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Administration Continues Exploring Approaches For Rating Colleges

The Obama Administration is continuing its efforts to develop a college ratings system, including providing two recent public opportunities to garner feedback from colleges and universities, and others within higher education. Such a system is the centerpiece of the higher education reform proposal announced by President Obama in August. (See September 5, 2013 Washington Update).

Recent activities have focused on the metric or metrics that might be used in such a system and how the components of any rating might be weighted. In December, the Department of Education issued a “request for information” related to the development of a Postsecondary Institution Ratings System (PIRS). A request for information is not an invitation to provide a full-blown college ratings proposal. Rather, it is a first step by the Department to collect ideas regarding the metrics that might be included in a ratings system, how those metrics might be weighted and presented, and how institutions might be grouped for comparison purposes.

NAICU was among the 125 organizations and individuals that submitted comments to the Department of Education prior to the January 31 deadline. The NAICU response suggested that a single rating metric would be harmful to U.S. higher education and that consumers would be better served by having a sufficient range of both quantitative and qualitative information to allow them to find their “best-fit” institution.

The Department also sponsored a day-long symposium on February 6, where researchers were invited to speak to the technical aspects of developing a rating. It was clear from the presentations that the research community is a long way from arriving at a consensus regarding either the purpose or the design of any system to rate the diverse range of U.S. higher education institutions.

For more information, contact Sarah Flanagan, Sarah@naicu.edu

IRS Provides Guidance on ACA Requirements for Adjunct Faculty/Student Employees

On February 10, the IRS provided long-awaited guidance for colleges and universities on defining the workload for adjunct faculty and student employees for purposes of health insurance coverage under the Affordable Care Act (ACA). The higher education community has been seeking this guidance since March of last year. While the information will help colleges account for workload hours, it is less clear that the guidance will answer all questions on when adjuncts are required to have health insurance under the ACA.

The ACA generally requires large employers to offer health insurance coverage to employees that work 30 hours
or more weekly. It was unclear, however, how to count the hours of adjunct faculty in particular since a percentage of classroom-related work is often done off campus or outside of the classroom setting.

The IRS rules clarify ways to tally hours on tasks such as lecture preparation, teaching, grading assignments, as well as office hours. They also indicate that other acceptable accounting methods may be developed by institutions, and that additional guidance may be announced in the future.

Links to the IRS release, community letters, and other specifics, can be found [here](#).

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**Task Force On Government Regulation Of Higher Education Holds First Meeting**

The Task Force on Government Regulation of Higher Education kicked off its work at a February 12 meeting held at the American Council on Education (ACE) headquarters in Washington, DC.

The group, which includes six NAICU members, is charged with: (1) making specific recommendations regarding ways in which requirements administered by the Department of Education might be streamlined or eliminated; (2) quantifying the impact of all federal regulatory requirements impacting colleges; and (3) recommending ways in which the costs and benefits of future regulatory activity can be accurately assessed.

The Task Force was created by a bipartisan group of Senators, led by Senators Lamar Alexander (R-TN) and Barbara Mikulski (D-MD). Joining the effort are Senators Richard Burr (R-NC) and Michael Bennet (D-CO). Co-chaired by Nicholas Zeppos, chancellor of Vanderbilt University, and William Kirwan, chancellor of the University System of Maryland, the task force is comprised of 16 members drawn from all sectors of higher education.

NAICU has long advocated for regulatory relief and has supported numerous initiatives directed at reducing the expense and burden of federal reporting and regulatory requirements. In addition to Chancellor Zeppos, the other NAICU members serving on the task force include Bill Armstrong, president of Colorado Christian University; Tom Chema, president of Hiram College; Margaret Drugovich, president of Hartwick College, Neil Kerwin, president of American University; and Claude Pressnell, president of the Tennessee Independent College and University Association.

At the opening meeting, the task force began with a conversation with Senators Alexander and Bennet on the purpose, scope and timeline of their work, which they hope will be completed by the end of the year. They then had an overview of the current regulatory situation by Terry Hartle, Senior Vice President, ACE, Division of Government and Public Affairs, that included the scope and size of the current regulations, the various processes that have led to overregulation and some of the options for and obstacles to deregulation. Following the ACE presentation, a number of other Washington associations representing various campus-based professional groups, talked about some of the more specific rules and challenges. It is generally agreed that while it makes most sense to focus on rules coming out of the Department of Education under the Higher Education Act, and therefore under the jurisdiction of the Senate HELP Committee, the possibility of recommending eliminating regulations from other agencies was not taken off the table.

