NAICU The Week in Review

The National Association of
Independent Colleges and Universities

*News from the Nation's Capital*
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## In this issue . . .



## Tuition Deduction Gets Retroactive Extension

In the early morning hours of December 10, Congress approved a $50 billion tax and trade package that preserves a number of popular tax breaks, including the above-the-line deduction for tuition expenses. It was one of the final bills to pass before the 109th Congress adjourned.

The tuition deduction, originally enacted in 2001, expired at the end of 2005. It allows taxpayers who do not qualify for the Hope or Lifetime Learning credits to deduct up to $4,000 in tuition expenses on their annual tax return. Single taxpayers earning less than $65,000 and married/joint filers earning $130,000 or less qualify for the deduction. The recently-passed "extenders" package will extend this deduction through the end of 2007. In addition, the bill makes the extension retroactive, so taxpayers can also claim the deduction for 2006. This is good news for students and families who have relied on this deduction, and were uncertain over the past year about whether or not it would be renewed.

The bill also includes a variety of trade incentives, Medicare fixes, a tax credit for employers who hire off the welfare rolls, and an extension of the Research and Development Tax Credit. President Bush is expected to sign the package into law soon.

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## Will Accreditation Be Used to Federalize Student Learning Outcomes?

In remarks made September 22 regarding the final report of the National Commission on the Future of Higher Education, Education Secretary Margaret Spellings noted that "Action Five under my plan will convene members of the accrediting community this November to move toward measures that place more emphasis on learning."

By convening an invitation-only accreditation meeting on November 29, the secretary took the first formal step in seeking implementation of this commission recommendation. With respect to accreditation, the recommendations include making performance outcomes the core of accreditation assessments and devising means by which learning and other outcomes can be compared across institutions. *(See report excerpt in the accompanying box, next page.)*

As commission staff noted in opening the meeting, the "accrediting community" was defined very broadly. Roughly a third of the participants were representatives of accrediting agencies and institutions of higher education. The remaining invitees were drawn from research organizations, education associations and think tanks, business, Department of Education staff, and state education groups.

The format of the meeting involved closed roundtable discussions, followed by public reports from designated participants at each table. The commission staff member who moderated the meeting expressed delight at the "amazing amount of consensus" she heard – particularly in terms of the need for comparable information about student learning outcomes. However, other accounts of specific roundtable discussions suggest that conversations were broad-ranging and that it would be premature to assume consensus had been reached.

A TEST OF LEADERSHIP: Charting the Future of U.S. Higher Education

*A Report of the Commission Appointed by Secretary of Education Margaret Spellings September 2006*

Recommendations on Accreditation (page 24)

- Accreditation agencies should make performance outcomes, including completion rates and student learning, the core of their assessment as a priority over inputs or processes. A framework that aligns and expands existing accreditation standards should be established to (i) allow comparisons among institutions regarding learning outcomes and other performance measures, (ii) encourage innovation and continuous improvement, and (iii) require institutions and programs to move toward world-class quality relative to specific missions and report measurable progress in relationship to their national and international peers. In addition, this framework should require that the accreditation process be more open and accessible by making the findings of final reviews easily accessible to the public and increasing public and private sector representation in the governance of accrediting organizations and on review teams. Accreditation, once primarily a private relationship between an agency and an institution, now has such important public policy implications that accreditors must continue and speed up their efforts towards transparency as this affects public ends.

On the heels of the November 29 meeting was a three-day session of the National Advisory Committee on Institutional Quality and Integrity (NACIQI). NACIQI advises the secretary of education in the recognition of accreditation agencies as "reliable authorities" on educational quality. Secretarial recognition of an accreditor is required in order for the institutions accredited by that agency to be eligible to participate in federal student aid programs.

The question of measuring student learning outcomes came up repeatedly during the three days of meetings, and it was clear that Secretary Spellings is determined to "push the envelope" in what she can do through NACIQI without additional legislative or regulatory authority. Several accrediting agencies under review were cited in Department of Education staff analyses as having unacceptable measures of student learning outcomes because they did not include a "threshold" measure. Members of the committee discussed at length whether "bright lines" – marking specific, quantifiable performance levels – should be established by accreditors for student learning in their evaluation of institutions. Although the majority of the committee rejected imposing threshold measures, several members showed great interest in the concept.

