NATIONAL ASSOCIATION OF INDEPENDENT COLLEGES AND UNIVERSITIES

The Week in Review

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House Leaders Lash Out at Higher Ed Community

Also in this issue

Two high-ranking Republican congressmen have launched a media barrage in response to community comments on H.R. 4283, the College Access and Opportunity Act.

In a heavily publicized June 14 letter, Reps. John Boehner (R-Ohio), chairman of the House Education and the Workforce Committee, and Buck McKeon (R-Calif.), chairman of the 21st Century Competitiveness Subcommittee, said they saw a "growing disconnect between the priorities of the lobbying community and those of parents, students, and taxpayers, who are increasingly concerned about the condition of American higher education."

The phrase "lobbying community" apparently referred to NAICU president David Warren and 46 other association heads, who endorsed comments on H.R. 4283 submitted to the committee by the American Council on Education (ACE). Their consensus was that the bill could not be supported in its current form.

The ACE letter expressed the community's concern that the bill would "alter the basic relationship between the federal government and institutions of higher education." Boehner and McKeon responded:

> As we emphasized repeatedly in our discussions with the lobbying community during the months leading up to introduction of the bill, this is not a routine reauthorization of the Higher Education Act.... With all due respect, that's been the point of this process all along: change. The point of reauthorization is not to simply perpetuate the status quo, but to identify ways to make programs, process, and policy better.

The chairmen accused colleges of silent indifference on matters that needed improvement, and actual opposition to providing greater transparency on college costs. According to their letter, the "lobbying community:"

- Opposes giving parents and students better access to information about what their college dollars are buying;
- Opposes allowing students at non-traditional institutions to receive a more equitable share of federal higher education subsidies;
- Supports requiring American taxpayers to provide billions in new subsidies for higher education programs.

The authors seemed surprisingly ill-informed about the language of their own bill. In their letter (and also in a June 16 hearing), Boehner and McKeon insisted that their legislation only required institutions to have a transfer of credit policy, make it known, and follow it. The bill's actual language goes much farther, and requires institutions to have objective standards for accepting credits.

Boehner and McKeon characterized the integrity provisions (such as the 50 percent rule on distance education, and the requirement that proprietaries receive at least 10 percent of their revenue from non-Title IV sources) as "outdated rules and requirements that present needless barriers to educational access." They also criticized the opposition of the "lobbying community" to giving "nontraditional" (i.e., for-profit) institutions an equitable share of higher education subsidies. (See p. 2 for more on the for-profit issue.) ■

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Education Committee Questions Equity for Proprietary Schools

On June 16, the House Committee on Education and the Workforce held a hearing entitled "H.R. 4283, the College Access and Opportunity Act: Are Students at Proprietary Institutions Treated Equitably under Current Law?"

In his opening statement, Chairman John Boehner (R-Ohio) said current higher education law creates a two-tiered system in which proprietary schools are treated like second-class citizens, and their students suffer because of "antiquated" regulations such as the "90/10 rule." Boehner said this rule, which requires that proprietaries receive at least 10 percent of their revenues from non-Title IV sources, forces proprietary schools to raise their tuition—a hardship for the low-income students that they predominantly serve. Boehner reiterated his defense of proprietaries in the committee's June 16 press release.

Witnesses

Representing the proprietary point of view were **Dwight Smith,** president and chief executive officer of Sophisticated Systems, Inc.; **Andrew Rosen,** president and chief operating officer of Kaplan, Inc. (a subsidiary of the *Washington Post*); and **David Moore,** chairman and CEO of Corinthian Colleges, Inc. They praised the quality of proprietary education and its importance in meeting the education needs of the many low-income students currently reaching college age.

The nonprofit view was represented by **Alice Letteney,** director of the University of New Mexico at Valencia, and **Barmak Nassirian,** associate executive director of the American Association of Collegiate Registrars and Admissions Officers. They expressed concern about the effect of eliminating the integrity provisions (the single definition of an institution of higher education, the 90/10 rule, and the 50 percent rule on distance education). They also had reservations about new requirements on transfer of credit between schools.

Smith vouched for the skill level of his five employees who graduated from DeVry University in Ohio. Rosen emphasized the need to remove the 50 percent rule, even though Kaplan is not subject to those rule (it participates in the Department of Education's Distance Education Demonstration Program).

Moore argued against "restrictive" integrity provisions and advocated the transfer of credit provisions in H.R. 4283. The ownership structure of an institution of higher education is irrelevant to whether it can meet the pressing need for skilled workers, Moore said. He maintained that proprietaries can best meet this need because they serve more low-income minorities and have greater success with them.

