

# **Federal Higher Education Policy: What's Next from DC? And Why Does It Matter?**

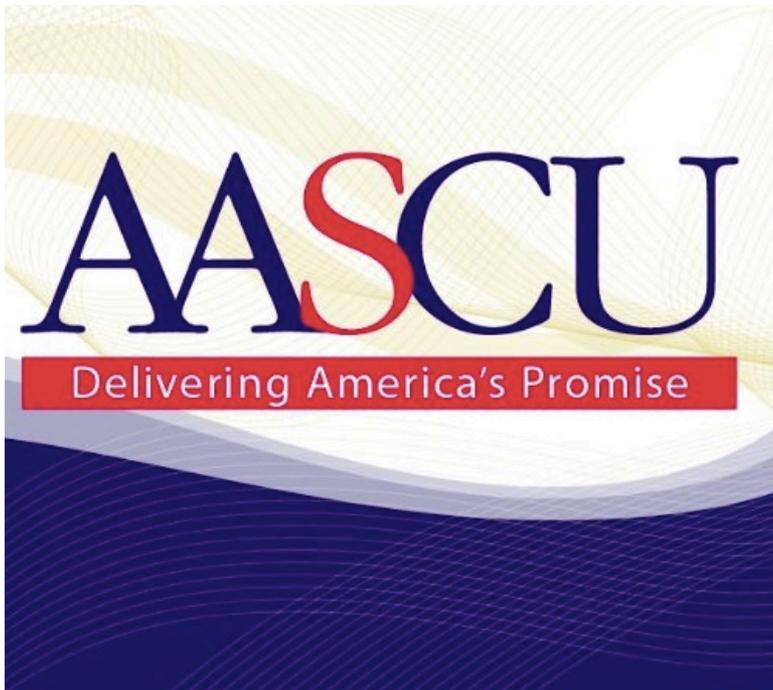


**Thomas L. Harnisch**

**AASCU Government Relations**

**Midwestern Higher Education Compact Annual Meeting**

**November 19, 2019**



- **400 presidents/chancellors of public universities & systems**
- **Emphasis: undergraduate education, teacher preparation, college access, student success, institutional leadership**
- **Federal lobbying and federal/state/institutional policy leadership**
  - **Only D.C. higher ed association with state policy focus in addition to federal focus**
- **Leadership/professional programming for CEOs, CAOs, Government Relations, Communications, International Affairs**

# Top 10 State Higher Ed Policy Issues

1. Federal Policy
2. The Economy
3. State Budgets and Affordability
4. Demographic Shifts
5. Economic and Workforce Development
6. Free College
7. Implementation of the Tax Cuts and Jobs Act
8. Immigration
9. Campus Sexual Assault
10. Political Polarization

# Federal Issues in 2019

- **Appropriations**
- **Higher Education Act Reauthorization**
- **Title III, Part F**
- **2019 Negotiated Rulemaking**
- **Section 117 Foreign Gifts and Contracts**
- **Title IX**

## Appropriations Process

- **Current continuing resolution (CR) will expire on November 21**
- **A short-term CR through December 20 a near-certainty**
- **A full-year extension for any remaining bills a distinct possibility**
- **Four of the 12 appropriations bills have separately passed both chambers:**
  - **Agriculture**
  - **Commerce, Justice, Science**
  - **Interior, Environment**
  - **Transportation, HUD**

## Appropriations Process

- **The remaining bills—most notably Labor-H, which failed procedural votes in the Senate on minibus #1 (10/18) and minibus #2 (10/31)—remain entirely unresolved due to Senate Democrats' refusal to support bills that do not have agreed-upon 302(b) allocations.**
- **This is also a House condition for conferencing all bills**
- **House and Senate leaders meeting this week to negotiate 302(b) numbers**

