Congress Adjourns; Lame Duck Session Addresses Several Areas of Importance

The 114th Congress adjourned sine die on Tuesday, December 16 after what's being called the least productive session in modern history. However, two big actions in the lame duck session kept NAICU priorities intact. Congress approved a one-year extension of expired tax benefits which included one-year retroactive extensions of the IRA Charitable Rollover and the above-the-line Tuition Deduction (see accompanying Washington Update story). Additionally, President Obama signed the “CRomnibus” spending package that covered several areas of interest to NAICU members.

Student Aid Funding Set for 2015-16 Academic Year

Congress sent the $1 trillion FY 2015 Omnibus Spending bill, H.R. 83, to the President for his signature on December 13. This “CRomnibus” spending package is so-named because includes 11 complete bills (omnibus), funding all agencies except Homeland Security, which is funded through February 27, 2015 by a continuing resolution (CR). This deal allows Congress and the Administration more time to work on immigration issues, without shutting down the rest of the government.

After nail-biting whip counts, the House passed the package by a vote of 219-to-206, with 57 Democrats voting for passage. The Senate passed the bill by a vote of 56 to 40, after a filibuster and a constitutional point of order against the bill. Both chambers passed a two-day continuing resolution to avert a government shutdown. The President signed the bill upon receipt.

For student aid, program funding has held steady, with a few increases:

- Funding for Pell grants is sufficient to cover the scheduled increase in the maximum grant to $5,830.
- SEOG is level funded at $733 million
- Federal Work Study has a $15 million increase, to $990 million
- TRIO is increased by $1.5 million, to $840 million
- GEAR UP is level funded at $302 million
- Graduate programs are level funded at $29 million
- First in the World is cut $15 million, to $60 million
In addition to these funding levels, the bill includes legislative language for a new provision that reinstates student aid eligibility, under “ability-to-benefit,” for students enrolled in career pathways programs, most of which are at community colleges. This is modeled on a successful program in Washington State, championed by Sen. Patty Murray (D-WA).

As with most end-of-the-session bills, the report language accompanying the bill can reinforce policy positions of the appropriations committees. There are quite a few areas of interest to NAICU members covered in this year’s report language:

- The Department of Education must report to the appropriations committees on enrollment and graduation information for Pell Grant recipients in the NSLDS, which began in the 2012-13 award year.
- Within the amount for Student Aid Administration, the Department is expected to continue its efforts to prevent sexual violence on campus.
- The committees request an update on the interagency task force on oversight of for-profit colleges in the FY 2016 budget justification for the Department.
- The committees request an update on the implementation of the expanded student complaint system in the FY 2016 budget justification.
- Within FIPSE, $2.5 million is provided for the National Center for Information and Technical Support for Postsecondary Students with Disabilities (aka database).
- Within FIPSE, $5 million for the Centers of Excellence for Veteran Student Success and $250,000 for a database contract.
- The committees encourage the Department to continue incentivizing institutions to develop and test competency-based education as an alternative method for delivering financial aid.
- A $1.4 million increase for the Office of Civil Rights to help ensure educational institutions are protecting students from sexual violence

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

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Congress Approves One Year Extension of Expired Tax Benefits; IRA Charitable Rollover and Tuition Deduction Renewed for 2014 Only

Prior to adjourning for the year, the House and Senate agreed to renew a set of tax benefits that expired on December 31, 2013. Included in the package were one-year retroactive extensions of the IRA Charitable Rollover and the above-the-line Tuition Deduction. These benefits will expire, however, on December 31, 2014.

In a surprise move, House Ways and Means Chairman Dave Camp (R-MI) introduced a separate bill, H.R. 5806, that would have made permanent three charitable giving benefits, including the IRA Rollover. The bill had the bipartisan support of House Leadership, and Senate Leaders indicated they would push for its passage as well. Unfortunately, President Obama announced he would veto the charitable bill, diminishing the measure’s support among Democrats in the House. It failed to gain a two-thirds majority in the House that would have been needed to override any potential veto.

The charitable giving package introduced by Rep. Camp would have traveled alongside the one-year extension, and been quickly considered before Congress adjourned for the year. Members of Congress recognized the difficulty in utilizing charitable giving benefits in a cycle of annual expirations and late renewals, and the harm and confusion it was causing among donors and nonprofits. In announcing the planned veto, the President indicated he was only willing to sign a one-year extension of all of the expired benefits. White House officials indicated that the President wants to try to address the status of the expiring provisions as part of ongoing tax reform efforts expected to resume next year.

