



ACE Analysis of Higher Education Act Reauthorization

On July 31, Congress completed reauthorization of the Higher Education Act (HEA) by passing the Higher Education Opportunity Act—five years late and after an unprecedented 14 extensions of the statutory deadline. The president signed the bill into law on August 14, 2008. Except for rules regarding relationships between higher education institutions and student lenders, the act does not address federal student loan programs, which were reauthorized and modified by the 2007 College Cost Reduction and Access Act. Although the act includes burdensome new reporting, disclosure, and other requirements, it reflects noteworthy progress in that Congress was persuaded to reject yet more onerous and problematic proposals. As the bill is hundreds of pages long, this summary highlights selected key new provisions only.

College Costs

The act includes various provisions aimed at the rising cost of postsecondary education. Although less draconian than the tuition price controls floated early in the reauthorization process, the act's college cost-related disclosure and reporting requirements are extensive. Much of the information is already collected by the U.S. Department of Education (ED), but some items, such as "net price," are new. As a practical matter, additional guidance from ED will be necessary to determine the full extent of these requirements.

- **College affordability and transparency lists:** Beginning July 1, 2011, ED will publish national lists for each of nine institutional categories, naming top 5 percent of institutions with (1) the highest tuition and fees; (2) the highest "net price;" (3) the largest percentage increase in tuition and fees; and (4) the largest percentage increase in net price. Institutions with large percentage increases in either tuition and fees or in net price will be required to submit a report to ED providing the reasons for the increase and the steps that will be taken to reduce costs. ED will issue an annual report on those institutions and post their reports on the College Navigator web site.
- **Net price:** For purposes of the act, net price is defined as the "average yearly price actually charged to a first-time, full-time undergraduate student receiving student aid ... after deducting such aid." Net price is determined by subtracting the average amount of need-based aid provided per aided student from the cost of attendance. While the statutory language provides some guidance, the net price concept is a complex one that raises many issues ED will need to address during implementation.
- **State higher education spending chart:** ED will annually publish state-by-state information concerning trends in state higher education spending and tuition, fees and financial aid for students at state institutions.

- **Net price calculator:** Within one year after enactment, ED will consult higher education institutions and other experts to develop a “net price calculator,” a tool intended to provide a student and his or her family with a more individualized estimate of the net price of particular higher education institutions. Within two years after ED makes the net price calculator available to institutions, each institution must post a net price calculator on its own web site. Institutions may choose to use ED’s calculator or may develop their own, provided it contains the same data elements as ED’s calculator.
- **Consumer information:** Within one year after enactment, ED will post on the College Navigator web site 27 categories of information about each institution that participates in Title IV programs. The information is to include institutional mission; statistics on applications, admission, enrollment, SAT or ACT scores, transfer students, male and female students, in-state and out-of-state students, racial and ethnic groups, disabled students, degrees awarded, time to completion of degrees, faculty, cost of attendance and financial aid; alternative tuition plans; and campus safety information. Most of this information is currently collected by ED. ED will also post on the College Navigator web site, in a sortable and searchable format, information on the cost of higher education for each institution that participates in Title IV programs.
- **Multi-year tuition calculator:** Within one year after enactment, ED will consult higher education institutions, financial planners and other experts to develop a “multi-year tuition calculator,” a tool intended to help students and their families estimate the amount of tuition they may pay to attend particular institutions in future years, as well as to compare estimates for multiple institutions. ED will make the multi-year tuition calculator available on the College Navigator web site, along with a disclaimer noting that the estimate is not binding and is subject to change.
- **State commitment of affordable college education:** The act adopts a so-called “maintenance of effort” requirement for states. For academic years beginning on and after July 1, 2008, each state must maintain a level of expenditure equal to (1) for public colleges and universities the average amount provided for non-capital and non-research and development expenses in the five most recent academic years and (2) for private colleges and universities the average amount provided for student financial aid in the five most recent academic years. ED may waive these requirements in limited circumstances. If a state violates this provision, ED will withhold the amount of any federal grant to the state under the College Access Challenge Grant program until the state has tried to correct the violation.

