In this issue

- Consensus Reached By Negotiated Rulemaking Panel on Campus Sexual Assault Regulatory Changes
- CAEP Issues New Teacher Preparation Standards as Congress Conducts HEA Hearings
- Education Department Proposes Expansive State Authorization Requirements For Distance Education Programs
- News and Notes from Negotiated Rulemaking
- Education Department Issues New Gainful Employment NPRM
- Update On Servicemember And Veteran Education
- House Going Through the Budget Motions
- Witnesses Offer Different Ideas for Managing Student Debt
- Deregulation Task Force Seeking Ideas

Consensus Reached By Negotiated Rulemaking Panel on Campus Sexual Assault Regulatory Changes

Expanded annual crime statistics reports, enhanced prevention and awareness programs, and new rules for conducting disciplinary proceedings, including the presence of attorneys, moved one step closer to reality April 1 when a negotiated rulemaking panel reached consensus on proposed regulations to implement new legislation. The changes in campus safety requirements were mandated by the Violence Against Women Act (VAWA). The Education Department will soon publish proposed regulations reflecting the consensus language that was agreed upon by the panel. Following a public comment period, the Department is expected to issue final regulations prior to November 1.

VAWA included significant revisions to the Clery Act campus safety provisions, and these changes are reflected in the proposed regulations. If the proposed regulations are adopted in the final rule, institutions should be aware that:

1. Annual crime statistics reports will be expanded to incorporate incidents of stalking, dating violence, and domestic violence. In addition, national origin and gender identity will be added as hate crime categories. The FBI’s “hierarchy rule,” which is generally applied to Clery crime reporting, will be suspended in reporting sexual assaults. Under the “hierarchy rule,” only the most serious offense is counted when more than one offense is committed in a single incident. The sexual offense exception will mean that a single incident with multiple offenses will be counted multiple times on an institution’s crime report. At the same time, several definitions were clarified so that counting issues and questions should be reduced.

2. New requirements for prevention and awareness programs and campaigns are spelled out in some detail in the proposal. A number of even more specific proposals were raised during the discussions, but the negotiators agreed that they would be more appropriate as handbook material. The handbook offers guidance to institutions, but its suggestions do not carry the force of regulation.

3. The proposed regulations make clear that an institution may not preclude either party in a campus disciplinary proceeding from being accompanied by an advisor of their choice, although the institution can limit the advisor’s participation in the proceeding. The proposed rule has the effect of permitting attorneys to be present, a practice that many institutions currently prohibit. This reading of the statute was strongly contested by NAICU’s nominee to the panel, Dickinson College General Counsel Dana Scaduto, who noted that it represents a “sea change” in the handling of disciplinary proceedings. Education Department officials indicated their interpretation of the statutory language would not change.
Earlier versions of the proposed regulations had also included a definition of “consent” and had required compliance with all subregulatory guidance issued by the Office of Civil Rights. These problematic provisions were dropped from the final proposal, providing a pathway for consensus. More detailed information about this negotiated rulemaking proceeding may be found here. NAICU will continue to monitor developments on this issue.

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

---

**CAEP Issues New Teacher Preparation Standards as Congress Conducts HEA Hearings**

Teacher preparation continues to be a hot policy topic in Washington. While both the House and Senate education committees have held hearings on teacher preparation reform, and new teacher education regulations are still sitting at OMB, a new accreditor issued new standards designed to transform teacher preparation before any changes in law or regulation.

**New Accreditation Standards**

The newly formed Council for the Accreditation of Educator Preparation (CAEP) issued new standards for educator preparation in January that place a greater focus on four areas: who is entering as teacher candidates; outcomes and impacts of the teacher on student learning; identifying the processes in preparation that links to better outcomes; and continuous program improvement, not just accreditation every seven years. The CAEP website (http://caepnet.org/accreditation/) contains detailed information about each standard and the evidence necessary to meet the standards. These standards will be phased into the accreditation process over the next couple of years with 2016 as the target date for compliance at accredited teacher preparation programs.

CAEP explains that the impetus for change in teacher preparation comes from the challenges the profession is facing right now which include: higher expectations for student learning, higher expectations for the quality of classroom teachers, lack of quality of entering teacher candidates when compared to the past, low stature of the profession, need to improve the evidentiary base, and the need to respond to the significant criticism facing institutionally-based teacher preparation. Within this context, CAEP strives to be a model accreditor, and help change the profession for the future.