## Appropriations Process

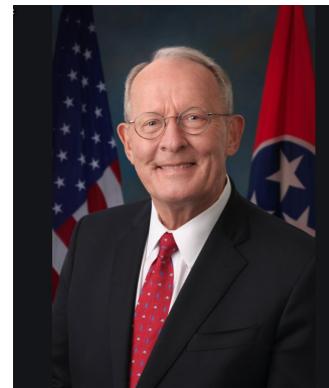
- **Congress will essentially have three weeks in December to figure out a spending plan**
- **Spending for the wall on the US/Mexico border remains an area of contention, but Republicans seem willing to put those discussions aside for now**

# Higher Education Act Reauthorization

- The HEA of 1965 was last reauthorized in 2008 by President George W. Bush.
- From the 60's-90's, HEA was authorized every 5-6 years. Last two reauthorizations in '98 and '08.
- Most of the HEA provisions are on autopilot, not requiring reauthorization to continue, however, an update would bring laws in line with current higher education realities.
- Contrasting approaches from Dems and the GOP---Dems seek greater federal investments, while the GOP seeks market-oriented solutions to lower costs.
- Sen. Alexander has made the HEA reauthorization a priority, as he is retiring in January 2021



**House Education and Labor  
Chair Bobby Scott (D-VA)**



**Senate HELP Committee Chair  
Lamar Alexander (R-TN)**

## Senate Approach to HEA

- **Sen. Lamar Alexander had set a goal to have the HEA finished by the end of this year**
- **Senate staffers have been working for months developing a bipartisan bill to reauthorize the HEA, but negotiations have stalled.**
- **One point of contention: How should colleges address sexual misconduct allegations on campus? Should there be live cross examination and live hearings? Differences between R's and D's**
  - **Obama guidance was criticized as violated rights of the accused, proposed DeVos has been criticized for turning campus disciplinary procedures into courtrooms.**
- **Other contentious issues remain: accountability & affordability, and size of federal spending**



**Senate HELP Committee Chair Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA)**

# House Approach to the HEA

- House Democrats introduced the 1,165 page College Affordability Act (CAA) on October 15, 2019.
- CAA was approved by the committee on a party-line vote on October 31, 2019
- It is expected to receive a floor vote in early 2020.
- CAA is estimated to cost \$400 billion over 10 years
- It is considered a non-starter in the Senate
- The Administration will likely oppose it, but they have yet to issue a Statement of Administration Policy (SAP)
- The ideas within the bill, however, could re-emerge in the future



**House Ed and Labor Chair Bobby Scott (D-VA)**

**COLLEGE**  
AFFORDABILITY ACT  
Est. 2019



# College Affordability Act

- **Affordability**
  - **Free Community College.** Creates a state-federal partnership where the federal government contributes 75% of the average resident tuition for public community colleges, and the state chips in 25%. States would have an MOE on other higher ed funding. This would bring the price to \$0, and then other forms of financial aid (Pell, state grants, etc.) could be used for non-tuition expenses. Cost approximately \$93 billion over 10 years. Includes language on degree pathways and student support services.
  - **Increases Pell Grant funding, extends eligibility.** Pell Grants would increase by \$625 and be indexed to inflation. Pell Grants would be extended to incarcerated individuals, extends eligibility from 12 to 14 terms & excludes remedial and non-credit coursework from the eligibility count, short-term programs, and post-baccalaureate study. Also includes a “bonus” provision for institutions that enroll and graduate large numbers of Pell students.
  - **Extends financial aid to undocumented.** Financial aid is extended to all those 16 and above w/o respect to immigration status as long as they have finished high school or joined the military.
  - **New investment in other financial aid programs.** Invests in work-study, SEOG, HBCUs, TCUs, MSIs, TRIO, dual credit, competency-based education demo, restores Perkins loan



