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Congress Goes Home for August Recess; Fall Calendar Likely to Include Higher Ed Activity

Congress began its traditional summer recess on August 4, and is scheduled to return to DC the week of September 8. With party control of the Senate at stake in the upcoming election, it is unlikely that members will spend much time in Washington this fall before heading back home to campaign.

Generally, a jammed calendar means little policy work gets done. However, higher education may be the exception to the rule, as major legislation is shaping up that could frame big changes in the federal rules affecting colleges.

Among the “must-dos” for Congress are the annual funding bills, including deciding how much money to allot for student aid for the 2015-16 school year. The Senate subcommittee has set its mark at the scheduled $100 increase for the Pell Grant maximum, to $5,830; and it has increased funding for the other student aid programs.

The House has not written its education funding bill, but may do so in September. There is no appetite for a government shutdown this fall, so it is expected a continuing resolution will be passed in September to keep the government running through the election. Then the current Congress will come back before the end of the year to make a final decision on next year’s spending bill in a lame duck session.

Just as significant for campuses, though, will be the behind-the-scenes work that will continue on the rewrite of the Higher Education Act (HEA). Members in both the House and Senate will continue to flesh out their separate frameworks for reauthorizing the HEA. The policy decisions made between now and this fall are likely to shape the structure and key components of the final legislation.

Among the most rapid developments are legislative proposals on campus sexual assault, reflecting rare bipartisan support for making massive changes in campus disciplinary processes. In a critical election year, it is possible that legislation in this area could move quickly, before being fully aired and reviewed.

With regard to our tax priorities, the House voted to make permanent two important higher education tax benefits, the IRA charitable rollover and the American Opportunity Tax Credit (AOTC). The Senate will likely push for a less expensive, two-year extension of the IRA rollover in conference this fall, and it is unclear if they will consider AOTC legislation, since the current provision doesn’t expire until the end of 2017.

With all this activity brewing in a heated political climate, it is more essential than ever that NAICU members try to engage their elected officials at home on these critical matters, so that whatever legislation is crafted this fall is thoughtful and helps both our institutions and the students we serve.

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Bipartisan “Campus Accountability And Safety Act” Introduced In The Senate

Wide-ranging legislation with massive implications for the way every college addresses sexual violence on its campus was introduced on July 30 by a bipartisan group of 10 Senators led by Senator Claire McCaskill (D-MO). The “Campus Accountability and Safety Act” proposes changes in the Higher Education Act, Title IX, and the Violence Against Women Act aimed at requiring colleges to act more aggressively in identifying, preventing, and addressing sexual misconduct on their campuses. There is a growing list of cosponsors.

The proposal places particular emphasis on assuring that individuals who are assaulted receive immediate and sustained support from trained campus personnel. In addition, institutions would be required to conduct campus climate surveys, post additional information on their websites, ensure consistency in their disciplinary proceedings, and develop agreements with local law enforcement authorities. The Department of Education would be required to publish information about pending Title IX investigations and would be authorized to impose stiff financial penalties for Title IX or Clery Act violations. Department officials would also be required to develop subregulatory guidance aimed at clarifying the interaction between Title IX and Clery requirements and resolving any inconsistencies between the two.

This multi-faceted proposal emerged from a series of roundtable discussions and a campus survey sponsored by Senator McCaskill and her colleagues.

Next steps for the measure are uncertain at this point. Senator McCaskill has expressed her hope that the measure can be taken up quickly after the Senate returns from its month-long August recess. The bill has been referred to the Senate Committee on Health, Education, Labor, and Pensions, where committee leadership has indicated that sexual assault issues will be considered in connection with reauthorization of the Higher Education Act (HEA). Final action on the HEA will not occur until after a new Congress convenes next year.

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House Cleans its Plate Prior to Recess

Moving towards a month-long summer recess (August 4-September 5), the House of Representatives approved several bills addressing higher education tax policy and Higher Education Act (HEA) programs. Although few of these measures are expected to see action in the Senate, they offer a sense of how future tax and HEA proposals may take shape.

Tax

IRA Charitable Rollover

Legislation that would permanently extend the IRA charitable rollover benefit was one of five charitable giving bills rolled into the America Gives More Act of 2014 (H.R. 4719), and approved by the House on July 17. The rollover provision, which expired at the end of 2013, allows individual taxpayers over the age of 70½ to donate up to $100,000 from their IRAs and Roth IRAs to colleges, universities, and other nonprofits without having to treat the withdrawals as taxable income. The five proposals incorporated into H.R. 4719 were approved as separate bills by the House Ways and Means Committee on May 29.

