NAICU Washington Update

The National Association of
Independent Colleges and Universities

News from the Nation's Capital
Vol. I, No.26 July 9, 2010

In this issue . . .

Action Needed for Private Colleges on House-passed Supplemental

Before breaking for the July 4th recess, the House sent the Senate its amendments to H. R. 4899, in the latest ping-pong match between the chambers on the FY 2010 Emergency Supplemental Appropriations bill. The House version includes much-needed funding for the Pell Grant shortfall, but also contains a problematic maintenance of effort (MOE) provision. As written, the MOE protects state higher education funding for public colleges only, and not for students.

We need NAICU members to help support the Pell Grant funding, while also working to improve the MOE.

Background

The $75 billion emergency war and disaster supplemental spending package includes $16 billion in domestic spending. Components of the domestic spending piece are $10 billion to avert anticipated teacher layoffs, $4.95 billion for the Pell Grant shortfall, and $701 million for border security, with the rest going to disaster relief.

For higher education, the critical piece is the nearly $5 billion for the Pell Grant shortfall. The health care and student loan reform bill last March provided $36 billion over the next 10 years for increases in the Pell Grant program. Still, the recession is driving ever increasing demands on the program. Already, additional funds are needed just to maintain a $5,550 Pell Grant maximum for the 2010-11 academic year.

Without the additional $5 billion through the 2010 supplemental appropriations bill, appropriators will face tough choices: either cut the maximum grant by up to $875 for the 2011-12 academic year, or cover the burgeoning Pell Grant costs by cutting other education programs. Adding the Pell money was a contentious decision in the House, given growing concerns about the deficit. The fate of the additional Pell funds is even more uncertain in the Senate.

White House Problems

The White House issued a Statement of Administration Policy (SAP) on July 1, in support of H. R. 4899, especially noting that "Since the quality of education we afford our children also is essential to our long-term strength and security, the Administration supports the proposed funding to avert the layoff of hundreds of thousands of public school teachers and deep cuts in Pell Grants that millions of students need to attend college."

However, that same SAP includes a veto threat because the bill's education increases are partly paid for by a proposed $800 million cut in Race to the Top funds - the White House's favored program of K-12 reform. (Even though the bill is considered "emergency spending," deficit hawks pushed for the $16 billion in additional domestic funding to be offset.)

The MOE Problem

As we've already noted, the maintenance of effort provision is problematic for private colleges. Like the 2009 stimulus bill, the provision requires states to maintain education funding only for public K-12 and public higher education. The MOE (see pgs. 12-14) doesn't include state student aid for public or private colleges, or state funds to private colleges.

When similar MOE language was included in the 2009 stimulus bill to protect public K-12 and public higher education, the result was that several states cut state-based student aid programs to balance their budgets. - Since the stimulus bill also contained a $500 Pell Grant increase, some state lawmakers argued that the Pell increase offset the state-grant cuts. This, of course, defeated the very purpose of the Pell Grant increase.

In many states, state-based aid was maintained only after valiant efforts by independent college state associations to fight proposed cuts. We're concerned that if Congress protects institutional funds to public colleges, but not state student aid, many of these battles will be reignited.

NAICU has sought to amend the House bill's MOE to protect all students, and all institutions in all sectors of higher education. This proposed MOE modification builds upon a current provision in Higher Education Act, Section 137.

How You Can Help

The House and Senate have been engaged in sending amendments back and forth, rather than working through a conference committee to reconcile differences on the bill. We encourage all NAICU members to advocate for the NAICU amended MOE with their congressional delegations as soon as possible. The Senate reconvenes the week of July 12, and at that point, will determine when it will bring up the supplemental bill for further consideration and amendment.

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

---

NAICU Seeks Member Comment on Proposed Regulations

NAICU has sent an action alert to its membership outlining the key issues of interest to private, non-profit higher education in proposed regulations intended to stem concerns about growing federal student aid fraud and abuse. Most concerns addressed in the proposed Department of Education regulations center on the for-profit sector of higher education, but the new rules would impact all of higher education.

The June 18 release of the proposed regulations represents an approximate mid-point in the regulatory process. The public has until August 2 to comment on the proposals, and the Department has until November 1 to publish final regulations, if such regulations are to go into effect by July 1, 2011. Public comments are taken seriously, and can have a great impact on the final process.

