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Accreditation: Negotiated Rulemaking, Round 2

The second session of accreditation negotiated rulemaking on March 26-28 didn't settle any major issues, but it did remove any doubt on the Department of Education's intent to require accreditation agencies to use "bright-line" measures of performance in their reviews of institutions.

Several negotiators offered an alternative to the regulations proposed by the Department regarding measurement of student learning outcomes. (See WIR, 3/27/07.) This alternative would have made measurement provisions on completion, placement, and state licensure pass rates a required part of an institution's self study. Institutions would also be required to identify expected levels of performance on student achievement, and then demonstrate success in meeting those levels through quantitative and qualitative measures.

Proponents of the alternative argued that it was preferable to the Department's proposal because it avoided the direct federal specification of standards, and put the responsibility for defining measures on institutions rather than on accreditors.

Alternative Proposed by Several Negotiators on March 28, 2007
(As noted on page 2, this alternative was proposed after the Department of Education negotiator rejected the counterproposal discussed on this page.)

There was a brief discussion of this proposal by the negotiation committee. Department of Education officials have not yet responded to it.

§602.16 Accreditation and preaccreditation standards

(a) The agency must demonstrate that it has standards for accreditation and preaccreditation, if offered, 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 mission, including, as appropriate, consideration of course completion, State licensing examination, and job placement rates.

For standards under paragraph (a)(1)(i) of this section, the agency must require that the institution or program
- specifies its educational objectives;
- establishes expected levels of performance; and
- demonstrates its performance against those expected levels of performance using quantitative and qualitative measures; and for vocational programs and programs leading to licensure or certification must also include completion rates; job placement rates and, as applicable, state licensing examinations pass rates.

The agency will demonstrate that its standards and processes allow it to judge the appropriateness of the levels of performance and the evidence provided to demonstrate acceptable performance.
These distinctions would affect the work of accreditors, but there would be little difference between the two proposals in terms of what institutions would be required to do. Judith Eaton of the Council for Higher Education Accreditation (CHEA) was the lone voice at the table offering the perspective of institutions.

The Department’s representative on the panel, Vickie Schray, indicated that the alternative was unacceptable because the accreditation agency’s “responsibility to review and approve is missing,” and because the Department wishes to retain its proposed requirements for quantitative standards for completion, job placement, and state licensure (or related) exam pass rates.

The flat rejection of the alternative by the Department discouraged some of the negotiators, but did not deter another group of them from putting forward yet another proposal on the final day of this negotiating session. (See accompanying box, preceding page.) Department officials have not yet commented on this proposal.

On other issues, the committee again discussed transfer of credit, but did not reach any agreement about the proposed regulation. (See WIR, 2/13/07, 2/28/07 and 3/27/07.) Members also briefly discussed new accreditation disclosures, and determined that they were closely tied to student achievement measures and would be reviewed further after the measure issue was resolved.

The committee reached “tentative agreement” on the review of institutions experiencing “substantive change,” and to the protection of religious mission. “Tentative agreement” is below the status of the “consensus” that the negotiated rulemaking process is intended to achieve, but indicates general agreement among committee members about a particular proposal.

The religious mission proposal would add the following to the regulations:

The agency must apply its accreditation standards in a manner that does not undermine the religious mission of any institution of higher education with a stated religious mission.

The next accreditation negotiated rulemaking session will be on April 24-26, and has been lengthened by a half day because of the Department’s concern that the committee’s work might not otherwise be completed. Department officials indicated that this phase of the process must be completed by April 26 to assure that final regulations can be in place by November 1 – allowing them to be implemented on July 1, 2008.

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Student Lending Issue Heats Up

In February, Sen. Ted Kennedy (D-Mass.) introduced the Student Loan Sunshine Act, S. 486, a bill to put new restrictions on the lending relationships between colleges and banks for educational loans, including private-label loans that are not guaranteed by the federal government. NAICU, along with many others in the Washington higher education community, have worked with Kennedy’s staff since the last Congress – when Kennedy introduced an earlier, more problematic version – to ensure that any new rules are consumer-friendly, manageable for schools to administer, and beneficial to students and parents.

