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Negotiated Rulemaking Ends with No Formal Agreement

After nearly three weeks of negotiations, spread over three months time, negotiators were unable to reach final consensus on a package of new integrity rules for the federal student aid programs.

The outcome was not a surprise, since the prime target of the new rules -- the for-profit sector -- was part of the negotiating team, along with their longtime adversaries such as consumer watch dog groups. The prime impetus for the panel was growing concern by the Department of Education's Inspector General that fraud and abuse could be once again on the rise in the for-profit sector.

Despite the lack of formal consensus on the full 14-issue package, a considerable amount of progress was made on all issues, and actual agreement was reached on nine topics. The Department of Education is free to write whatever proposed regulations it wishes when consensus is not reached. However, tradition dictates the Department will likely adopt most agreements that were reached.

The sessions resulted in important progress on the issues of greatest concern to NAICU -- including the role of states, and the question of how to measure credit hours. The Department is expected to publish its proposed rules around June 1 for public comment.

NAICU had two formal negotiators representing private, non-profit education at the table throughout the lengthy ordeal: Todd Jones, president of the Association of Independent Colleges and Universities of Ohio, and Maureen Budetti, NAICU's director of student aid policy. Other negotiators included representatives from the Department; American Council on Education; public college and workforce sectors; students; accreditors; financial aid administrators; college business officers; and the lending and testing industries.

For more details, visit our page summarizing the background and outcome on the issues of most direct interest to private colleges and universities.

Obama's FY 2011 Budget Treats Student Aid Kindly

President Obama sent his FY 2011 budget to Congress on February 1, and made education funding a top priority in a tight budget, providing a 7.5 percent increase in discretionary funds. That's in contrast to an overall three-year freeze on non-security discretionary programs, which would hold spending at \$447 billion for programs outside of Homeland Security, Defense, Veteran's, and Intelligence.

For education, the budget includes a \$4 billion increase in discretionary funds, which the administration is touting as the biggest increase since 2003. The big budget news is an additional \$3 billion for K-12 programs, but also a proposal to consolidate 38 programs through reauthorization of the Elementary and Secondary Education Act (ESEA, aka NCLB). Among the ESEA consolidations, we are particularly concerned that funding for Teacher Quality Enhancement Grants (HEA Title II) is eliminated and consolidated into a broader block grant for teacher preparation activities. NAICU's stance is that there is a critical role for institutions of higher education as the lead grantee in teacher preparation partnerships.

For student aid, the budget advocates passage of the Student Aid Fiscal Responsibility Act (SAFRA), providing a mandatory Pell Grant maximum of \$5,710, full conversion of all student loans to direct lending, direct Perkins Loans, and investments in community college and early childhood reform. A new proposal paid for by SAFRA is included in the budget: \$1.2 billion over three years for Graduation Promise grants, to help strengthen high schools.

All other student aid programs would be level-funded, except for the LEAP state grant program, which is proposed for elimination, along with five other education programs. NAICU is extremely concerned that the elimination of LEAP would result in a net loss of grant aid for low-income students in this tough economic time. LEAP funding provisions ensure that states maintain their student aid programs, help students persist and graduate, and treat students at private colleges and universities the same as students at public institutions.

Beyond student aid, the budget proposes to expand the income-based repayment plan (IBR) for student loans, and to make permanent the American Opportunity Tax Credit, which provides a \$10,000 tax credit for four years of college. The IBR proposal would lower the discretionary income threshold from 15 percent to 10 percent; lower the loan forgiveness timeline to 20 years of payment, down from 25 years; and maintain loan forgiveness for 10 years of public service.

The Strengthening Institutions programs (Title III, HBCUs and HSIs) received a five percent increase overall. International Education programs are level funded in the budget.

The next steps for the budget process are for the House and Senate budget committees to hold hearings with administration officials, then write their version of a budget resolution, which typically occurs in March.

Student Aid Reconciliation Stalled by Health Care? It's Complicated.

It is our understanding that the Senate education committee may have the student aid reconciliation bill ready to go. However, the committee apparently is waiting for a decision on how to move forward with the health care reform legislation before taking action. The bill would convert all student loans to direct loans; put the savings generated by that switch into increasing the Pell Grant maximum by CPI plus 1 percent, reaching at least \$6,900 by 2018; expand Perkins Loans; engage states in broad-based education reform; and fund community college and early childhood education reform.

The thinking in the Senate is that the student aid bill represents a last resort for passage of a health care reform bill via the reconciliation process. Reconciliation is a budget mechanism to

ensure mandatory spending cuts and deficit reduction, and enjoys special rules in the Senate that prohibit filibuster and require only a simple majority for passage (51 votes).

