

## In this issue

- [House Ways and Means Committee Approves Permanent AOTC Bill](#)
- [Higher Education Act Reauthorization Moves to the Next Phase](#)
- [Education Department Again Extends Effective Date of State Authorization Regulations](#)
- [NACIQI Takes a Fresh Look at Accreditation Recommendations](#)
- [Department of Education Issues Proposed Regulations Dealing with Campus Sexual Assault](#)
- [Focus on Campus Sexual Assault Issues Continues in Washington](#)
- [Senate Finance Looks at Student Debt and Tax Benefits](#)
- [Supreme Court Limits President's Recess Appointment Authority](#)
- [Tax-Filing Help for Pell Recipients](#)

---

## [House Ways and Means Committee Approves Permanent AOTC Bill](#)

Legislation to make the American Opportunity Tax Credit (AOTC) permanent as well as consolidate and eliminate other current tuition tax benefits was passed by the House Ways and Means Committee on June 25.

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), was greatly improved after the intense advocacy efforts of NAICU members who helped ensure about 5 million middle class Americans did not lose their educational benefit.

As originally introduced, H.R. 3393 was [extremely problematic](#). The original bill eliminated AOTC eligibility for nearly 50 percent of current students and families. It also cut the eligibility income caps from the current levels of \$80,000 for single and \$160,000 for joint/married filers to \$43,000 for single and \$86,000 for joint/married filers.

In addition, the original bill replaced the Hope Credit, Lifetime Learning Credit, and the Tuition Deduction with a permanent AOTC. Since the AOTC works as an enhanced Hope Credit, the Hope Credit would be unnecessary. Unfortunately, since the bill only permitted the AOTC benefit for the first four years of college, eliminating the Lifetime Learning Credit and Tuition Deduction would deny a current tax benefit to future graduate students and lifetime learners.

After a short but intense advocacy effort by the NAICU membership, House Ways and Means Chairman Dave Camp (R-MI) this week offered a "Manager's Amendment" restoring the income caps to their current levels of \$80,000 for single and \$160,000 for joint/married filers. Unfortunately, the amendment did not address the four-year AOTC limit and the loss of graduate education benefits also important to NAICU member institutions and students.

The revised bill also includes provisions to exclude Pell Grants from taxation, allow both a full amount of the refundable credit and a Pell Grant to eligible students, and indexes the income limits for inflation.

During the committee's consideration of the bill, many members expressed concern with the bill and indicated they had heard from the colleges in their states or districts. The Manager's Amendment was adopted, and the bill passed the committee by a 22-13 party line vote. Committee minority members voted against the bill primarily because its cost (\$96 Billion) was not offset with any revenue raising provisions.

It is unclear if H.R. 3393 will be considered by the whole House.

For more information, contact Karin Johns, [Karin@naicu.edu](mailto:Karin@naicu.edu)

---

## [Higher Education Act Reauthorization Moves to the Next Phase](#)

With the hearing phase all but concluded, both the House and Senate Education Committees have started to unveil preliminary ideas for how the Higher Education Act might be rewritten. Three major proposals, from key players in the process, emerged within less than a week of each other giving great insight into how the next phase of the lengthy legislative process might shape up.

House Education and the Workforce Committee Chairman John Kline (R-MN) and Subcommittee on Higher Education and Workforce Training Chairwoman Virginia Foxx (R-NC) released a [statement, 11-page outline](#), and the first three in a series of bills that outline the Committee's goals, the next steps in the process, and some specific ideas future legislation is likely to include. The bills include:

- [Simplifying the Application for Student Aid Act \(H.R. 4982\)](#)
- [Strengthening Transparency in Higher Education Act \(H.R. 4983\)](#)
- [Empowering Students Through Enhanced Financial Counseling Act \(H.R. 4984\)](#)

On the Senate side, Committee on Health, Education, Labor and Pensions Chairman Tom Harkin (D-IA) released a [785-page bill](#), while Committee Ranking Member Lamar Alexander (R-TN), along with Michael Bennet (D-CO), released [legislative language](#) simplifying the student aid programs and application processes.

