

In this issue . . .

- Accreditation: Negotiated Rulemaking, Round 3
 - Privacy and Security Amendment Added to Senate Bill Funding State Student Tracking Systems
 - Budget Deal Gets Closer, More Complex
 - "Paying for College" Gets Respectful House Hearing
 - Dollar Levels Hold Steady for ACG and SMART Grants
 - When Cuomo Came to Washington
-

Accreditation: Negotiated Rulemaking, Round 3

Continuing an ongoing saga in which the Department of Education and a group of conferees are attempting to negotiate rules around accreditation, the panel's third set of sessions, held April 24-26, featured both high drama and further exchanges of language dealing with performance measures – but ultimately failed to produce consensus. A fourth session has now been scheduled.

The drama was provided when Judith Eaton, president of the Council on Higher Education Accreditation (CHEA), informed fellow negotiators that the Department of Education's chief negotiator had suggested that she resign from the panel due to her opposition to the regulation of transfer of credit policies. The Department official, Vickie Schray, denied having asked for Eaton's resignation, indicating that she had merely mentioned it as one of several options available to all negotiators. Schray said that she wanted to be sure that Eaton understand all of her options, as she seemed "distressed" about her decision to withhold consensus on the transfer of credit issue.

Eaton, along with Susan Zlotlow, director of the American Psychological Association's office of program consultation and accreditation, dissented from the "final offer" made by the Department of Education with respect to measurement of student achievement (*see box, next page*). This proposal is more subtle than previous proposals by the Department, but remains highly troublesome in that it pushes a level of uniformity among institutions and a reliance on rigid measurement that would be damaging to the diversity and creativity that characterizes American higher education.

This view is widely shared by institutional leaders in both the public and private sectors of higher education. NAICU has joined the other presidential associations in developing a joint statement outlining our reasons for believing that the Department of Education is using the negotiated rulemaking process to seek unprecedented control over the accreditation process (see www.naicu.edu/docLib/20070507_AccredConcerns-5-04-07.pdf and www.naicu.edu/docLib/20070507_AccredConcerns-TalkPts-5-04-07.pdf). When proposed regulations are published in the *Federal Register*, NAICU will ask members to comment on them.

Although the negotiating sessions were scheduled to conclude on April 26, the committee will now meet for an extra day, on June 1. The main focus of this fourth session will be proposed regulations dealing with procedures governing the process by which the Department of Education recognizes accreditation agencies. There was near-unanimous opposition among the negotiators to these proposals on the basis that they reduced due process protections for accreditors while substantially increasing the control of the Department and its accreditation advisory body, the National Advisory Committee on Institutional Quality and Integrity (NACIQI), over accreditation agencies.

**FINAL OFFER OF DEPARTMENT OF EDUCATION
PROPOSED REGULATIONS DEALING WITH STANDARDS RELATED TO STUDENT ACHIEVEMENT**

Section 602.16 Accreditation and preaccreditation standards.

(a) The agency must demonstrate that it has standards for accreditation and, if offered, preaccreditation that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits. The agency meets this requirement if—

(1) The agency's accreditation standards effectively address the quality of the institution or program in the following areas:

(i) Success with respect to student achievement in relation to the institution's missions, which may include different standards for different types of institutions or programs. Standards satisfying this criterion must include expected levels of performance that are either established by the agency, or established by the institution or program under subparagraphs (A) and (B). In addition—

(A) If the agency does not establish the expected levels of performance with respect to student achievement, the institution or program, at the institution or program level respectively, must—

(1) Specify its goals for student achievement;

(2) Establish the expected level of performance; and

(3) Demonstrate its performance against those expected levels of performance using quantitative and qualitative evidence, including, as appropriate, external indicators.

(B) For prebaccalaureate vocational programs and degree programs leading to initial professional licensure or certification, expected levels of performance must include completion rates, job placement rates, and, as applicable, pass rates on State licensing examinations or other appropriate measures of occupational competency.

(C) Every agency must demonstrate that its standards and processes allow it to evaluate whether the evidence provided by the institution or program shows that the institution's or program's performance is acceptable. In any instance when the institution or program establishes the expected levels of performance, the agency must also demonstrate that its standards and processes allow it to evaluate the institution's or programs' expected levels of performance. The agency will take into account the institution's or program's use of other externally-set performance measures or criteria.