According to the American Association for Colleges of Teacher Education, of the 1400 institutions with teacher preparation programs, 60 percent have specialized accreditation. Whether through specialized accreditation or state approval processes, institutions with teacher preparation programs need to get ready for the new standards.

NAICU strongly encourages its members with teacher preparation programs to engage in the outreach, clinics and webinars that CAEP will host over the next several months to inform institutions about the coming changes, and to respond to requests for feedback as they tease out how institutions can provide evidence of meeting specific standards. NAICU also encourages you to be purposeful in your work—be sure to document changes to teacher preparation programs, and link those changes to how they will improve the program.

Broadly, institutional leaders need to consider three questions:

- What will these changes mean for your teacher preparation programs?
- How can you prepare for this wave of change?
- Are the right people on campus aware of these changes?

CAEP was formed by the merger of the National Council for Accreditation of Teacher Education (NCATE) and the Teacher Education Accreditation Council (TEAC). While a two-year transition is underway, CAEP will make its first appearance before the National Advisory Committee on Institutional Quality and Integrity (NACIQI) in June. CAEP must earn Department of Education approval as a specialized accreditor, and is being treated as a new accreditor in review, despite the merger.
Meanwhile on Capitol Hill . . .

As Congress moves toward the next Higher Education Act (HEA) reauthorization, teacher preparation reform is one of the main focus areas. In preparation, both the House and Senate Education Committees have held hearings on teacher education.

Both hearings included witnesses from private colleges. Vanderbilt University was invited to testify because it is one of the four institutions deemed exceptional by the National Council on Teacher Quality (NCTQ) survey. [See Washington Update article] Marcy Singer Gabella, professor of the practice of education and associate chair for teacher education in the Peabody College of Education and Human Development at Vanderbilt University, discussed how federal policy leaders might support the ongoing development of successful models of teacher preparation. Mary Brabeck, the Gale and Ira Drukier dean and professor of applied psychology at New York University, was invited to speak at the Senate hearing as chair of the CAEP Board.

Testimony in both hearings reflected the reality that state, local and institutional players are working together to improve teacher preparation and student learning outcomes. While opening statements from committee members reflected their concern about the state of the profession and its impact on student learning, members did not appear eager for an intrusive federal role into teacher preparation to drive improvements.

However, both committees would like feedback on the data collection for states and institutions required by Title II of HEA. They would like to know what is useful, what isn’t, and what’s too much. If your institution has particular feedback about the Title II report cards, please let us know.

Video and testimony from the House hearing is available here:


Video and testimony from the Senate hearing is available here:

[http://www.help.senate.gov/hearings/hearing/?id=5a666b0f-5056-a032-52a1-8a78d93043e0](http://www.help.senate.gov/hearings/hearing/?id=5a666b0f-5056-a032-52a1-8a78d93043e0)

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

---

**Education Department Proposes Expansive State Authorization Requirements For Distance Education Programs**

Colleges and universities offering distance education programs would be required to secure state authorization in each state in which a participating student resides, according to a new set of proposed distance education regulations offered by the Education Department.

The new proposal was one of six subject areas taken up during a Program Integrity and Improvement Negotiated Rulemaking Committee session held March 26-28. The session also included in-depth discussion of state authorization for foreign locations of U.S. institutions, PLUS loan eligibility, debit card restrictions, the clock to credit hour conversion formula, and aid for repeated course work. [See News and Notes from Negotiated Rulemaking] Many of these issues were introduced during the first session in February.

The Education Department’s previous regulation in this area was struck down in court. The new proposal, which is described in Issue Paper #2 on the Education Department’s website, is significantly more expansive than what was previously in place. The prior regulation, two sentences long, required an institution offering distance education to “meet any state requirements for it to be legally offering postsecondary distance or correspondence education in that state.”

The new proposal, some 11 paragraphs, requires each state to authorize “by name” all institutions that are providing distance education services to its residents and to have a process for resolving complaints about those institutions. The regulation would compel states which do not currently have an authorization process to
develop a process.

The proposed regulations would permit participation in a reciprocity agreement such as the State Authorization Reciprocity Agreement (SARA) to satisfy a portion of the proposed new requirements. However, participation in such an agreement would not satisfy requirements relating to the resolution of student complaints. SARA, for example, assigns responsibility for complaint resolution to the "home state" of the institution participating in the agreement. The proposed regulation, however, would require both the institution’s home state and the student’s state of residence to be responsible for resolving any complaints.

