



The Week in Review

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Omnibus Bill Further Erodes Student Aid Funding

In the first lame-duck session after the 2004 election, the House and Senate finalized the FY 2005 omnibus appropriations bill, which includes funding for the Department of Education and the federal student aid programs. It marks another year of slow erosion in the federal commitment to low-income students.

For the first time in recent history, funding for a student aid program was eliminated. Although Perkins Loan capital has been regularly targeted for elimination, this is the first year in which proposed cuts were not restored. No new federal capital will be sent to participating institutions, who will have to provide loans from their revolving funds.

While the Pell Grant maximum remains at \$4,050 for the third year in a row, Congress cut program funding by implementing the state tax table updates in the formula that determines family contributions. This technical change to the Pell Grant formula means 84,000 fewer students can receive Pell grants next year. Had the maximum grant increased over the last three years, the eligibility status of these students would not be in question.

The final appropriations bill includes increases for Supplemental Educational Opportunity Grants (SEOG), TRIO, and GEAR

UP that are minor when compared to the House and Senate subcommittee requests for these programs. SEOG increased by \$8 million, to \$778 million; TRIO increased by \$3 million, to \$836 million; and GEAR UP increased by \$8 million, to \$306 million.

An across-the-board cut of .83 percent was applied to the entire omnibus bill to keep federal spending at the \$821 billion limit, as recommended by the president's budget. When the across-the-board cut is applied to level-funded programs, it forces cuts to programs like LEAP, Federal Work-Study, and Graduate Education. These programs have endured such cuts for the third year in a row. (See page 3 for more funding information.)

Because of the tight budget constraints on this final spending bill, overall funding for the Department of Education is \$780 million below the president's request, \$1.12 billion below the House version, and \$2.3 billion below the Senate request. This and the erosion of student aid funding hints at how much tighter the budget vise will be next year, as the rising federal deficit becomes a top budget priority in the 109th Congress.

The administration plans to squeeze non-defense, non- homeland security domestic spending

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in next year's budget, and education could be cut by \$5 billion over the next five years. The Student Aid Alliance will meet before the end of the year to discuss its appropriations request for FY 2006 and its strategy for saving student aid.

Lame Duck, Part Two

The House sent the omnibus bill to the Senate on November 20. Before the Senate passed the bill the same day, staffers found a provision (not related to student

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aid) that would give appropriations committee staff access to individual tax returns. After much embarrassment, the Senate adopted the appropriations bill along with a resolution repealing the provision. The House had expected to pass a cleaned-up version of the bill by unanimous consent before going home for Thanksgiving,

but Minority Leader Nancy Pelosi (D-Calif.) held the leadership's feet to the fire and demanded a roll call vote. Because of this holdup, the agencies included in the omnibus bill are being funded under a continuing resolution until December 8.

The final part of this year's lame duck session took place the week of December 6. The House

voted again on repealing the controversial tax provision and sending the omnibus bill to the president for signature. Both chambers are also considering intelligence reform legislation. ■

For more information, please contact Stephanie Giesecke at NAICU, 202-785-8866, or stephanie@naicu.edu.

Solomon Amendment Overturned by Appeals Court

The Solomon Amendment, which threatens a loss of certain federal funds if a college or university bars or restricts access for military recruiters on campus, was found unconstitutional by a panel of the U.S. Court of Appeals for the Third Circuit. The 2-1 ruling was issued on November 29 in response to a suit brought by a coalition of law schools, faculty, and students.

In *FAIR et al. v. Rumsfeld et al.*, the court held that the law, which has been in effect for a decade, violates the First Amendment rights of institutions.

Law schools have been at the center of controversy over the Solomon Amendment. In 1990, the American Association of Law Schools added sexual orientation to its nondiscrimination policy, and most law schools adopted policies denying the use of career services facilities to employers who discriminate, including discrimination based on sexual orientation. That set up a conflict with the policies of the armed services, which forbid homosexual conduct or orientation.

