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**Deadline Looms; Government Shutdown Possible**

As the clock ticks down to the beginning of Fiscal Year 2014 on October 1, Congress needs to pass a continuing resolution (CR) to keep the federal government temporarily funded, in the absence of finalized appropriations bills. What Congress is doing instead, is planning a series of votes on legislation sent back and forth between the House and Senate to gain political points before developing an actual bill that could be approved and sent to the president. There is no guarantee that a real bill will get done in time, thus a government shutdown looms as the worst case scenario.

The **House leadership** has had a hard time balancing its desire for a straight extension of FY 2013 funding, with its conservative wing’s push for a vote on defunding the Affordable Care Act (ACA) (aka “Obamacare”), a lower spending total, and having enough votes to pass a CR.

This morning, the House passed (230-189) a resolution that would provide continuing FY 2013 funding for the government until December 15, and include language to defund the ACA. When this **bill is received in the Senate**, action could go two ways – the Democratic majority could strip the ACA language and pass a clean CR with a simple majority, then send it back to the House; or the Republican minority could filibuster the proposal to remove the ACA language, which would force the Democratic majority to find Republicans to support 60 votes to stop the filibuster, remove the language, and send it back to the House.

If and when the bill comes back to the House, the leadership faces another hurdle with the spending total. Continuing FY 2013 funding amounts to $988 billion, but conservatives want to use the CR to lower spending to $967 billion, which reflects further sequestration cuts. Because 59 members of the Republican caucus support this option, leadership will need Democratic votes to pass its version to avoid a government shutdown. It is uncertain how many Democrats would support a straight extension CR; avoid a government shutdown; and be perceived as helping Republicans.

Senate Democrats will not support a CR at $967 billion. In fact, they have been working on FY 2014 appropriations with a total of $1.058 trillion, which represents the restoration of sequestration cuts.

Getting through these votes over the next week will be telling of how Congress will deal with the remaining work on FY 2014 appropriations, and the looming debt ceiling debate later this fall.

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Senate Kicks Off Formal Reauthorization Process

Momentum is building towards the on-time renewal of the Higher Education Act, with the formal announcement of the hearing topics and procedures planned by the Senate Committee on Health, Education, Labor, and Pensions (HELP). The bi-partisan leadership of the committee, Chairman Tom Harkin (D-IA) and Ranking Member Lamar Alexander (R-TN) released a letter describing the general topics to be covered and the process that interested parties should use in making recommendations regarding those topics.

Earlier this year, the bipartisan leadership of the House Committee on Education and the Workforce made a similar call for recommendations. [See July 24, 2013, Washington Update] However, the Senate request differs in terms of the sequencing and specificity of the input being sought.

Rather than setting a single deadline for receipt of all recommendations, the HELP Committee is asking that interested parties submit at any one time only those recommendations related to an announced hearing topic. For example, if the committee announces plans to hold a hearing on accreditation, then it wants to receive recommendations only about accreditation in advance of that hearing. The committee plans to hold about a dozen reauthorization hearings, so most stakeholders will be providing multiple sets of recommendations over the course of the next several months. The committee will announce each hearing topic about a week in advance.

The general topic areas identified by the Committee are similar to those listed in the House request. However, unlike the House, the Senate has set guidelines for the length and general contents of the submissions. They are to be no more than 5 pages long and are expected to include background information, appropriate statutory or regulatory references, detailed recommendations, and rationale for the recommendations. Recommendations are to be submitted to hea_reauth113@help.senate.gov.

Following closely on the heels the of the committee’s announcement of its general reauthorization plans, the first hearing was held on September 19. It focused on the respective roles of the higher education "triad" of accreditors, states, and the federal Department of Education.

Dr. Paul E. Lingenfelter, former President of the State Higher Education Executive Officers Association, provided a brief history of the triad and suggested ways in which the role of each entity might be strengthened. He cited the need to reduce the variability among states in terms of their oversight efforts, suggested that accreditors provide more information to the public, and indicated the Department of Education should place greater focus on student success as well as refine its own tools for auditing institutions.