At the March session, several negotiators cited the scope, complexity and confusing language of the proposal as significant problems. It is unclear whether or how Education Department officials will respond to these concerns.

A related proposal under discussion would require U.S. institutions operating a branch campus or additional location outside of the U.S. to be authorized by three entities: the country in which it is located, the institution’s home state, and the institution’s accreditor. An exception is made for campuses/locations on U.S. military bases, if exempted by the foreign country.

Moving forward, state authorization must include disclosure by the institution of the existence of, or plans for, a foreign branch campus/additional location. States must have the authority to deny authorization of the additional campus/location. The state also must be able to review and take timely final action on complaints about the foreign branch campus/location—including enforcement of applicable state law. In addition, students and prospective students at the foreign branch campus/additional location must be notified that they may use the complaint process in the institution’s home state to resolve disputes.

The next rulemaking session will be held April 23-25 and is intended to be the final opportunity to discuss the distance education proposals. A fourth session has been scheduled for May 19-20, primarily to discuss the PLUS Loan issue; however, other issues could be raised if time permits.

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

News and Notes from Negotiated Rulemaking

PLUS Loans and institutional cash management provoked considerable controversy during the second meeting of the Program Integrity and Improvement Committee March 26-28. (See Education Department Proposes Expansive State Authorization Requirements for Distance Education Programs)

PLUS Loans: A change the Education Department made at the end of 2011 to tighten the adverse credit standard used to determine a parent or grad student’s eligibility for a PLUS Loan was the focus of much discussion. The Department has acknowledged that it did not properly warn schools when it realized it was not using the intended credit assessment indicators, but its correction caused many applicants to be denied loans and many schools to lose enrollment.

The HBCU representative recommended returning to the earlier formula and argued that PLUS Loans are essential for college access for low-income students. Consumer advocates, while concerned about maintaining access, seem to have greater concern about “over-borrowing” and the borrower’s ability to repay the loan. Some view increasing access to PLUS Loans as a benefit for colleges, not students.

At the request of the panel, the Education Department provided PLUS Loan data that were not publically available previously. This has delayed the Department’s ability to provide proposed regulatory language and required adding another session in May to deal with PLUS Loans.

Cash Management: Consumer advocates and financial industry representatives disagreed over how to manage student aid funds on college campuses. Overall, the consumer groups support the Education Department’s proposals while industry and campus representatives warned of unintended consequences and additional administrative burden and costs.

The Department has proposed two categories of regulations. One has to do with handling credit balances due to students while the other applies more broadly to management of Title IV student aid funds. The credit balance issues mainly concern low-tuition schools like community colleges. Of greater concern to private, nonprofit
colleges are proposed rules on managing Title IV funds.

Regarding the broader cash management requirements, the Education Department’s proposed language bans co-branded ID or debit cards, even when sponsorship arrangements are unrelated to Title IV funds. It also requires colleges to maintain separate bank accounts for Title IV funds and prohibits putting Title IV funds into “sweep” accounts (short-term/overnight accounts that can earn interest) or other accounts that might put the funds at risk. It also proposes institutions obtain specific authorization for including charges for books and supplies integral to a course as part of tuition and fees charges. Currently, tuition and fees may be paid with Title IV funds without additional authorization by the student or parent. A separate authorization from the student (or parent for PLUS Loans) is required before Title IV funds can be used to pay most other types of charges.

The proposed credit balance disbursement requirements are designed to provide students with their student aid credit balance refunds without any additional charges, regardless of the disbursement method. A highly contentious issue was ensuring students who received refunds on a debit card did not have to pay any ATM fees anywhere and would be exempt from account maintenance and overdraft fees. The stringent requirements concerning credit balances stem from allegations that some fees charged for use of debit or prepaid cards were too high, which financial representatives said is no longer the case.

The other two student aid issues, one dealing with clock-to-credit hour conversion, and the other about repeating passed courses were settled with little discussion.

The Education Department website provides details on all of the Program Integrity and Improvement negotiated rule-making issues.

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

---

Education Department Issues New Gainful Employment NPRM

Building on its prior regulatory attempt and trying to avoid future judicial challenges, the Education Department published a Notice of Proposed Rule-Making (NPRM) on March 25 to once again amend the Gainful Employment rules. The regulatory language takes up slightly more than 20 pages (16504-16525) in the Federal Register.