There is growing concern that fraud and abuse in the for-profit sector could be contributing to the spiraling cost of federal student aid. However, neither party in Congress has been willing to apply fraud and abuse rules solely to the for-profit sector. The for-profit sector has some rules that the non-profit and public sectors do not need to follow (most notably the 90/10 rule). Still, the recent conversion of some non-profit colleges to for-profit entities has added resolve to policy makers view that no sector is immune from increased scrutiny.

Recent hearings in both the Senate and the House on fraud and abuse focused heavily on for-profit abuses, but included such universal concerns as the awarding of credit hours and the effectiveness of accreditation.

NAICU is encouraging each of its members to write in on the issues of greatest concern. In particular, NAICU has cited as especially troublesome the proposal to impose a federal definition of credit hour and the requirements on state authorization. Other areas NAICU advises members to review carefully include misrepresentation, incentive compensation, and gainful employment.

On the matter of state authorization, NAICU is working closely with its network of independent college state executives, to help develop state and institutional specific responses to the proposals on state authorization.

For more information on the issues of state authorization or credit hour, contact Susan Hattan (susan@naicu.edu). For all other proposed regulatory issues, contact Maureen Budetti (maureen@naicu.edu).

Congressional Committees Focus on Program Integrity

Education committees in both the House and Senate have begun oversight hearings on program integrity issues raised in the proposed rulemaking now underway by the Department of Education. Interest in the issue has also been spurred by a rising tide of media reports on the growth and activities of proprietary schools.

On June 17, the House Education and Labor Committee held a hearing to examine the Department of Education Inspector General's (IG) criticisms of accreditation agency reviews of institutional credit hour policies. The criticisms grew out of the IG's review of three regional accreditation agencies, and are the basis for proposed rules to establish a federal definition of "credit hour."

Committee Chairman George Miller (D-Calif.) framed the issue as one of cost to students and taxpayers. Federal student aid is based on credit hours. To the extent that credit hours are inflated in order to generate more income to an institution, the federal government ends up footing a large part of the bill. He expressed concern that credit hour inflation could well become part of a business plan for increasing corporate profits. Miller also noted that members of Congress are not eager to decide this, but that a "lot of money" is at stake.

Noting that Congress has traditionally relied on accreditation in this area, Miller expressed concern that the IG reports "highlight a lack of clear standards and policies on this issue, as well as a questionable decision by one agency to accredit an institution which peer reviewers observed had ‘egregious' credit hour policies." The decision he cited from the IG's report was the Higher Learning Commission's handling of credit-hour inflation in some programs offered by InterContinental University, a for-profit institution owned by the Career Education Corporation.

The committee heard from the Department's inspector general, Kathleen Tighe; the president of the Higher Learning Commission of the North Central Association, Sylvia Manning; and Michale McComis, executive director of the Accrediting Commission of Career Schools and Colleges. Tighe emphasized the need to establish a federal definition of "credit hour." Manning took the position that the meaning of a credit hour is well understood in the academic community. She noted that establishing a federal definition would set a bare-minimum threshold, but that such a threshold would neither assure nor advance quality.

A week later, the Senate Health, Education, Labor, and Pensions (HELP) Committee held a hearing to review for-profit education. It was the first of a series of hearings the committee plans to hold.

Committee Chairman Tom Harkin (D-Iowa) focused the hearing on student aid dollars, observing that for-profit schools enroll less than 10 percent of all postsecondary students, but receive 23 percent of all federal financial aid. He also expressed uncertainty about what the government is getting for its investment. In particular, Harkin noted that the exceptionally high rate of students "churning" through for-profit schools each year requires further investigation to determine whether or not students are completing their programs.

Ranking member Mike Enzi (R-Wyo.) urged caution, suggesting the committee use a "scalpel" and not a "hatchet" in approaching for-profit institutions. He stated that proprietary schools have been effective in reaching non-traditional populations, and suggested that the performance of private not-for-profit and public institutions deserve scrutiny as well.

The attention-getter at the hearing was investor Steve Eisman, featured by Michael Lewis in his book The Big Short as having foreseen the crash of the subprime mortgage industry. Eisman contends that the same factors that led to the mortgage crisis are at play today in the proprietary sector. Specifically, he cites the increasing volume of loans being made to individuals who will not be able to repay them. All of the risk falls to the federal government, which has made or guaranteed the loans, and to the student, who is responsible for repayment. The school bears no risk at all.