Collectively the proposals show three diverse sets of ideas for HEA, making it increasingly likely that the reauthorization process will spill over into the next Congress. The first proposal to be made public, by Senators Alexander and Bennet would eliminate the SEOG, LEAP and Perkins Loan programs, and reduce the Free Application to Federal Student Aid (FAFSA) to two questions. This "One Grant -One Loan" proposal has been around in various forms since the 1990s, but has been heavily pushed in this reauthorization cycle by advocacy groups that do not directly represent higher education stakeholders. The likelihood of passage is unclear, but some college groups are not opposed to the idea.

A radically simplified federal application process has also been brewing for several years, although an overly simplified form could actually cost low-income students access to important student aid funds. If states and institutions find the FAFSA so simple as to be unreliable, a proliferation of confusing and expensive private, fee-based forms could develop as was the case before the FAFSA was created by Congress in 1992.

The [Republican outline](#) from the House Education Committee follows some of the Alexander themes including the idea of One Grant and One Loan, but is less radical in its simplification approach. Most interesting in the House draft is the legislative process they propose to follow: unveil smaller bills over time. This approach anticipates making bill details available by topic, but would likely indicate a longer process towards a comprehensive reauthorization that would extend beyond this Congress. Among the good news in the House summary is a reaffirmation of the independence of accreditation and states, and a condemnation of the Obama Administration's plan to rate colleges instead of providing a more consumer focused system to help students find the best fit college.

Senator Harkin's [statement, two-page outline](#) and accompanying [bill language](#) are the most detailed of the proposals unveiled this week. While on one hand he continues his lifelong support for the [core student aid programs](#), including campus-based aid and LEAP, he also proposes a new funding stream for public colleges to help them reduce tuition for in-state students. This effort to direct federal institutional support to one sector of higher education is an unexpected departure from the historical federal role in higher education of providing aid to low-income students to use at the college of their choice. Sen. Harkin also would strengthen oversight of for-profit colleges and loan servicers, and calls for improved consumer information.

As the reauthorization process moves forward, NAICU will be asking for the active engagement of all members,

first from those who have elected officials on the Congressional education committees, and later from all members as the bills move to the House and Senate floors.

*For more information, contact Sarah Flanagan, [Sarah@naicu.edu](mailto:Sarah@naicu.edu)  
Maureen Budetti, [Maureen@naicu.edu](mailto:Maureen@naicu.edu)  
Susan Hattan, [Susan@naicu.edu](mailto:Susan@naicu.edu)*

---

## **[Education Department Again Extends Effective Date of State Authorization Regulations](#)**

The Department of Education has once again offered a one-year delay in implementation of state authorization regulations. A June 24 [Federal Register notice](#), parallel to one issued last June (See [Washington Update](#), June 18, 2013), explains that an institution can qualify for the delay if the state in which it is located is in the process of establishing an authorization process that is acceptable to the Education Department.

An institution that does not meet the state authorization requirements must obtain an explanation of “how an additional one-year extension will permit the State to finalize its procedures so that the institution is in compliance.” The institution must provide that explanation to Education Department staff upon request. A request for the explanation would most likely be made during an institution’s Title IV recertification review, since enforcement of the authorization requirement is handled through that process.

The state authorization requirements addressed in this notice require an institution to be authorized in the state in which it is located. They do not deal with the authorization of distance education programs. The portion of the state authorization regulations dealing with distance education were struck down in court and are not currently in effect.

A negotiated rulemaking committee recently considered proposed new distance education rules, but failed to reach agreement (See [Washington Update](#), May 22, 2014). New federal regulations dealing with state authorization of distance education programs will not take effect until the current regulatory process is completed. Remaining steps in that process include the publication of proposed regulations, acceptance and review of public comments, and publication of final regulations.

That process will take quite some time to complete. Earlier this week, Education Under Secretary Ted Mitchell indicated that final distance education regulations would not be published prior to November 1. Because of the way HEA regulations work, this means any new regulations dealing with state authorization of distance education could not take effect prior to July 1, 2016.