In the new regulations, the Education Department establishes a structure for approving and overseeing eligibility of gainful employment programs and to provide program transparency to students. The Education Department also proposes to use debt-to-earning figures, similar to those in its former regulations, and program level cohort default rates to assess institutional eligibility. It has added a new certification requirement for all existing and new gainful employment programs. Presidents will be required to note in the institution’s program participation agreement that the gainful employment programs are accredited and meet state and federal occupational licensing requirements in the standard metropolitan area in which the college is located.

The proposal substantially expands the list of disclosures that must be provided to students and prospective students. Prospective students include not only students who have contacted the college, but students the college contacted directly, or indirectly, through means such as advertising.

Also adding complexity, and perhaps confusion, is the variety of time periods during which various items are calculated and the different sets of students for which information must be reported to the Education Department.

The complex document seems to be unsatisfactory to many groups, from for-profit institution leaders who see it as over-kill to student advocacy groups who view it as not strong enough. This NPRM is a challenging piece from the Department and NAICU staff will continue to digest the regulations and provide further details in the near future.

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

---

NAICU / Washington Update / April 11, 2014 / 5 of 8
Update On Servicemember And Veteran Education

The Obama administration continues to make steady progress in implementing the initiatives outlined in the April 2012 executive order establishing “Principles of Excellence” for institutions enrolling service members and veterans.

The principles focused on a number of issues in the following areas: program integrity, consumer information, and complaint resolution issues.

Program Integrity: The Department of Veterans Affairs (VA) sought trademark protection for the term “GI Bill,” which was registered as a trademark owned by the VA in October 2012. In a March 10 Federal Register notice, the VA outlined the terms of use for the trademark. The publication discusses the placement of the trademark symbol and outlines five criteria for third-party use of the term.

In addition, a revised Memorandum of Understanding (MOU) governing the Defense Department’s Tuition Assistance (TA) program is expected to be issued next month. The revisions are expected to incorporate provisions of the “Principles of Excellence” related to the return of TA funds after withdrawal, misrepresentation, incentive compensation, state authorization, readmission, and the provision of consumer information.

Consumer Information: The VA has now posted on its website a GI Bill comparison tool that provides information about all VA-approved education and training program providers. The site includes institution-specific information about the amount of assistance for tuition and fees, housing, and books a veteran could expect to receive—based on the length of active-duty service. It also indicates the number of GI Bill recipients attending the institution and notes whether or not the institution has agreed to the “Principles of Excellence” or participates in the Yellow Ribbon program. Graduation rate, default rate, and median borrowing information compiled by the Department of Education also is provided—along with a link to the institution’s College Navigator page.

Complaint Resolution: In late January, several federal agencies announced the establishment of an online system for use by service members, veterans, and their families for registering complaints against educational institutions that receive education program funding from the VA or the Defense Department. Participating agencies include the Departments of Veterans Affairs, Defense, Education, and Justice; the Consumer Financial Protection Bureau; and the Federal Trade Commission.

Complaints may be registered on either the Department of Defense or GI Bill websites. The Education Department also will accept complaints via e-mail at: compliancecomplaints@ed.gov. Federal officials who receive the complaint will first contact the school in an effort to address it. Information about the complaints and their resolution will then be provided to the Federal Trade Commission’s Consumer Sentinel Network. This network is accessible to federal, state and local law enforcement agencies.

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

House Going Through the Budget Motions

The House of Representatives passed a fiscal year 2015 budget resolution April 10 reflecting House Budget Committee Chairman Paul Ryan’s (R-Wis.) “Path to Prosperity” proposals. The plan sticks to the $1.058 trillion spending cap set in the January budget deal, but makes additional cuts to entitlement spending to appease members who want even less government spending.

H. Con. Res. 96 passed the House largely along party lines by a vote of 219 to 205, but the Senate is not expected to write or take up a budget resolution because Senators consider it unnecessary with the statutory cap enacted in January. The nonbinding congressional budget resolution traditionally serves as a blueprint for the federal budget process in the House and Senate, providing the appropriations committees with fiscal targets. While the House budget resolution will die in the Senate, some of the ideas found in the resolution could be picked up in future appropriations bills or during the reauthorization of the Higher Education Act.

The student aid funding proposals in the resolution are recycled from past versions of Rep. Ryan’s budget plan. Wrapped in language about financial sustainability for the Pell Grant program and targeted aid to the neediest
students, the resolution would eliminate all mandatory funding for Pell Grants, while freezing the maximum grant at $5,730 for the next 10 years, without providing additional discretionary funds to sustain it. In addition, the resolution would: save money in the Pell Grant program by eliminating eligibility for certain groups of students, lower the auto-zero income level, revert income protection allowances to pre-2007 levels, impose a maximum income cap for eligibility, and eliminate eligibility for less-than-half-time students.