The Senate passed a temporary extension of the IRA rollover in April. The Senate bill would retroactively extend the benefit for two years, covering all of 2014 and expiring on December 31, 2015. House and Senate tax committee members are expected to resolve the differences between the two bills over the next few months. The final agreement is expected to look more like the Senate version, given its much lower price tag of a two-year versus a permanent extension of the benefit.

Black-Davis Bill

On July 24, the House approved the Student and Family Tax Simplification Act (H.R. 3393), also known as the “Black-Davis” bill after its authors, Reps. Diane Black (R-TN) and Danny Davis (D-IL). That measure would
permanently extend the American Opportunity Tax Credit (AOTC), and would also eliminate and consolidate other various tuition tax benefits.

As previously reported, NAICU has long advocated for the AOTC to be made permanent. We were also pleased that the House Ways and Means Committee restored the income eligibility cuts from the original Black-Davis bill. However, unfortunately, the final version of H.R. 3393 also eliminates graduate and lifetime learning benefits by limiting the AOTC to four years.

The Senate is not currently scheduled to consider permanent AOTC legislation, as the benefit does not expire until December 31, 2017. If it does take up the issue, it will likely consider the version (S. 835) introduced by Senator Charles Schumer (D-NY), which would further increase eligibility for the benefit and extend it beyond the first four years of college.

Higher Education Act

In addition to the tax measures, the House approved three bipartisan higher education bills that had been reported out of committee earlier this month. NAICU joined others in the higher education community in expressing general support for the bills, which cover competency-based education, transparency, and financial aid counseling, and indicating interest in their further refinement as the process continues.

Competency-Based Education

On July 23, the House unanimously approved the Advancing Competency-Based Education Demonstration Project Act (H.R. 3136), authored by Rep. Matt Salmon (R-AZ). The bill would authorize competency-based education demonstration projects and would allow the Secretary of Education to waive current statutory and regulatory requirements that impede their creation. The goal of the legislation is to cut the cost of attending college by promoting innovation. In related news, the Department of Education announced it will soon provide information on applying for waivers under the experimental sites authority to test competency-based programs.

Transparency

By voice vote the same day, the House also passed the Strengthening Transparency in Higher Education Act (H.R. 4983), authored by Rep. Virginia Foxx (R-NC). The measure would require the Secretary of Education to create a consumer-tested College Dashboard that would provide a limited amount of the essential information students need for selecting colleges. The Secretary would also be required to provide a link to the College Dashboard page of each institution listed on a student’s FAFSA.

Financial Aid Counseling

On July 24, the House passed the “Empowering Students through Enhanced Financial Counseling Act” (H.R. 4984), authored by Rep. Brett Guthrie (R-KY). The bill would require annual counseling for student loan borrowers and, for the first time, for Pell Grant recipients and parent PLUS borrowers. The bill was amended slightly during House consideration to include additional counseling elements and to provide for a longitudinal study of the effects of the counseling.

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Institutions Invited to Apply to Participate in Experimental Sites Initiative

The Secretary of Education has issued an invitation to institutions that participate in Title IV programs to apply to participate in a new Experimental Sites Initiative (ESI). Under the ESI, institutions are granted waivers from certain requirements for administering Title IV programs, in order to test new methods of providing aid. This round of sites is focused on President Obama’s goal of making college more affordable.
Four types of experimental sites will be set up to remove barriers to innovation, new technology, and alternative approaches to teaching and learning that could improve students’ academic outcomes:

1. **Prior Learning Assessment**: This would allow costs for assessments of prior learning, and in some cases the cost to prepare materials for such assessments, to be included in a student’s cost of attendance.

2. **Competency-Based Education**: This provides flexibility in providing federal student aid to students in self-paced competency-based education programs.

3. **Limited Direct Assessment**: This provides flexibility to provide a mix of direct assessment coursework and credit or clock hour coursework in the same program.

4. **Federal Work Study (FWS)**: This would allow institutions to compensate FWS students as “near-peer” counselors to high schools students, solely with federal funds.

Letters of application must be received by the Department of Education no later than September 29, 2014. Institutions chosen for the sites will be expected to provide significant information about their experiments, including, in some cases, control groups of students. The Secretary plans to select a diverse cross-section of institutions and encouraged applicants to include high-need, working, and adult students in their proposals. Also considered in selecting institutions will be “evidence of programmatic compliance, cohort default rates, financial responsibility ratios, and, for for-profit institutions, “90/10” funding levels.”

Ideas solicited by the Department of Education last December helped in developing the experimental site concepts. For more details on the requirements of each of the four experimental sites and instructions for submitting letters of application, see the [Federal Register](https://www.federalregister.gov).

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