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Congress Sends Higher Ed Funding Increases to President
Congress worked overtime this past weekend, sending President Obama the FY 2010 omnibus appropriations act on Sunday, December 13, for his approval. This combination of six funding bills includes major increases for education programs as Congress continues trying to complete its work for the year this week.

For student aid, the bill includes $17.5 billion for the Pell Grant program to fund an appropriated base grant of $4,860. When the $690 from mandatory funds is added to that, it takes the total student maximum grant to $5,550 for 2010-11. This is a $207 million increase in funding over last year, and a $200 increase in the maximum grant.

Other major increases in the bill include a $117 million increase for Student Aid Administration, to help fund the Department of Education's conversion to direct lending; a $5 million increase for TRIO programs; a $10 million increase for GEAR UP; and increases for all Title III and V Strengthening Institutions Grants. International Education programs were also increased by $7 million.

While no new funding was provided for the Perkins Loan program, the other campus-based programs were level funded at last year's amounts of $757.4 million for Supplemental Educational Opportunity Grants; $980.4 million for Federal Work Study; and $63.8 million for LEAP state grants. Graduate programs were also level funding, with Javits at $9.6 million, and GAAN at $31 million.

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The House has approved the Tax Extenders Act of 2009, extending for one year 49 expiring tax provisions at a cost of $31 billion. The bill passed on December 9 includes one-year extensions of the IRA charitable rollover and the above-the-line tuition deduction, currently set to expire on December 31.

The Senate hasn't scheduled consideration of an extenders package yet, but Senate Finance Chairman Max Baucus (D-Mont.) has indicated his intent to move similar legislation soon, after the Senate completes action on health care overhaul reform.
On December 8, Sen. Charles Grassley (R-Iowa), ranking member of the Senate Finance Committee, introduced legislation that would improve and permanently extend all of the higher education tax provisions set to expire at the end of next year. Items include; the new $2,500 American Opportunity Tax Credit; Section 127 employer-provided education assistance; Student Loan Interest Deduction improvements; and the annual contribution limit increase to Coverdell Education Savings Accounts.

This Grassley bill will likely be a starting point when the Senate takes up a host of tax provisions enacted in 2001 and expiring next year. No immediate consideration is scheduled, and no companion bill has been introduced in the House.

If the House and Senate do extend the 2009 expiring provisions for one year, the IRA charitable rollover and the tuition deduction will be added to the list of all the other provisions expiring on December 31, 2010. This would mean that almost every higher education tax benefit in existence will be set to expire at the end of next year.

There will be tremendous pressure on Congress and the president to extend - and pay for - the myriad of 2001 tax breaks set to expire. This includes not only the higher education provisions, but hundreds of small-business, corporate, estate, family, health, and other provisions enacted as part of the 2001 estate tax relief bill signed into law by President Bush.

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**NAICU Board More Cautious on Student Aid Bill**

The changing landscape on the president's student aid initiative was the dominant policy conversation during November's NAICU board and committee meetings in conjunction with the annual NAICU Fall Leadership Conference. The policy committees spent many hours poring over both the policy and political dynamics during their two days of meetings.

Ultimately, the board continued to support the bill, but with less enthusiasm than at the Spring 2009 board meeting, when legislative details were less clear.

The greatest concern for the board was the controversial effort by Congress to use states as the primary vehicle in reaching the president's ambitious goal of being first in the world in national graduation rates by 2020. Given the negative feelings many private colleges have over recent state cutbacks in student aid, and the lack of support for private college students via stimulus funds, committee members were especially annoyed that states would now be given responsibility for leading and organizing conversations on post-secondary improvement. An even more serious concern was how this new authority might be used to intrude into the affairs of private colleges.

