In this issue . . .

- Congress Heads Out of Town, Leaving Loose Ends
- Turning the Rocks Over: Congress Takes a Hard Look at For-profits
- GI Bill Updates
- Fraud and Abuse Issues: Next Phase of Regulatory Process Begins
- "Gainful Employment," Part 2

Congress Heads Out of Town, Leaving Loose Ends

Before taking its traditional late-summer break from Washington, Congress took steps toward writing the FY 2011 appropriations bills, and extending higher ed tax benefits. Still, members of the House and Senate left plenty of loose ends to be wrapped up later -- for the most part, after the November elections.

Appropriations

Both the House and Senate Appropriations Committees worked on their versions of the FY 2011 Labor-HHS-Education spending bills in July.

The House provided $176 billion for its three agencies of jurisdiction. For education, the bill funded a $5,550 Pell Grant maximum (along with the $5.7 billion needed to cover the Pell shortfall); provided level funding for SEOG, work study, TRIO, GEAR UP and the graduate programs; but eliminated funding for Perkins Loans and LEAP state grants.

With an allocation about $8 billion less than the House, the Senate committee maintained a $5,550 Pell Grant maximum, but didn't cover the shortfall. Their bill restored funding for LEAP state grants; provided level funding for SEOG, work study, GEAR UP and graduate programs; and increased TRIO by $15 million.

Neither chamber expects to bring these bills to the floor until after the elections. During the Senate subcommittee mark up, Chairman Tom Harkin (D-Iowa) commented that "this bill won't see the light of day until December."

Meanwhile, appropriators and Democratic leaders in both chambers spent weeks on an effort to add $5 billion for the Pell Grant shortfall and $10 billion for education jobs to the FY 2010 war supplemental bill. Funding for these programs was added by the House in June, but multiple attempts to do the same in the Senate were unsuccessful. In the end, Congress sent President Obama a "clean" bill funding only the war and disaster aid.

Once the supplemental went to the White House, the Senate looked for other legislative vehicles for the education jobs amendment. It took many "spectacular failures" (as one leadership aide put it), plus a series of convoluted procedural moves. The end result, however, was that just one day before breaking for the August recess, the Senate approved a free-standing bill providing $10 billion for teacher jobs and $16 billion in federal matching funds for Medicaid (FMAP).

The bill (H.R. 1586) passed with the help of Republican senators Collins and Snowe of Maine, and with heavy pressure from Republican governors in support of the FMAP funds. Following the Senate action, House Speaker Nancy Pelosi (D-Calif.) called House members back to Washington for a quick session on Tuesday, August 10, in order to vote on H.R. 1586 and send it to the president.
Because this last funding bill did not include any Pell Grant funds, appropriators hope they can cover the shortfall out of regular appropriations later this year. House Appropriations Chairman David Obey (D-Wis.) allocated enough money to the education subcommittee to do so. Senate Subcommittee Chairman Harkin acknowledged that the Senate allocation doesn't cover the shortfall, and asked that the House version prevail. Pressure is growing in the Senate to reduce discretionary spending by another $6 billion -- a step that would put total appropriations at $20 billion below the president's request. Still, no one supports cutting the Pell Grant maximum as part of these spending reductions.

Congress will return to Washington after Labor Day for a brief session, most likely passing a continuing resolution to keep the government running through the November elections. The final spending bills will be handled in a lame duck session, scheduled to begin November 29.

**Tax Extenders**

Past weeks also saw a number of failed attempts to pass a one-year, retroactive extension of a variety of expired tax provisions. Ultimately, Congress adjourned without addressing these important provisions -- among them, the IRA charitable rollover, the tuition deduction, and the research and development (R&D) credit. These items, and many others, expired on December 31, 2009.

Extensions of the expired 2009 provisions were part of the Unemployment Insurance (UI)/Jobs bill, but that bill faced continued controversy regarding the length of the UI insurance extension, and the general revenue offsets. Eventually, Congress stripped all of the tax extenders from the UI bill, redrafted it to address criticisms, and passed it as a stand-alone bill. Congress will again attempt to address the expired 2009 tax extenders when the session resumes in September.