Accreditation

In the context of the report of the Commission on the Future of Higher Education and other calls for increased accountability, accreditation was one of the most controversial topics in HEA reauthorization.

- **Student achievement:** The act reflects the essential historic distinction and collaborative relationship between institutional standards and accreditation standards regarding student achievement. An institution sets its own specific standards and measures consistent with its mission and within the larger framework of the accreditation standards. In consultation with

institutions, accreditors set common standards that are used to review all of the institutions they accredit. The act forbids ED from establishing criteria that specify, define or prescribe the standards accreditors use in assessing an institution's success with respect to student achievement.

- **Due process:** The act prescribes due process procedures for adverse actions by accreditors. For example, an accreditor's appeal body must be separate from its initial decision-making body and must be subject to a conflict of interest policy. Accreditors must allow institutions to submit new evidence during an appeal process when the accreditor's adverse action is based solely on failure to meet financial standards and new evidence consists of "significant financial information" unavailable before the adverse action.
- **Distance education:** ED shall not require an accreditor to have separate standards, procedures or policies for evaluation of distance education. Accreditors must, however, require institutions that offer distance education to establish that a student registered for a distance education course is the same student who completes and receives credit for it.
- **Respect for mission:** The act requires accreditors to apply standards that respect the stated mission of institutions, including religious missions.
- **Transparency in accreditation:** Accreditors must make publicly available a summary of their actions, including adverse actions such as denial or withdrawal, the reasons for the adverse action and the affected institution's official comments concerning final denial or withdrawal of accreditation.
- **National Committee on Institutional Quality and Integrity (NACIQI):** The act restructures NACIQI, which advises ED on recognition of accreditors and related matters. In the past, the secretary of education has appointed all NACIQI members. Under the act, the secretary and members of the House of Representative and the Senate from both parties will appoint 12 members (six from each body). Membership will expand from 15 to 18 and appointment terms will increase from three to six years. Current members' terms will end on the date of enactment of the act. New members cannot be appointed until January 31, 2009.
- **Diploma mills:** The Act defines "diploma mill" for the first time. ED will maintain information and resources on its web site to help students, families and employers identify and avoid diploma mills, and will continue to participate in interagency efforts to combat them.

Student Financial Aid Provisions

As previously noted, federal student aid programs were revised extensively in the College Cost Reduction and Access Act of 2007. While the Title IV programs were not the primary focus of the reauthorization bill, the act nonetheless contains a wide array of federal student aid provisions.

- **Pell Grant Program:** In addition to increasing the annual authorized maximum award levels, the act makes several changes to the Pell Grant Program. For example, students will be eligible to receive Pell Grants on a year-round basis to foster persistence and reduce time-

to-degree; the minimum award is set at 10 percent of the actual annual maximum award; eligibility is limited to 18 semesters or the equivalent; and students who lose a parent to combat in Iraq or Afghanistan are eligible for a maximum Pell Grant.

- **Veterans:** The act contains a number of provisions designed to assist veterans and their families with postsecondary education. The act directs ED to create a searchable web site containing information on financial aid and other benefits and services for military members and veterans. In addition, the act also provides a right to readmission for veterans in certain circumstances and modifies the treatment of veterans benefits in calculating need.
- **PLUS Loan deferment:** The act allows graduate students to receive an in-school deferment on their PLUS loans. Parent borrowers were given this authority in the College Cost Reduction and Access Act.
- **Financial aid application process:** The act aims to make financial aid application processes and forms more user-friendly for students and parents. Among other changes, it calls for fewer, more understandable questions on the Free Application for Federal Student Aid (FAFSA), requires ED to develop a model format for institutional financial aid offer forms that institutions provide to applicants, and directs ED to develop a system through which students can receive early estimates of the amount of aid they might be eligible to receive.
- **Dual enrollment:** Effective July 1, 2010, the act permits higher education institutions to admit as regular students persons who will be dually or concurrently enrolled in the institution and a secondary school.
- **Unit record database prohibited:** In response to an initiative ED proposed, the act forbids “development, implementation, or maintenance of a Federal database of personally identifiable information” regarding persons who receive assistance under HEA, attend institutions that receive assistance under HEA, or are “otherwise involved in any studies or other collections of data” under HEA. The act authorizes funding to support the development of statewide student data systems through a pilot program, but it is unclear whether this program will be funded.
- **Students with intellectual disabilities:** Under the act, great flexibility is granted to waive Title IV eligibility criteria related, for example, to grant ceilings, need analysis and satisfactory progress in order to make students with cognitive disabilities eligible for Pell Grants, Federal Work-Study (FWS), and Supplemental Educational Opportunity Grant (SEOG) funds.