The requirements that remain in effect, and which are being delayed by the June 24 Federal Register notice, are those requiring an institution to be authorized by the state in which it has its main location or in which it has an additional physical location offering at least half of an educational program. Unfortunately, constantly changing and inconsistent interpretations of the regulatory requirements have proven to be confusing to states and institutions alike. Often, an institution is unaware its authorization is in question until an issue is raised during recertification review. The Education Department has declined to make available a list of states that are out of compliance, so—delay or not—the confusion is likely to continue.

For additional background on the state authorization regulations, see this [Washington Update](#) story.

*For more information, contact Sarah Flanagan, [Sarah@naicu.edu](mailto:Sarah@naicu.edu)*

---

## **[NACIQI Takes a Fresh Look at Accreditation Recommendations](#)**

A strong and independent accreditation system is vitally important to maintaining both the quality and diversity of American higher education was the message NAICU delivered recently in testimony before the National Advisory Committee on Institutional Quality and Integrity (NACIQI).

The Committee has begun to take a fresh look at its Higher Education Act reauthorization recommendations to Education Secretary Arne Duncan. The Committee had submitted a [series of preliminary recommendations](#) in June 2012.

To start the process, the Committee invited representatives of institutions, accreditation agencies, and other organizations to present testimony.

The [NAICU presentation](#) emphasized the critical role of accreditation in allowing a diverse set of institutions to flourish and expressed concern that the growing number of federal mandates on accreditors threatens to transform them into federal compliance officers.

Following these presentations, NACIQI members engaged in a wide-ranging discussion of the direction their review should take. They ultimately settled on four broad categories to be fleshed out in the coming months:

1. Simplifying the accreditation process
2. Permitting nuance in accreditation
3. Examining the balance between compliance and quality assurance and among the various actors who have or seek federal financial support
4. Considering an appropriate policy role for NACIQI.

In related accreditation activity, the [draft reauthorization proposal](#) being circulated by Senator Tom Harkin (D-IA) [Link to related story] would require accreditors to publish on their websites all major accreditation documents, including:

1. Any self-study report that includes assessment of educational quality
2. Any on-site review report, including the response from the institution
3. Any written report dealing with an institution's compliance with agency standards and with its performance with respect to student achievement
4. All documents related to any adverse action taken against an institution.

NAICU has long opposed general disclosures of accreditation findings, due to concern that doing so would substantially change the nature of the accreditation process and undermine the frankness and candor that help make the process successful.

*For more information, contact Susan Hattan, [Susan@naicu.edu](mailto:Susan@naicu.edu)*

---

## **[Department of Education Issues Proposed Regulations Dealing with Campus Sexual Assault](#)**

Campus sexual assaults were the focus of proposed [regulations](#) issued June 20 by the Department of Education. The regulations include new requirements dealing with the reporting of instances of sexual violence; sexual assault primary prevention and awareness programs and campaigns; protective measures; and campus disciplinary procedures.

The proposals were developed to implement changes made by the Violence Against Women Act to the Clery campus safety provisions of the Higher Education Act.

The proposals were developed by a negotiated rulemaking committee that achieved "consensus." Consensus in a negotiated rulemaking context does not mean 100 percent agreement, nor is it determined by a majority vote. Rather, it means that a compromise that can be accepted by all participants has been reached. If consensus is reached, the members of the negotiated rulemaking team and the organizations that nominated them as their representatives agree that they will not comment negatively on the consensus-based regulatory language. Additional information about the committee's decisions may be found [here](#).

Because a NAICU-nominated candidate was selected to serve on the negotiated rulemaking panel, the Association cannot submit comments on the proposed regulations. Anyone who wishes to comment on the proposals may do so through the Federal eRulemaking portal or by mail addressed to: (Comments submitted by fax or e-mail will not be accepted)

Jean-Didier Gaina

U.S. Department of Education

1990 K Street NW., Room 8055

Washington, DC 20006-8502

Include the Docket ID [ED-2013-OPE-0124] at the top of your comments. The 30-day public comment period for the proposal will close on July 21, 2014.

**Department of Education's Summary of the Major Provisions of This Regulatory Action** [*See Federal Register*, June 20, 2014, pages 35418-19.]