Similarly, Congress failed to act on a Small Business bill containing a provision on the taxability of business-issued cell-phones and personal digital assistants (Blackberries). Specifically, the provision would remove such electronic devices from "listed property." This would allow their cost to be deducted or depreciated like other business property, without onerous recordkeeping requirements. This provision is popular throughout the business and nonprofit communities. The Small Business bill is also on the calendar for September.

*For more information on appropriations, contact Stephanie Giesecke, stephanie@naicu.edu*

*For more information on tax policy, contact Karin Johns, karin@naicu.edu*

---

**Turning the Rocks Over: Congress Takes a Hard Look at For-profits**


Kutz is GAO's managing director of forensic audits and special investigations. He led of team of undercover investigators - or "secret shoppers" - who posed as potential students at 15 for-profit schools in a half-dozen states. Armed with hidden cameras, the investigators filmed their interviews with "admissions counselors."

While a handful of the video clips shown at the hearing revealed positive practices, deceptive practices were found at all 15 schools. (Video clips start about 38 minutes into the hearing at the above link.) One recruiter told the investigator that "no one comes after you" if you don't pay back your student loans. Several others provided wildly unrealistic estimates of the cost of the training or future earnings potential. Applicants were repeatedly denied access to financial aid counselors for estimates of the level of aid they could count on before making a decision.

Kutz noted that the Department of Education has heretofore failed to enforce regulations to
curb these abusive practices. Four of the 15 cases have been turned over to the Department because they encouraged applicants to commit fraud. For example, in one case, a counselor recommended that the potential student declare dependents he didn’t have. Another advised the person to hide significant personal assets.

Other hearing witnesses included David Hawkins, director of public policy and research at the National Association for College Admission Counseling; Joshua Pruyn, a former recruiter at Westwood College, Colorado; and Michael McComis, executive director of the Accrediting Commission of Career School and Colleges (a national accreditor).

Hawkins focused on existing incentive compensation rules banning remuneration based on enrollments. He claimed that the "safe harbors" (i.e., exceptions) to these rules have gutted their effectiveness in preventing the use of boiler room tactics to enroll students. Hawkins applauded provisions of the Department’s proposed fraud and abuse regulations that would eliminate all these exceptions.

Pruyn's testimony offered a disturbing account of the student recruitment tactics he was trained to use to get prospective students ("leads"), and to "close the deal." He said he was really just a salesman, and quit his job with Westwood College because of his personal qualms about dishonest practices saddling students with debt.

McComis outlined the standards and work of his national accrediting agency. Because his agency accredited three of the 15 institutions cited by the GAO, McComis was questioned at length by HELP Committee Chairman Tom Harkin (D-Iowa) and Sen. Al Franken (D-Minn.). Both senators expressed the view that rooting out abusive and fraudulent practices should be the responsibility of accreditors.

Harkin has become increasingly concerned about the for-profit sector, especially its reliance on federal student aid and the high level of debt of its students. According to a report issued earlier this year, students at for-profit institutions comprise only 9 percent of all higher education students, but consume 24 percent of the Pell Grants and loans. They also account for 44 percent of loan defaults.

Near the end of the hearing, Harkin displayed a PowerPoint slide used by the University of Phoenix entitled, "Creating Urgency: Getting Them to Apply NOW." The slide described how recruiters needed to use "pain" in the process of getting prospective students to enroll. He indicated that the use of this type of training material by the largest for-profit education company in the country suggested to him that hard-sell recruiting practices may not necessarily be limited to a few "bad apples."

As a somber crowd of Wall Street analysts and for-profit institution representatives filed out of the hearing room, it was clear that the committee's work had struck a nerve.

The committee's investigation will continue with additional hearings planned for the fall, one focusing on accreditation. In addition, the committee is requesting additional information from 30 for-profit colleges regarding their recruitment practices -- as well as graduation and loan default data. HELP Ranking Member Mike Enzi (R-Wyo.) has suggested that the practices of public and non-profit institutions be reviewed as well. Harkin also indicated there may be a need to draft "clear-cut legislation" to address problems.

