

Background Brief: HEA Reauthorization

The Higher Education Act (HEA) of 1965¹, signed into law by President Lyndon Johnson, was originally intended to expand the federal government's role in higher education policy, including provision of federal financial assistance to students, specifically those from lower- and middle-income families. It's important to note that HEA was always intended to be a way to expand access to higher education for lower- and middle-income students. Equally important is to recognize that the Act does not work to support higher education through a distinct federal-state partnership model, like that used in Medicaid or other social service programs. Instead, HEA created federally funded student aid programs and financial support for programs and institutions serving specific types of students intentionally to encourage those who historically didn't consider college to complete some postsecondary training. Even in 1965, President Johnson recognized the need for our nation to pursue higher levels of postsecondary educational attainment to address national problems like poverty and community development.

The original Higher Education Act of 1965 was 52 pages long and included eight major sections, called Titles, governing a range of programs and initiatives. Over the last 52 years, HEA has been reauthorized by Congress nine times, typically every 4-6 years, though the ninth reauthorization was completed in 2008, ten years after the prior reauthorization. The most recent reauthorization of the law, called the Higher Education Opportunity Act² and passed in 2008, is 432 pages long and includes 11 major sections. The tenth reauthorization was scheduled for 2013 and is now several years overdue, though Congressional leaders in both the House and the Senate have indicated in early 2019⁸ it was a priority for them to complete in this Congress.

What is "Reauthorization"?

HEA includes authorization language, which creates, extends, or makes changes to a federal program, and specifies the amount of money that the government may spend to carry out the program. In some authorization legislation Congress authorizes a specific amount for a program, and in others, it leaves the amount open ended. Authorization is the first step in funding a program with federal money and is required before funds can be appropriated through the annual budget process. Authorizations allow Congress to allocate funds to a

¹ The Higher Education Act of 1965: <https://www.gpo.gov/fdsys/pkg/STATUTE-79/pdf/STATUTE-79-Pg1219.pdf>

² The Higher Education Opportunity Act (2008): <https://www.gpo.gov/fdsys/pkg/PLAW-110publ315/pdf/PLAW-110publ315.pdf>

particular program, but don't always require that funding be allocated to those programs. Appropriations are the annual allocations of federal funding to programs. This two-part process of authorization and appropriations means that even though a program is authorized, it may not have funds appropriated in one or more years sufficient to support it. For this reason, it's important to pay attention both to what programs are authorized in HEA and to what programs are included in annual budget requests and appropriations bills.

There are many programs included within HEA and reauthorization bills can seem a little misleading in that they seem to imply that there is one action taken to reauthorize all the programs in the Higher Education Act. Unfortunately, that's not the case; each program may have its own reauthorization language, the language in any given reauthorization bill may authorize the program through the full time period of the overall reauthorization bill, or only for part of that time. Similarly, programs authorized in previous bills but not included in a new reauthorization bill will likely lapse.

Federal funding for higher education institutions and students are authorized through HEA, so it is vital that student affairs professionals engage in advocacy to support students and student aid around HEA reauthorization. By far the largest section of the bill is Title IV, which governs all federal financial assistance to students, including, but not limited to:

- Pell Grants;
- Federal student loan programs, including the federal direct loans and specialized loan programs like the Perkins Loan program, and loan forgiveness provisions such as the Public Service Loan Forgiveness (PSLF) program;
- Federal TRIO programming; and
- Federal Work Study programs.

Titles III and V of HEA also provide significant financial support for minority-serving institutions and teacher education programs.

Though sometimes confused for one of the Titles of HEA, Title IX³, which is the federal civil rights law pertaining to sex discrimination in education, is part of the Educational Amendments of 1972 to the Civil Rights Act of 1964. Because it involves enforcement and adjudication of civil rights protections at institutions of higher education, however, legislators will sometimes include amendments or revisions to Title IX in HEA reauthorization bills. Given recent regulatory action on Title IX by the Department of Education, Democrats in Congress have indicated that they intend to include changes to Title IX in HEA bills considered in the 116th Congress.