The majority opinion found the law schools' nondiscrimination policy to be a form of "expressive speech," protected by the First Amendment. The court relied heavily on the U.S. Su-

preme Court's ruling in 2000 in *Boy Scouts of America v. Dale*, which upheld the right of the Boy Scouts of America to exclude a homosexual scoutmaster. The judges found that the threatened loss of some federal funding infringed on the institutions' fundamental rights.

"The Solomon Amendment requires law schools to express a message that is incompatible with their educational objectives, and no compelling governmental interest has been shown to deny this freedom. While no doubt military lawyers are critical to the efficient operation of the armed forces, mere incantation of the need for legal talent cannot override a clear First Amend-

ment impairment," the appeals court concluded.

The Third Circuit court's ruling officially covers institutions in New Jersey, Pennsylvania, Delaware, and the Virgin Islands. However, law schools at universities in other states have already announced that they will resume enforcement of their nondiscrimination requirements for all recruiters.

The Justice Department has not officially announced any plans for an appeal to the Supreme Court. There is also a possibility of further legislation to repair the Solomon Amendment with findings that attempt to set out a compelling governmental interest for its enforcement. ■

For more information, contact Jon Fuller at NAICU, (202) 785-8866, or jon@naicu.edu.

"Constitution Day" Mandated

In the miscellaneous section of the FY 2005 Omnibus Appropriations bill, Congress included a new mandate for all educational institutions, including colleges and universities.

The provision designates September 17 as "Constitution Day," and requires any educa-

tional institution that receives federal funds to hold an "educational program" about the U.S. Constitution on September 17 of each year.

The provision also requires federal agencies to give new employees information about the

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Education Funding Comparisons

(\$ in millions)	FY 2004 Final	President's FY 2005	House Floor FY 2005	Senate C'tee FY 2005	FY 2005 Omnibus
Department of Education					
Pell Grants	12,005.0	12,830.0	12,830.0	12,830.0	12,364.9
Pell Grant Surplus/Shortfall	(3,220.0)	(3,681.0)	(3,681.0)	(3,681.0)	(3,612.0)
Pell Grant Maximum	4,050	4,050	4,050	4,050	4,050
<i>(actual dollars, not in millions)</i>					
Supplemental Educational Opportunity Grants	770.4	770.4	794.5	799.9	778.7
Federal Work-Study	998.5	998.5	998.5	998.2	990.0
Perkins Loans--New Federal \$	98.8	0.0	0.0	98.8	-
Perkins Loan Cancellations	66.6	66.6	66.6	66.6	66.1
Leveraging Educational Assistance (LEAP)	66.1	0.0	66.1	66.1	65.6
Loan Forgiveness for Child Care	0.0	0.0	0.0	0.0	-
<i>Institutional Development</i>					
Strengthening Institutions	81.0	81.0	81.0	85.0	80.3
Strengthening Hispanic Serving	93.9	95.8	95.8	100.0	95.1
Strengthening HBCUs	222.6	240.5	240.5	240.5	239.0
Strengthening HBGIs	53.0	58.5	58.5	58.5	58.0
Strengthening Tribal Colleges and Universities	23.2	23.7	23.7	25.0	23.8
Strengthening Alaska Native and Native Hawaiian Institutions	10.9	6.1	10.9	13.0	11.9
<i>Program Development</i>					
Fund for the Improvement of Postsecondary Education (FIPSE)	154.4	32.0	32.0	157.7	163.0
Teacher Quality Enhancement	88.8	88.8	88.8	88.8	68.3
Minority Science Improvement	8.8	8.8	8.8	8.8	8.8
International Programs--Domestic	89.2	89.2	93.2	89.2	92.4
International Programs--Overseas	12.8	12.8	12.8	12.8	12.7
Institute for International Public	1.6	1.6	1.6	1.6	1.6
Interest Subsidy Grants (HEA VII)	1.9	1.5	1.5	1.5	1.4
<i>Scholarships/Aid to Students</i>					
Federal TRIO Programs	832.5	832.5	842.5	844.5	836.5
Byrd Honors Scholarships	40.7	40.7	-	41.0	40.6
GEAR UP	298.2	298.2	318.2	302.5	306.4
Advanced Placement Fees	23.4	23.4	30.0	33.5	29.7
Campus-based Child Care Services	16.0	16.0	16.0	16.0	15.9
Demonstration Projects for Students Disabilities	6.8	0.0	0.0	7.0	6.9