The proposed regulations would:

- Require institutions to maintain statistics about the number of incidents of dating violence, domestic violence, sexual assault, and stalking that meet the proposed definitions of those terms.
- Revise the definition of "rape" to reflect the Federal Bureau of Investigation's (FBI) recently updated definition in the UCR Summary Reporting System, which encompasses the categories of rape, sodomy, and sexual assault with an object that are used in the UCR National Incident-Based Reporting System.
- Revise the categories of bias for the purposes of Clery Act hate crime reporting to add gender identity and to separate ethnicity and national origin into independent categories.
- Require institutions to provide, and describe in their annual security reports, primary prevention and awareness programs to incoming students and new employees. These programs must include: a statement that the institution prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking; the definition of these terms in the applicable jurisdiction; the definition of consent, in reference to sexual activity, in the applicable jurisdiction; a description of safe and positive options for bystander intervention; information on risk reduction; and information on the institution's policies and procedures after a sex offense occurs.
- Require institutions to provide, and describe in their annual security reports, ongoing prevention and awareness campaigns for students and employees. These campaigns must include the same information as in the institution's primary prevention and awareness program.
- Define the terms "awareness programs," "bystander intervention," "ongoing prevention and awareness campaigns," "primary prevention programs," and "risk reduction."
- Require institutions to describe each type of disciplinary proceeding used by the institution; the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding; and how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault, or stalking.
- Require institutions to list all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceedings for an allegation of dating violence, domestic violence, sexual assault, or stalking.
- Require institutions to describe the range of protective measures that the institution may offer following an allegation of dating violence, domestic violence, sexual assault, or stalking.
- Require institutions to provide for a prompt, fair, and impartial disciplinary proceeding in which (1) officials are appropriately trained and do not have a conflict of interest or bias for or against the accuser or the accused; (2) the accuser and the accused have equal opportunities to have others present, including an advisor of their choice; (3) the accuser and the accused receive simultaneous notification, in writing, of the result of the proceeding and any available appeal procedures; (4) the proceeding is completed in a reasonably prompt timeframe; (5) the accuser and accused are given timely notice of meetings at which one or the other or both may be present; and (6) the accuser, the accused, and appropriate officials are given timely access to information that will be used after the fact-finding investigation but during informal and formal disciplinary meetings and hearings.
- Define the terms "proceeding" and "result."

- Specify that compliance with these provisions does not constitute a violation of section 444 of the General Education Provisions Act (20 U.S.C. 1232g), commonly known as the Family Educational Rights and Privacy Act of 1974 (FERPA).

#### Additional Resources

- "[Consensus Reached By Negotiated Rulemaking Panel on Campus Sexual Assault Regulatory Changes](#)," Washington Update, April 11, 2014.

For more information, contact Susan Hattan, [Susan@naicu.edu](mailto:Susan@naicu.edu)

---

## [Focus on Campus Sexual Assault Issues Continues in Washington](#)

Campus sexual assaults remained a priority in Washington this week with a Senate hearing and a roundtable discussion, following the recent publishing of a set of proposed regulations.

Senator Claire McCaskill (D-MO) and Senator Richard Blumenthal (D-CT) concluded the last of three sexual assault roundtables, while the Senate Health, Education, Labor, and Pensions (HELP) Committee held the hearing: "Sexual Assault on Campus: Working to Ensure Student Safety."

In addition, the Education Department published proposed regulations recently implementing the changes made by the Violence Against Women Act to the Clery campus safety provisions of the Higher Education Act. The Department will accept public comments on the proposals until July 21. (See related [Washington Update](#) story.)

Roundtable: Administrative Process and Criminal Justice System Forum (June 23)

Senator McCaskill's third roundtable focused on the interaction between campus procedures and the criminal justice system in addressing campus sexual assaults. Much of the discussion centered on the differing interests, responsibilities, and procedures of institutions and law enforcement. These differences, as well as differences in the resources available on campus and in the surrounding community, create challenges in identifying appropriate solutions.