³ Title IX of the Educational Amendments of 1972: <https://www.justice.gov/crt/title-ix-education-amendments-1972>

Why is HEA Reauthorization Important?

The United States' higher education system is unprecedented world-wide in guaranteeing access to affordable post-secondary education and training to millions, producing world-class research, and preparing engaged citizens. While there is much to celebrate in our national landscape of colleges and universities, years of state disinvestment and the diminishing purchasing power of federal grant programs have resulted in noticeable signs of wear. Our federal policy has failed to keep up with today's more diverse student body, including many adults shouldering responsibility not only for their own education, but also that of their children, resulting in a system of financial aid and regulations that are ill-suited to meeting the needs of either today's students or the American taxpayer. The reauthorization of HEA presents an opportunity to correct that course and fulfill both the promise and the responsibility of the federal government as the only entity that can provide reliable information on key outcomes for all students.

As our industry changes and new pathways to access and complete higher education become available, it is important for the federal government to update legislation that guides regulation and financial aid distribution in equitable ways. Federal policy can and should work to correct historical inequities and increase options for students that are proven to result in high quality credentials.

Tenth Reauthorization Status

As mentioned previously, HEA was due for reauthorization in 2013. The key education committees in both chambers of Congress have held hearings on HEA-related topics and issues for the last several years, though neither committee passed a comprehensive bill until 2017. In the House of Representatives, Chairwoman of the Committee on Education and the Workforce (Ed & Workforce) Virginia Foxx (R-NC) introduced a comprehensive reauthorization of HEA on December 1, 2017: the "Promoting Real Opportunity, Success, and Prosperity through Education Reform Act" (PROSPER Act)⁴. Chairman of the Health, Education, Labor, and Pensions (HELP) Committee Senator Lamar Alexander (R-TN) had indicated that the committee was working on a comprehensive HEA reauthorization bill due to be released in spring 2018, but bipartisan talks stalled and the Committee did not consider HEA legislation in 2018.

The continued delay is unfortunate as there are much-needed updates to our nation's signature higher education law, but it does provide the opportunity for a fresh start in both the House and Senate and the prospect of a more bi-partisan process for legislation in the 116th Congress. Following the 2018 midterm elections, the 116th Congress, which opened in January 2019, is

⁴ H.R. 4508, Promoting Real Opportunity, Success, and Prosperity through Education Reform (PROSPER) Act: <https://www.congress.gov/bill/115th-congress/house-bill/4508>

split along party lines with the House controlled by Democrats and the Senate controlled by Republicans. In today's increasingly polarized political environment, many might think that would lead to intractable disagreement and continued Congressional inaction. Understanding how the parties and the chambers work, separately and together, to pass legislation, however, offers a glimmer of hope, especially for the future of HEA. Specifically, the requirement that both chambers of Congress must pass the same legislation before it can be considered for signature by the President provides incentive for the parties to work together when they hold majority control of one or the other chamber.

The Senate has traditionally been the more bipartisan of the two chambers, in large part because of the rules of the chamber and the need for 60 votes to pass many pieces of legislation. It has been 40 years since one party controlled a super-majority in the Senate that would allow them to pass legislation without votes from the opposing party, so Senators tend to work in a more bipartisan manner more readily than their House counterparts. The House, which requires only a simple majority to pass legislation, tends to be more fractious because it's common for one party to be able to pass legislation without requiring any votes from members of the opposing party. However, anything that passes the House must also pass the more bipartisan Senate, so House Democrats still need to craft legislation that will secure Republican votes in the Senate, and that President Trump will sign. Therefore, a more bipartisan process in the House, even when bipartisanship may not be strictly necessary to garner a simple majority of votes to pass legislation, increases the overall odds that legislation will be passed and signed into law.

Conversations around HEA Legislation in the 116th Congress

Policymakers from both parties generally agree with NASPA's overarching priorities, though they differ in where they place the emphasis for why and how best to accomplish them. Republicans tend to support investments in education for the resulting benefits to employers and the economy, and Democrats have given attention to addressing individuals' and families' economic stability with a focus on closing equity gaps. These differences become apparent in the details, which matter in any legislation, but with legislation as broad and far-reaching as HEA, there are a lot of details.