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(\$ in millions)	FY 2004 Final	President's FY 2005	House Floor FY 2005	Senate C'tee FY 2005	FY 2005 Omnibus
Department of Education					
<i>Graduate Fellowships</i>					
GAANN and Javits	40.4	40.4	40.4	40.4	39.0
Thurgood Marshall Legal	0.0	0.0	0.0	3.0	32.9
<i>New Block Grants</i>					
Reading First	1,023.9	1,125.0	1,125.0	1,062.0	1,145.0
Improving Teacher Quality	2,928.4	2,930.0	2,950.0	2,975.1	2,916.0
Education Technology	691.7	691.7	600.0	691.8	496.0
<i>Other Major Education Programs</i>					
Education for the Disadvantaged	12,338.7	13,342.3	13,342.3	13,457.6	12,739.5
Impact Aid	1,229.5	1,229.5	1,250.8	1,229.5	1,243.8
Special Education Total (IDEA)	11,240.2	12,176.0	12,176.0	12,328.3	11,673.6
Vocational Education	1,334.9	1,012.0	1,333.5	1,326.9	1,326.1
Adult Education	590.1	590.1	590.1	590.1	585.4
Total Department of Education	\$55,662.4	\$ 57,339.0	\$ 57,681.2	\$ 58,848.6	\$ 56,559.0

Department of Health and Human Services

National Institutes of Health	27,816.9	28,526.0	28,526.0	28,900.3	28,371.0
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High Court Will Rule on Title IX Whistleblower Case

At the end of November, the U.S. Supreme Court heard a case involving high school athletics that could have an important effect on colleges and universities as well. The issue in *Jackson v. Birmingham Board of Education* is whether someone who complains about gender discrimination against others is also protected by Title IX and has a right to sue under that statute.

Roderick Jackson was the coach for a girls' basketball team at a Birmingham high school. After he complained that the boys' team had much better facilities and

equipment, he was relieved from his coaching duties. He sued the board of education, but lost in the lower courts. If the Supreme Court rules in his favor, education institutions at all levels will face new possibilities for litigation.

A decision in the case is expected before the end of June. ■

For more information, contact Jon Fuller at NAICU, (202) 785-8866, or jon@naicu.edu.

Leadership Changes at Department of Education

President Bush announced on November 17 that he intends to replace retiring Secretary of Education Rod Paige with Margaret Spellings, who served as one of the president's policy advisors during his first term. Spellings also served Bush in an advisory capacity while he was governor of Texas. She has worked in education policy and politics since the 1980s, (and was Bush's political director for his first gubernatorial campaign.)

Paige announced on November 5 that he would resign at the end of President Bush's first term. Paige cited No Child Left Behind, improved reading scores, clean departmental audits, a historically low cohort default rate, and a new culture of accountability in education as some of his major accomplishments.

Spellings is regarded as the architect of Bush's No Child Left

Behind law. She has long had an agenda for educational improvement at the elementary and secondary levels, and was an early advocate of testing students to prevent social promotion.

Spellings is expected to be confirmed by the Senate without difficulty. Influential members of the Senate Health, Education, Labor and Pensions Committee, such as Senators Lamar Alexander (R-Tenn.) and Ted Kennedy (D-Mass.) have spoken highly of her.

In his announcement, Bush noted the progress that had been made at the elementary level, and indicated the direction education policy will take in his second term. "Margaret Spellings and I are determined to extend the high standards and accountability measures of the No Child Left Behind Act to all of America's public high schools. We must ensure that a high school diploma

is a sign of real achievement, so that our young people have the tools to go to college and to fill the jobs of the 21st century," the president said. Spellings has little experience in higher education and has not indicated where her interests lie.