(D) Institutional accreditors will consider information provided by the institution about program level performance either in the aggregate, or at both the program level and in the aggregate, in making the institutional accreditation decision.

For more information, contact Susan Hattan, susan@naicu.edu

Privacy and Security Amendment Added to Senate Bill Funding State Student Tracking Systems

Senator Russ Feingold (D, Wisconsin), with the assistance of NAICU, successfully added an amendment to S. 761, the Senate math and science competitiveness bill, to give Americans greater privacy safeguards in statewide P-16 education data systems. The amendment would require states that apply for federal funds to establish or improve statewide student tracking databases to implement a series of privacy protections.

Restrictions added by the Feingold amendment include limitations on the use of data, restrictions on third party use of data, requirements for data security, and the protection of unique identifiers. Although the amendment still allows for individual tracking of students and the collection of academic records, it served to raise red flags regarding some of the potential abuses of privacy that could occur as a result of these new state student tracking systems.

While NAICU still opposes the establishment of educational tracking systems as a fundamental violation of an individual's right to privacy, any safeguards that can be added to the emerging systems could be helpful in protecting against future security breaches.

The bill will now go to conference with several individual math and science bills approved by the House of Representatives. The House bills do not provide funding for states to establish student tracking systems.

For more information, contact Susan Hattan, susan@naicu.edu

Budget Deal Gets Closer, More Complex

House and Senate budget negotiators are getting close enough to a deal on the FY 2008 budget resolution that they will appoint conferees the week of May 7, and move forward with formal conference meetings later in the week. The House is aiming to have the conference report on the floor for a vote the week of May 14. The two major sticking points of interest to private colleges have been (1) the total spending amount for appropriations, and (2) the reconciliation instruction to the education committees to allow fast track procedures in the Senate for the consideration of changes to the student loan programs.

It is our understanding that the total spending amount the budget will allow appropriators will be better than half way between the House and Senate plans. The House proposes \$22 billion above the president's budget, and the Senate proposed \$18 billion above the president's budget. This is good news for education, and specifically student aid funding, because it means we have a better chance of securing increases for the student aid programs when the total pot of money is bigger.

It is obvious that a reconciliation instruction that would require funding cuts to student loans is also very much in play and will be the last decision made. The reconciliation instruction was included in the House version of the budget resolution. It requires the House Education and Labor Committee to find \$75 million in student loan savings by September 10, 2007. The instruction was included in order to grease the wheels for dramatic changes in the student loan program by getting around Senate procedural and budget rules. Unlike regular Senate legislation, reconciliation bills are limited to 20 hours of debate, with no amendments, and require a simple majority for passage. By requiring Congress to direct a relatively small amount (\$75 million) of student loan savings to deficit reduction, the Senate can also use the special rules to cut a reported \$15 billion from lender subsidies and transfer it to increased student benefits, including additional grant aid.

While one of the lead negotiators is firmly against it, the education chairmen are trying to work out a deal. Senate Budget Chairman Kent Conrad (D-N.D.) has been quoted as saying he is against including the reconciliation instruction to achieve nominal deficit reduction just to move controversial student loan changes. While he supports increased student aid, he says it should be done through the regular legislative process, and not using the budget reconciliation process intended for deficit reduction purposes. He had criticized Republicans for using that process to pass the 2001 tax cuts, so he doesn't want to use it for student aid financing.

Because of the recent scandal in the student loan industry, House education committee chairman George Miller (D-Ca.) is pushing strongly for the reconciliation instruction to survive the budget conference, and has offered that more could go towards deficit reduction to address Conrad's interest in protecting the integrity of the budget reconciliation process. It is our understanding that Senate chairman Ted Kennedy (D-Mass.) is talking to Ranking Member Mike Enzi (R-Wyo.) to see if they have enough common ground on student loan issues under the HEA reauthorization process to ensure that he does not need to use budget reconciliation to reach his goal of cutting lender subsidies to increase grant funding.

Once conferees finalize the FY 2008 budget resolution, appropriators are given the final total spending amount, and then they divide that up between the 12 appropriations subcommittees. Student aid programs are funded in the Labor-HHS-Education appropriations subcommittee, which is the largest domestic appropriations bill of the 12, coming in at about \$145 billion last year. If the student loan reconciliation instruction survives the budget process, the education

committees begin writing that legislation, which would then put the reauthorization of the HEA on two tracks – one for student loans, and one for everything else.