Both Senator Alexander (R-TN), Chair of the Senate Health, Education, Labor, and Pensions Committee (HELP Committee), and Representative Bobby Scott (D-VA), Chair of the House Education and Labor Committee (Ed & Labor Committee)⁵, have recently addressed the issues

⁵ The House committee that governs education issues is typically referred to as the Committee on Education and Labor when the chamber is under Democrat control and the Committee on Education and the Workforce when the chamber is under Republican control.

they expect to include in comprehensive HEA reauthorization bills to be introduced in spring 2019.

Senator Alexander's Priorities for HEA

In early February 2019, Senator Alexander spoke at numerous events outlining his priorities for HEA Reauthorization in the 116th Congress. Many of the proposals the Senator discussed are similar to those he has raised in the past⁶, though he seems to have softened on his previously more partisan stance that would have removed or significantly weakened several regulatory protections in HEA. Democrat Ranking Member of the HELP Committee, Senator Patty Murray, objected to the regulatory rollbacks and bipartisan progress on the bill halted. As Senator Alexander has announced that he will not seek re-election in 2020, the 116th Congress represents his last chance to leave a mark on the nation's signature higher education legislation. His remarks in early 2019 seem to point to a more productive, bipartisan approach, though critics have expressed concern that his emphasis on a number of individual bills that have enjoyed bipartisan support signals that the resulting legislation will not be as comprehensive as needed.

Simplifying financial aid application. Known for his ubiquitous printed FAFSA form, which he uses to emphasize his concerns about the complexity of the form as a barrier for increasing access to higher education, it is unsurprising that Senator Alexander's first priority is to simplify financial aid. In remarks at the American Enterprise Institute⁷, the Senator spoke both about removing unnecessary questions from the FAFSA and about addressing concerns related to the FAFSA verification process. While he has in the past advocated for oversimplification of the FAFSA, suggesting that it could be reduced to two questions submitted on a postcard, the Senator's remarks indicated that HELP Committee staff have worked with experts in the field to whittle the FAFSA down from its current 108 questions to about two dozen. Another option the Senator mentioned considering would expand the data sharing between the Internal Revenue Service (IRS) and the Department of Education to import more data needed to complete the FAFSA automatically.

FAFSA verification is a process for checking the accuracy of data submitted by students and their families in order to prevent improper payments. According to the National Association of Student Financial Aid Administrators (NASFAA)⁸, the Department of Education's Central Processing Services uses a proprietary algorithm to identify up to 30% of all FAFSA applications

⁶ Senate Bill 108 (114): Financial Aid Simplification and Transparency Act of 2015.

<https://www.congress.gov/bill/114th-congress/senate-bill/108>

⁷ An agenda for higher education reform: Remarks by Senate HELP Committee Chairman Lamar Alexander (R-TN), American Enterprise Institute, February 4, 2019: <https://www.aei.org/events/an-agenda-for-higher-education-reform-remarks-by-senate-help-committee-chairman-lamar-alexander-r-tn/>

⁸ National Association of Student Financial Aid Administrators (NASFAA), October 2018. NASFAA Issue Brief: Verification. http://www.nasfaa.org/uploads/documents/NASFAA_Issue_Brief_Verification.pdf

for verification. The audit-like process must be completed prior to release of any federal aid. Data compiled by the National College Access Network (NCAN)⁹ from the 2016-17 aid year show that over half of Pell Grant recipients were identified for verification, suggesting that low-income students, who may also frequently be first-generation students and unfamiliar with the bureaucracy around applying for federal aid, may be disproportionately selected. This level of burden represents a significant barrier for low-income students to access aid, especially in light of data compiled by NASFAA that shows the verification process does not impact most financial aid awards¹⁰. Fortunately, the second proposal Senator Alexander mentioned considering for simplification of the FAFSA – increasing the data sharing capabilities between the IRS and ED – is recommended by NASFAA as a way to address many of the issues with the current verification process as well.