The NAICU board ultimately recognized, though, that these important reservations were outweighed by the significant student aid funding in the bill, which would shore up the Pell Grant program and expand Perkins loans - programs of critical importance to low-income students in all sectors. The key provision tipping the balance was the Rule of Construction in the House bill that protects private college autonomy. This was buttressed by the promise from Senate staff that, although the Senate could not include such a provision under the Byrd Rule, they would remove any mention of private college participation in the state persistence program, so that private colleges could not be compelled to participate. This means that private colleges, with the best completion rates with at-risk students of all sectors (see NAICU's 12 Facts), could be left out of state 2020 conversations and funding. However, the higher principle of protecting private college autonomy would be preserved.
It is likely that the student aid bill in its final form will provide two pots of money to improve college completion. The smaller pot - around $1 billion - would fund a national competition, and NAICU is advocating that it be reserved for colleges and non-profit groups in a fair and open competition. The second pot is likely to be twice that size, and would fund state-based conversations among early-childhood, K-12, and post-secondary education, along with labor. These conversations are intended to break down the silos across these sectors, so that more students can get into and through the pipeline. It is unclear if states would be required to fund any actual programs with this money.

All of this money, along with funding for community college, K-12 construction, early childhood, and Pell Grant and Perkins expansion, would come from the proposed conversion from FFELP to direct loans.

In the meantime, the bill still awaits final action on health care reform before it can move forward. Another uncertainty is the vote count on the conversion to direct lending. The tensions on the underlying direct loan issue were evident in a letter issued by House education committee chair George Miller (D-Calif.) and subcommittee chair Ruben Hinojosa (D-Texas), encouraging all college presidents to convert to direct lending now. That prompted a counter letter by Senate education ranking member Mike Enzi (R-Wyo.), House ranking member John Kline (R-Minn.), and others reminding college presidents that no legislation had yet been passed on this mandate.

Meanwhile, everyone in the higher education community and in Congress agrees on one thing, if nothing else: that the upcoming holiday break is welcome.

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Implications of House Financial Regulation Bill for Colleges

The House passed a bill to regulate the financial sector on December 10. Buried in the 1,700-pages of the reform bill are several provisions with implications for colleges. The Senate has yet to introduce companion legislation.

The legislation, H.R. 4173 authored by Rep. Barney Frank (D-Mass.), explicitly covers "private education loans" which includes some made by colleges. Last August's Higher Education Act reauthorization extended federal authority over student loans made by private lenders. The Federal Reserve wrote the regulations (as part of the "truth in lending" provisions), and provided a definition of private education loans. The definition excludes non-interest-bearing, institution-based, tuition payments plans and emergency loans, but it includes other loans made by colleges and their related organizations - such as institutional loans included in student aid packages.

Both the HEA provision and this new legislation use the same definition of a private education loan, and are aimed at protecting students from unscrupulous lenders - including post-secondary institutions with questionable lending practices. But while the truth-in-lending regulations require that borrowers self-certify their eligibility for the loans, H.R. 4173 would require lenders to certify both students' eligibility and that they have talked with the college's financial aid office. This is to ensure that colleges know about private debt their students are assuming.

There has been growing concern among policy makers about the explosion of expensive, direct-to-consumer educational loans that colleges don't even know their students are assuming. Much of the marketing on these loans, with excessive interest rates, is done through late-night television or the Internet. There is evidence that many of these students could have borrowed through the cheaper federal student loan programs instead.
Just how other parts of this massive bill might affect colleges is unclear at this point. However, it seems possible that colleges providing private education loans could come under the authority of the consumer protection agency to be created under the legislation -- and then would even have the opportunity to pay a fee for the privilege of being overseen.

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Program Integrity Neg-reg Panel Addresses Thorny Issues

The Department of Education's negotiated rule-making committee on proposed changes to program integrity regulations spent most of December 7 to 11 in protracted sessions, wrestling with over a dozen separate issues.

This second round of negotiations was marked with divergent points of view on a number of key issues, with the committee reaching "tentative agreement" on only one issue - a minor change related to "retaking course work." The more contentious issues included:

Definition of a Credit Hour: The department believes that it needs a consistent definition of a credit hour to insure equity among federal student aid recipients and to administer its programs appropriately. Most of the non-federal negotiators (with perhaps the exception of the consumer protection representative) feel that the matter is better left to accreditors.

Most traditional institutions use the Carnegie system, with a credit is equal to an hour of class time and two hours of work outside class. This would remain an acceptable definition under the department's proposal, but in lieu of the Carnegie system, institutions would be "responsible for establishing equivalencies in credit hours for the amount of academic work, as represented in intended learning outcomes and verified by evidence of their achievement . . . "

Under the proposed language, accrediting agencies would have to "evaluate and approve an institution's policies and procedures for determining credit hours awarded for courses and programs." Although many at the table believe that the department should not define a credit, the accreditors present seem willing to work a deal.