In last year's budget resolution, Congress provided for student loans and health care to be reformed using the reconciliation process. However, that resolution stipulates that if reconciliation is used, there can only be one vehicle (or one vote) on the combined proposals. Moving the health care legislation under regular order in the Senate seems to have fallen apart, now that there don't appear to be the 60 votes needed for passage. This turn of events makes the student aid reform bill the last possible vehicle to move health care.

All reports we have heard point to floor action on a reconciliation package later in February. Senate HELP Committee Chairman Tom Harkin (D-Iowa) was recently quoted in the National Journal's "Congress Daily" as saying, "We have the votes."

But Wait, There's More . . .

Attaching the health care bill is not the only sticking point in getting the student aid bill done in the Senate, though. When the House passed its student aid bill in September, the Congressional Budget Office scored its provisions as (1) the conversion to direct lending saving \$87 billion, (2) the Pell Grant increases costing \$40 billion, (3) \$10 billion going to deficit reduction, and (4) the remainder spent on the other reform provisions in the bill.

That score is based on the March 2009 CBO baseline, which is valid until Congress enacts this year's budget resolution (for FY 2011). However, since that estimate, three major changes have occurred. First, more colleges have already converted to direct lending in anticipation of this legislative mandate. Then Pell Grant eligibility soared way above expectations, resulting in vastly increased costs for the program. Finally, the federal government has purchased more private loans through the temporary ECASLA legislation than anticipated.

Bottom line of all of this: The estimated savings from converting to direct lending stays constant, but the cost of the Pell grant increase rises from \$39 billion to \$56 billion over 10 years. No one knows whether or not these changed costs will affect the fragile Senate majority appearing to support the bill. Passage of the student aid reconciliation bill could get just as complicated as health care in the coming months.

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

Debt Ceiling Increases

Congress has sent the President H.J. Res. 45, which increases the debt ceiling by \$1.9 trillion, and reinstates statutory pay-as-you-go (PAYGO) requirements on entitlement spending. It is estimated that this increase in the debt limit, passed on February 4, will enable the U. S. government to continue borrowing to cover expenses through the rest of 2010.

The PAYGO amendment adds an additional layer of score-keeping to the legislative process to ensure that entitlement legislation does not further increase the deficit each year. The amendment also exempts the Pell Grant program from sequestration -- a form of automatic spending cutbacks. That's a first, and another indicator of the value Washington now puts on student aid, along with other programs for low-income individuals, should Congress fail to balance the PAYGO "scorecard" at the end of each session.

The floor debate on the debt ceiling and the PAYGO amendment vacillated between the arcane and the partisan. However, it clearly signaled that annual federal budget deficits and cumulative national debt have risen to the top of the hot-issues list. The renewed interest in the debt will have an impact on advocacy for student aid funding, even though post-secondary education is considered key to job creation.

House, Senate Look to Extend Expiring Tax Provisions

The IRA charitable rollover and the tuition deduction, two very important provisions for colleges and universities, have now expired with the rest of the 2009 expiring tax provisions. However, both the House and Senate intend on retroactively extending these provisions for one additional year.

These two items then will join a host of other important provisions from the 2001 estate tax bill and 2008 stimulus bill that are set to expire at the end of 2010. There's the possibility of losing practically every higher education tax benefit at the end of next year -- including the IRA rollover, tuition deduction, the new \$2,500 college tax credit, Sec. 127 employer-provided education assistance, improvements made to the student loan interest deduction, and increased contribution limits to Coverdell education savings accounts.

Various bills are being introduced in both the House and Senate to make these items permanent, but there is no sense of timing for their consideration -- particularly since Congress is yet to address the now-expired 2009 tax provisions.

We'll keep you apprised of developments as we move toward the end-of-2010 expiration date on these many important tax provisions.

For more information, contact Karin Johns, Karin@naicu.edu

New Officers, Members Named to NAICU Board

The members of the National Association of Independent Colleges and Universities (NAICU) have selected 15 new board directors and four new board officers for 2010-11. Members of NAICU's board of directors set the association's agenda on federal higher education policy; actively encourage support of NAICU priorities and initiatives; and oversee the association's financial administration. Members typically serve three-year terms.

"NAICU's new board members and officers were selected by their peers because of their expertise in the field, proven leadership, and commitment to America's college students," said NAICU President David L. Warren. "They assume their responsibilities at a time of great challenge and transformation for American higher education.

