



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE UNDER SECRETARY

May 18, 2021

Robyn Bitner
Counsel
National Student Legal Defense Network
1015 15th St. NW, Suite 600
Washington, DC 20005

Dear Ms. Bitner:

On September 5, 2018, the National Student Legal Defense Network (NSLDN) submitted a Petition for Correction and Disclosure (“petition”) in connection with the U.S. Department of Education’s (“Department’s”) August 14, 2018 notice of proposed rulemaking on gainful employment.¹ Consistent with the Department’s Information Quality Act (“IQA”) guidelines, we responded to your petition through the public comment process, and included our response in the preamble to the final rule, issued on July 1, 2019, which rescinded the prior regulations on gainful employment.² On July 31, 2019, NSLDN submitted its Information Quality Request Appeal (“appeal”), asking that the Department rescind both its 2018 notice of proposed rulemaking and its 2019 final rule.³ This letter constitutes the Department’s response to NSLDN’s appeal.

Pursuant to the IQA and OMB guidance, the Department has issued guidelines identifying the process for affected persons to request correction of information disseminated by the Department. The Department’s guidelines provide that requests about information on which the Department has sought public comment will be responded to through the public comment process. They further provide that the Department may choose to provide an earlier response if the Department in its discretion deems it appropriate to do so and if doing so will not delay issuance of the final action in the matter. Neither the IQA nor OMB guidance, nor Department guidelines, provide a mechanism for rescinding a final rule once it has been issued. To the contrary, the Department is legally obligated to conduct negotiated rulemaking and notice and comment requirements prior to proposing any changes to the Code of Federal Regulations with respect to Federal student financial aid programs, including with respect to regulations on the subject of gainful employment.

The Department therefore is unable to grant NSLDN the relief that it requests in its appeal through this response. However, the Department notes that since the Department published the 2019 final rule rescinding the gainful employment regulations, Joseph R. Biden Jr. was elected as President of the United States and Dr. Miguel Cardona was confirmed as the Secretary of Education. The new leadership at the Department is reviewing and plans to revisit its policies relating to gainful employment in the future, as our resources and competing priorities permit, both with regard to the data and information considered in rescinding the gainful employment regulations and more broadly. Any such process will comport with applicable negotiated rulemaking and notice and comment requirements.

We appreciate your interest in this matter. If you have any other questions, please feel free to contact my office.

¹ <https://www2.ed.gov/policy/gen/guid/iq/exhibit-b-sudent-defense-petition-with-exhibits.pdf>.

² 84 FR 31392 (July 1, 2019). The regulations became effective July 1, 2020.

³ <https://www2.ed.gov/policy/gen/guid/iq/appeal-of-iqa-challenge.pdf>.

Sincerely,

A handwritten signature in black ink that reads "Julie Margetta Morgan". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Julie Margetta Morgan

Delegated the authority to perform the
functions and duties of the Under Secretary
Senior Advisor
Office of the Under Secretary