For more information, contact Karin Johns, Karin@naicu.edu
Proposed Teacher Preparation Regulations Tie Program Quality to Aid; Comments due Feb. 2, 2015

After two years in the making, the Department of Education issued a Notice of Proposed Rule Making (NPRM) to provide increased Title II accountability for all teacher preparation programs and to link program quality to Title IV TEACH Grant eligibility. Comments on the proposed regulations are due February 2, 2015.

Included in the regulations is an additional request for comments (due Jan. 2, 2015) to the Office of Management and Budget (OMB) on the cost and burden of implementing teacher preparation regulations.

Major Areas of Concern

While some improvements were made in the time that has elapsed since the failed negotiated rulemaking sessions in 2012, the same four major areas of concern for colleges remain as prominent features of this regulatory proposal:

1. Federally-mandated state indicators of quality for teacher preparation program assessments;
2. Rating programs in four performance classifications based on the federally-mandated state indicators;
3. The use of value-added metrics embedded into student learning outcomes and student growth measures; and
4. A precedent-setting link between program performance and all Title IV student aid.

Procedural Improvements

There are several procedural improvements, however, that were made to the draft regulations, including:

- A 60-day comment period ending Feb. 2, 2015 (Docket ID ED-2014-OPE-0057);
- A long implementation plan that would give programs until the 2020-2021 school year to meet the new standards;
- Recognition of the need to protect student privacy by increasing the threshold for program reporting to 25 students or more;
- The inclusion of institutions that represent diversity in the state stakeholders meetings; and
- Technical assistance to help low-performing programs improve. (If the programs do not improve, they will be closed.)

Federal Government Enters New Territory in Mandating and Defining Assessment Indicators

However, despite these improvements, the regulations, and the tenor in which they are being issued, are still problematic. Of particular concern is the premise that teacher quality can be measured by the GPA and SAT scores of the incoming teacher candidates, and that an institution's teacher preparation program quality can be measured by the student test scores of the children taught by an institution's graduates. The federal government is entering new territory in mandating and defining the indicators to use in assessing program quality, which has been a traditional role of the states, the profession, and private accreditation.

Despite the rhetoric around allowing states to use their own measures of student growth, because of previous federal actions, all but eight states already use value-added measures of student learning in their teacher assessments. Thus this proposed regulation is mandating those remaining states to use value-added measures in their student learning outcomes when assessing teacher preparation programs.

The circuitous links among the definitions of state indicators, program ratings based on these indicators, the prominence of value-added measures in student learning outcomes, and connecting program quality to student aid eligibility are unprecedented. Teacher preparation programs will be assessed and rated following these steps:

1. Every "teacher preparation program” (elementary, secondary, special education) at every "teacher preparation entity” (IHE, alternative route) will report to the state on their graduates and new teachers so that the state can assess its program performance.
2. Program performance will be based on student learning outcomes, employment outcomes, survey outcomes, and whether the program is accredited by a specialized accreditor (CAEP), or meets equivalent state standards.

3. Performance ratings will be classified as “exceptional,” “effective,” “at-risk,” or “low-performing.”

4. Only programs with “effective” or “exceptional” ratings, based on satisfactory or better student learning outcomes, will be defined as “high quality” for the purposes of awarding student aid TEACH grants under Title IV.

5. Programs with a “low-performing” rating and the loss of state approval will not be allowed to use any Title IV aid. These programs will be given technical assistance to help them improve. (If the programs do not improve, they will be still closed.)

There is no doubt that these proposed regulations are designed as a test pilot for a rating system for all of higher education.

The Department indicates they do not believe this system will be difficult for states to implement, using the rationale that all 50 states and the District of Columbia received stimulus money in 2009, to collect and report on student growth relating to individual teachers and tests by 2013. The Department also notes that $575.7 million in federal funds have already been given to states for state longitudinal data systems, which allows 30 states and the District of Columbia to link student achievement to teacher programs.

The regulations stop just short of a federal mandate for specialized program accreditation, because it requires an “assurance of accreditation,” or meeting equivalent rigorous state standards. The Department explains in its rationale that specialized accreditation is “tantamount to a State finding that the teacher preparation program has these other attributes.”

Comments on the overall proposed regulation package are due February 2, 2015. To submit comments electronically, go to www.regulations.gov and submit comments for Docket ID ED-2014-OPE-0057. Written comments can be sent to Ms. Sophia McArdle, U. S. Department of Education, 1990 K Street, NW, Room 8017, Washington, DC, 20006. NAICU will be submitting comments, which will be shared with its membership before the comment period is completed.

