denial of ACICS Recognition by ED

ED Senior Department Official Terminates Federal Recognition of ACICS

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Key Contacts

Naomi May San Diego	nmay@cooley.com +1 858 550 6025
Jay Vaughan Washington, DC	jvaughan@cooley.com +1 202 776 2031

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