Following lunch, President Drugovich, talked about her work to document the overall impact of regulations on her campus. Finally, the panel set forward a series of next steps and discussed ways to arrive at concrete outcomes for Congress by the end of the year.

The next meeting of the Task Force is scheduled for June 6. Between now and then, the Task Force will be firming up the scope of work and meeting in subcommittees to ensure a specific work product will be produced.

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NLRB Seeks Comments on Issues Relating to Unionization of College Faculty

The National Labor Relations Board (NLRB) has issued a notice and invitation for briefs to respond to a series of questions relating to unionization of college faculty. The specific case before the board involves an effort to unionize non-tenure track faculty at Pacific Lutheran University.

Pacific Lutheran has raised two main arguments to support its position that none of its faculty are eligible to unionize under federal labor law. The first of these arguments involves the university’s religious affiliation, and it is similar to the position that has been taken by a number of other faith-based, and mostly Roman Catholic, colleges in response to efforts to unionize adjunct faculty. The religious argument is based on a 1979 Supreme Court case (NLRB v. Catholic Bishop) which found religiously affiliated educational institutions to be exempt from NLRB jurisdiction on First Amendment grounds.

Pacific Lutheran’s second argument involves those non-tenure track faculty who are employed full time, and who participate and vote in the university’s Faculty Assembly. The university argues that those faculty are not eligible to unionize because they participate in the management of the institution—a position based on the 1980 Supreme Court ruling in NLRB v. Yeshiva University.

The questions raised by the NLRB about both of Pacific Lutheran’s arguments have broader significance for other institutions. They clearly affect other colleges raising similar religious freedom arguments about efforts to organize their adjunct faculty. The NLRB asks how it should test whether any institution that identifies itself as religiously affiliated should be exempt from the board’s jurisdiction. In 2009, in a case involving Carroll College, the D.C. Court of Appeals found that any investigation by federal officials of an institution’s religious practices and values could dangerously affect the institution’s freedom of religion under the First Amendment.

The NLRB’s questions about the application of the Yeshiva precedent, involving tests about the managerial status of faculty, could have implications for all independent colleges and universities. The NLRB raised similar questions two years ago, in connection with a case involving efforts to unionize the faculty at Point Park University. NAICU joined ACE and other associations in a brief to the NLRB affirming the continued relevance of Yeshiva. That case is still pending.

Briefs in response to the most recent NLRB questions are due at the end of March. NAICU is now considering its response to those questions. Faculty unionization cases often take a very long time to resolve. Once the NLRB issues a ruling, it is likely to be appealed to the federal courts. The Point Park University case has gone on for more than a decade, and at its most recent stage has been under consideration by the NLRB for two years.

For more information, contact Jon Fuller, Jon@naicu.edu

ADA regulations on 2008 amendments

On January 30, the Department of Justice (DOJ) issued a Notice of Proposed Rulemaking to amend its Americans with Disabilities Act (ADA) regulations to incorporate the statutory changes in the ADA Amendments Act of 2008. The DOJ is proposing to add new sections to its Title II and Title III ADA regulations to provide more detailed definitions of “disability” and to make consistent changes in other sections of the regulations. If your institution would like to weigh in, comments to the DOJ must be submitted on or before March 31, 2014.

The 2008 ADA amendments are intended to provide expansive coverage for individuals with disabilities in employment, education, and public facilities. With the enactment of the ADA amendments of 2008, more college students and more national test takers (CPA, LSAT, etc.) with learning disabilities can get accommodations. Colleges and universities already comply with ADA as employers, and providers of education. College disability offices say most colleges and universities have been generous in providing accommodations for their students and employees.

There are three major items in the proposed regulations colleges should be aware of:

1. Definition of disability
The regulations propose to further define disability by including “learning disabilities,” such as Attention Deficit Disorder and dyslexia, within the meaning of “physical or mental impairment.” These are included as illustrative examples of learning disabilities. The DOJ recognized that covered entities were not providing accommodations for these clinically diagnosable impairments covered under the ADA. Thus, they are proposing to specifically list them.

For colleges and universities, this change means there will most likely be more requests to accommodate students with learning disabilities for test-taking or other class work. These accommodations might include a quiet testing area, longer test time, or note takers, for example.

2. Affirmation of academic standards

The DOJ affirms that nothing in the ADA is intended to alter academic standards at colleges and universities, and that Congress did not intend for there to be any changes in the law with regard to “providing reasonable modifications in policies, practices or procedures that would fundamentally alter the nature of programs.” Therefore colleges would not be expected to reduce academic standards when providing accommodations.