Letteney, representing the American Association of Community Colleges (AACC), described the type of students served by community colleges. She noted that they serve the same low-income and minority students as proprietary schools. She pointed out that for-profit institutions are businesses, and underlined the distinction by citing the profits of a number of them. (For example, Career Education Corporation made $1.593 billion in the three years ending 12/31/03.)

Lettney argued that using a single definition for both types of institutions would reduce funds available from various non-Title IV programs, such as Title V for Hispanic-Serving Institutions, by opening them to thousands of proprietaries. The removal of the 90/10 rule would eliminate any "free-market test" for proprietary institutions by making them 100 percent federally subsidized. She noted that AACC supports the removal of the 50 percent rules, but only with additional oversight, as in the Distance Education Demonstration Program.

Several Democratic members, such as Reps. Dale Kildee of Michigan and Tim Bishop of New York, spoke of their concerns about removing the integrity provisions that have helped prevent the fraud and abuse of a decade ago. The only Republican to agree was Rep. Mike Castle of Delaware. He cautioned members about providing federal money to for-profit institutions, and stated that Moore's statements were not logical.

Two Democrats, Carolyn McCarthy of New York and Rob Andrews of New Jersey, were quite sympathetic to the concerns of the proprietaries. McCarthy noted that New York has a single definition and it works just fine. Andrews felt distance education should be less restrictive, and reputability and quality could be left to accreditation. ■

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Proposals for Collection of SEVIS Fee Continue to Evolve

The higher education community is attempting to make collection of the Student and Exchange Visitor Information System (SEVIS) fee more student friendly. Final regulations on the fee are expected to be issued by the Department of Homeland Security in the near future.

Foreign students and scholars who seek to enter the U.S. after September 1, 2004, will have to pay the SEVIS fee (most likely $100) before they can submit an application for a visa. Generally, the fee will be paid via the Internet with a credit card or by check in U.S. dollars, to a U.S. financial institution (most likely Bank One in Chicago, Illinois). Students will receive a paper receipt that must be presented when they apply for the visa.

The higher education community has long been concerned that the fee collection process is burdensome and potentially unworkable for many students. During the past two months, higher education officials have met with Homeland Security Secretary Tom Ridge and Under Secretary Asa Hutchison. Both indicated that while fee collection must begin soon to fund the operation of the SEVIS system, they are willing to consider an alternate fee collection option that would ease the burden on students and schools.

The most promising option would shift the payment of the fee from the student to the institution. The institution could pay the fee for a cohort of students after the start of the school year, and collect the money from the students however they like. In the past, we have opposed the involvement of our campuses in fee collection because Homeland Security would require them to track each individual student. Under the alternative plan, however, the school could pay the fee for an entire cohort of students. This system would eliminate the hurdles in the visa process; the fee would be collected only for students getting a visa; and it would reduce the campus workload by not having to track each student and monitoring whether they were credited with a payment before seeking a visa.

Even if the higher education community determines that the cohort system is the least burdensome option, there are still significant hurdles in store. They include legislative changes, decisions on how this type of system should be designed, and short-term congressional funding.

A proposal will be sent to Homeland Security by the higher education community within the week with our suggestions on streamlining and simplifying this process, in the hope that the final regulations will reflect our efforts. ■

For more information, contact Karin Johns at NAICU, (202) 785-8866 or *karin@naicu.edu*.

Student FICA Exemption Proposal Discussed at IRS Hearing

On June 16, the Internal Revenue Service held a hearing on proposed rules regarding clarifications to the student FICA exemption at colleges and universities. The National Association of College and University Business Officers (NACUBO) presented testimony on behalf of NAICU and others in the higher education community.

In 1998, after several years of inconsistent application of the student FICA exemption to colleges and universities, and a sustained effort in the higher education community to gain clarification and consistency, the IRS published guidelines that were well received and easily understood. Since that time, institutions have had a clear road map for application of the FICA exemption to students employed by the institution.

On February 25 of this year, the IRS proposed new regulations that attempted to clarify the treatment of medical residents under FICA. The IRS wanted to definitively exclude medical residents from the FICA exemption, but the proposed rules set forth a vague and overly broad set of definitions that could exclude many graduate student workers, as well as undergraduate students working on campus, who were well within the safe harbors of the 1998 guidelines.

The higher education community expressed its concerns to the IRS during the hearing. The consensus was that, in an attempt to eliminate one category of readily defined student employees (medical residents) from the FICA exemption, the IRS has unintentionally rolled back the regulatory clarity and administrative practicality that was achieved by the 1998 guidelines.

Since it was not the IRS's intention to revise the tax treatment of any group of working students other than medical residents, we hope that the final regulations will be narrowed to reflect our recommendations. Final regulations are expected before the end of the year. ■

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