Dr. Marshall A. Hill, Executive Director of the National Council for State Authorization Reciprocity Agreements, addressed the state role. He listed a series of administrative, policy, and data activities performed by state agencies—particularly with respect to public institutions. He identified major challenges as being maintaining quality in the face of diminishing resources and supporting innovation without inviting abuse of programs.

Dr. Susan Phillips, Provost and Vice President for Academic Affairs, University at Albany, spoke about the inevitable tensions among members of the triad—indicating that such tension was healthy. She suggested that the roles of each party be clarified and that communication and coordination among them be increased.

Dr. Terry W. Hartle, Senior Vice President, American Council on Education, focused on the role of the Department of Education in institutional eligibility and certification. He noted that the Department has substantial powers, but often fails to use them or applies them unevenly. He particularly noted the problems created by inconsistent application of the federal financial responsibility standards. He also cited the practice of the Department’s piling more responsibilities upon accreditors, while at the same time attempting to exert greater control over them, as being particularly problematic.

In questioning the panel, committee members were particularly focused on issues relating to cost and innovation. Most of the comments and questions did not relate directly to the responsibilities of triad members, though witnesses noted that reduced state support has been a factor in rising public college tuition. The loss of funding for the state-federal partnership LEAP program was also cited. These themes will undoubtedly be repeated as the committee continues its series of reauthorization hearings.

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Final SEC Municipal Advisor Rule Exempts College and University Board Members

The Securities and Exchange Commission (SEC) recently announced final rules establishing a permanent process for registering municipal advisors, as required by the Dodd-Frank Act. The SEC announcement exempts college and university board members acting in their official capacity from having to register as municipal advisors. This is good news for the higher education community that has been advocating for this exemption since the proposed rules were announced in January, 2011.

The Dodd-Frank Act was passed in July, 2010, as part of the Wall Street Reform and Consumer Protection Act. Dodd-Frank was considered the most sweeping change to financial regulation in the U.S. since the Great Depression. The SEC proposed rules that followed in January, 2011, would have established a broad definition of municipal advisors that would have to register with the SEC and keep up with burdensome record-keeping requirements. This would have impacted college and university board members. [See February 11, 2011 Washington Update]

The SEC announced the exemption of college and university board members from the municipal advisor requirements on September 18, 2013. NAICU had been working with the Association of Governing Boards of Colleges and Universities (AGB) and others in the higher education community on this issue since the proposed rules were announced. AGBs announcement also contains additional information from the SEC.

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Saint Leo President Arthur Kirk Testifies at House Hearing on Veterans Education

In testimony before the House Subcommittee on Higher Education and Workforce Training, Saint Leo University president Arthur F. Kirk, Jr. stressed that creating a supportive environment and developing individualized roadmaps to graduation are two key approaches critical to serving the needs of the nation’s servicemembers and veterans enrolled in college.

The September 11 hearing focused on the work colleges are doing to help servicemembers and veterans succeed.

“Saint Leo University is proud of its military students and is committed to providing them with outstanding academic programs and personal attention in small classes,” Kirk stated. He went on to observe that these qualities characterize the offerings of private, non-profit colleges in general.

Saint Leo University’s efforts to create a proactive “veteran-supportive environment” include relevant training for faculty, staff, and students. Some 52 veteran certifying officials (VCOs) have received extensive training in identifying and addressing issues that veterans are likely to face in pursuing their education.

Kirk also highlighted the university’s efforts to provide military and veterans students with a “road map to graduation.” University officials determine what credits the student is bringing to college and then develop a clear sequence of courses towards a degree. The individualized plans are updated each term so that the student clearly understands what’s needed to graduate.

“Postsecondary institutions now face the largest influx of student veterans on campus since World War II,” Rep. Virginia Foxx (R-NC), chair of the House Subcommittee said. “The higher education community has a responsibility to tailor programs and coursework to ensure the needs of this unique student population are met and taxpayer resources are used wisely and efficiently. Fortunately, many schools are rising to the challenge.”

“We believe that social support is also critical and continue to look for new ways for veteran students to connect on campus and at our education centers,” said Kirk. “We recognize the critical role that faculty and staff veterans can play in mentoring veteran students and have encouraged these interactions. The sense of community that these efforts build on campus benefits our entire student body—veterans and non-veterans alike.”
The University awarded 311 associate degrees, 884 bachelors, and 290 graduate degrees to veterans in 2012, more than double the number from two years ago.