"The economic downturn, growing student financial need, and the push for greater accountability are among the dynamics affecting higher education," Warren said.

A full list of NAICU board members can be found at:
<http://www.naicu.edu/about/naicu-board-of-directors>

Jobs Bill Action Moves to the Senate

Before the holiday break, the House passed a \$152 billion Jobs for Main Street bill, which included a \$300 million increase for Federal Work Study (FWS), and \$23 billion for additional State Fiscal Stabilization Funds for public K-12 and public higher education. Now the Senate is working on a collection of bills that comprise a jobs package. The first action on the Senate side is expected immediately following the February Presidents Day break.

The four parts in the Senate package are broadly defined as tax credits, small business, infrastructure and public service. NAICU is asking the Senate to include two important items: 1) matching the House's \$300 million for FWS, and 2) adding a "maintenance of effort" provision requiring states to protect state student aid funds.

FWS funds provided through the American Recovery and Reinvestment Act (ARRA, the stimulus bill) last year have proven effective in providing jobs for students in college -- to help them not only pay for college, but to stay in college and graduate. Almost 90 percent of the FWS stimulus funds had been distributed by the end of 2009, underlining the program's efficiency.

At the same time, the \$500 increase in the Pell Grant included in the ARRA last year has resulted in some states cutting state financial aid programs. The move has undercut the intent of Congress, which enacted the Pell Grant increase to help students with additional funds at a time when families' financial situations were drastically changing. Clearly, in these difficult economic times, federal funds for student aid should supplement, not supplant, state aid.

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

New Net Price Calculator Resource Available

The Association for Institutional Research (AIR) and the National Association of Student Financial Aid Administrators (NASFAA) are making available a Net Price Calculator Webinar the two associations co-hosted --after having received nearly 2,000 requests for it.

To watch the video presentation and/or download the full PowerPoint and script from the webinar visit the AIR Web site. Questions regarding the Net Price Calculator, or feedback regarding the presentation materials, may be submitted to npc@airweb.org.

In addition, AIR is establishing a Net Price Calculator Information Center on its Web site, and slated to go live later in February.

NAICU also has Net Price Calculator background information and resources in the College Cost section of its HEA 101 mini-Web site.

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

ESEA Reauthorization Underway

The President's budget kicked off the process for the reauthorization of the Elementary and Secondary Education Act (ESEA) with the outline of proposed consolidation of programs to focus on "competitiveness, flexibility, and accountability," according to the department's press release on the budget.

The administration's plan consolidates 38 ESEA programs into 11 funding streams, and "will propose to replace the accountability system established in NCLB with a new system build around the goal of helping all students graduate high school college- and career-ready."

NAICU and other higher education associations will be watching the ESEA reauthorization process in Congress closer than ever before. A particular concern is the role institutions of higher education will play in teacher preparation. Already, the budget proposes to consolidate all federally-funded teacher education programs into three streams that have institutions as partners, not as lead grantees.

The Obama administration is very interested in expanding the role of alternative routes to teaching in filling highly qualified teaching positions in low-performing schools. They believe the success they've seen, especially in urban areas -- with special programs in Boston, New York, and Chicago -- are the models to follow for reforming low-performing schools across the

country. This is seen by some as an affront to traditional teacher preparation programs at institutions of higher education, both public and private. The concept also opens the doors for increased participation in federal teaching programs for proprietary institutions.

NAICU and other higher education associations are working closely with the American Association of Colleges of Teacher Education (AACTE), whose members are deans of education, to ensure public and private colleges and universities maintain a strong role in federally-funded teacher preparation programs, without overly burdensome accountability provisions.

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

Green-building Fellowships Available for Under-resourced Colleges

Second Nature, a national nonprofit organization advancing sustainability in the higher education sector, is seeking applications for the 2010 Kresge Fellowship Program created to address some of the challenges faced by under-resourced schools to "build green" on their campuses.

Fellowships will be awarded to 25 under-resourced institutions. The application deadline is March 15. Final decisions will be announced on April 15.

The fellowships will provide up to \$2,000 toward registration, accommodations, and travel expenses for fellows to attend one national green building-related conference. Facilities directors, campus planners, and vice presidents of finance and business are eligible. Fellows will be funded to take part in learning and networking opportunities, such as the 2010 Association for the Advancement of Sustainability in Higher Education (AASHE) Conference and the US Green Building Council's Greenbuild Conference. They also will become members of the Kresge Fellowship Network.

For more information regarding the program guidelines, application form, and other details, visit the [CampusGreenBuilder Web site](#).

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