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

GI Bill Updates

Post-9/11 Veterans Education Assistance Improvements Act of 2010

On August 5, the Senate Veterans Affairs Committee approved legislation to expand and modify the Post-9/11 GI Bill. The bill was introduced by the committee's chairman, Sen. Daniel Akaka (D-Hawaii) in late May. Similar legislation was recently introduced in the House by Rep. Walt Minnick (D-Idaho).
Of particular interest to private colleges is a provision to establish a national $20,000 cap on annual tuition and fee payments to veterans attending non-public institutions. Currently, the VA sets tuition and fee caps state-by-state, with the figures varying widely across states. These state-specific numbers are used both to calculate a veteran's basic tuition-and-fee benefit, as well as to establish the baseline for the special "Yellow Ribbon" program (see below).

Testifying before the committee in July, representatives of veteran students groups cited the move to a single national figure as their number one priority in modifying of the post-9/11 GI Bill. As Tim Embree of the Iraq and Afghanistan Veterans of America put it, "We need a GI Bill benefit that is easy to calculate and is easily understood by those who use the benefit as well as those who distribute it."

The legislation also would expand eligibility for active-duty National Guard and Reserve members, and would increase the number of training programs where benefits could be used.

Yellow Ribbon Program

The Department of Veterans Affairs recently announced that over 1,100 colleges have signed Yellow Ribbon agreements for the 2010-11 academic year. This is approximately the same number of participants as the initial year of the program. Information about participating schools and their agreements may be found on the VA website.

Fraud and Abuse Issues: Next Phase of Regulatory Process Begins

Monday, August 2, marked the deadline for submitting comments on proposed regulations to address fraud and abuse in federal student aid programs. NAICU submitted its own comments, as well joining over 70 other associations on a higher education community letter. In addition, many NAICU members submitted individual comments in response to an action alert sent last month that outlined the key issues of interest to private, non-profit higher education.

The areas of greatest concern to NAICU include the federal definition of "credit hour" and provisions dealing with state authorization. NAICU requested that both proposals be stricken, based on concerns that they could lead to inappropriate interference with academic decisions and institutional autonomy. Striking these provisions was also the top priority identified in the higher education community letter. Both letters also requested clarification and modification of some of the dozen other topics addressed in the proposal.

The Department will now review the comments and make revisions to the proposals. Final regulations must be published by November 1 in order to go into effect by July 1, 2011.

In a related development, the Department has now published its full package of proposals dealing with "gainful employment." (See related story.)

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

"Gainful Employment," Part 2

As part of its effort to tighten fraud and abuse rules, the Department of Education published the second part of proposed "gainful employment" regulations on July 26. "Gainful employment" is one of the most closely watched of the issues in the proposed fraud and abuse rules. Stock prices of publicly-traded proprietary schools have been fluctuating for several weeks in concert with varying analyses of the impact of proposed rules changes.
The regulations are intended to ensure that students don’t take on large amounts of debt for training programs that lead to jobs with earnings too low for them to repay their loans. The proposed regulations apply only to non-degree programs of at least one year in length that train individuals for "gainful employment in a recognized occupation." The vast majority of such programs are offered by for-profits and community colleges. Still, the department has estimated that 238 private, non-profit institutions also have such programs.

The Department is accepting public comments on the proposal until September 9.

The first portion of the regulations, published June 18, included institutional reporting and disclosure requirements regarding cost, occupations, completion and job placement rates, and debt levels. This information provides the basis for the calculations required for gainful employment programs under the July 26 proposal.

The more recent publication provides a complex matrix for determining continued federal student aid eligibility. Briefly, eligibility will be based on the loan repayment rate of a program's former students (including both program completers and non-completers), and the ratio of debt to income or earnings of its program completers. (See accompanying box for greater detail.)

In addition, the July 26 proposal requires new programs to be approved by the Department, based on enrollment projections and a demonstration that the training is aligned with job opportunities.

Until more complete program-level data becomes available, it's not possible to determine the impact of the proposal on the private, non-profit sector. However, it is worth noting that the private, non-profit sector has the highest institutional loan repayment rates of any higher education sector.

The requirements on reporting and disclosure, as well as those on approval of new programs, would take effect on July 1, 2011. The eligibility requirements would go into effect on July 1, 2012.

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