According to the department, students in clock hour (seat time) programs that convert those hours to credits receive more aid for less time spent than do students receiving credit under the Carnegie system. The department has also proposed to increase the number of hours of "instructional time" required in converting that time to credit hours. This was most strenuously opposed by the cosmetology representatives.

Incentive Compensation: The department has proposed eliminating from the regulations all the "safe harbors" related to incentive compensation (i.e., paying recruiters based on the number of students they enroll). The department believes that the safe harbors provide too wide a berth for abuse by the for-profit sector. The safe harbors cover a number of practices, such as receiving multiple salary increases in a year. Because the incentive regulations also cover nonprofit and public institutions, some negotiators from those sectors are concerned that the removal of the safe harbors might be as problematic for them as for the for-profit sector.

State Authorization as a Component of Institutional Eligibility: The department has proposed a new regulatory section to define the meaning and extent of state authorization of colleges and certain non-degree programs. These institutions and programs must be authorized to operate in a state in order for their students to be eligible for federal student aid. There have been several instances in which students have continued to receive federal aid at at colleges and in programs lacking state
authorization. This recently happened in California, when its for-profit authorizing agency went out of business, and also is a department concern in states allowing accreditation to substitution for state authorization.

The non-federal negotiators objected to a number of requirements in the proposed language, including requiring the state to monitor education programs to assure quality, capacity, financial viability, and compliance with state laws. Besides their concern that the regulations go too far, negotiators noted that accreditors and the department already perform some of the proposed functions. A particularly vexing proposal was that, in order for a college to offer distance education courses in other than its home state, both states will have to have an agreement.

Definition of a high school diploma: To stem the growing problem of high school diploma mills and ineligible students receiving student aid, the department proposed language requiring colleges to develop and maintain lists of good, bad, and questionable high schools. Colleges would use the lists in determining students' eligibility for student aid. There is no comprehensive national list of recognized schools and, in fact, many states don't have such a list.

Nearly all negotiators objected to this proposed solution, suggesting that - for efficiency, consistency, and liability reasons - the department should provide such lists. They also raised operational questions.

The department seems to have no intention of maintaining the lists, nor did it offer any other solutions - though it suggested sources and methods colleges might use for the high school lists. During the next session, in late January, negotiators will learn if the proposed language stands or will be modified according to negotiator recommendations.

Misrepresentation of Information to Students and Prospective Students: The department is proposing new regulatory language expanding the types of information subject to misrepresentation rules. The current rules apply to information colleges provide to students and the Secretary of Education. The proposed language would include accreditors and state agencies, and would broaden the areas of information that would be covered.

The department's definition of misrepresentation - "false, erroneous or misleading statements" - would also apply to statements and advertising regarding an institution's accreditation; transfer of credit policy; completion of programs; grounds for terminating a student's enrollment; unsolicited recommendations, subject matter, state authorization for courses of study; and program cost. In addition, the proposed change would apply the misrepresentation rule to those providing information that does "not accurately reflect the current conditions of employment opportunities in the industry or occupation for which students are being trained."

Many of the non-federal negotiators raised concerns about the wording and extent of the proposal, arguing that the changes could infringe on academic freedom, and weren't compatible with the realities of college operations and teaching.

Gainful Employment in a Recognized Occupation: To address the problem of students incurring high levels of debt for education programs with little benefit, the department has proposed two controversial options. This is primarily a proprietary school issue, because "gainful employment" applies only to short-term programs. Still, the options provoked comment from the representatives of the business officers (NACUBO), student aid administrators (NAFSA), and the traditional college sectors in addition to the proprietary sector. The proposals step into previously untouched areas in attempting to restrict eligibility for federal student aid by either "the value added by the program" or a debt-to-income ratio.

In the first case, the department would "consider the cost/earnings relationship to be reasonable if the cost
of the program is less than 3 times . . . the value added” (i.e., the difference between wages of high school graduates and for those completing the vocational program). The second option would evaluate "whether a student’s starting annual income is adequate to repay the average debt service obligation for someone completing a specific program, while still having an adequate amount available to meet living expenses.” The department seems very intent in tightening up this area, and had Department of Labor and Bureau of Labor Statistics representatives address the negotiators.