The issue will be revisited at the next NACIQI meeting, scheduled for May 31-June 1, 2007. In addition to the staff findings on the agencies under review at that meeting, the committee will discuss a report on the most effective use of student learning outcome data in gauging institutional effectiveness. The committee assigned the Western Association of Schools and Colleges (WASC) to prepare the report, after dropping a staff recommendation that WASC revise its procedures to include its "expectations for institutional improvement (student learning)."

It is by no means certain that NACIQI has the legal authority to demand the imposition of bright-line standards, absent regulatory or statutory sanction of such a policy change. NACIQI may take the "just do it" approach, and see if it survives a legal challenge. Alternatively, a

negotiated rule-making session on accreditation is a possibility, although such a session has not been scheduled. Another option is for the Education Department to submit legislative language to Congress for consideration in the reauthorization of the Higher Education Act.

NAICU has urged the department not to initiate negotiated rule-making on accreditation issues until after Congress has completed reauthorization. Testifying at a November 8 public hearing, Vice President for Government Relations and Policy Development Sarah Flanagan observed:

> "Accreditation has been used successfully by the federal government for more than a generation to ensure quality and diversity of educational product without inappropriate federal intrusion into matters of curriculum. In this sense, accreditation has served as a *barrier* to federal control. We encourage you to continue this past practice of limited federal regulation over accreditation, to ensure that accreditation not become a *tool* for federal intervention. This is not just a belief in the central premise that accreditation is first and foremost a system of peer review. We also believe that excessive federal control of accreditation would lead to a decline in the variation and excellence that is the hallmark of American higher education."

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## Year-Long Continuing Resolution on FY 2007 Appropriations

Just three days after the 109th Congress adjourned, the incoming House and Senate Appropriations Chairmen, Rep. David Obey (D-Wis.) and Sen. Robert Byrd (D-W.Va.) issued a joint press statement declaring that they will craft a year-long continuing resolution (CR) for the FY 2007 appropriations bills that were not passed in the 109th Congress. They say that:

> "The outgoing Republican Leadership's failure to govern has denied the new Congress the opportunity to start with a fresh slate.
>
> "As incoming Chairmen of the House and Senate Appropriations Committees, we are now responsible for finding a way out of this fiscal mayhem. It is important that we clear the decks quickly so that we can get to work on the American people's priorities, the President's anticipated war funding request, and a new budget.
>
> Unfortunately, there are no good options available to us to complete the unfinished work of the Republican Congress. After discussions with our colleagues, we have decided to dispose of the Republican budget leftovers by passing a year-long joint resolution."

The exiting Republican leadership punted the 11 remaining FY 2007 appropriations bills to the Democrats in the 110th Congress in a continuing resolution that runs until February 15, 2007. Obey and Byrd will work to craft a long-term CR that will run until September 30, 2007, the end of the 2007 fiscal year. Their plan will not include earmarks, which gives them an additional $3 to 4 billion to possibly add to other programs. While there is no guarantee, they could add some of this to the education bill to help fulfill the push for additional funding this year.

In the 109th Congress, only the Defense and Homeland Security bills were signed into law. The remaining appropriations could have been funded through an omnibus bill, but that option was rejected by conservative members on the GOP side out of fear that the omnibus approach might lead to unchecked spending. (History shows that increased spending on programs can sometimes be maneuvered in omnibus bills, and additional pork projects added at the last

minute.) Ultimately, there was too much disagreement around legislation still on the table – including the bipartisan push for an additional $7 billion in the education bill, the need for an additional $3 billion for veterans' health care, and amendments to the agriculture bill – for Congress to be able to pass the bills individually.

The current continuing resolution funds programs at the lowest of either the House or Senate-passed appropriations levels, or the FY 2006 appropriations level. What this means for student aid is that the 109th Congress missed the opportunity to increase the Pell Grant maximum for the first time in five years. Student aid will be funded at FY 2006 levels, which are the same as in the House and Senate bills, with the exception of the $100 increase for the Pell Grant maximum in the House bill. The good news is that the CR does not carry an across-the-board cut, which had been the case in the omnibus bills over the last three years, and which has seriously eroded funding in student aid.

