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JUDGE RULES SBA MUST RELEASE INFORMATION FOR ALL PPP BORROWERS

A federal judge has ruled the Small Business Administration must release detailed information for all Paycheck Protection Program loans. This includes both the identities of loan recipients and loan amounts. The underlining case was brought by a number of media agencies under the Freedom of Information Act after they had requested that the SBA disclose who had received a PPP or Economic Injury Disaster (EIDL) loan under the CARES Act.

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The SBA had previously announced that it would release information about who had received a PPP loan above $150,000, including business names, addresses, NAICS codes, loan amounts and other demographic data. However, if the loan was less than $150,000, the SBA refused to release the business name and address for any such recipient, although the other data was released.

Various news agencies challenged the right of the SBA to withholding this information and sought full disclosure of all PPP and EIDL loan data. In denying the disclosure of this information, the SBA had invoked two exemptions under FOIA indicating that the data was either confidential or that the disclosure of the data would be an invasion of privacy. Subsequently, the news agencies brought suit in federal court seeking the full disclosure of the data.

In court, the SBA argued that it was necessary to prevent the disclosure of certain "confidential" data as the information could allow a third-party to calculate the payroll information for a company (thereby providing an unfair competitive advantage). Under the PPP loan program, companies receiving a PPP loan used their payroll data to calculate the amount of potential PPP funding by taking an average of their payroll and multiplying that by 2.5. The US District Court found that there was little evidence that the extraction of such information would be inevitable and lead to the extraction of confidential data to a third-party. While it may be possible to use the amount to try to decipher companies' particular payroll information, it is not a good indication; a company may have requested less money than it may have been eligible for, had employees who were paid in excess of $100,000 or other factors that would prevent a competitor from accurately calculating a company's payroll information based solely on the PPP loan data. Therefore, the court found that the SBA did not meet its burden for the use of the exemption for withholding the information.

In addition, the SBA also argued that the disclosure of the information would constitute an invasion of privacy. Unfortunately, the court did not buy this argument either. In fact, the court found that the SBA lost this argument before it was even presented. It found that although the disclosure of the information may be an invasion of privacy, the borrower expressly waived this right when applying for the loan as the loan application expressly provided that certain information could potentially be disclosed, including the name of borrowers and the amount of the loan.

Therefore, based upon the court's holding, it is likely that the SBA will be required to release the remaining information related to who received a PPP and/or an EIDL loan. Companies that may have received a PPP and/or an EIDL loan should be aware that their information may now become available to the general public. The disclosure of this information may cause additional scrutiny and unwarranted solicitations from third-parties. Therefore, companies should ensure that they take the necessary precautions to protect themselves. ■

Read the original article at kjk.com/news-resources

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COLLEGE TUITION & COVID-19: EXACERBATING A PRE-EXISTING CONDITION

Although now difficult to remember much from a pre-COVID-19 world, the cost of tuition for postsecondary education was already considered by many a national crisis in need of an intervention. Sending students home to learn virtually for the spring 2020 semester has only intensified this debate. Now, with multiple class action lawsuits between students and their universities, courts may get to decide the ultimate question: How should higher education be valued?

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Every college has a tuition reimbursement policy that usually requires withdrawing from a course within a certain number of days or weeks into the semester. If a student drops a class after this deadline, full tuition is pocketed by the institution. When the initial mass closure of campuses occurred, many colleges provided prorated financial credits for room and board, but most did not provide any tuition reimbursement due to the passage of the pre-determined withdrawal date.

Now lawsuits are erupting concerning the spring 2020 semester, with claims based on breach of contract. According to consumers of the education, they signed up for in-person, hands-on learning with access to amenities and the overall "college experience" for an agreed-upon price. What they received, allegedly, fell far short. Nursing students are telling stories of learning to insert catheters from home on stuffed animals. Chemistry students watched YouTube videos of experiments instead of performing them.

In response, higher ed institutions argue that the curriculum is still the same as students would have encountered, and students are still earning credits toward their degree. The shutdown caused many schools to utilize and develop new online formats and increase access to technology. Some courts have agreed with schools, relying on a finding that colleges did not actually promise in-person learning.

For parents and students, it is important to be aware of any COVID-19 specific policies developed by your college of choice during this period of unknown. For Fall 2020, many schools gave students the option of a discounted tuition price in exchange for staying home and attending all virtual classes. The discounts, however, appear to be nominal. For example, a $17,000 tuition rate discounted by $750.

Unless any of these lawsuits survive the motion to dismiss phase, be prepared for colleges retaining the upper hand in determining tuition costs, staying firm in their reimbursement policies, and retaining the ultimate discretion in switching between in-person and virtual learning experiences. ■

OHIO CLE UPDATE
for attorneys and judges

Self-Study CLE Cap Waived Through 2021

The Supreme Court of Ohio has waived the self-study (online) CLE cap to complete CLE requirements for the 2019-20 compliance period (ending 12/31/20) as well as the 2020-21 compliance period (ending 12/31/21). Visit the Columbus Bar Association website at **www.cbalaw.org/CLE** for a large selection of self-study courses and live interactive webinars.