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Finally – A Senate Higher Education Reauthorization Bill

In a major victory for the higher education community, the Higher Education Act (HEA) reauthorization bill approved by the Senate on July 26 strikes provisions of the bill that would have imposed rigid measures of student learning through the accreditation system. Adoption of that provision, authored by Sen. Lamar Alexander (R-Tenn.) addressed NAICU's primary concern with the Senate bill. (*See WIR, 7/03/07*)

The Senate approved S. 1642 by a vote of 95-0. Relatively few changes were made to the bill over two days of debate.

The final version also modifies the original transfer-of-credit provisions so that an institution's right to make its own decisions about award of academic credit is preserved. In addition, the measure includes a number of new cost-reporting provisions of the bill – but none of these provisions cross into the "price control" realm.

The bill makes important changes to some student aid programs. For one, it corrects eligibility provisions for ACG and SMART grants that have been confounding student financial aid administrators and students since the inception of the programs. These include making legal aliens and students at institutions with certain unique curricula eligible for the grants, and aligning the grant disbursement period with Pell Grant awards. It also returns authority for defining "critical foreign languages" to the Secretary of Education, and drops the requirement that these languages must be critical to national security.

The bill makes several improvements in Title VI, such as providing grants for undergraduates to study foreign languages. Unfortunately, however, language requiring "academic diversity" is still contained in this portion of the bill.

S. 1642 does not include the most problematic provisions in H.R. 890, the Student Loan Sunshine Act, passed by the House in May, such as prohibiting college presidents from serving on bank boards, or bank representatives from serving as college trustees. Also, student aid administrators would be allowed to have their expenses reimbursed by lenders for advisory service to a lender.

The bill requires lenders to provide specified information to borrowers – including interest rate, types of repayment plans available, when interest is capitalized, all fees, and default collection practices. Lenders also must report to the Secretary information relating to any reimbursements made to student financial aid administrators. The language may still need to be clarified, however, since it is not clear how some of the requirements would be met by other entities affiliated with a college.

The major floor battle was over an amendment offered by Sen. Tom Coburn (R-Okla.) that would have prohibited use of tuition funds or federal grants to hire "registered lobbyists" to influence federal legislation or any other federal activity. With considerable help from the NAICU Secretariat, the state executives, and many NAICU presidents, we aggressively fought the amendment on the basis that it was an inappropriate restriction on colleges' ability to make legitimate contacts with federal officials – noting that small, tuition-dependent institutions would be particularly hard hit.

The Coburn amendment was modified by the adoption of a second-degree amendment by Sen. Edward Kennedy (D-Mass.) which was approved by a vote of 93-0. This modification improves the original Coburn language, but still raises some questions and concerns.

The NAICU membership also played an active and important role in calling attention to problems with several other proposed amendments:

- An amendment by Sen. Judd Gregg (R-N.H.) that attempted to connect increases in tuition and fees to increases in the Pell Grant maximum, was not offered.
- Likewise, an amendment by Sen. Dick Durbin (D-Ill.) dealing with textbooks was not offered.
- An amendment by Sen. Harry Reid (D-Nev.) on file-sharing was withdrawn, and the provision requiring implementation of a technology-based deterrent was dropped entirely. Additional file-sharing reporting requirements were included in the managers' amendment, however. This outcome, while not perfect, was a big improvement over the original proposal.

The House has not yet put together its HEA reauthorization bill. Given that the Senate has completed action on it, though, we expect the House to quickly pull together a proposal. In the meantime, the Senate passed S. 1868, extending the Higher Education Act's authority until October 31, 2007, and the House plans to act soon on this extension.

However the rest of the process unfolds, we anticipate a great deal of activity in the next two months, and a likelihood that action will be completed on both reauthorization and reconciliation this fall.

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Victory for Student Aid and an Admonition on Accreditation in House Bill

The FY 2008 education appropriations bill passed by the House of Representatives on July 19 is a big victory for student aid funding this year, and also cautions the Department of Education to hold off on revamping accreditation.

H.R. 3043 increases the Pell Grant maximum \$390 (to \$4,700), restores SEOG and LEAP funding, and increases the funding for TRIO and GEAR UP. The bill spends \$10 billion more than the president's request for the same agencies. This has prompted administration statements that the president would veto the bill should it reach his desk with this total. NAICU and the other groups working in support of the bill had hoped to see it pass with a veto-proof margin of 290, but the final vote of 276 to 140 fell short of that mark. However, 15 members did not vote, and 14 of the Republicans who had earlier vowed to sustain the president's veto wound up voting for the bill.

Floor debate centered on attempts to cut back spending in the bill, but all failed. There were no student aid amendments.

Regarding accreditation, the committee report noted "the Committee includes a new provision that prohibits funds under this Act from being used to promulgate, implement, or enforce any revision to the regulations in effect under section 496 of the Higher Education Act of 1965 on June 1, 2007, until legislation specifically requiring such revision is enacted." The bill also reflects a shift in approach toward creating a national student record database (*see separate story below*).