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## Previewing the 110th Congress

Washington is still reeling from the effects of the November elections, and it will be many months before the dust settles and the implications for higher education are clear. Most obvious will be the change in the House and Senate leadership (assuming the successful recovery of North Dakota Democratic Senator Tim Johnson) and the change in chairmen who lead committees that are key to independent higher education. Equally important, though, will be the staff changes that are certain to follow. Since many of our issues are worked out at the staff level, the people who come and go as a result of the elections will also have a great impact on us.

On December 7, the House Democratic Caucus approved Speaker Nancy Pelosi's (D-Calif.) nominations for committee chairmen. Committee assignments for other members will not be finalized until later in January. The Senate Democratic leadership organized and announced committee chairmen in November. In the meantime, here is NAICU's preview of the 110th Congress.

House Education and the Workforce: George Miller (D-Calif.) will now assume the chairmanship of the House Education and the Workforce Committee, as Buck McKeon (R-Calif.) becomes its ranking member. McKeon's staff was loaded with higher education experts, and it is not yet clear which staff will stay with the committee and which will move on. Miller's first task will be to implement the promise to "cut student loan interest rates in half." This proposal is one of the "Six for '06" campaign platforms that the Democrats ran on. Implementing that proposal will be extremely difficult, given that changes to the student loan program cost money and are technically complex to write. While we have seen no official legislative proposals, rumors are that the interest rate cut could be limited in the number of years or programs to which it applies. A major hurdle will be finding an offset to pay for this change so that the proposal meets the Democrats' push to reinstate "pay-as-you-go" rules for tax and entitlement programs.

Once the student loan interest rate matter is resolved – expected in the first 100 hours (about two legislative weeks) of the 110th Congress – Miller will have to decide what to do with the Higher Education Act (HEA) reauthorization. Indications are that he wants to start from scratch on a new House bill. If he decides to start at the hearing stage, HEA would take at least a year, if not two years, to complete. This is particularly true if Miller decides to turn his attention to the pending reauthorization of the bi-partisan, but still controversial, No Child Left Behind Act.

At the policy level, we can expect a new focus on the traditional student aid programs, and a less generous treatment of the proprietary sector (though much of the relaxation of the fraud and abuse rules the for-profits wanted has already been enacted). But don't assume that accountability issues such as college cost will go away. Although McKeon had the most

well-known proposals for price containment, many committee Democrats also have introduced bills on this and other accountability matters that are potentially as problematic to our sector. Also, many committee Democrats have been pushing the STAR Act, a bill that would give higher Pell Grants to the poorest students at institutions participating in the direct lending program. The bill gets an additional legislative lift because it officially generates savings for the federal government, and could effectively take away the option for many colleges to stay in the bank-based loan program.

Senate Health, Education, Labor, and Pensions (HELP): If the Democrats assume control of the Senate, Sen. Ted Kennedy (D-Mass.) will retake the reins of the Senate HELP Committee, while the current chairman, Mike Enzi (R-Wyo.), will become the ranking member. During the 109th Congress, Kennedy and Enzi worked on a bipartisan basis on most education legislation, including the HEA reauthorization, so it is likely that Kennedy will use these initiatives as the starting point for legislative action next year.

Theoretically, the Senate could move quickly to enact the portions of its HEA reauthorization bill that were not included in the Higher Education Reconciliation Act of 2006. What would make this difficult is a desire by many Democrats to revisit the loan provisions included in reconciliation. For example, incoming Senate Majority Leader Harry Reid (D-Nev.) has endorsed the "Six for '06" agenda put forward by House Democrats. This means the Senate will face the same budgetary challenges described above in the House committee analysis. Kennedy sponsored the STAR Act in the Senate, so the long-standing tensions between direct and guaranteed lending may well be re-ignited as part of the reauthorization effort.

The committee is also likely to continue its efforts to expand the collection of data on students and institutions. Collection of student data will likely focus on state-based longitudinal systems, beginning at the pre-K level. Requirements for institutional information about admissions and the post-graduation activities of alumni also could be included.

There are several proposed membership changes on the committee, though the current size (20 members) and party ratio (11:9) remain the same. As a result of election winners and losers, retirees, and members who have switched committee assignments, the committee will have three new Democratic members and three new Republicans.