Other testimony was presented by Kimrey W. Rhinehardt, vice president for federal and military affairs, The University of North Carolina; Russell S. Kitchner, vice president for regulatory and governmental relations, American Public University System; and Ken Sauer, senior associate commissioner for research and academic affairs, Indiana Commission for Higher Education.

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**Adrian President Docking Tells House Committee How Independent Colleges are Innovating**

Innovations at independent colleges were front and center as the House Committee on Education and the Workforce continued its busy hearing schedule on September 18, with a look at the transformations going on within higher education, with a particular focus on partnerships among businesses and colleges.

In the hearing, Jeff Docking, president of Adrian College in Michigan, told the Committee members how Adrian was able to "skip the Great Recession" and grow from a college of less than 900 students in 2005 with an annual operating deficit of $1.3 million to an institution of more than 1,700 students and an operating budget that has more than doubled.

In his testimony, Docking said that Adrian’s efforts were focused on developing a “unique business model that relies on strategic investments, measurable results, and accountability that responds to the needs of students and the job market in Michigan.” Adrian sought out innovative partnerships with businesses that could advance the College’s educational mission while cultivating talent needs in their business community – located just 60 miles southwest of Detroit. Those partnerships, which include micro-research studies with local business leaders and environmental studies with the Michigan International Speedway, among others have given Adrian the resources to expand its financial aid offerings and provide greater access to higher education for many young adults.

Docking also highlighted a new Adrian loan repayment assistance initiative which offers to pay all or part of its student’s loans if they are unable to secure a well-paying job post graduation.

Committee members also heard about efforts at Rice University from witness Rich Baraniuk, director of OpenStax College at Rice, to make college textbooks on the most expensive and widely used subjects freely available to all colleges. Other witnesses on the panel included Charles Isbell, professor and senior associate dean for the College of Computing at Georgia Tech, who talked about their efforts with MOOCs, and Paula Singer, CEO of Global Products and Services at Laureate Education.

In her opening statement Subcommittee Chair Virginia Foxx (R-NC) also highlighted the transformation that has taken place at two other NAICU member institutions. Partnerships with local institutions at Grace College in Indiana were first presented to the House Committee at an earlier hearing in 2011, and was one of the reasons the Committee chose to explore campus innovations further. Rep. Foxx also mentioned how Emmanuel College in Boston worked with Merck Pharmaceutical to launch a new biomedical focus that has revolutionized the institution.

As the hearing finished, several members of the Subcommittee declared they found the topic among the most interesting the Committee had explored to date. Clearly, the impression witnesses left was that higher education was indeed innovating and changing, contrary to the image in recent media reports.

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Colleges Receiving IRS Penalty Notices in Random Compliance Check

The IRS has recently issued a slew of penalty notices to a random sampling of public and private colleges and universities who are failing to provide student specific information along with Forms 1098-T. The penalty notices propose stiff fines for not properly reporting student Taxpayer Identification Numbers (TINs) or Social Security Numbers (SSNs) with the 1098-Ts.

Form 1098-T is the Tuition Payments Statement that colleges and universities are required to issue for the purpose of determining a student’s eligibility for the American Opportunity and Lifetime Learning tax credits. Institutions submit the 1098-Ts annually to the IRS and typically provide the student with a copy.

The IRS requires that institutions regularly solicit TINs and SSNs from students and provide them with the 1098-Ts for the most accurate student information. While colleges and universities do request this information from students, students are not required to provide this information to the college.

The National Association of College and University Business Officers (NACUBO) has determined through conversations with IRS representatives that there are steps colleges can take to demonstrate that they have made a good-faith effort to collect the required information and possibly avoid the fines.

Institutions must respond within 45 days of receiving the notice, or ask for an extension. Colleges must show that a reasonable effort is made to collect current data, and that the institution is, and will continue to, act in a responsible manner. Providing the IRS with the steps taken to solicit this information is helpful, and responses should be provided in brief letter form, rather than complex student spreadsheets or databases. Finally, colleges should communicate with the IRS on their practices and procedures, but should not re-file corrected tax returns.

