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Insights

Class Action Against Sixteen Universities for Alleged Unlawful Practices in Awarding Financial Aid

January 25, 2022

By: Robert A. Greising and Elizabeth M. Roberson

Earlier this month, a group of former college students joined together to **file a class action lawsuit** (the "Lawsuit") against sixteen universities.[1] The former students allege that the universities are weighing an applicant's ability to pay when determining financial aid packages and have inflated the price of attendance for years and that such practices violate the safe harbor from the antitrust laws provided by Section 568 of the Improving America's Schools Act of 1994.

Section 568 and The 568 President's Group

All 16 of the universities named are members of the 568 President's Group, a group that uses a common methodology to determine an applicant's need for financial aid. This group originated following Congress's enactment of Section 568 which allows institutions of higher education to cooperate in developing common principles and forms to be used in awarding need-based aid. Section 568 provides a temporary safe harbor from the antitrust laws that could otherwise prohibit or limit this type of cooperation. The safe harbor expires on September 30, 2022.[2]

Under Section 568, colleges and universities may collaborate on need-based aid policies and common forms to be used by such a group of cooperating institutions but must not consider the financial circumstances of the student or the student's family when making their admissions decision. Section 568 also makes clear that such institutions may still exercise their independent professional judgment when making aid decisions and may consider information in addition to that set out on any common aid application.

The 568 President's Group developed a Consensus Approach to financial aid. The Consensus Approach consists of a set of standards for determining a family's ability to pay for college.[3] This approach helps to standardize many financial aid policies for the institutions in this group but still allows for professional judgment in making financial aid decisions.

The Lawsuit

The Lawsuit alleges that the 568 President's Group (or as the Lawsuit terms it, "the 568 Cartel") has engaged in anticompetitive conduct not permitted by Section 568 that has artificially raised net prices of tuition and reduced aid. Further, the Lawsuit alleges that certain members of the 568 President's Group engaged in need-aware admissions decisions through many approaches, including "enrollment management". The Lawsuit claims that enrollment management limits the number of financial-aid-eligible applicants who are admitted in order to achieve financial aid budgetary objectives. According to the Lawsuit, this effectively disadvantages certain applicants based on their need for institutional financial aid. The Lawsuit claims that such an analysis

violates Section 568 by making admission decisions that take into account the financial circumstances of the applicant or family and doing so eliminates the safe harbor under Section 568.

What's Next?

The Lawsuit was only recently filed on January 9, 2022. The directions it will take cannot be predicted, though vigorous defenses can be expected. Institutions of higher education should evaluate their own participation in similar cooperative efforts and how they have been applied in practice to understand the status and potential implications for them.

Should you have any questions about the subject of the Lawsuit or your policies, please contact **Robert A. Greising**, **Elizabeth M. Roberson**, or another one of our **Education and School Law Professionals** for assistance.

Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.

[1] The sixteen named universities are Brown University, California Institute of Technology, University of Chicago, Columbia University, Cornell University, Dartmouth College, Duke University, Emory University, Georgetown University, Massachusetts Institute of Technology, Northwestern University, University of Notre Dame, University of Pennsylvania, William Marsh Rice University, Vanderbilt University, and Yale University. The allegations in the Lawsuit indicate that Brown, CalTech, Chicago, Cornell, Emory, Rice and Yale may not have been members of the 568 President's Group the entire time. We do not comment on the validity of any of the allegations in the Lawsuit.

[2] While Congress has extended the expiration of Section 568 several times in the past, we can give no assurances that a bill extending this section will be passed and signed into law.

[3] Consensus Methodology, *The 568 Group*, **http://www.568group.org/home/?q=node/15**.