**OMB Request for Comments due January 2, 2015**

Embedded within the overall regulations is a request for comments to the OMB on the cost and burden of implementing the regulations. The cost and burden to implement regulations are often underestimated by the federal government, with the intent of avoiding the cost threshold for an “economically significant” regulation of $100 million. Triggering that threshold can bring greater scrutiny to the entire package, which is why this question is so important to answer. The estimate of the total 10-year cost of these regulations is between $42 and $42.1 million with more specific breakdowns that you can find here. Comments on cost and burden should be sent to OIRA_DOCKET@omb.eop.gov, with a copy to Stephanie@naicu.edu.

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

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**White House Holds 2nd Summit on College Opportunity**

Reaching out to a wider swath of higher education and community leaders, President Obama, joined by Vice President Biden and First Lady Michelle Obama, hosted the second College Opportunity Day of Action in Washington, DC on December 4. Included in the day-long Summit were nearly 40 NAICU member institutions and organizations.

Prior to the Summit, higher education leaders were asked to nominate new programs that their institutions or organizations were undertaking to help make college more accessible in one of four areas: building networks of colleges focused on promoting completion, creating K-16 partnerships around college readiness, investing in high school counselors, and increasing the number of college graduates in STEM fields (see below for more detail).

During the Summit, the White House announced more than 600 new commitments from the nominated programs to help more students prepare for and graduate from college.
NAICU President David Warren, who also attended the Summit, characterized the day as significant in the amount of collaboration and commitment to moving these critical higher education issues forward. “We are proud of the many commitments made by private, nonprofit institutions, not just those participating in the Summit, but also institutions around the country that are tackling these very issues every day. NAICU and our members are very focused on making higher education more accessible, and ensuring that more students succeed in reaching their higher education goals,” said Warren.

This Summit follows the first event held in January, where more than 100 college and university presidents and other higher education leaders joined President Obama at the White House. There, each higher education leader in attendance committed to announcing a new initiative to improve college access and completion for low-income students.

Four focus areas of the December 4, 2014 Summit on College Opportunity:

- **College Completion Collaboration**—Colleges and universities are establishing collaborations around graduating more students, particularly low-income students. These networks demonstrate what can be accomplished when colleges and universities work together to pilot and evaluate promising practices that help students persist, share what is learned, and scale what works.

- **K-16 Collaboration**—Higher education institutions working in partnership with school districts, community organizations, business and philanthropy to increase the share of high school students who are on track to enter and succeed in college.

- **K-12/Postsecondary Counseling and Advising**—The White House was especially interested in initiatives that connect high school counselors with higher education institutions to recruit and enroll at-risk students and projects that align access efforts with college readiness standards.

- **STEM Degree Production**—The White House was especially interested in initiatives that focus on college completion for low-income, women, and underrepresented minority STEM students, improving retention in STEM fields, especially by overhauling introductory STEM courses, and supporting student connections to research and career pathways.

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

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**Distance Education Reciprocity Effort Continues to Move Forward**

Since its establishment in August 2013, State Authorization Reciprocity Agreement (SARA) officials have continued to promote membership in the agreement and to refine its operations and requirements.

Of particular interest to NAICU members was the recent issuance of a new FAQ regarding SARA’s use of the Department of Education’s financial responsibility composite scores to assess the financial soundness of private institutions wishing to participate in SARA. Due to the serious flaws in the application of this metric, NAICU has long objected to its use in determining eligibility for participation in SARA. The new FAQ offers a fuller explanation of the reasons that SARA officials have chosen to continue to rely on the Department's standard, making it clear they do not intend to depart from the current policy.

SARA, which added five new members in November and one in December, now counts 18 States in its membership. Current SARA members include Alaska, Arizona, Colorado, Idaho, Indiana, Kansas, Louisiana, Montana, Missouri, Nebraska, Nevada, New Hampshire, North Dakota, Oregon, South Dakota, Virginia, Washington, and West Virginia.

In early December, the national SARA board approved two new policies. The first provides that participating institutions will begin reporting distance education enrollment information in the fall of 2015. This information will be disaggregated by student residence. Beginning in the fall of 2016, the data will be further disaggregated by broad program of study. The second addresses quarterly reporting by participating states of appealed complaints. This reporting will begin in April 2015. All information gathered in both sets of reports will be posted on the NC-SARA website.
Sexual Assault on Campus Continues to be a Priority

Addressing sexual assault on campus continues to be a high-profile issue for campus officials, policy makers, and the media. Most recently, the November 19 Rolling Stone article regarding the University of Virginia and its attendant controversy has generated even more intense interest in identifying fair and effective means of addressing the issue. Several recent events underscore just how complex that task is for policy makers, institutions, law enforcement, and students and families.