3. Feedback from colleges

The DOJ would like feedback from colleges about their estimates of the number of students with learning disabilities who have asked for accommodations since the implementation of the 2008 law, and how many students would likely ask for accommodations with the implementation of the regulations. They would also like to know more about their estimates on the cost of implementing the law by providing accommodations for these students.

The Department estimates that in the first year of implementation, 142,000 students would take advantage of accommodations; and over 11 years, 400,000 college students, and 800,000 national test takers, would use accommodations. The year-one cost estimate for providing the necessary requirements is between $36.2 million and $61.8 million for both institutions of higher education and national testing entities.

The proposed regulations cover additional issues that may impact individual institutions, so it would be advisable to review the regulations to determine how they would affect your institution.

For more information and background, see these previous NAICU articles on ADA Amendments:

Revised Disabilities Act in the Works - June 12, 2008
House Passes ADA Restoration Act - June 27, 2008
Bush Signs ADA Amendments - September 30, 2008

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

Department of Energy to Host Webinar on Campus Microgrids

The Higher Education Associations Sustainability Consortium (HEASC), of which NAICU is a member, is hosting a webinar, DOE + Campus Microgrids, on February 19, 2014, from 2:00 p.m. - 3:30 p.m. Eastern, in conjunction with the Department of Energy. HEASC is an informal network of higher education associations committed to advancing sustainability within their membership and within the higher education system overall.

HEASC members meet on a quarterly basis by phone and once a year in person to collaborate, share best practices, and initiate new ideas to advance sustainability. This webinar is part of the Association for the Advancement of Sustainability in Higher Education’s (AASHE) recently launched 2014 calendar of professional development webinars.

Efforts to conserve resources are not only good for our environment, but could impact the bottom lines of our institutions, while also reflecting your civic missions.
Washington Update will keep members apprised of the efforts of the consortium, as well as provide information we hope you will find helpful in your campus sustainability endeavors. Targeted to faculty, presidents, and planners, the webinars will each feature experts in the growing field of sustainability, as well as resources for campus implementation.

The webinar is being offered free to AASHE members. If you are not sure about your AASHE membership status contact webinars@aashe.org or search their member directory.

For more information, contact Bo Newsome, Bo@naicu.edu

NAICU 2014 Annual Meeting in Review

More than 400 private, nonprofit college and university leaders gathered in Washington, DC, for the 2014 NAICU Annual Meeting and Advocacy Day.

Annual Meeting participants heard from speakers on a wide range of topics including:

- Derek Bok, former president of Harvard University, and author of Higher Education in America, discussed the future of higher education.
- Senator Lamar Alexander (R-TN), ranking member on the Health, Education, Labor and Pensions (HELP) Committee, called for cutting back on the regulation of higher education. (link to speech text)
- Stephen Joel Trachtenberg, president emeritus, The George Washington University, and author of Presidencies Derailed: Why University Leaders Fail and How to Prevent It, discussed failed college presidencies.
- Michael Roth, president of Wesleyan University, talked about the Massively Open Online Class (MOOC) offered by Wesleyan.

2014 Award for Advocacy of Independent Higher Education

NAICU presented Sen. Alexander with the 2014 Award for Advocacy of Independent Higher Education. Established in 1993, the NAICU Advocacy Award recognizes individuals outside of academe who have championed the cause of independent nonprofit higher education and who have an extended record of service, initiative, and determination.

As a former governor, university president, education secretary, businessman, and now two-term Senator, Sen. Alexander has brought an authoritative voice to the national debate on higher education policy, ensuring the future vibrancy, quality, and independence of American higher education. As the lead Republican on the Senate Health, Education, Labor and Pensions Committee, he is a strong and bipartisan voice for higher education institutions in Tennessee and around the county.
2014 Henry Paley Memorial Award

The NAICU Legal Services Review Panel, which evaluates emerging legal issues, litigation, and the decisions of federal regulatory bodies and advises Association leaders on the implications for private, nonprofit higher education, was honored with the 2014 Henry Paley Memorial Award. The volunteer panel is comprised of university general counsels, senior college administrators, and state association executives who also are lawyers.

Philip R. Moots, attorney at law with the firm of Newhouse, Prophater, Letcher & Moots, L.L.C. of Columbus, OH, and who served as chair of the panel for more than 30 years before retiring five years ago, accepted the award on behalf of the panel’s volunteers.

Since 1985, the Paley Award has recognized an individual(s) who, throughout his or her career, has unfailingly served the students and faculty of independent higher education. The recipients of this award have set an example for all who would seek to advance educational opportunity in the United States. The Paley Award is named for Henry Paley, president of the Commission on Independent Colleges and Universities of New York from 1975 until 1984.

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