House Ways and Means: The election resulted in the loss of several moderate committee Republicans, including: Clay Shaw (Fla.), Nancy Johnson (Conn.), J.D. Hayworth (Ariz.), and Melissa Hart (Pa.). Depending on how the committee is rebuilt – nine new Democrats have been named, and two to four new Republicans are expected – there will likely be fewer crossover votes and more votes by party line. Incoming Chairman Charles Rangel (D-N.Y.) has announced few long-term legislative priorities of interest to higher education, but has promised to continue the "audit" of the NCAA initiated by current Chairman Bill Thomas (R-Calif.). Incoming Speaker Pelosi and other leadership officials indicated that tuition deductibility would have been at the top of the agenda, but the deduction was extended by the Republican leadership during the lame duck session *(see related story on page 1)*. Incoming Democrats also are expressing interest in "simplification" of current higher education tax breaks that would replace many incentives with a single deduction or credit. Specific details remain unavailable, however.

Senate Finance: We'll be watching with great interest how the change in chairmanship will affect the Finance agenda. For several years, Chairman Charles Grassley (R-Iowa) and the majority staff have focused intensely on the nonprofit sector. Bills containing charitable incentives, like the IRA charitable rollover, and higher education tax relief, like the permanent extension of Sec. 529 benefits, have become routine.

In addition, the committee has worked full-time on non-profit governance reforms, investigating wrongdoing and strengthening penalties for abuse. Senator Grassley had big plans for legislating university governance reforms in 2007, based on the committee's investigation of American University and other high-profile cases. Will this agenda continue under the leadership of incoming Chairman Max Baucus (D-Mont.)? There are competing schools of thought.

On one hand, Grassley and Baucus were agreeable colleagues and approached most issues in a bipartisan fashion. On the other hand, Baucus' staff has indicated that this is not a priority for the new chairman. While that may be good news for those nervous about potentially burdensome reforms in our sector, it doesn't bode well for maintaining and strengthening current charitable incentives, such as the IRA charitable rollover.

Senator Baucus is a strong supporter of higher education tax incentives, and introduced a bill prior to the election calling for full scholarships for math and science majors, a single refundable tuition tax credit of up to $2,000, and other pre-K and higher education initiatives. At the time of introduction, Baucus stated that many of the items in his bill were controversial and expensive. He also acknowledged that his initiatives reflected a comprehensive longer-term strategy to rescue a "lagging" American education system and bolster U.S. global competitiveness.

House Budget Committee: John Spratt (D-S.C.) will become chairman of the Budget Committee in the 110th Congress. Spratt approaches the federal budget with a finely-tuned eye for the nuances of fiscal policy and a strong predilection for balanced budgets. Throughout the years of Republican control of the House, Spratt offered complete alternative balanced budgets in committee and for the Democrats during floor debates, so incorporating the elements of "pay-as-you-go" budgeting (PAYGO) – one of Pelosi's top priorities – will come naturally for Spratt and his experienced staff.

While the overall parameters of the federal budget are not likely to change for the 110th Congress, we should expect to see the priorities within a Spratt budget include increased funding for education. Whether they can find the funding to pay for all the student aid increases proposed in the "Six for '06" plan remains to be seen, however.

Senate Budget Committee: Kent Conrad (D-S.D.) will take another turn at being chairman of the Senate Budget Committee in the new Congress. As a deficit hawk, Conrad is likely to champion PAYGO rules for tax cuts and continued tight caps on spending. Increased education funding is not always a priority for Conrad, but the Democratic leadership may push him to allow higher funding levels.

House Appropriations Committee: David Obey (D-Wis.) will again take the helm of the powerful Appropriations Committee, and will most likely keep his lead position on the education appropriations subcommittee, which funds student aid. As chairman, Obey will have the opportunity to divide the total spending amount to help fulfill one of the "Six for '06" elements of the Democratic platform: increasing the Pell Grant maximum to $5,100. While this is an expensive proposal, increasing student aid has been a top priority of Obey's for years, and Democrats have supported increases in the Pell Grant program the last five years, while the Pell maximum has stayed flat

Senate Appropriations Committee: Robert Byrd (D-W.Va.) will again chair the Appropriations Committee, and Tom Harkin (D-Iowa) will again chair the education, health and labor subcommittee. Senator Arlen Specter (R-Pa.) is expected to keep his seat at the top of the Republican side, as ranking member of the subcommittee. Harkin and Specter have worked together for years running the education subcommittee in a bipartisan fashion, as allies advocating increased funding for education and health programs. If Byrd is able to give the subcommittee a larger allocation next year, Harkin has a chance to preside over increases for student aid.