Key Disclosures and Compliance Provisions

The act addresses a number of topics related to campus climate and responds to recent, much publicized incidents on college campuses. Although many of these provisions impose new disclosure and reporting requirements, the requirements are less onerous than some Congress considered.

- **Campus safety:** In response to the tragic shootings at Virginia Tech and similar events, the act expands institutional reporting requirements under the Cleary Act to include (1) reports of written agreements between a higher education institution and state and local law enforcement agencies and (2) a statement on the institution's policies regarding immediate emergency response and campus evacuation procedures. While the act does not contain the controversial language from the House version of the bill that would have required campus officials to provide their communities "timely warning" of campus emergencies within 30 minutes after learning of the emergency, it does require campus officials to notify the campus community immediately upon confirmation of a significant emergency, unless issuing the notification will compromise efforts to contain the emergency.
- **Peer-to-peer file-sharing:** Congress included in the act several copyright-related requirements. Institutions will be required to disseminate an annual disclosure to students that (1) states that unauthorized distribution of copyrighted material, such as through peer-to-peer networks, may subject students to civil and criminal penalties, (2) describes the penalties for such violations, and (3) includes the institution's policies on peer-to-peer file sharing. Institutions must also develop a plan to combat unauthorized distribution of copyrighted material. In developing the plan, institutions must consider technology-based deterrents. Report language accompanying the law explicitly states that technology-based deterrents include "bandwidth shaping" and "traffic monitoring to identify the largest bandwidth users." Institutions must also offer, "to the extent practicable" and in consultation with the chief information officer, alternatives to illegal downloading.
- **Fire safety:** The act requires institutions with on-campus housing to publish annually a fire safety report which provides statistics on a dormitory-by-dormitory basis. The report, which is to be shared with the campus community and the secretary of education, must detail such information as the number of fires, deaths, injuries, fire drills, fire-related property damage and the type of fire detection systems in each building.
- **Textbook cost containment:** Effective July 1, 2010, institutions will be required to disclose in their course schedules, "to the maximum extent practicable," the International Standard Book Number (ISBN) of every required and recommended textbook and supplemental materials and retail price information. Lacking accurate information about the ISBN number at the time the course schedules are set, the institution is permitted to indicate that this information is "to be determined." Publishers are required to provide faculty with information on price, copyright dates of the three previous editions, any substantial revisions between a new edition and prior iterations, whether the textbook is available in any other format and at what price and to supply textbooks in bundled and unbundled formats.
- **Missing persons:** The act requires institutions that both participate in any federal higher education programs and maintain on-campus housing to establish a missing student notification policy for students who reside in on-campus housing and have been determined after an investigation by campus security officials to be missing for 24 hours.
- **Protection of student speech and association rights:** The act contains a very general "sense of Congress" provision that supports open exchange of ideas and discourages intimidation, harassment, discrimination and chilling of student speech. The act also expresses the sense of Congress that "students should be treated equally and fairly."

- **Lobbying:** Institutions may not use HEA funds to pay anyone for influencing or attempting to influence officers or employees of any agency, members of Congress or congressional employees with respect to specified types of federal actions, such as federal contract awards and federal grants. It also bars use of federal student aid funds to hire a registered lobbyist or pay anyone to secure an earmark. Institutions are required to annually certify compliance with these restrictions.
- **Transfer of credit:** Under the act, a higher education institution must disclose publicly its transfer of credit policies, including criteria related to transfer of credit earned at another institution. Accreditors must confirm as part of accreditation reviews that the institution complies with this requirement. ED must include on the College Navigator web site a link to an institution's website that provides transfer of credit policies. Neither ED nor NACIQI is authorized to require particular policies, procedures or practices on transfer of credit. The act clarifies that the disclosure requirement creates no legal right to require an institution to accept a transfer of credit.