Senate Subcommittee Examines the Role of Law Enforcement in Campus Sexual Assault Cases

In the waning days of the 113th Congress, the Subcommittee on Crime and Terrorism of the Senate Judiciary Committee held a hearing focusing on the need for greater involvement of law enforcement officials in sexual assault incidents on campus and for improvements in the way in which law enforcement handles these situations.

Repeated themes at the hearing were that police often handle assault cases badly, while colleges are more concerned about sweeping things under the rug than in addressing the problem. In general, members of the subcommittee suggested that law enforcement officials should be more heavily engaged in addressing campus sexual assault incidents than is currently the case.

Legislation introduced earlier this year by Senator Claire McCaskill (D-MO) and a bipartisan group of cosponsors would require that colleges enter into memoranda of understanding (MOUs) with local law enforcement officials. Witnesses, who included the Assistant Director of Student Support and Intervention for Confidential Advising at Southern Oregon University, the Chief of the Cornell University police, and the Executive Director of Day One, an organization dedicated to dealing with issues of sexual assault, addressed the pros and cons of such a requirement.

Proponents argued that the requirement would avoid situations where physical evidence is destroyed and would bring all relevant parties to the table to work together in addressing assault cases. On the other hand, the Cornell University police chief cautioned that—while MOUs can be helpful—better, less costly options should be explored. She pointed out that MOUs are often time-consuming to negotiate, can strain the resources of small institutions or those located in areas with multiple law enforcement authorities, and offer no guarantee to an institution that they will be honored.

The witnesses also discussed the different purposes and procedures of campus disciplinary proceedings versus those of the criminal justice system. Highlighted during the hearing was the Campus Choice Program at Southern Oregon University. The program, which focuses on maximizing victim choice after an assault has occurred, has been widely cited as a model by policymakers. Among other things, it provides an assault victim with a confidential advisor who is exempt from Title IX requirements to report the assault. At the same time, one of the objectives of the program is to increase reporting of assaults by offering victims more control over the steps to be taken.

Underscoring the substantial interest in this topic, Subcommittee Chairman Sheldon Whitehouse (D-RI) observed that seven members of the Senate had actively participated in the hearing. He noted that it was an unusually high level of participation in a subcommittee hearing—particularly during the busy closing days of a Congress.

Proposed Changes to Campus Safety and Security Survey to Reflect New VAWA Requirements

The Department of Education is soliciting comments on revisions made to the Campus Safety and Security Survey to reflect the additional reporting requirements made by amendments to the Violence Against Women Act (VAWA). The Paperwork Reduction Act requires that the public be given an opportunity to comment on any new information collection in terms of the accuracy of the institutional burden estimate and how that burden might be minimized. This version of the document highlights the additional information to be provided.
Another Try at Gainful Employment Regulations

The Department of Education has again published a final gainful employment rule and has again been sued by the Association of Private Sector Colleges and Universities (APSCU). In an attempt to avoid further litigation, the Department doesn’t use program cohort default rates (p-CRD) as a measure of a college’s eligibility for federal student aid in the new rule. In 2011, the US District Court of Washington, DC vacated the previous gainful employment rule declaring the use of p-CRD “arbitrary and capricious.”

Despite the change in the new rule, in November APSCU filed suit claiming the regulation is still arbitrary and capricious, unlawful, unconstitutional, relies on a single measure for determining whether students are prepared for gainful employment, and will harm millions of students.

According to the Department, the issuance of regulations on gainful employment is part of its efforts to address growing concerns about programs that are required by statute to provide training that prepares students for gainful employment, "but instead are leaving students with unaffordable levels of loan debt in relation to their earnings, or leading to default." Except for the disclosures, the regulations, which finalize the proposed rule from last March, are effective July 1, 2015 and cover nearly all programs at for-profit schools as well as non-degree programs at public and private, nonprofit colleges.

Detailed Accountability and Transparency Frameworks included in the Regulations

The accountability framework creates a process to establish an institution’s eligibility for HEA Title IV funds and outlines how eligibility is maintained. This certification requires that gainful employment programs meet federal and state accreditation and licensing and certification requirements. In order to determine if the gainful employment program retains eligibility, the accountability framework also establishes a debt-to-earnings measure, comparing a student’s debt to the student’s discretionary and annual earnings after completion of the program. Depending on the ratios, a program can pass, fail, or be in the zone. A program is ineligible for title IV funds if it fails two out of three consecutive years.

The transparency framework outlines the reporting and disclosure required for gainful employment programs. Program information will be used in the department’s accountability framework. The disclosures will be provided to students and the public through a template developed by the Department.