The panel discussed proposals such as increasing grant support for prevention and training programs, requiring all Title IX coordinators receive training from a federal trainer, the development of a model statute defining "consent," establishing graduated responses such as variable penalties, and ways in which to identify and reduce overregulation of campuses. In the latter category, Senator McCaskill raised current "timely warning" requirements as an example of where campuses should have greater discretion in determining whether or not the specific circumstances of a sexual assault case warrants such a warning. She indicated she was continuing to work on legislation and hopes to introduce a bipartisan bill later this year.

### **Additional Background**

A webcast of the June 23 roundtable, along with related documents may be found [here](#).

Information about the two previous roundtables may be found [here](#).

### **Hearing: "Sexual Assault on Campus: Working to Ensure Student Safety" (June 26)**

The Senate HELP Committee [hearing](#) focused on suggestions for amendments to the Higher Education Act.

The liveliest exchanges came between Catherine Lhamon, assistant secretary for civil rights at the Education Department, and the committee leadership. Chairman Tom Harkin (D-IA) suggested it would make sense to develop a graduated set of penalties for Title IX violations, rather than relying solely on the "nuclear option" of withdrawing all funds to punish a violation. Ms. Lhamon disagreed, expressing her concern that institutions would not expect the Department to withdraw all funds if they knew that lesser penalties were available. She also indicated that institutions had to make additional expenditures in order to meet Title IX requirements, so that was an intermediate penalty already in effect.

Ranking Member Senator Lamar Alexander (R-TN), raised concerns about the process by which the Office of Civil Rights develops Title IX guidance—noting that such guidance has the force of law, but does not go through a formal rulemaking process. Contrasting that process with the negotiated rulemaking proceedings that led to proposed changes to the Clery campus crime requirements, he suggested there is a need to provide for greater public input into the development of Title IX guidance.

As has been the case in other discussions of campus sexual assault issues, the importance of conducting campus climate surveys was emphasized by several witnesses. There was also considerable discussion of the respective roles of institutions and law enforcement authorities. Senator Patty Murray (D-WA) drew the committee's attention to legislation she and several other members have introduced—the Tyler Clementi Higher Education Anti-Harassment Act of 2014 (S. 2164)—to require colleges to develop policies and procedures for addressing harassment on campus and on other Clery Act locations. This proposal is included in the [reauthorization proposal](#) released by Senator Harkin earlier this week. (See related story.)

In addition, drawing from the recent debate over handling sexual assault in military settings, Senator Tammy Baldwin (D-WI) raised questions regarding the handling of these cases in ROTC programs and at the military academies. Because the military academies do not receive Title IV student aid funds, they are not required to publish annual Clery Act crime reports. Senator Harkin indicated he would include language in HEA reauthorization legislation to require them to do so.

#### Additional Resources

For an overview of federal activities related to sexual assault on campus, see: May 19, 2014, [Washington Update](#).

For more information, contact Susan Hattan, [Susan@naicu.edu](mailto:Susan@naicu.edu)

---

## **Senate Finance Looks at Student Debt and Tax Benefits**

Preparing students for the cost of college and attempting to reduce loan debt via savings mechanisms in the tax code was the focus of a Senate Finance Committee hearing held June 24.

The hearing, *“Less Debt from the Start: What Role Should the Tax System Play?”*, was the first for Senate Committee Chairman Ron Wyden (D-OR) as he begins exploring tax reform policy.

During the hearing, committee members examined existing tax-favored savings options as well as considered additional new ideas, including the concept of “advanced” tax credits to help pay for college. The committee also discussed options for making colleges more accountable for the “federal revenue brought in by students.”

No higher education representatives testified at the hearing. Witnesses included tax policy experts, a high school counseling director, a recent high school graduate, and a former committee staffer who spent years examining the college and university sector for Senator Charles Grassley (R-IA).

The idea of “advanced” tax benefits was suggested, but was not seen as a viable option given the timing of paying tuition, versus tax filing and refund season.

Both the student and school counselor discussed ways to better inform high school students of the various options for saving for college including the tax benefits.

It was also suggested that billions of dollars are being provided to colleges and universities through various provisions of the tax code without application of any real requirements, standards or incentives to control the cost of tuition. One witness urged the committee to review how endowments, tax exempt bonds, tuition remission and other programs are treated in the tax code to better understand how taxpayer education dollars are spent on institutions and students.