As a result of these positive conversations, the new legislation, though not perfect, is an improvement. (www.naicu.edu/StudentLoanSunshineActFeb1ROM07166_xml.pdf). It is likely that some form of this legislation will make it into this year’s Higher Education Act reauthorization, and so we continue to work with Kennedy on further improvements.
Now, at least two states’ attorneys general have stepped up scrutiny of these loan arrangements by taking action at the state level. The charge is being lead most aggressively by New York’s Andrew Cuomo – although Attorney General Lori Swanson of Minnesota also is getting into the mix.

Cuomo’s efforts have received considerable media coverage both in New York and nationally. He is particularly interested in loan arrangements between lenders and colleges – especially any direct benefits colleges might have received from these loan arrangements. These direct benefits can be as diverse as financial aid officer training and travel support; revenue sharing arrangements between lenders and schools; opportunity pools; and even such mundane promotional items as backpacks with lender logos.

In late March, Cuomo sent letters to colleges, urging them to sign settlement agreements or face the possibility of subpoena (http://chronicle.com/news/index.php?id=1904). In addition to colleges within New York, he sent letters to colleges nationally whose students include New York residents. Although they deny wrongdoing, some colleges have signed the letters agreeing to following a "code of conduct" that he prescribes. Some have also agreed to return certain monies to students who have borrowed from the lenders with whom the school has an arrangement. In most cases the amount of money returned will be nominal.

It would be wise for all colleges to review any lending programs they have in light of the standards proposed in the Sunshine Act (see link above). Presidents, financial aid officers, business officers, and college legal counsel should play a role in any internal conversations, and institutions should clearly understand how any revenue from these programs has been used to benefit students. Most colleges have negotiated these deals with banks in an attempt to provide their students with access to the best loans possible, and to secure loans with terms and conditions more favorable to students and families than they could secure without the support of their college.

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**Senate Finance Committee**
**Eyes Competitiveness, Tax Incentives**

Senate Finance Chairman Max Baucus (D-Mont.) has begun an examination of the role of higher education and U.S. competitiveness in a global economy. Witnesses at the committee’s March 20 hearing, "Realizing a Competitive Education: Identifying Needs, Partnerships and Resources," included representatives from the K-12 education and community colleges, as well as education-based foundations and state systems.

NAICU submitted for the record a statement on competitiveness and the role of the federal tax code in encouraging and assisting with the investment in higher education. We expressed support for the many tax incentives enacted over the past ten years, and urged the committee not only to maintain them but to strengthen and make them permanent. The NAICU statement also called for making both the tuition deduction for higher education expenses and the IRA charitable rollover permanent. Both items are currently set to expire at the end of 2007.

We indicated our willingness to work with the committee in simplifying or consolidating the Hope and Lifetime Learning tax credits and the tuition deduction, but also noted the importance of ensuring that no one currently receiving a tax break lose out under a consolidated plan. It will be equally important that any new super-credit or deduction not result in an increased reporting burden on our institutions.

Finally, we expressed support for IRC Sec 127, employer-provided education assistance, and restoring the tax-free treatment of scholarship and grant amounts used for room and board expenses. There would be no better competitiveness initiative than allowing working students and their employers to enjoy the benefits of Sec. 127, given that many of these working students are science, technology, and engineering majors.

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NAICU offered to work with the committee and Congress to generate, advance, and sustain the talent of our workforce. A comprehensive competitiveness agenda will be multi-jurisdictional, involving increased funding and other education initiatives. However, we can also support students, colleges and universities, and partners in industry by strengthening and continuing the important tax initiatives outlined in NAICU’s statement.

The Finance Committee is expected to pursue legislation addressing competitiveness issues, though the time line is uncertain.

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