[Simplifying student loan repayment and creating an automatic payroll deduction for loan repayment](#). Senator Alexander also decried the complexity of loan repayment, stating that the 9 current repayment options were too complex and confusing. In place of these options, the Senator discussed a proposal for only two repayment options, both of which would involve an automatic deduction from borrowers' paychecks. Borrowers would be required to either enter a standard 10-year repayment plan, where an equal payment would be deducted from every paycheck in an amount necessary to repay their loans within 10 years, or an income-based repayment plan that would automatically deduct a set percentage of a borrower's disposable income. Senator Alexander specified that the deduction may be 0 for borrowers with no disposable income and that such a situation would not adversely affect their credit ratings¹¹. Many have questioned the requirement of payroll deductions for student loan payments¹², citing the complexity of accurately determining what constitutes a borrower's disposable income as well as concerns about forcing borrowers to prioritize repayment of lower-interest-rate-bearing student loan debt before higher-interest-rate consumer debt¹³. Concerns related to inflexibility of a payroll withholding system for workers with seasonal or other income that fluctuates, as is common in the increasing gig economy have also been raised. All of which says nothing of the additional infrastructure and data sharing that would be necessary to allow

⁹ Warrick, C. (November 2018). FAFSA Verification: Good Government or Red Tape? NCAN: http://www.collegeaccess.org/images/documents/Verification_White_Paper_2018.pdf

¹⁰ NASFAA, 2018. NASFAA DATA SHOW VERIFICATION DOES NOT IMPACT MOST FINANCIAL AID AWARDS. https://www.nasfaa.org/uploads/documents/verification_one_pager.pdf

¹¹ Berman, J. (February 9, 2019). Prominent Republican wants to take student-loan payments out of your paycheck. Marketwatch: <https://www.marketwatch.com/story/prominent-republican-wants-to-take-student-loan-payments-out-of-your-paycheck-2019-02-06>

¹² National Consumer Law Center and Student Loan Borrower Assistance. (February 2019). The Dark Side of Payroll Withholding to Repay Student Loans. https://www.nclc.org/images/pdf/student_loans/dark-side-withholding.pdf

¹³ Kreighbaum, A. (February 19, 2019). Alexander's Loan-repayment Overhaul. Inside Higher Ed: <https://www.insidehighered.com/news/2019/02/19/proposal-payroll-withholding-sets-debate-student-loan-system>

employers to adequately implement a payroll deduction of this type. Until additional details about the proposals are available, including the formula that might be used to determine a borrower's disposable income, it will be difficult to accurately determine the impacts of this proposal on individuals' budgets.

Replacing the gainful employment debt-to-earnings metric with repayment rates for all programs. Senator Alexander proposed addressing more comprehensive accountability for institutions of higher education by “expanding and simplifying” the gainful employment debt-to-earnings ratio metric with program-level loan repayment rates for all programs. The gainful employment rule requires institutions who offer job training programs, largely 2-year community and technical colleges and for-profit institutions, to report average debt-to-earnings ratios for graduates from those programs. While the data are undoubtedly useful – the first release of data resulted in many programs identified as having high debt-to-earnings ratios, most of which offered by for-profit institutions, to voluntarily close¹⁴ – they come with significant institutional burden. Restrictions on the Department of Education creating a student-level data system, introduced during the last reauthorization of HEA, the Higher Education Opportunity Act¹⁵ in 2008, mean that ED is unable to simply connect data on who has graduated from job training programs with wage data from another federal agency to create the metric. Institutions, therefore, must individually identify and obtain post-graduation earnings data for graduates of these programs in order to report the metric.

The gainful employment rule has been the subject of controversy since it was first implemented and is currently proposed to be rescinded by Secretary DeVos¹⁶. While the existing gainful employment rule is undoubtedly imperfect, NASPA joined comments submitted by the American Council on Education (ACE) opposing the rescission due to the possible direction of Pell funds to programs that demonstrate poor returns for students.¹⁷ It's unclear, however, how or whether replacement of the rule's key metric with repayment rates would improve institutional accountability. In addition to the myriad complexities of calculating accurate and meaningful repayment rates, summarized in a July 2018 paper from the Center for American Progress¹⁸, there remain questions about how the data would either allow consumers to make