This is the first of three hearings Chairman Wyden plans on convening over the summer to examine various sections of the tax code. At this time, he does not plan on moving forward on any particular tax reform legislation.

For more information, contact Karin Johns, [Karin@naicu.edu](mailto:Karin@naicu.edu)

---

## **Supreme Court Limits President's Recess Appointment Authority**

The U.S. Supreme Court's unanimous ruling this week in [National Labor Relations Board v. Canning](#), limiting the president's authority to make recess appointments is likely to have limited consequences for higher education.

This was the first time the high court had interpreted the constitutional provision allowing the president to fill vacancies in the Executive Branch that "may happen during the recess of the Senate."

The court ruled that President Obama exceeded that authority in January 2012 when he appointed three members to fill vacancies on the National Labor Relations Board. The Senate had refused to confirm his nominees, leaving the board without a quorum and unable to function. The Senate tried to block the president from making recess appointments to fill those vacancies by holding very brief *pro forma* sessions every three days while most of its members were away from Washington. The president argued that such sessions were a sham, but the Supreme Court unanimously found that under the separation of powers, it is up to the Senate, and not the President, to determine whether or not it is officially in session ("the Senate is in session when it says it is").

The court's ruling is unlikely to have major political effects on current and future appointments because of changes in the Senate rules that make it easier to confirm presidential appointments over the objections of the minority. But the ruling will have an effect on the work of the National Labor Relations Board which is now considering several cases of interest to colleges and universities.

More than 400 board decisions, made between January 2012 and August 2013, will now have to be reviewed and reissued. Because there is still a Democratic majority on the board, it is likely that the outcome of these cases will be the same. But their review will take time and may slow the board's action on several issues currently pending before the NLRB directly concerning colleges and universities. Those include possible reconsideration of the Yeshiva precedent that blocks unionization of regular faculty members at independent colleges and universities, the Brown decision that graduate students are primarily students and therefore not eligible for collective bargaining, and new issues including the unionization of adjunct faculty at faith-based colleges and the unionization of student athletes.

For more information, contact Jon Fuller, [Jon@naicu.edu](mailto:Jon@naicu.edu)

---

## **Tax-Filing Help for Pell Recipients**

Many students fail to maximize the tax benefits they deserve, missing out on critical financial support as they work to achieve a postsecondary education.

As part of the Obama Administration's effort to promote college affordability, the Treasury Department posted a [fact sheet on its website](#) in mid-June to help taxpayers claim college benefits, particularly Pell Grant recipients eligible for the American Opportunity Tax Credit (AOTC).

Due to confusion about their eligibility for the ATOC, the families of as many as 9 million high-need students may pay higher taxes than required.

Working with the Education Department, Treasury has provided "a fact sheet that outlines how and when a student should allocate the Pell Grant to tuition, fees, and course related materials, or to living expenses when



filing a tax return.”

Students have a choice in the allocation and the choice can affect their AOTC benefit and the taxes owed. The student or family’s allocation on the tax form may differ from the manner in which the institution allocates the Pell Grant.

For more information, contact Maureen Budetti, [Maureen@naicu.edu](mailto:Maureen@naicu.edu)

---

*NAICU Washington Update* (formerly *Week in Review*) is published by the National Association of Independent Colleges and Universities.

Tracy Fitzsimmons, *President, Shenandoah University; Chair, NAICU Board of Directors*  
David L. Warren, *President*  
Sarah Flanagan, *Vice President for Government Relations and Policy Development*  
Pete Boyle, *Vice President for Public Affairs*

*Washington Update* is available to NAICU member presidents and their staff via e-mail, and is archived on the [NAICU Web site](#), both as individual stories and as a complete-issue PDF file, formatted for printing.

To subscribe, or for member log-in user name and password, e-mail [galen@naicu.edu](mailto:galen@naicu.edu).

© 2014 by the National Association of Independent Colleges and Universities

---



### ***Washington Update***

National Association of Independent  
Colleges and Universities  
1025 Connecticut Ave., N.W., Suite 700  
Washington, DC 20036