For more information, contact Stephanie Giesecke, stephanie@naicu.edu

"Paying for College" Gets Respectful House Hearing

The chairman of the House Subcommittee on Higher Education, Lifelong Learning, and Competitiveness, Rep. Rubén Hinojosa (D-Texas) held a May 1 hearing in preparation for the reauthorization of the Higher Education Act (HEA). The well-attended "Paying for a College Education: Barriers and Solutions for Students and Families" focused on both the financial hurdles that students face, and suggestions for overcoming them.

Witness Claude Pressnell, president of the Tennessee Independent College and University Association and vice-chair of the Advisory Committee on Student Financial Assistance, said that the barriers to college for low- and moderate-income families can be grouped into four main categories: finances, inadequate academic preparation, lack of information, and the complexity of the college application process. Among the Advisory Committee's recommendations for changes to the HEA, Pressnell urged support for a program to encourage partnerships with business and private philanthropic organizations to contribute to funding college access activities.

Dallas Martin, president of the National Association of Student Financial Aid Administrators (NASFAA), also testified. He explained the role and importance of campus aid administrators in providing information and assistance to students needing financial assistance. The expansion and complexity of federal regulations and programs has increased the demands on aid administrators, he said. Lack of support from the Department of Education, and sometimes from university officials, Martin said, "has forced many financial aid offices to seek assistance from lenders, guaranty agencies, and others to print student financial aid consumer information, to perform student loan exit and entrance counseling, to establish call centers, and to provide additional staffing during peak periods in the financial aid office."

Perhaps surprisingly, given the current scrutiny of the bank-based federal loan programs, Martin was asked only one question. Rep. Thomas Petri (R-Wis.) wanted to know why NASFAA had rejected a proposal that would have restricted gifts from lenders to financial aid administrators. Martin replied that the NASFAA board was divided on whether tougher action was necessary, and said that the organization is currently reviewing a new code of conduct.

Another witness, Luke Swarthout, higher education advocate for the U.S. Public Interest Research Group, stressed the need to simplify the admissions and aid process, ensure more grant aid, seek ways to limit textbook prices, and reduce student debt. Jim Boyle, president of College Parents of America, urged that the threshold for tax deductions for educational expenses be raised, so more middle class families could benefit from them.

Hinojosa concluded the hearing by adding three observations of his own. He sees parental involvement as a key to student success, and noted that for Hispanic students the role of the mother is especially important. He urged that families save more for college, and that the tax code be used more creatively to assist low-income students, such as via subsidized housing.

An archived webcast of the hearing, as well as the text of witness testimony, is available through the Web site of the House Committee on Education and Labor.

For more information, contact Maureen Budetti, maureen@naicu.edu

Dollar Levels Hold Steady for ACG and SMART Grants

Award amounts for two key federal grant programs, Academic Competitiveness Grants (ACG) and National Science and Mathematics Access to Retain Talent (SMART), will hold at current levels in the coming year, the Department of Education has announced. The academic majors approved for SMART grants, listed in an attachment posted with the awards letter, also remain the same as 2006-07.

The rulings, posted in the April 27 letter from the Department, establish award amounts as follows:

- Year 1, ACG: \$750
- Year 2, ACG: \$1,300
- Year 3, SMART: \$4,000
- Year 4, SMART: \$4,000

ACG and SMART grants are aimed at encouraging academic rigor and study in science, mathematics, and critical foreign languages. The programs have proved difficult to administer since their start in 2006, despite Department efforts to improve them. The programs were included in negotiated rulemaking ("neg-reg") this spring in hopes of improving the current regulations, but consensus was not achieved. A coalition of institutional and student representatives and others protested that the Department had not gone far enough in easing the burden of administering the programs.

Negotiators did reach tentative agreement on aspects of the program's management, and some of that language could be included when the Department issues draft regulations, expected in June, and in its final regulations, expected in the fall. In addition, the higher education associations have sent Congress recommendations for improvements to the law on which the regulations are based.