# College Affordability Act

- **Affordability**
  - **Simplifies Financial Aid.** Simplifies the FAFSA, allows for one-time-only submission of the FAFSA, and provides data matching with the IRS. This has consequences for federal costs.
  - **Makes changes to loan repayment.** Eliminates upfront fees, lowers IBR amounts, reforms PSLF, maintains and modifies the Cohort Default Rate, and winnows down the number of repayment programs.
  - **No changes to loan interest rates formulas.** Undergrad is currently 4.53%, Graduate is 6.08%, and PLUS/Grad PLUS is 7.08%.
  - **Alters the campus-based aid formula to institutions.** Moves to a fair-share formula tied to the Pell Grant participation.
  - **Makes Grads students eligible for subsidized loans**



# College Affordability Act

- Program Integrity, Accountability, & Accreditation
  - Improves administrative provisions of state authorization
  - Restores Obama-era Gainful Employment provisions
  - Restore borrower defense protections
  - Modifies and extends 90/10 (changes it to 85/15, includes all federal dollars)
  - Addresses for-profit to non-profit conversions
  - **Authorizes secretarial review of accreditation standards**
  - Requires “outcomes-based” assessment of institutions
  - Mandates the standards terms and metrics for accreditors through the TRP process



# College Affordability Act

## DATA

- **College Transparency Act**
  - Lifts the ban on federal unit-record data system
  - Authorizes the creation of a federal database on all students at NCES
  - Requires all participating institutions to submit data
  - Articulates initial data elements, but allows the Commissioner to collect additional data needed to accomplish the purposes of the system after consulting with institutions
  - Authorizes limited data matching with certain other federal agencies
  - Provides safeguards on the use and maintenance of data



## Areas of Concern

- College Promise Program
  - The program intrudes on the states' funding choices by creating a strong incentive for them to freeze state-university budgets in favor of funding community colleges
  - It intrudes on 4-year institutions' academic policies by requiring them to accept all associates degrees as equivalent to 2 years at their institutions, regardless of comparability or quality
  - The program does not, moreover, leave community colleges any better off, since it only displaces tuition payments with federal/state dollars
  - The program imposes massive additional requirements on community colleges and participating states



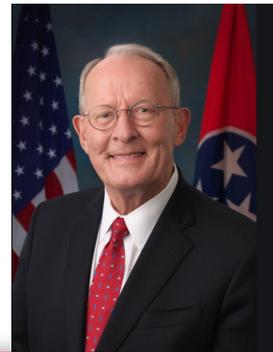
# College Affordability Act

## Areas of Concern

- **No broad state-federal partnership**
- **Substantial new reporting requirements and administrative burden**
- **Does not address challenges in educator diversification and educator shortages**
- **Accreditation concerns**

# FUTURE Act & Student Act Improvement Act

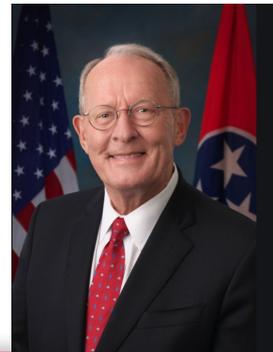
- Authorization for funding for Title III, Part F of the Higher Education Act expired on September 30, 2019, money to continue until next year.
- This pertains to minority-serving institutions (HBCUs, NASNTI, AANAPISIs, etc.). Funding used for STEM initiatives and student services, educational equipment, facility renovation, etc. \$255 million on the line.
- House Democrats passed the FUTURE Act to extend authorization, but the bill introduced in the Senate met objections from HELP Committee Chair Lamar Alexander (R-TN).