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## Senate Finance Committee Scrutinizes College Costs

On December 5, the Senate Finance Committee held a hearing to examine the relationship between federal support for higher education and tuition increases. The hearing, entitled "Report Card on Tax Exemptions and Incentives for Higher Education: Pass, Fail, or Need Improvement," was timed to coincide with congressional efforts to extend the above-the-line tuition deduction during the lame duck session *(see related story on page 1)*. Witnesses included Patricia McGuire, president of Trinity University, D.C.; a Harvard economist; the president emeritus of the University of Michigan; a government tax strategist; and *Wall Street Journal* deputy bureau chief Dan Golden, author of the recent book *The Price of Admission*.

In opening remarks, Committee Chairman Charles Grassley (R-Iowa) expressed concern that even with congressional assistance for college tuition through the tax code, he continues to see what he called "a bad triple play" on the part of institutions – "big tuition increases, expanding endowments, and now million-dollar salaries for college presidents."

McGuire requested that legislators "do no harm" to colleges and universities "whose students need our good work and scarce resources, and who also need the ongoing support of federal financial aid in even more generous measure." Federal tax legislation, McGuire said, "recognizes the essential public good" that education provides, including its role as "one of the drivers of economic productivity and lifelong economic security for citizens." She also implored the committee not to take legislative steps, based on some undefined public resentment of elite institutions, that would, instead, negatively impact smaller colleges and universities like Trinity.

In other testimony, panelists touched on such admissions-related questions as legacies and preferential treatment of applicants. There was little discussion of endowments or executive compensation, however.

After several of the witnesses debunked the notion that federal student aid programs and tax breaks for tuition have led colleges and universities to raise their prices, the hearing took a strange turn. Incoming Chairman Max Baucus (D-Mont.) took particular interest in a proposal by Susan Dynarski, from the Kennedy School of Government at Harvard, to replace the current tax credits and deductions, and the Pell Grant, with a single refundable "super credit."

Baucus and Grassley are both advocates of simplification of the tax code, and we can expect to see legislation in the next Congress addressing tax simplification. However, the proposal to eliminate various popular grant programs took many in the higher education community by surprise. Such a proposal is unlikely to gain traction given the current budget rules and committee jurisdictions. That said, any proposals aimed at "simplification" in the upcoming Congress will be watched closely.

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## Negotiations on Student Loan Provisions Off to a Bumpy Start

Negotiated rule-making on loan terms and processes began on December 12 in a state of some confusion. The first two-and-a-half-day session of the negotiated rule-making panel on loan issues began with most members of the panel uncertain as to whom they represented. Panel members asked the Department of Education representative for clarification, noting that they had been nominated by one party and seated as a representative for another. To resolve this dilemma, the panel agreed that the negotiators would represent no one but themselves. This action releases the entities that nominated the negotiators from objecting to any agreements reached by the panel.

Prior to the session, the interests of private colleges had been represented by Elizabeth Hicks, Massachusetts Institute of Technology, and Ellen Frishberg, Johns Hopkins University. Although neither was nominated by NAICU, both are seasoned financial aid administrators. Hicks was deputy assistant secretary for student financial assistance programs in the Clinton administration; Frishberg is a former NAICU employee. Both remain on the panel, but speak not for private colleges, NAICU, or their own institutions – just for themselves.

The loan panel agreed to an agenda developed by the department from the higher education portion of the Budget Reconciliation Act of 2005 (HERA), internal sources, and regional hearings. It also added about a half-dozen new items. Based on the panel's discussion of the agenda items, the department will draft regulatory language for consideration at the next session planned for late January or early February. Agenda items include counseling and certain repayment terms for Graduate PLUS Loan borrowers, identity theft, use of preferred lenders, prohibited inducements, economic hardship deferments, loan discharge for disability and death, assignment of defaulted loans, and collection costs for Perkins Loans.

