



SUNY Federal Relations Update Friday, May 16, 2008

HEA Reauthorization Update

As I mentioned in Tuesday's *SUNY Federal Relations Update*, Congress last week approved another one-month extension of the Higher Education Act (HEA), extending the existing law through May 31 giving House and Senate negotiators on the five-year reauthorization bill (S. 1642, H.R. 4137) additional time to reach agreement. Some believe a new law will be in place before the holiday, while others are skeptical. The Committee Chairs and Ranking Minority members from both the Senate and House are driving the process and only in the last few days have others seen the bill—including other members of the Committee.

A draft of the compromise language is currently circulating. Angie Anderson is following developments closely and has identified a number of outstanding provisions of concern. We have a copy of the draft document—900+ pages—and if you are curious about any specific section, please contact Angie and she can provide you with details. She can be reached by email at: angie.anderson@suny.edu or by phone at (202) 220-1315. We have been following the reactions of AACC, AASCU, NASULGC, AAU and ACE to the draft legislation. You should be aware that not all of the associations are in consensus in their reaction to the legislation. For example, AASCU is supportive of certain provisions requiring data collection while other associations find those same provisions quite troubling.

Several outstanding issues remain between Committee members themselves, one of the most controversial being a "maintenance of effort" provision that would require states to maintain their fiscal support for higher education or otherwise risk losing a portion of their federal funding. The provision requires that states finance higher education at or above average funding levels over the preceding five years; states that don't could forfeit a specific portion of the monies provided through a federal need-based aid program, LEAP.

The higher education community has made some headway on a few issues, including the peer-to-peer file sharing oversight provisions and some of the accrediting language regarding the Secretary's authority to regulate outcomes. The provisions in the proposed bill represent a great increase in federal involvement in higher education,

many unfunded mandates and impose several new costs on colleges in the name of addressing college costs.

Here is a run down of the some of the issues, much of it as reported by the National Association of State Universities and Land Grant Colleges, with additional information from various sources:

Increased Federal Involvement in Higher Education

- **Accreditation:** The draft bill includes the compromise language the higher education community and the accreditors jointly submitted to the House and Senate that would limit the authority of the Department of Education to regulate standards of accreditation. However, the draft bill modifies the limitation to prohibit the Department from regulating the accreditation standards of accreditors pertaining specifically to student achievement, curricula, recruiting and admissions practices, and measures of program length. This modification leaves open the possibility—and may create an expectation—that the Department could regulate other standards accreditors must set, including standards for faculty, facilities, equipment, supplies, and the fiscal and administrative capacity of institutions. In addition, the language would require all accreditors that have any involvement with an institution, including at both the institutional and programmatic levels, to review the institution's compliance with reporting and disclosure requirements, a task for which accreditors are not equipped.
- **Lobbying:** As another example, the bill would require institutions to annually “certify” to the Secretary that no federal funds were inappropriately used for lobbying purposes. Institutions are already prohibited from such practices. However, the additional language in the bill could turn the Secretary and the Department of Education into auditors, requiring them to review the finances of nearly every college and university on an annual basis.
- **Tuition Prediction:** The current version of the bill would all require institutions to provide “nonbinding” tuition and fee estimates for future years. Such a requirement could create false expectations among the public. This would be even more unreasonable for public institutions, as tuition and fee levels are very dependent on state funding and therefore often unpredictable.
- **Emergency Notification:** The bill also includes language that would require institutions to notify the campus community within 30 minutes of an emergency situation, regardless of the quality or quantity of information that university or law enforcement officials may have. Such a mandate could result in communicating incomplete or incorrect information, which could exacerbate an emergency.

Unfunded Mandates

The increase in new unfunded mandates runs very counter to one of the expressed purposes of this reauthorization process, namely to reduce college costs. Illustrative examples include the following:

- The legislation would call on institutions to track and disclose information about their alumni, including information about their employment and enrollment in graduate education. Most colleges and universities have already experienced the difficulty of tracking graduates. Many would argue that the costs involved in such an effort exceed its benefits, especially when no federal resources would be devoted to it.
- The conference bill would mandate institutions to collect and report on information that is not collected by anyone at this point. In many of these cases, the infrastructure to collect such information does not exist. For example, the bill would require institutions to report on the percentage of students enrolled who are Pell Grant *eligible*. Institutions do collect information on students who *receive* Pell Grants. In order to determine those who are *eligible*, institutions would apparently be forced to ask all students, even those who do not apply for student aid, about their financial circumstances. Many would agree that such a practice would be unreasonably intrusive, and would require significant additional resources.
- Institutions would have to report graduation rates in no fewer than 48 separate categories.

College Cost Provisions

- The conference bill would impose a host of new reporting requirements on institutions with tuition or tuition increases which under the proposed law are determined to be excessive. This would even be the case when decisions on tuitions are beyond the control of the institution, e.g. the decision is made by the state legislature.
- The draft conference report not only retains the cumbersome "College Affordability and Transparency Lists" from the House bill but requires so many additional lists that it would lead to the creation of more than 400 such lists. It also abandons the use of "net tuition" in favor of "net price," so cost comparisons will reflect geographical differences in cost of living more than other cost differences. Cost of attendance is defined in 13 different ways elsewhere in current law and includes room and board. The use of "net price" would inevitably lead to apples-and-oranges comparisons among institutions because of the significant differences in costs of living among regions of the country and between urban and rural areas. The draft bill would lead to the creation of more than 400 college affordability and

transparency lists because the bill links the lists to the 13 definitions of cost of attendance in current law (plus a fourteenth included in the bill) and the nine categories of institutions enumerated in the bill.

- The draft conference report would also require institutions to publish nonbinding multi-year estimates of future tuition and fees levels.

Other Issues

- **"Green" Building Standards and FIPSE Eligibility:** The draft bill includes the House provision that would require any institution that receives FIPSE funding to demonstrate to the Department that it meets or exceeds the current version of ASHRAE/IES Standard 90.1 energy efficiency standards for any new facilities construction or major renovations.
- **Copyright Infringement/P2P File Sharing:** The draft bill improves the House-passed provisions on illegal peer-to-peer file sharing. It eliminates the House language that would have required campuses to prepare plans for offering alternatives to illegal downloading and to explore technology-based deterrents. However, the draft includes new language that would require institutions to disclose "the development of plans to detect and prevent unauthorized distribution of copyrighted material on the institution's information technology system, which shall, to the extent practicable, include offering alternatives to illegal downloading . . ."
- **Effective Date of the Act:** The draft bill sets multiple effective dates for various provisions. However, the vast number of proposed new requirements and changes in law would greatly complicate implementation of the bill for institutions and the Department of Education.