¹⁴ Carey, K. (June 30, 2017). DeVos is discarding College Policies that New Evidence Shows Are Effective. The New York Times: <https://www.nytimes.com/2017/06/30/upshot/new-evidence-shows-devos-is-discarding-college-policies-that-are-effective.html? r=0>

¹⁵ Higher Education Opportunity Act (2008). <https://www2.ed.gov/policy/highered/leg/hea08/index.html>

¹⁶ Department of Education. (2018) Proposed Rule: Program Integrity: Gainful Employment. <https://www.federalregister.gov/documents/2018/08/14/2018-17531/program-integrity-gainful-employment>

¹⁷ ACE, Higher Education Groups Ask Education Department Not to Eliminate Gainful Employment Regulations. (2018). <https://www.acenet.edu/news-room/Pages/ACE-Higher-Education-Groups-Ask-Education-Department-Not-to-Eliminate-Gainful-Employment-Regulations.aspx>

¹⁸ Miller, Ben. (2018). Getting Repayment Rates Right. Center for American Progress: <https://www.americanprogress.org/issues/education-postsecondary/reports/2018/07/10/453199/getting-repayment-rates-right/>

more informed decisions or about how they would allow for greater oversight by ED. While program level repayment rates make sense when the connection between an educational program and subsequent employment paths is clear, as is the case for many job-training programs, it's less clear how useful they would be as a tool for evaluating a liberal arts degree, which may lead to many career paths.

Representative Scott's Priorities for HEA

Representative Bobby Scott has been less specific on the priorities of the House Democrats in seeking HEA reauthorization. In Fall 2018, as Ranking Chair of the House Committee on Education and the Workforce¹⁹, Representative Scott introduced the Aim Higher Act, which was comprised of several Democrat proposals related to HEA and combined into a single omnibus bill. The Aim Higher Act was not intended to demonstrate a variety of Democrat priorities, but the collection of initiatives included are too expensive to stand a serious chance of passage. Democrats in the House are working on a comprehensive HEA reauthorization package that will undoubtedly include as many of the policy initiatives in the Aim Higher Act as possible, tempered with the political realities of needing to pass the bill through the Republican controlled Senate.

At an event held by Inside Higher Ed in February 2019, Representative Scott spoke about needing an HEA reauthorization that would make sweeping changes rather than simply applying tweaks to existing legislation or regulations²⁰. He noted that current financial aid programs were insufficient to meet the needs of today's students, who increasingly struggle to meet basic food, housing, and childcare costs. Among the more broad-based reforms discussed by Representative Scott is an as-yet-undisclosed package of incentives for states to provide free community college tuition to all students and a state maintenance of effort proposal. Unlike in other federal-state funding partnerships, the federal government's contributions to higher education do not rely on any sort of state-matching requirement. As states have faced tighter and tighter budgetary constraints over the years, their support for higher education has dwindled. Representative Scott has spoken of the need to re-incentivize states to increase their investments in higher education.

Perhaps the issue most likely to spark controversy and challenge the progress of HEA reauthorization is campus safety, specifically the responsibilities of colleges and universities to respond to accusations of sexual misconduct under Title IX. Ranking Democrat Member on the Senate HELP Committee, Senator Patty Murray (D-WA) has been vocal in opposition to the

¹⁹ The House committee that governs education issues is typically referred to as the Committee on Education and Labor when the chamber is under Democrat control and the Committee on Education and the Workforce when the chamber is under Republican control.

²⁰ Ashford, E. (February 7, 2019). Can they find common ground on HEA? Community Colleges Daily: <https://www.ccdaily.com/2019/02/common-ground-hea/>

recent proposed rule on the Title IX²¹, including in submitting public comments on the rule that were co-signed by 35 Democrat Senators²². While Republicans have praised ED for seeking to clarify institutional responsibilities under Title IX through the public notice-and-comment regulatory process, they have been less outspoken on the specific proposals included in the proposed rule. It is broadly expected, however, that they will stand with the Trump Administration, setting the stage for what could be a heated disagreement that may ultimately derail progress toward comprehensive reauthorization of HEA in the 116th Congress.