NACUBO is preparing additional guidance for their business officers, and we’ll share that information when it’s available.

The IRS has increased scrutiny of certain sectors and filers due to reports of taxpayer fraud involving individuals who are ineligible for certain tax benefits claiming them anyway. The penalty notices being sent to colleges failing to report TINs or SSNs reflects their interest in ensuring that only students eligible for the tax benefits are claiming and receiving them.

A helpful IRS publication can be found by clicking here.

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Department of Education Aims to Update Gainful Employment Regulations

The Department of Education held its first of two negotiated rule-making sessions on September 9-11, to review changes it is proposing to the gainful employment regulations.

In the latest round of changes, the Department proposes to take non-Title IV recipients out of the data collected on gainful employment programs and proposes to eliminate low loan repayment rates as an indicator of a failing program, although programs would still have to disclose their repayment rates. The loan repayment rate was designed to provide a clearer indication of which borrowers were repaying their loans than was possible through the cohort default rates which were being manipulated by some for-profits schools.

During the neg-reg discussions some panelists suggested that a high repayment rate might be used as an indicator of good program performance and exempt such programs from further gainful employment program requirements.

The Department is also proposing significant changes to the way it calculates annual and discretionary debt-to-earnings ratios used to judge the quality of gainful employment programs. Overall the changes increase
substantially the number of programs covered by the gainful employment rules and likely the number of programs that will fail. Data provided by the Department to allow negotiators to analyze the impact of the proposed changes were only at the program level, and it was not possible to identify the institutional location of the programs. That and other manipulations of the data made them of little use in determining the potential impact of the proposed regulations. For further information please click here.

The sessions are the latest chapter in the long story of the controversial regulations, which were originally devised to get at problems in the for-profit education sector.

The negotiated rule-making sessions are being conducted to respond to recent court action brought by for-profit institutions that sought to invalidate the original regulations. The judge threw out portions of the regulations because of issues related to the loan repayment threshold and the inclusion of non-Title IV recipients in the data collected on the programs. Even aside from the court action, the Department had already issued 44 clarifications to its complicated and often unclear original regulations.

The panel is comprised of interested parties including students, consumer advocates, representatives from various higher education sectors (Jenny Rickard from the University of Puget Sound represents private nonprofit colleges), including for-profit institutions, veterans’ groups, state attorneys general and state higher education officials. As such, it got off to a rough start, with consumer groups and for-profit representatives at opposite ends of the policy spectrum leaving little hope consensus will be ultimately achieved.

All programs at for-profits are considered to be gainful employment programs. Only certificate programs at nonprofit private and public institutions are. Negotiated rule-making is a required part of the process of writing Title IV regulations. Without consensus, the Department is free to publish the proposed regulations it wants.

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Save the Date: NAICU Annual Meeting and Advocacy Day – Feb. 2-5

Throughout the remainder of this year and into 2014, Congress will be debating several aspects of higher education, not the least of which is the reauthorization of the Higher Education Act and President Obama’s proposed scorecard. NAICU is hearing that Congress is hoping to pass bipartisan legislation before it adjourns in 2014. These are vital issues that will shape the future of higher education.

The 2014 NAICU Annual Meeting, Securing Our Future: Capitol Conversations, February 2-5 in Washington, D.C., will come at a critical time for independent higher education. The Annual Meeting schedule is beginning to fill up. Lobby Day, on Feb. 4, again will be a critically important and highly visible component of the Annual Meeting. Lobby Day is an opportunity to take private colleges' message to the Hill. In addition to the Government Relations and Public Relations Academies, NAICU is pleased to announce an excellent slate of speakers, including:

- Charlie Cook, Political Commentator

- Derek Bok, Author, Higher Education in America; former president, Harvard University

- Michael Duffy, co-author, The President’s Club: Inside the World’s most Exclusive Fraternity; Washington bureau chief and executive editor, Time magazine

- Stephen Joel Trachtenberg, Author, Presidencies Derailed: Why University Leaders Fail and How to Prevent It; President Emeritus, George Washington University

- Michael Roth, President, Wesleyan University, on MOOCs and the Liberal Arts
Plan your visit now. It’s important that our collective voices are heard and understood. We look forward to seeing you in Washington.

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