



SUNY Federal Relations Update Wednesday, July 30, 2008

HEA Reauthorization Headed for Passage

On Tuesday evening, House and Senate conferees passed the conference report on the Reauthorization of the Higher Education Act. The bill clocks in at a staggering 1,158 pages, and will see floor action most likely on Thursday in both the House and Senate. It is expected to pass with bi-partisan support. Below is a quick snap shot of provisions in the bill that we believe are most noteworthy.

Although major improvements such as those discussed below have been made throughout the legislative process, the conference report is still replete with a myriad of new requirements and mandates on institutions. We will keep you apprised of any major changes, if any, as the bill proceeds through the final stages of the process.

SUMMARY OF MAJOR ISSUES

- * **Year-Round Pell Grants**
- * **ACG and SMART Grants**
- * **Accreditation**
- * **Mandatory Additional Data Reporting and Disclosure Requirements**
- * **College Costs**
- * **Multi-year Tuition Reporting**
- * **Peer-to-Peer File Sharing**
- * **Textbooks**
- * **Campus Crime aka "30 minute rule"**
- * **Mandatory Additional Data Reporting requirements**
- * **"Maintenance of Effort"**

POSITIVES:

- * **Year-Round Pell Grants**

The bill authorizes year-round Pell grants for low-income students.

* **ACG and SMART Grants**

The bill enhances eligibility and corrects certain technical problems in administering the American Competitiveness Grants and National Science and Mathematics Access to Retain Talent (SMART) Grants.

* **Accreditation**

We are pleased that conferees ultimately adopted the original language that was passed in both the House and Senate versions of the bill. These original provisions were recommended by the higher education community to prohibit the Department of Education from regulating, and thereby setting, accreditation standards. We had been concerned with earlier versions of the draft because it lacked explicit prohibition on certain items and could lead to federal intrusion on the accrediting process.

NEW REQUIREMENTS, BUT SOFTENED IN THE FINAL DRAFT:

* **Mandatory Additional Data Reporting and Disclosure Requirements**

We have been, and continue to be, concerned with the current language that has the addition of hundreds of new reporting requirements. Conferees did soften some new data requirements, and included language in certain places suggesting that data collection be done "to the extent practicable."

* **College Costs**

We had been concerned with college costs language, which in earlier drafts required reporting the "cost of attendance", as opposed to the original "tuition plus fees". The conference language would base "net price" on the "cost of attendance." The various "college affordability and transparency lists" would be based on both "tuition and fees" as well as "net price." Institutions in the top five percent of each category with respect to increases in tuition and fees or net price would be required to file reports with the Secretary explaining the causes and the steps they will take to addresses cost. Additional cost-related reporting requirements in Title VIII have been removed.

* **Multi-year Tuition Reporting**

This reporting requirement, which required that campuses estimate 4 years of tuition for incoming students has been significantly altered. Congressman Bishop (NY-1), fought hard on SUNY's behalf to alter this language to be retrospective. The conference report modified version of a "multi-year tuition calculator" would be created

and maintained by the Secretary. In its simplest terms, the mechanism would allow the public to create nonbinding estimates of future tuition and fee levels based on the changes over the past three years in tuition. There would also be disclaimers on this "calculator" expressing that this is again a nonbinding estimate.

* **Peer-to-Peer File Sharing**

The language regarding peer-to-peer file sharing is much more benign than in earlier drafts of the legislation. Campuses must make a plan and offer legal alternatives. These are things that our campuses already do.

Here is the official language:

“(29) The institution certifies that the institution— “(A) has developed plans to effectively combat the unauthorized distribution of copy righted material, including through the use of a variety of technology-based deterrents; and “(B) will, to the extent practicable, offer alternatives to illegal downloading or peer-to peer distribution of intellectual property, as determined by the institution in consultation with the chief technology officer or other designated officer of the institution.”

* **Textbooks**

The conference report includes a provision that requires publishers to disclose to faculty members the prices at which the publishers make their textbooks available to bookstores, the copyright dates of the three previous editions of their textbooks, a description of substantial revisions between editions, and other information. There is also a requirement that book publishers "unbundle" materials like CD's and workbooks that are typically packaged with textbooks (raising their overall cost) and sell them separately, however there are loopholes in this provision. The bill also contains language on textbooks that would place new requirements on institutions. Institutions would be required, "to the extent possible," to make to the public information about the course materials, such as International Standards Book Numbers (ISBNs), author(s), title, publisher, and copyright dates.

* **Campus Crime aka "30 minute rule"**

A controversial provision that first appeared in the House bill, which would have required colleges to notify students and employees within 30 minutes of an emergency "on or off campus" has been significantly altered. The final report eliminates the specific time reference, instead requiring an institution to provide notification "immediately" once it determines there is an emergency situation on its campus. It is also important to note that the latest provision does not include "off campus" in its wording.

* **Mandatory Additional Data Reporting requirements**

With respect to the broad range of new reporting and data disclosure requirements, it appears that many of the recommendations of the higher education community were accepted. At the same time, however, the language on the disaggregation of graduation rates by income level remains. Also, institutions would still be required to provide illustrative examples of the employment and graduate education pursuits of their employees.

* **"Maintenance of Effort"**

A provision requiring that states maintain higher education funding in good economic times and bad, or face losing federal "LEAP" aid, was a major sticking point for this legislation. It was originally included in the House bill, and was adamantly opposed by the National Governors Association. Last night, conferees approved an altered "maintenance of effort" provision. The language that was passed changed the link from LEAP to the new (and not yet funded) College Access Challenge Grants, thereby not threatening any existing funds states may already be receiving.

Inside Higher Ed summed up the "maintenance of effort" well. Here is their synopsis of what occurred last night.

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"Sen. Lamar Alexander, a Tennessee Republican and former U.S. education secretary, mounted a vigorous challenge to the "maintenance of effort" proposal, which he (as a former governor of Tennessee) characterized as an inappropriate attempt by Congress to dictate how states spend their money. Alexander's opposition was among the factors that seemed to imperil Congress's chances of reaching agreement on the bill this fall.

On Tuesday evening, members of the conference committee had a chance to choose between a watered-down version of Tierney's original proposal (the replacement would deny states that cut college funding a chance to compete for money from a new state challenge grant program that has not been, and might never, be funded by the federal government) and an Alexander alternative that would impose that restriction only if a state received its full allotment of federal money under the Individuals With Disabilities Education Act — which would never happen, Alexander suggested, because Congress so frequently imposes requirements on states and then fails to provide the money to carry them out.

The senators on the conference panel adopted Tierney's proposal and rejected Alexander's largely on party lines, and that vote cleared the way for the 40-4 vote on the entire Higher Education Act bill."