Of the two other neg-reg panels considering student financial aid regulations, only the highly technical "general provisions" panel has reached consensus on its package of draft regulations. The loan panel could not reach agreement on a number of items, most notably provisions regulating institution and lender relations, and provisions weakening the Perkins Loan Program. Draft and final regulations for these two panels are expected to be published on the same schedule as the ACG and SMART Grant regulations.

For more information, contact Maureen Budetti, maureen@naicu.edu

When Cuomo Came to Washington

New York Attorney General Andrew Cuomo's investigation of college and student loan lender ties reached Capitol Hill on April 25 when he testified before the House Committee on Education and Labor, chaired by Rep. George Miller (D-Calif.). He was the sole witness.

Cuomo said that his office had "uncovered several significant, deceptive and illegal practices" that were widespread through the country and many segments of the loan industry. He identified revenue sharing, preferred lender lists, improper relationships between lenders and financial aid administrators, denying student their choice of lender, undisclosed sales of loans to another lender, and opportunity loans. These "unholy alliances," Cuomo stated, put the interests of the lender and the institution ahead of the students' interests. Preferred lender lists, for example, could steer students to borrow from lenders with the best "kickbacks" for schools, rather than the best loans for students. Cuomo claimed he was not against preferred lender lists, if they were developed correctly.

Although he accused the Department of Education of being "asleep at the switch," Cuomo, who became New York's attorney general in early 2007, has based his investigation on New York state consumer law. He said institutions have broken the law by not disclosing their relationships with lenders to students at their schools who take out loans. According to the law, there does not have to be any damage done to the students for these cases to be pursued. The attention that Cuomo has brought to particular practices at named schools have led many institutions to sign his prescribed code of conduct, and to "reimburse" students amounts based on the extent of the school's revenue-sharing. Lenders also have settled with Cuomo and made payments that he says will be used to fund a financial literacy campaign. Many facets of his investigations concern private student loans, not federally-insured loans.

Miller said that the system was spinning out of control and was replete with corrupt practices. He has introduced companion legislation to Sen. Kennedy's (D-Mass.) "Sunshine Act" to restrict existing practices and require institutions to provide more information on lenders they suggest. Similar draft regulations are expected to be issued by the Department in June. During the question and comment period, many committee members seemed supportive of the attorney general. However, a few saw the controversy differently, with some asking if overly restricting school and lender interaction might cause problems for students.

Ranking Minority Member Buck McKeon (R-Calif.) labeled the controversy as being between the Democrat-supported Federal Direct Lending Program (FDLP) and the "bank-based" Federal Family Education Lending Program (FFELP) which he supports. Rep. Rubén Hinojosa (D-Texas), chair of the Subcommittee on Higher Education, Lifelong Learning and Competitiveness, asked Cuomo if he thought it better that banks market loans directly to students. Both McKeon and Rep. John Kuhl (R-N.Y.) noted the Department had no control over private loans, while Cuomo and Miller both recommend such oversight.

The controversy continues to play out in the press with more schools and lenders, campus and Department individuals, guaranty agencies, and – most recently – alumni associations drawn into the fray. On May 7, the New York state legislature approved a code of conduct based on Cuomo's recommendations (www.oag.state.ny.us/press/2007/may/may07a_07.html).

For more information, contact Maureen Budetti, maureen@naicu.edu

The Week in Review is published by the National Association of Independent Colleges and Universities.

Leslie H. Garner, Jr., President, Cornell College (Iowa), *Chair, NAICU Board of Directors*
David L. Warren, *NAICU President*
Sarah A. Flanagan, *Vice President for Government Relations and Policy Development*
Roland H. King, *Vice President for Public Affairs and Acting Editor*
Stephen G. Pelletier, *Editorial Consultant*

We welcome your comments. Contact us at (202) 785-8866, by fax at (202) 835-0003, or by e-mail at roland@naicu.edu. Our mailing address is 1025 Connecticut Ave., N.W., Suite 700, Washington, DC 20036. *The Week in Review* is available to NAICU member presidents and their staff via e-mail upon request, and is archived on the NAICU Web site, www.naicu.edu (go to user log-in on home page). To subscribe, or for member log-in user name and password, e-mail roland@naicu.edu. © 2007 by the National Association of Independent Colleges and Universities



The Week in Review

National Association of Independent
Colleges and Universities
1025 Connecticut Ave., N.W., Suite 700
Washington, DC 20036