To save money on student loans, the plan would repeal the expansion of income-based-repayment (IBR), and eliminate the in-school interest subsidy for undergraduate student loans. Rep. Ryan argues that IBR disproportionally benefits graduate and professional students, and that there is no evidence that the undergraduate subsidy is critical to going to college.

Similar tweaking of eligibility and student loan changes have made it through appropriations and budget deals in the past, so NAICU will keep an eye on these ideas as other committees consider higher education issues throughout the year.

The next steps in the FY 2015 congressional funding process is the writing of the 12 appropriations bills, including the Labor-Health and Human Services-Education bill. Both House and Senate subcommittees hope to have bills done by mid-July. NAICU will provide updates as necessary.

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

Witnesses Offer Different Ideas for Managing Student Debt

Senators and witnesses both expressed concern about student loan debt levels that, in aggregate, now exceed $1.2 trillion during the March 27 hearing Strengthening the Federal Student Loan Program for Borrowers conducted by the Senate Committee on Health, Education, Labor and Pensions (HELP).

Ranking Minority Member Sen. Lamar Alexander (R-TN) noted that while college is more affordable than many students think over-borrowing could be a problem. Committee Chair Sen. Tom Harkin (D-IA) concurred while suggesting that limiting borrowing for part-time students and for personal expenses might help reduce debt levels. He also suggested limiting borrowing by graduate students who currently can borrow up to $138,500 in Stafford loans and up to the cost of attendance in Grad PLUS loans, and may feel they are protected by income-based repayment and loan forgiveness. In addition, several witnesses suggested providing institutions with the authority to limit borrowing for certain categories of programs and simplifying programs.

James Runcie, chief operating officer, Office of Federal Student Aid, Department of Education, blamed some student loan repayment problems on confusion caused by the Department’s expansion from a single servicer for Direct Loan (DLP), prior to 2009, to the current 11 servicers. He also argued that providing better information about income-driven repayment plans was a solution for many borrowers. He noted the Education Department sent more than 3 million emails to federal student loan borrowers in November 2013 about repayment options. He said that this had helped a number of borrowers avoid default. Currently, 22 percent of DLP loans are in an income-driven plan. He also cited other department efforts including the Financial Awareness Counseling Tool (FACT) on StudentLoans.gov.

Michelle A. Cooper, president of the Institute for Higher Education Policy, suggested “risk-sharing” by institutions and states either through lowering costs or contributing to a risk-sharing pool based on a measurement of repayment, such as the cohort default rate. A bill by Sen Jack Reed (D-RI), Protect Student Borrowers Act of 2013 (S. 1873), proposes a risk-sharing scheme based on institutional cohort default rates. Other witnesses also recommended additional loan counseling.

This was one of a series of HELP Committee hearings on the road to reauthorization of the Higher Education Act before it expires on December 31, 2014.

After the hearing, Sen. Harkin has introduced the Smarter Borrowing Act (S. 546) and plans to introduce the Proprietary Education Oversight Coordination Improvement Act. The first bill would require institutions to update students about their remaining Pell Grant eligibility at least once every two years. The second bill, which
will be cosponsored by Sen. Richard Durbin (D-IL), would establish an interagency oversight committee on for-profit schools. Rep. Elijah Cummings will introduce it in the House.

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

Deregulation Task Force Seeking Ideas

The Task Force on Government Regulation of Higher Education is seeking specific ideas from college campuses regarding which regulations and legal requirements Congress and the Administration should remove or change. Six of the Task Force’s 20 members are from private, non-profit colleges and NAICU staff is actively collaborating on the Task Force’s work. NAICU encourages all its members to submit ideas to regulations@acenet.edu. Deadline is April 30.

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

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

Tracy Fitzsimmons, President, Shenandoah University; Chair, NAICU Board of Directors
David L. Warren, President
Sarah Flanagan, Vice President for Government Relations and Policy Development
Pete Boyle, Vice President for Public Affairs

Washington Update is available to NAICU member presidents and their staff via e-mail, 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 galen@naicu.edu.

© 2014 by the National Association of Independent Colleges and Universities

NAICU

Washington Update
National Association of Independent Colleges and Universities
1025 Connecticut Ave., N.W., Suite 700
Washington, DC 20036