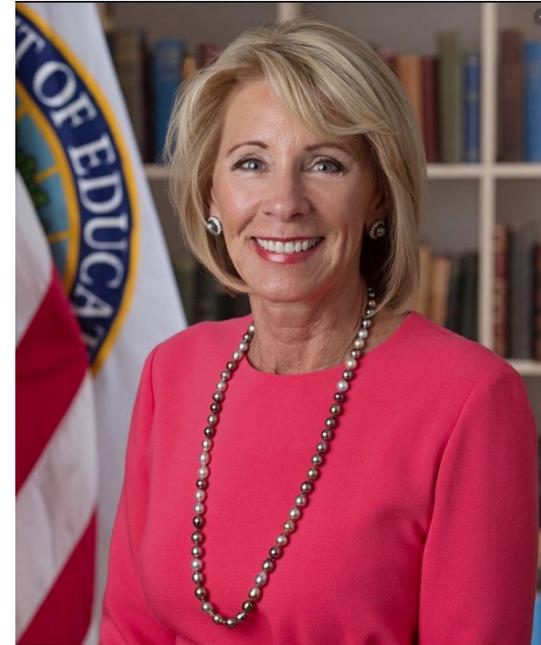
# Student Aid Improvement Act

## (A counter offer: A mini-HEA reauthorization)

- Provide permanent funding for the Minority-Serving Institutions
- Other provisions
  - FAFSA Simplification
  - Pell Grants for prisoners
  - Short-Term Pell
  - Simplify aid letter
  - Increases the maximum Pell award
  - More efficient FAFSA (FAFSA Act)



# Negotiated Rulemaking---Accreditation and State Authorization



# Negotiated Rulemaking---Accreditation and State Authorization

- **July 2018**: The U.S. Department of Education said that they would like to encourage innovation in higher education through overhauling regulations on accreditation and a range of other issues
- **Early 2019**: ED convened a “negotiated rulemaking” panel to examine a wide range of issues in higher education, including accreditation and state authorization
- **April 2019**: The panel reaches a consensus on the policy changes.
- **June 2019**: Consensus rule was published for notice and comment period until July 12<sup>th</sup>.
- **November 2019**: Final rule published.
- **July 2020**: Final rule to take effect

# Negotiated Rulemaking---Initial Ideas from ED

## Examples:

- End state authorization requirements
- Drop the definition of the credit hour
- Remove the 50 percent cap on outsourcing instruction
- Allow accreditors to make their own definitions of “regular and substantive interaction.”

**Principal Deputy Undersecretary  
Diane Jones and Secretary Betsy  
DeVos**



# State Authorization

- In the Obama-era regulations, they allowed states to have their own regulations in addition to the reciprocity agreements (reciprocity agreements cannot prohibit states from “enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.”)
- Some didn’t like language this because they thought it undermined the meaning of the agreements
- During the negotiated rulemaking panel, they stuck with the language from the Obama-era regulations
- However, the Department removed the language (“whether general or specifically directed at all or a subgroup of educational institutions”) in the final rule
- The Department says they cannot layer on additional higher education regulations, but they can enforce “general-purpose state laws and regulations outside the state authorization of distance education.”

# State Authorization

- **Eliminated: 2016 rule requiring that institutions offering distance education courses in any state in which they aren't physically located demonstrate that such state has a process for resolving student complaints. The Department viewed it as redundant.**
- **Required: (1) Programs designed to meet educational requirements for specific vocational license or certification that is required for employment in an occupation or (2) advertised as meeting such requirements must inform both prospective and enrolled students of the specific states in which:**
  - The institution has determined its curriculum meets the state educational requirements for licensure or certification
  - The institution has determined its curriculum does not meet the state educational requirements for licensure or certification
  - The institution has not made a determination
- **Institutions need to make disclosures on transfer of credit policies, refunds, contact information for complaints, teach-out plans, and written arrangements**

# Accreditation

- **The Department's new rules ease accreditation standards, a move blasted by Democrats, liberal thinktanks and consumer advocacy groups. Some of the changes include:**
  - **Faster approval for changes to academic programs**
  - **Allows outsourcing of instruction to unaccredited entities up to 50% of their offerings (as in current law) to be approved by the staff (current law: the board must approve)**
  - **Faster recognition of new accreditors**
  - **Greater leeway for sanctions for those that are out of compliance (from 2 to 4 years)**
  - **Allows colleges to create branch campuses without certain approvals from accreditors**
  - **Different faculty standards for those that teach in dual enrollment or concurrent enrollment programs, provided they have the education or experience to be in those roles**