Satisfactory Academic Progress (SAP): The department has offered only preliminary draft language on its proposal to update the SAP regulations. Currently students must have a grade point average of 2.0 to maintain federal aid eligibility. The new rules would require an institution to have a reasonable SAP policy, including a schedule of incremental progress, and to evaluate students’ progress at the end of each payment period or the end of an academic year.

Negotiators pointed out that some of the prescribed timing might not be feasible, especially for short programs. The department is concerned that students are getting federal student aid despite not making academic progress, and even when they are on probation for several terms.

The negotiators are scheduled to return for a third session in late January. Time constraints and the controversial nature of the issues could pose problems for completing the work over that session. Consensus on the whole package could prove difficult because of negotiators' strong differences of option on many of these items.

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Civil Rights Commission to Look at Gender in Admissions

The U.S. Commission on Civil Rights has initiated a "Project on Sex Discrimination in Higher Education Admissions." The project will focus on whether selective coeducational institutions give special preference to male applicants. As an initial step, the commission identified 19 public and private institutions within 100 miles of Washington, DC, and has issued subpoenas for their admission records. The commission indicates that they were chosen to provide information about a cross section of institutions, and not because of any complaints or suspicion about their specific admissions practices. For more on this developing story, see the links to media coverage on the NAICU Web site.

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First Glimpse of Three-year Default Rate Isn't Pretty

The Department of Education has given a first glimpse of the new three-year cohort default rate (CDR) for institutions, and as expected, the extra year, combined with the souring economy, caused most colleges' default rates to rise.

According to a Wall Street Journal analysis, the default rate change across all sectors went from 7 percent to 12 percent. The greatest increase was in the for-profit sector, where the rate rose from 11 to 21 percent. The rates for public and private four-year colleges went from 4 to 7 percent, and 4 to 6 percent respectively. Two-year public and private college default rates went from 10 to 16 percent, and 9 to 16 percent.
The change in CDR time frame was enacted in the 2008 Higher Education Act reauthorization. The change grew out of concern that some institutions were helping students avert default for two years after completion, so that their default rates looked lower. Another factor was that changes in repayment requirements have made it less likely for defaults to occur in the first two years. Since the new rates are not official at this point, colleges with rates over 30 percent will not yet be subject to sanctions.

Several federal student loan repayment plans that are based on a borrower's income - income based repayment and income contingent repayment - should help students unable to pay their loans avoid default.

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NAICU Continues to Gather Student Access, Success Efforts

President Obama set a goal for all of higher education to achieve the highest proportion of college graduates in the world by the year 2020. While policy makers realize that independent colleges and universities are very successful at graduating high percentages of their students within four years, they are interested in the stories behind this graduation success, particularly with underserved populations.

In response, NAICU is conducting a survey to gather information on current access and success initiatives and programs on independent college campuses nationwide. Through this information, NAICU plans to demonstrate to policy and public stakeholders that independent institutions should be recognized as a critical sector and active partner in reaching the President’s 2020 goal.

The on-line survey began collecting data in mid-November, and results are now being compiled into a preliminary report on the 122 responses received by early December. The results have already been valuable in conversations with the White House, and will be posted on the NAICU Web site and distributed more widely early in the new year.

Meanwhile, NAICU members that have not yet responded - or would like to expand on responses already submitted - are invited to complete the survey on line. It will remain open indefinitely.
http://www.surveymonkey.com/s.aspx?sm=YGi3FD91SVfzJoJRpM0nJA_3d_3d

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Plan now to attend the NAICU Annual Meeting, with a line-up that includes Meet the Press moderator David Gregory, political analyst Charlie Cook, New York Times Economics Scene columnist David Leonhardt, Cornell University President David Skorton, Inside Higher Ed editor Scott Jaschik, author Ben Wildavsky, and panels on access, persistence and cost; private college/community college cooperation, and much more.

It’s important you make your hotel reservation now. The Hyatt Regency on Capitol Hill expects to be sold out over our meeting dates, and will only honor the special NAICU sleeping room rate of $226 single or $241 double until January 1. For preliminary schedule, hotel reservations, and meeting registration, visit the NAICU Web site.
http://www.naicu.edu/events/2010-annual-meeting