The next step in the appropriations process is Senate consideration of the FY 2008 education spending bill, which has not yet been scheduled. The Senate bill maintains level funding for the student aid programs.

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Efforts to Build Student Unit Record Data System Move in a New Direction

While failing to obtain congressional approval and funding to create a national student record database, advocates are now hoping to arrive at the same place by going through the states. Recent efforts have focused on establishing longitudinal data systems at the state level that might ultimately be linked to one another, creating a comprehensive national system.

Evidence of the shift away from a national to state-by-state approach is reflected in the Higher Education Reauthorization bill approved by the Senate (S. 1642) this week. A provision of the bill prohibits the use of funds to establish a Department of Education database of individual student information, but specifically notes that the prohibition is not intended to prevent states or groups of states from developing longitudinal student unit record systems.

In addition, the managers' amendment to S. 1642 includes authority for a state higher education information system pilot program. Under this program, up to five states would receive funds to design, develop, and implement comprehensive postsecondary student data systems. This provision was included at the request of Sen. Richard Burr (R-N.C.).

The shift is also evidenced by the House Appropriations Committee's rejection of an administration request for \$25 million to conduct a pilot study of a student unit record data system. "The Department has not made a convincing case that the benefits of a national database containing individual student records outweigh the costs of establishing and maintaining such a system," the committee report states. "Further, the Department has not adequately addressed privacy concerns."

However, the FY 2008 Labor-HHS-Education Appropriations bill, as recently approved by the House, does include \$37.5 million to continue a pilot program by the Department's Institution of Education Sciences (IES) for the design and implementation of statewide systems. The committee's view, as stated in the report on the bill, is that "such data systems help States to efficiently and accurately manage, analyze, disaggregate, and use individual student data consistent with the No Child Left Behind Act."

The initial set of grants under the IES program were made in November 2005, when 14 states were awarded a total of \$52.8 million to develop these systems. [See www.ed.gov/print/news/pressreleases/2005/11/11182005a.html.] Then early this month, IES announced additional awards of \$62.2 million to 13 states for the design and implementation of statewide longitudinal data systems. [See www.ed.gov/news/pressreleases/2007/07/07022007a.html.]

Most efforts in this area have focused initially on data systems at the elementary and secondary level. However, the long-term vision is to expand them through postsecondary education and possibly beyond.

Finally, last week the Senate requested a conference with the House on math and science competitiveness legislation. The Senate version of this legislation (S. 761) includes grant support for statewide P-16 education data systems. (See *WIR*, 10/02/06, 5/08/07), while the House version of the measure (H.R. 2272) doesn't include support for the systems.

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Senate Completes Reconciliation in One Day

Sen. Edward Kennedy (D-Mass.), chair of the Health, Education, Labor and Pensions (HELP) Committee successfully propelled the Senate's higher education reconciliation bill to completion on July 19, garnering considerable Republican support along the way.

The Senate reconciliation bill (S. 1762) was substituted into the House reconciliation bill (H.R. 2669), and eventually passed 78 to 18. Several relevant amendments, listed below, were considered – along with a session-extending list of non-germane Republican amendments and procedural votes.

The bill cuts more than \$20 billion from lenders and loan guarantors to fund a number of student financial aid increases. It funds a new Promise Grant program for low-income Pell Grant recipients; allows federal loan payments to be capped at 15 percent of borrower income; boosts the amount students can earn before their federal student aid is decreased, and provides loan forgiveness for public-service employees after 10 years of repayment. It also provides funding for minority-serving institutions.

Lenders have complained that the cuts – especially on top of similar cuts last year – will cause smaller lenders to leave the program and will force remaining lenders to reduce the benefits they offer students.

NAICU and the rest of the higher education community sent letters to Sen. Kennedy in advance of floor consideration of the bill, supporting the increased funding for student aid. The letters are available on line at:

www.acenet.edu/AM/Template.cfm?Section=LettersGovt&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=22992 (Higher education community letter)

www.naicu.edu/docLib/20070725_NAICU_Senate_Recon.pdf (NAICU letter)

Despite the bill's \$17.3 billion over five years for need-based grant aid, NAICU and many others in the higher education community remain concerned about the structure and requirements of the new Promise Grant program. Instead of directing savings to the Pell Grant program, as the House does, this program would have to be administered separately. Grants would go only to the "most needy" students, with that term left undefined, and the Secretary of Education is given authority to establish the minimum and maximum grant awards. In addition, the program requires that the funding must not replace federal, state, or institutional aid to students.

Outcome of Proposed Amendments to the Senate Reconciliation Bill

Murkowski – Provide \$176 million for a college access partnership program; approved 73-24
Kennedy – Assure that student grant benefits extend through 2017; approved 52-45
Nelson-Burr – Reduce cuts in subsidy reductions to lenders; defeated 36-61
Sessions – Eliminate the loan forgiveness program for public service employees; defeated 42-55
Graham – Strike provision in the bill to eliminate the FAFSA drug question; approved by voice vote

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