# Foreign Gifts and Contracts

- On November 5<sup>th</sup>, AASCU joined 29 other higher education groups in submitting comments on the Department's proposed information collection request to "modernize" Sec. 117 reporting.
- Our comments and recommendations are accompanied by a legal memorandum from the law firm of Hogan Lovells that outlines a number of flaws in the Department's proposed approach.
- This proposed information collection would vastly expand the scope of Sec. 117, extending well beyond statutory language and congressional intent. The proposed information collection will require many more institutions to report to the Department as well as significantly expand the administrative burden on those schools.
- Moreover, the Department has vastly underestimated the time it will take for institutions to comply with this expansion of the foreign gift reporting requirements.
- **We strongly urge all institutions to review these material and assess the impact of the Department's stunningly overbroad framing of its authority on their operations.**

# Title IX

- **In November 2018, the U.S. Department of Education issued a notice of proposed rulemaking to amend Title IX of the Education Amendment of 1972**
- **Title IX prohibits discrimination on the basis of sex in education programs or activities receiving federal financial assistance.**
- **Courts and the ED have determined that institutional responses to sexual harassment fall under Title IX. Title IX has had regulatory guidance over the years for institutional compliance, but not actual regulations.**
- **Secretary DeVos took issue with the Obama-era guidance, which she argues was unfair to the accused and a federal overreach.**
- **Over 100,000 comments were received by the U.S. Department of Education, and they have spent most of 2019 going through those comments**

# Title IX

- **Title IX final regulation is at OIRA for clearance---therefore, a final rule is imminent.**
- **The associations have voiced their concern about the Administration proposed regulations, particularly**
  - **Campus code and policies**
  - **Representation**
  - **Live hearings, cross-examination**
  - **Evidentiary standards**
  - **Privacy and evidence**
  - **Regulatory burden**

# TODAY'S HIGHER EDUCATION Policy HEADLINES

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Universities  
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**[AASCU Webinar---Higher Education Act Reauthorization in the 116th Congress:  
Real Possibility or Mere Mirage?](#)**  
**[Thursday, March 28 at 1pm Eastern. Free and Open to the Public](#)**

**March 19**

## **[AASCU in the News](#)**

**[Presidential Hopefuls Are Pushing Free College Back Into the Spotlight. But What Does 'Free' Mean, Anyway?](#)**  
*The Chronicle of Higher Education*-subscription required (Date posted: March 18, 2019)

## **[National Headlines and Reports](#)**

**[Report: Proposals to Reform the Higher Education Act](#)**  
*The White House* (Date posted: March 18, 2019)

**[Here's What the Trump Administration Wants to Change in Higher Ed's Landmark Law](#)**  
*The Chronicle of Higher Education* (Date posted: March 18, 2019)

**[Student Loan Caps Proposed in White House Higher Education Plan](#)**  
*Bloomberg Government* (Date posted: March 18, 2019)

**[Sen. Gillibrand: Expand GI bill to make college free with public service](#)**  
*MSNBC* (Date posted: March 18, 2019)

**[Confused About How 'Free College' Programs Differ? This Primer Can Help](#)**  
*The Chronicle of Higher Education* (Date posted: March 18, 2019)

**[Op-ed: The Cruel Irony of 'Free' College Promises](#)**  
*The New York Times* (Date posted: March 18, 2019)

**[Millennial Presidential Candidate Pete Buttigieg Has Actual Ideas for Solving the Student Loan Crisis](#)**  
*VICE* (Date posted: March 18, 2019)

**[Presidential candidate talks higher education funding](#)**  
*The Western Courier* (Date posted: March 18, 2019)

**[Op-ed: Trump probably wasn't thinking about these campus free-speech problems](#)**  
*The Washington Post* (Date posted: March 18, 2019)

## **[State Headlines and Reports](#)**

**[FL: House poised to consider higher ed spending changes](#)**

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