Beyond the loan panel, the Department of Education suggested it might convene three other panels to develop regulations for recent legislation: (1) Academic Competitiveness Grants (ACG) and the Science and Mathematics Access to Retain Talent (SMART) Grants ACG/SMART Grants, (2) institutional and student eligibility issues, and (3) accreditation. The need analysis changes in HERA will not be negotiated since there is a legislative prohibition against regulation in this area.

The department initially planned to convene a December panel on ACG/SMART Grants. However, when it didn't receive nominations from the high school sector needed to establish a meaningful definition of a "rigorous academic curriculum," it reopened the nominating process. (Completion of a rigorous academic curriculum is a requirement for a student receiving an ACG grant, and the definition and verification of that term has been a troubling aspect of the new program.) Now, the department plans to conduct the initial session for this panel near the time of the second loan panel session.

An eligibility panel could be established. Since it would likely consider some financial responsibility issues, it is unlikely to go ahead before the department secures accounting experts to help inform the department's negotiator. Currently, the department's career staff have not been instructed to set up a negotiating panel on accreditation – an indication that they could be using NACIQI to implement their agenda instead *(see related story on page 1)*.

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## House Passes Charitable Giving Preference Bill

The House of Representatives has unanimously agreed to S. 4044, the "Religious Liberty and Charitable Donation Clarification Act of 2006." The bill would amend the recently-passed bankruptcy bill to allow bankrupt individuals to pay charitable pledges before other creditors. Widely supported throughout the charitable community, the bill had passed the Senate in September. Sponsored by Sens. Orrin Hatch (R-Utah) and Barack Obama (D-Ill.), the legislation was agreed to by the Senate on December 6.

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## Youth Vote Turns Out in Record Numbers

Great news on the youth-vote front. Efforts by our member presidents, the National Campus Voter Registration Project, and other non-partisan groups contributed to a record turnout of young voters this fall. Ten million 18- to 29-year-olds voted in the 2006 elections – an increase of 2 million over the midterm elections in 2002.

Nearly half (46 percent) of young voters reported they were contacted by a political campaign or organization during the 2006 election cycle, and these get-out-the-vote efforts took many forms. Twenty-eight percent of young voters said they received a phone call, and 22 percent had someone knock on their door. Interestingly, only 3 percent received a text message on their cell phone, and in a sign of the times, 7 percent were contacted through a social networking site like MySpace or Facebook.

According to two sets of exit polls, Democrats were the big winners of the youth vote. CNN reported the highest percentage, at 60. A separate exit poll from respected bipartisan pollsters Ed Goeas and Celinda Lake reported that 40 percent of young voters identified themselves as Democrats, 30 percent as Republicans, and 23 percent as independents. Even so, half reported that they voted for Democrats and 35 percent cast their ballots for Republicans.

The winds of change also blew through the states. Thirty-six governors were up for re-election, with the Democrats gaining six of those seats. Now there are 28 states headed by Democratic Governors; and 22 led by Republicans. The mid-term election brings the total of female governors to nine, tying a national record. Tradition holds that in midterm elections, the party of the president loses an average of 360 seats in state legislatures; at this point, 322 seats have turned over.

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## Early Guides to Congress – Get 'em While They're Hot (and Still Available)

NAICU has available a limited run of our *Early Guide to the 110th Congress*. Produced in the days following the November 7 election, it gives a quick overview of the new Congress (though of necessity, results of some of the races decided after Election Day are not included). If you'd like a copy, while supplies last, send an e-mail with your full mailing address to roland@naicu.edu.

We'll be producing a definitive guide to the 110th Congress in early 2007, with full committee assignments. When you request the early guide, let us know if you'd like to be on the mailing list for that directory as well.

*For more information, contact Roland King, roland@naicu.edu*

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Charting Our Course:
*The 2007 NAICU Annual Meeting*
*February 4-7, Washington, D.C.*
Register Now!

Go to **www.naicu.edu/meetings/index.shtm**
(or click on Meetings at www.naicu.edu)
for links to preliminary schedule, meeting registration form, and hotel reservations.

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