Student Loan “Sunshine” Provisions

The act addresses recent controversies regarding relationships between educational institutions and student lenders, including conflicts of interest, preferred lender lists and disclosure of loan terms and conditions. Under the act, the federal government will, for the first time, regulate not only federal student loans but also private educational lending. Although the act takes precedence over ED regulations relating to preferred lender lists and prohibited inducements that went into effect on July 1, 2008, ED will need to reconcile the new statutory requirements with its new rules through the negotiated rulemaking process. As the act does not expressly preempt state laws in the area of student lending ethics, institutions in states with pertinent statutes or regulations may need to comply with state as well as federal requirements.

The act requires all institutions that participate in federal student aid programs or that have entered into a preferred lender arrangement to develop a code of conduct covering a wide range of proscribed items. The institution must publish the code prominently on its web site and annually inform all officers, employees, and agents with education loan responsibilities of the code.

Provisions Applicable to Federal Student Loans

- **Preferred lender arrangements:** An institution that enters into a preferred lender arrangement for education loans must make certain disclosures regarding Federal Family Education Loan Program (FFELP) loans and the institution's obligation to process FFELP loans irrespective of the lender that the student chooses. ED, in coordination with the Board of Governors of the Federal Reserve, will determine minimum required disclosures regarding FFELP loans offered under preferred lender arrangements and develop a model form for such disclosures.

- **Disclosures regarding direct loans:** The act requires ED to provide a model disclosure form to institutions that participate in the Direct Loan Program. Such institutions must make certain disclosures regarding the program to students attending or planning to attend the institution (or their families, as applicable) and must provide such information concurrently with any private loan information that the institution offers to a prospective borrower.
- **Disclosures to FFELP borrowers:** The act requires FFELP lenders to make certain disclosures regarding loan terms and conditions to borrowers at specified times, including prior to the time of disbursement.
- **Guaranty agencies:** The act further limits items guaranty agencies may offer a higher education institution, a lender or their employees. In addition, guaranty agencies must collaborate with higher education institutions to develop and disseminate financial literacy programs and materials for student and families.

Provisions Applicable to Private Student Loans

- **Prohibited conduct:** The act forbids lenders that make private education loans to engage in certain practices with respect to their relationships with institutions. For example, the act bans gifts from private lenders in connection with the lender's private educational loan activities, revenue-sharing and co-branding of loans by institutions and private lenders. Financial aid office employees and other institutional employees with duties related to private education loans or other financial aid may not receive compensation, but may receive reimbursement for reasonable expenses, for service on a private educational lender's advisory board. Institutions that participate in federal student aid programs are required to report to ED annually certain detailed information regarding advisory board expense reimbursement by private lenders.
- **Preferred lender arrangements:** Private student lenders that have a preferred lender arrangement with an institution are required to submit to the institution each year, and the institution is required to disclose, certain information regarding each type of private education loan that the lender intends to offer the institution's students or families for the subsequent award year. The institution must be sure to include the name of the private lender with which it has a preferred lender arrangement in all information and documentation that relates to the lender's private educational loans.
- **Disclosures to borrowers:** Lenders of private education loans must make certain disclosures to borrowers in any application (or any solicitation that does not require an application), as well as at the time of loan approval and loan consummation. The disclosures must include information regarding the terms of the private loans as well as federal student financial aid.
- **Self-certification:** Before consummating a private education loan, the lender must obtain from the borrower (not the institution) a signed certification form, which is to be developed by ED in consultation with the Federal Reserve System's Board of Governors and will contain disclosures concerning private loans and federal student financial aid specified in the act. The form will include a place for, among other data, the applicant's cost of attendance

as determined by the institution and will explain that information required to be provided by the applicant is available from the institution's financial aid office. By asking students to self-certify their cost of attendance rather than having the institution certify the amount, the act creates the possibility that students could take out private loans that exceed the amount of their actual need.