Representatives of the for-profit sector have argued that Eisman is trying to bring down the sector in order to cash in on his investment bets against them. Eisman acknowledges he would make money in such an instance, but contends he is speaking out to stop current practices "before it's too late."

Other witnesses included the Department's Inspector General, Kathleen Tighe, who said that a large portion of complaints brought to the attention of her office have involved proprietary schools - and that prop-school complaints were growing at a faster rate than those for other sectors. She also mentioned that several of the program integrity rules proposed by the Department had been inspired by these investigations.

Former student Yasmine Issa described accumulating thousands of dollars of debt she's been unable to pay since completing ultrasound technician training at a proprietary institution. She has been unable to find work in the field because the ultrasound program wasn't accredited (although the institution as a whole was). Another witness, consumer attorney Margaret Reiter, described fraudulent proprietary sector practices she had observed while working in the office of the California Attorney General.

Sharon Thomas Parrott, senior vice president at DeVry, Inc., was the only representative of the for-profit sector to testify. She focused most of her remarks on DeVry, attempting to distance it from practices at other for-profit schools, while mentioning the work of the sector in enrolling poor, disadvantaged, and minority students.

For more information, contact Maureen Budetti, Maureen@naicu.edu

---

NAICU Revamps IRC Sec. 127 Coalition

A bill to make employer-provided education assistance permanent has been introduced in the House. On June 25, Reps. Earl Pomeroy (D-N.D.) and Sam Johnson (R-Texas) introduced legislation that would make the Internal Revenue Code Sec. 127 – employer-provided education assistance - permanent for both graduate and undergraduate course work.

The bill, H.R. 5600, was going to be introduced by Sander Levin (D-Mich.). When Levin was appointed Chair of the Ways and Means Committee, he asked Pomeroy to carry the bill for him. (The tax committee chairmen tend to not introduce stand-alone bills.) Levin remains very supportive of the measure.

Originally enacted in 1978, Sec. 127 has expired and been extended many times. It allows employers to offer up to $5,250 annually in tuition assistance to employees. The employee does not have to pay taxes on the amount, plus the amount is deductible to the employer and free from FICA taxes.

Sec. 127 has enjoyed wide support from the education, employer, and labor communities, and has wide bipartisan support on the Hill. It was extended for 10 years as part of the large 2001 estate tax repeal bill. It's currently set to expire on December 31, 2010, unless extended or made permanent.

NAICU co-chairs the Sec. 127 coalition, along with the Society for Human Resource Management (SHRM). A tremendous amount of work lay behind the introduction of the bill, including rebuilding the coalition of 100+ organizations that support the provision and will advocate for it. The coalition hadn't been reactivated since working on passage of the 2001 bill. The newly-updated coalition boasts representatives from more than 50 private colleges - including NAICU member presidents - as well as from all sectors of higher education, K-12 groups, manufacturing, labor unions, and more.

NAICU also has updated its research on the use of the benefit for our advocacy efforts. This report, once finalized, will be included on a new coalition website that is under construction.

In the Senate, legislation making Sec. 127 permanent is included in S. 2851, introduced by Sen. Charles Grassley (R-Iowa). It's unclear when Congress will turn its attention to the myriad of tax provisions expiring this year, given that they still haven't completed action on extending the tax provisions that expired at the end of 2009.

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

VA Announces Initial List of 2010-11 Yellow Ribbon Participants, Extends Deadline

The Department of Veterans Affairs has extended the deadline for submission of Yellow Ribbon program agreements for the 2010-11 academic year to July 23. The agreement form and instructions may be found here. To date, 1,100 institutions have entered into these agreements. Additional information about participating institutions and their agreements is posted on the VA website.

The Yellow Ribbon program is a special component of post-9/11 GI Bill benefits, created to expand educational choices for veterans. It allows institutions with tuition and fee charges in excess of the public, in-state rate to fund all or a portion of the additional charges. Institutional funds are matched 50-50 by the VA.

Study Abroad Guidance Issued:

The VA also has issued a fact sheet regarding the use of Post-9/11 GI Bill benefits for study-abroad programs. The fact sheet is available on line.