Possible Bipartisan Agreement

While it remains to be seen what language will eventually be introduced or passed by either chamber, it's possible to identify at least a couple areas of policy priorities that have good odds to be discussed as part of a final bipartisan HEA reauthorization bill in the 116th Congress.

Continued support for low-income students, including the maintenance of grant programs to improve college-preparation and access for historically under-represented students. While the PROSPER Act took steps to simplify student aid programs by eliminating existing programs – such as the in-school student loan interest subsidies, the Supplemental Educational Opportunity Grant (SEOG) program and the Public Service Loan Forgiveness (PSLF) program – the Aim Higher Act preserved and bolstered support for low-income students within existing programs. The past two years of appropriations bills passed by Congress and signed by President Trump have similarly signaled broad bipartisan support for student aid, maintaining or increasing the maximum Pell Grant award, allocating funds to aid PSLF applicants who were misled about eligible repayment programs, and generously supporting TRIO programs and minority-serving institutions (MSIs). It is reasonable to expect that efforts to simplify grant and loan programs for students may result in changes to specific programs, and for the shifting of funds to benefit some students while reducing funds for others. However, the prevailing atmosphere for a bipartisan HEA reauthorization bill is likely to be one of continued financial support for low-income and historically under-represented students.

Focus on deregulation and simplification. Negotiation between the parties around Republican desires to limit the federal role in higher education and Democrat desires to fund college for all could focus on programs targeted to smaller populations. For example, while college access and credential attainment is undoubtedly important in preventing recidivism among formerly incarcerated individuals, reinforcing or strengthening support for the Second-chance Pell

²¹ Department of Education. (2018). Proposed Rule: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. <https://www.regulations.gov/document?D=ED-2018-OCR-0064-0001>

²² United States Senate. (2019). Public Comments Re: ED Docket No. ED-2018-OCR-0064, RIN 1870-AA14, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. <https://www.help.senate.gov/imo/media/doc/013019%20Proposed%20Title%20IX%20reg%20caucus%20letter.pdf>

program may be possible. Republicans generally support the roll-back in regulations Secretary DeVos is spearheading, making it likely that they will seek to codify changes to the borrower defense to repayment and gainful employment regulations in legislation. As noted above, the recent proposed rule on Title IX has prompted Senate Democrats to take a hard line on the need to protect students by changing legislative language governing Title IX. NASPA believes that these programs provide important safeguards to students and taxpayers and looks forward to working with policymakers to identify revisions and improvements to our national education data system to allow appropriate accountability and student safety without adding burden to institutions.

Updates to the Drug Free Schools and Communities Act regulations in response to the opioid epidemic. As Congressional attention has focused on the ravages of the opioid epidemic in communities across the country, it is likely that language in HEA relating to institutional programs related to substance use may be modified. The Aim Higher Act included language that would require use of evidence-based or evidence-informed programs for alcohol and drug prevention programs, including the creation of a cooperative agreement between the Departments of Education and Health and Human Services to determine what counts as an evidence-based program and compliance assistance language. While the exact nature of possible language in HEA is open for debate, both Republicans and Democrats may work to update these aspects of the bill.

Ultimately, only time will tell which policy proposals and priorities will emerge from the Congressional educational committees. NASPA will continue to represent the voices of student affairs professionals in policy conversations in Washington, D.C. along with other higher education associations as the 116th Congress continues their work this year.

Additional Resources on HEA Reauthorization

The Higher Education Act (HEA): A Primer: <https://www.hsdl.org/?view&did=749333>

The Nuts and Bolts of HEA Reauthorization:

<https://www.thompsoncoburn.com/insights/blogs/regucation/post/2016-01-20/the-nuts-and-bolts-of-hea-reauthorization>

About NASPA

NASPA – Student Affairs Administrators in Higher Education is the leading association for the advancement, health, and sustainability of the student affairs profession. Student affairs is a critical component of the higher education experience, collaborating with colleagues across institutions of higher education to offer students valuable learning opportunities, meaningful social engagements, and safe and inclusive environments. NASPA’s Public Policy Agenda is grounded in a commitment to ensuring opportunity for all institutional members’ students and a belief that higher education is a great benefit to both individuals and society.