Title II – Teacher Professional Development

This section expands and revises existing grant programs and adds additional grants to improve teacher training and professional development, mentoring and induction. It also builds upon efforts to develop closer alignment between schools and departments of education and the post-No Child Left Behind K-12 classroom.

- **Quantifiable goals:** In the area of accountability and evaluation, the bill requires each college or university that receives Title IV student aid and that operates a teacher preparation program to develop, on an annual basis, quantifiable goals for increasing the number of high need teachers, as designated by the secretary of education. This provision is accompanied by language that makes clear that institutions are not required to create new degree programs or areas of concentration or any specific curriculum in order to be in compliance with the accountability mandates.
- **Report card:** In regard to the state report cards on the quality of teacher programs, among other data that a school must submit to the state, each institution that conducts a traditional teacher preparation program or an alternative certification program is required to report the pass rate percentage on state licensure and certification tests of students who have completed 100 percent of their non-clinical coursework. The secretary is authorized to assess fines of up to \$27,500 for failure to deliver timely data for inclusion in the report cards.

Title VI – International Education

There are several key provisions in the act related to Title VI and international education.

- **Determination of national need:** Before each grant cycle, ED will receive from a wide range of federal agencies recommendations regarding national need for expertise in foreign languages and world regions.
- **Diversity of views; government service:** Applications for funding must explain how the funded activities will reflect diverse perspectives and a wide range of views and generate debate on world regions and international affairs. Applications must also describe how the applicant will encourage government service in areas of national need.
- **Student survey:** ED will assist grantees in developing a biannual survey of students who have completed programs under Title VI to determine postgraduate employment, education or training.

- **Academic freedom:** The act bars ED from mandating, directing or controlling higher education institutions' instructional content or curriculum.
- **Foreign gifts:** The act specifies that if a foreign government, corporation or foundation supports a Title VI center or program, the institution must report to ED the amount of any aggregate contributions in excess of \$250,000 in accordance with pre-existing foreign gift reporting requirements under HEA.

Studies

The act authorizes various studies.

- **Analysis of endowments:** The comptroller general will conduct a study of amounts, uses and public purposes of college and university endowments.
- **Impact of federal regulations on cost of postsecondary education:** The act calls on the Advisory Committee on Student Financial Assistance to collect information on federal regulations, the impact of federal regulations on student financial assistance and the cost of postsecondary education, and to make recommendations to help streamline regulations for institutions.
- **Diversity:** The secretary of education will commission a national study on minority male achievement and task the National Academy of Sciences to conduct a study to identify any race, ethnicity or gender bias in standardized admission tests.
- **Private education loan criteria:** The act authorizes a comptroller general study regarding use of non-individual factors, such as accreditation, graduation rates and cohort default rates as underwriting criteria for private education loans and effects of such criteria on availability and cost of the loans.
- **Analysis of regulation of higher education:** The National Research Council of the National Academy of Sciences will conduct a study of federal regulation of higher education.
- **Student aid recipient survey:** ED will conduct and publish a survey of student aid recipients at least every four years. Among other information, the survey will describe the impact of the cost of postsecondary education on students' choice of institution, debt burden, capacity to repay debts and the effect of debt on course of study and post-graduation plans.

Effective Date and Next Steps

- **Effective date:** The provisions of the act are effective August 14, 2008, unless otherwise noted. Institutions must take their obligations under the act seriously and make a good faith effort to comply with its provisions, as they would with any new federal law. However, as a practical matter, a number of provisions have ambiguities that will need to be addressed and clarified during the regulatory process.

- **Negotiated rulemaking:** Changes to Title IV of the act are subject to negotiated rulemaking. The secretary of education is required to select participants who are expert or experienced in the subjects under negotiation, and who reflect sector diversity, representing large as well as small participants, and persons who serve local areas and national markets. ED is also required to select individuals who can legitimately claim to speak for those whom they represent.
- **Master calendar:** Changes to Title IV are also subject to the “master calendar,” which requires regulations to be finalized before November 1 of a given calendar year in order to take effect the following July 1.
- **New Programs:** The act includes approximately 70 new programs but only a fraction of these are likely to be funded.
- **Authorization period:** The act generally reauthorizes HEA provisions for six years, through September 30, 2014.