Both the reporting and disclosure requirements are extensive. Institutions must report on each student enrolled in a gainful employment program, providing identifying information and details of their program, enrollment status and outcomes, debt (including that from private education loans), tuition, fees, and other program expenses, and job placement information if required to do so by their accrediting agency or state.

Based on consumer testing, institutions may have to disclose any of the following: the occupations (and SOC code) that the program prepares students for, completion rates for various categories of students, length of the program, number of individuals enrolled, the loan repayment rate for various groups of students, cost of tuition and other costs, placement rates, percentage of students who receive title IV or private loans, median loan debt and earnings for various groups of students, program cohort default rate, information regarding meeting state licensing requirements and program accreditation, and a link to the Department’s "College Navigator Web site.

The institution must update the disclosure template information annually, and provide it, or a link to it, prominently on any Web page that contains academic, cost, financial aid, or admissions information about the program. Institutions must provide each prospective student a copy of the program disclosure template prior to signing an enrollment agreement, completing registration, or making a financial commitment to the institution. Institutions must maintain records of their efforts to provide the disclosure to prospective students. The final determination of what must be disclosed will be provided in a subsequent Federal Register notice.
The Department provided several corrections to the gainful employment regulations on December 4. One important correction is that the disclosure requirements (Sec. 668.412) are effective January 1, 2017.

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

NACIQI Reviews Agency Accreditation; Continues Reauthorization Discussion

The National Advisory Committee on Institutional Quality and Integrity (NACIQI) held its semi-annual meeting on December 11. The committee had a relatively light agenda in terms of accreditation agency reviews, in that its scheduled review of the Council for the Accreditation of Educator Preparation (CAEP) was delayed until next spring.

Thus, the only agency to come before the committee was the American Veterinary Medical Association, Council on Education (AVMA-COE). Nineteen individuals offered third-party comments about the accreditor—fairly evenly divided between supporters and opponents of the continued recognition of the agency. Opposition to the agency was based largely on its work in accrediting foreign veterinary schools and in accrediting an institution that uses a distributive model of education. The agency’s accreditation was extended for six months, at which time it is to submit a compliance report.

The remainder of the meeting included a presentation by Education Department Under Secretary Ted Mitchell, followed by a committee discussion of a set of additional recommendations for reauthorization of the Higher Education Act.

Mitchell focused his remarks on the need to enhance flexibility in the delivery of education, while preserving academic rigor. He also spoke to the importance of persistence and graduation and the need for transparency. As he indicated at the NAICU Fall Leadership Conference, Mitchell said more specifics about the President’s proposed ratings system will be released soon in the form of “a paper that will describe what we have in mind.”

With regard to HEA reauthorization, the committee intends to develop recommendations supplementing those it put forward in April 2012. The initial outline proposes an ambitious set of changes, ranging from the development of common terms for accreditation actions to the complete overhaul of the system to make all accreditors national in scope and to permit other types of entities to serve quality assurance functions. The draft document also makes several proposals for providing NACIQI with a more substantive role in the recognition of accreditation agencies and in higher education policy generally.

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

Department of Education Clarifies Aid Eligibility for Incarcerated Students

Due to questions concerning the complexity of determining Federal financial aid eligibility for incarcerated students, the Department of Education, as part of a joint announcement with the Department of Justice, published guidance to address those questions and clarify the requirements.

The clarification reiterates earlier guidance on the definition of “incarcerated,” provides distinctions on eligibility of individuals at various types of correctional facilities, and defines the differences between eligibility for Pell Grants and for Title IV student loans. It also, for the first time, makes clear that students who are committed to juvenile detention facilities are eligible for Pell Grants. Key points defining the eligibility guidance include:

- No individual who is incarcerated in any correctional facility may receive a Title IV student loan.
- No individual who is incarcerated at a Federal or State penal institution may receive a Pell Grant.
- No individual who is subject to involuntary civil commitment upon completion of a period of incarceration for a forcible or non-forcible sexual offense may receive a Pell Grant or a student loan.

For more information, contact Susan Hattan, Susan@naicu.edu
• Otherwise eligible individuals in local or county jails, penitentiaries, and correctional facilities are eligible for Pell Grants.
• Otherwise eligible individuals in juvenile justice facilities are eligible for Pell Grants.
• In determining the Pell Grant, the cost of attendance may only include tuition, fees, books, and supplies. No living expenses may be included.

The student aid eligibility guidance was part of a larger guidance package that will provide quality educational opportunities for students while incarcerated. Besides the student aid information, it included guidance on the treatment of individuals with disabilities who are in correctional facilities, and the civil rights of students in juvenile justice residential facilities.

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