The Department of Education has also announced that Deputy Secretary Eugene Hickok will resign at the end of January 2005. Hickok served first as under secretary and then as deputy secretary during the first term of the Bush administration and was instrumental in the implementation of No Child Left Behind. Before coming to Washington, he served as Pennsylvania's secretary of education during the governorship of Tom Ridge. No successor to Hickok has been announced. ■

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College Students Show at Polls

Congratulations to all NAICU members for another outstanding voter education, registration, and get-out-the-vote effort during this critical election cycle! In addition to the hundreds of examples of voter outreach shared by our members and listed on the National Campus Voter Registration Project link on the NAICU Web site, a newly released survey sheds additional light on the outcome of our civic engagement efforts.

According to the first national post-election survey of college students, 77 percent voted. More

than 85 per cent said they followed the presidential election very or somewhat closely. All in all, this is great news. With your help, NAICU will continue to dispel the myth that college students are apathetic and not engaged in their community. ■

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Constitution Day (Cont. from page 2)

U.S. Constitution in their orientation materials, and give all employees the same materials each September 17.

The legislation does not specify any penalty for failure to comply with the mandate. However, in light of the recent controversy over whether colleges and universities were adequately providing voter registration materials to students, NAICU will keep an eye on this issue.

The provision was inserted into the omnibus by Senator Robert Byrd (D-W.Va.). ■

For more information, please contact Stephanie Giesecke at NAICU, (202) 785-8866, or stephanie@naicu.edu.

Press Coverage Raises Doubts over Student Unit Record Proposal

A deluge of press stories and editorials in the past week have brought the Education Department's student unit record initiative—and NAICU's concerns about it—to the public eye. Coverage in the *New York Times*, regional newspapers and radio, and the campus press has highlighted the privacy concerns shared by NAICU, students, and college officials.

Currently, the National Center for Education Statistics (NCES) collects aggregate data from institutions. Under the new proposal, NCES would track data on individual students, tied to their Social Security numbers.

NAICU has serious concerns about making unprecedented compromises in the confidentiality of student information for the limited research benefits of such a system. The proposal would take away control over access to individual educational records from the students, including those who do not receive any federal financial aid, and give it to the federal government.

Researchers at the Education Department who want this information say they intend to keep it confidential. However, we doubt that they have the political might to resist everyone who may want this data.

A November 17 presentation by NCES Director Dennis Carroll at the NAICU Fall Leadership Conference only heightened concerns shared by NAICU Board members and other private higher education leaders. Alerted by NAICU to the controversy, the *New York Times* ran a story on Nov. 29. NAICU staff spent the rest of the week talking to re-

porters and editorial writers from around the nation.

In much of the coverage, NAICU and the United States Student Association have made the case against the proposal, while the State Higher Education Officers Organization and the American Association of State Colleges and Universities supported it. Public universities in most states already report individual student data to the state government.

Virtually every editorial and letter to the editor that has run so far in the mainstream and campus press has supported NAICU's position, and urged Congress to slam the brakes on the ED initiative.

- The *Miami Herald*: "The department also might find it difficult to resist political pressure to turn over information. In the words of one skeptic, '[When] the White House calls, what are you going to do?'"

- The *Baltimore Sun*: "Under the new regime, no one would ask for [students'] permission and the government would force the schools to tell all. A change as tectonic as sharing private information without consent must be well-justified; in this case, it is not."

- The *Des Moines Register*: "The goal of supporters—greater accountability by postsecondary schools—should not be the charge of the U.S. Department of Education. The key federal roles in higher education should be advancing research and helping moderate-income students afford tuition with grants and loans."

In a letter to the *Times*, a faculty member noted that the

Patriot Act allows the U.S. attorney general to obtain individually identifiable information from NCES. One student wrote that "when I write a controversial term paper, I won't have any F.B.I. agents looking over my shoulder."

NAICU e-mailed an overview of the proposed IPEDS changes to member presidents on November 30. A compilation of background information, talking points, and other resources, as well as links to media coverage, is available online at <http://www.naicu.edu/HEA/UnitRecord.shtml>. ■

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