

'Gainful Employment' No True Test of School Success

Two weeks before it was set to take effect, the Department of Education has stopped the implementation of a rule designed to hold for-profit colleges accountable for marketing claims about employment rates for graduates. Had the Borrower Defense to Repayment rule taken effect, for-profit colleges would have had to prove their programs led to the "gainful employment" of graduates or risk the loss of federal aid, according to a post by **Androvett Legal Media & Marketing**.

"There is no doubt that the student loan bubble may burst in the near future due to the crushing amount of student loan debt resulting from the skyrocketing costs of attendance combined with the limited availability of jobs upon graduation," says Dallas bankruptcy attorney **Aaron Gottlieb** of **Godwin Bowman & Martinez**.

"However, some responsibility must still remain with the student loan borrower to carefully choose which colleges and programs to attend. If a for-profit school provides the student an education and degree for which the student paid tuition, then a 'gainful employment' requirement following graduation seems to be too broad a brush to wield in determining whether the for-profit school made a material misrepresentation.

"In fact, several lawsuits have been dismissed over the past five to 10 years on the basis of student borrowers' reliance on publications such as *U.S. News & World Report*, which listed inaccurate employment rates of graduates. The courts have consistently considered this information mere 'puffery,' rather than any sort of guarantee. I fail to see the difference between touting 'employment rates,' and promising 'gainful employment.' They appear, from my perspective, to be

one and the same.”

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