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

Chief Privacy Officer Position Created at Dept. of Ed.

The Department of Education has announced the creation of the position of Chief Privacy Officer. The Chief Privacy Officer will head up the Family Policy Compliance Office, which is responsible for the administration of the Family Educational Rights and Privacy Act (FERPA). This individual will also be responsible for advising and coordinating other departmental activities related to privacy and data security issues.

The position description notes the desire of the Department to make more data available to the public, and acknowledges that the growth in data collection has created increasing concern about student privacy. Data collection has been the centerpiece of a number of departmental initiatives, including the Race to the Top. In addition, the Department has invested over $500 million since 2005 for the development of statewide longitudinal data systems.

Student privacy concerns have been underscored most notably by a Fordham University study directed by Joel Reidenberg. This study documents the lack of basic privacy protections in elementary and secondary school state reporting. Among the report's recommendations is that a Chief Privacy Officer be appointed to each state education department.

The federal privacy officer position has not yet been fully developed, and the Department estimates it will be filled just over a year from now.

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

New Survey on Academic Development and Remediation

In the next several weeks some of you may be asked to participate in a randomly selected sample of institutions that aims to evaluate students' need for developmental or remedial courses. The survey is being sponsored by the National Assessment Governing Board, created by Congress in 1988 to oversee the National Assessment of Student Progress, also known as The Nation's Report Card.

The survey asks for information on tests used to evaluate entering students, such as ACT or SAT, and scores on these tests below which developmental or remedial courses are needed.

Institutional participation in this survey is voluntary. The National Assessment Governing Board says that only aggregated information will be reported, and no individual institution's responses will be identified.

For more information, contact Frank Balz, frank@naicu.edu

Department Issues RFP for "Teachers for a Competitive Tomorrow" Program

The Department of Education has issued a Request for Proposals for the "Teachers for a Competitive Tomorrow" program. The program supports partnerships to develop master's degree programs for teachers in STEM subject areas, plus critical foreign languages. Applications are due by July 30, 2010. The Federal Register Notice is available on line.

Teachers for a Competitive Tomorrow (TCT): Programs for Master's Degrees in Science, Technology, Engineering, Mathematics, or Critical Foreign Language Education
(Federal Register: June 30, 2010 [CFDA# 84.381B])

Purpose of Program: The purpose of the TCT program is to enable partnerships served by eligible recipients to develop and implement 2-or 3-year part-time master's degree programs in science, technology, engineering, mathematics, or critical foreign language education for teachers in order to enhance the teachers' content knowledge and pedagogical skills; or to develop and implement programs for professionals in science, technology, engineering, mathematics, or critical foreign language education that lead to a master's degree in teaching that results in teacher certification.

Applications Available: June 30, 2010.

Deadline for Transmittal of Applications: July 30, 2010.

Eligible Applicants: An institution of higher education on behalf of a department of science, technology, engineering, mathematics, or a critical foreign language, or on behalf of a department or school with a competency-based degree program (in science, technology, engineering, mathematics, or a critical foreign language) that includes teacher certification.

Estimated Available Funds: $852,888.
Estimated Range of Awards: $200,000-$250,000.
Estimated Average Size of Awards: $213,222.
Estimated Number of Awards: 1-4.

Additional information is available on line.

For more information, contact Maureen Budetti, maureen@naicu.edu

---

About NAICU Washington Update

NAICU Washington Update (formerly *Week in Review*) is published by the National Association of Independent Colleges and Universities.

John E. Bassett, *President, Heritage University, Chair, NAICU Board of Directors*
David L. Warren, *President*
Sarah Flanagan, *Vice President for Government Relations and Policy Development*
Roland H. King, *Vice President for Public Affairs and Editor*

Washington Update is available to NAICU member presidents and their staff via e-mail upon request, and is archived on the NAICU Web site, both as individual stories and as a complete-issue PDF file, formatted for printing,

To subscribe, or for member log-in user name and password, e-mail roland@naicu.edu.

National Association of Independent Colleges and Universities
1025 Connecticut Ave., N.W., Washington, DC 20036
(202) 785-8866, Fax (202) 835-0003
www.naicu.edu

© 2010 by the National Association of Independent Colleges and Universities.