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Back to the Future:
What Previous HEA Reauthorizations Might Say About the Next One

By Dan Madzelan

For 50 years, the Higher Education Act has been the primary vehicle for advancing federal higher education policy. Many policymakers and interested observers expect its upcoming reauthorization to address three overarching topic areas: college affordability, institutional quality, and student safety. Indeed, previous reauthorizations have addressed specific issues within each of these areas—expanded financial aid availability and process simplification, third-party (accreditors and states) oversight of institutions, and assurances that students have safe learning environments. Yet we cannot say that these are settled issues. This article describes previously implemented policies in the hope that a better understanding of the past might help policymakers craft policies that further advance the primary goal of the HEA: widespread access to quality postsecondary education opportunities.

Keywords: *simplification, affordability, institutional quality, higher education act*

As the Higher Education Act of 1965 (HEA) approaches its 50th birthday (and AARP membership eligibility), the upcoming ninth formal reauthorization of this landmark legislation will primarily address three overarching topic areas: college affordability, institutional quality, and student safety. Policymakers share families' concerns with ever-increasing tuition and student loan debt, their reasonable expectation that colleges provide an education worthy of the investment, and their belief that colleges are responsible for providing a safe learning environment. Still, it is hard to imagine there will be a surfeit of new ideas. Previous reauthorizations have plowed much of the same higher education policy ground.

When contemplating the path forward, it can be useful and informative to examine the past. While a contrivance such as a flux capacitor might be useful in this regard, one is simply not needed. The public record is readily available for review, and to a lesser extent the first-hand, if increasingly fuzzy, recollections of the author. Reauthorizing the HEA has always been a significant legislative achievement, but several efforts in particular are also especially notable for their enduring contributions to higher education and society in general. For example, the Education Amendments of 1972 (P.L. 92-318) established a "portable" grant or voucher program, now known as Federal Pell Grants, that helped put the choice of college more squarely in the hands of students and their parents. Today, Pell Grants provide financial assistance to more than 41% of undergraduates (NCES, 2014). Of course, it scarcely needs mentioning that Title IX of the 1972 Amendments ensures equal opportunity irrespective of gender in educational programs and activities at America's colleges and universities. The Higher Education Amendments of 1992 (P.L. 102-325) also simplified and streamlined the financial aid application process, thus expanding access to postsecondary education while establishing an accountability framework that helps assure Congress that its generous and increasing investment in higher education is not abused.

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Reauthorizing existing legislation is about meeting new constituent needs, public demands, and policy objectives, as well as reordering budget priorities, by modifying existing programs or creating new ones. By this reckoning, it is not just the previous eight HEA reauthorizations that are worth considering; important policy direction has been accomplished through "off-cycle" legislation as well. Two early examples are the Middle Income Student Assistance Act of 1978 (P.L. 95-566), which expanded student eligibility for Pell Grants by increasing the income limits while eliminating them altogether for the federal student loan program, and the Student Loan Reform Act of 1993 (Title IV of the Omnibus Budget Reconciliation Act of 1993 [P.L. 103-66]), which offered participation in the Direct Loan program to all eligible institutions and provided an income-contingent repayment option for their borrowers.

More recently we have seen "mini HEA reauthorizations" through budget reconciliation legislation enacted in the mid-2000s, including the Higher Education Reconciliation Act of 2005 (HERA; Title VIII of the Deficit Reduction Act of 2005 [P.L. 109-171]) and the College Cost Reduction and Access Act (P.L. 110-84). These budget reconciliation-driven policy discussions might simply have been a way for Congress to avoid having to think too deeply in the short term about policy alternatives. In the physics of policymaking, the dollars-and-cents approach of the budget process is no substitute for a longer-term substantive review and debate of the issues, but is often the path of least resistance. Nevertheless, several far-reaching federal student aid policy issues were discussed and decided through the budget process, including changes to the federal need analysis methodology and the level of subsidies paid to lenders and guarantee agencies participating in the Federal Family Education Loan (FFEL) program, and consequently were not considered in the 2008 HEA reauthorization.

Through 1980, HEA reauthorization occurred every four years. Each of the following three reauthorizations occurred at six-year intervals. The most recent (2008) reauthorization was ten years in the making, including sixteen separate temporary statutory extensions of the HEA authority. As noted above, several mini reauthorizations also occurred during this span. As of this writing, the present HEA reauthorization process seems largely to have reverted to a normal track. The House Education and Workforce Committee and Senate Health, Education, Labor, and Pensions (HELP) Committee have each held several formal hearings. This year's budget reconciliation process did not instruct either committee chairman to identify savings from the higher education programs within their respective jurisdictions. If the opposite had occurred, the HEA reauthorization effort would have lacked financial resources and policy options would necessarily have been limited as well.

That said, the Obama administration has yet to offer its plan for reauthorizing the HEA. Ordinarily an administration signals any new policy preferences in the president's annual program budget request. That did not happen in the fiscal year 2015 or fiscal year 2016 requests. What has happened is that the U.S. Department of Education has engaged in negotiated rulemaking each year since the HEA was last reauthorized, except for 2011. It appears, then, that this administration is content to advance its policy preferences through the rulemaking process rather than through Congress. However, the bottom line remains: Congress will have to produce a bill that the president will sign. The alternative is a repeat of the last reauthorization—a series of short-term extensions of the HEA authority until the president and Congress can reach an agreement.

College Affordability

More than 90 percent of elementary and secondary students in the United States attend public schools (NCES, 2015). Thus, the first time most parents see a tuition bill is when their child enrolls in college. No one is surprised when these parents ask why college costs so much. Declining financial support provided directly to colleges and universities by states is properly identified as the primary cause of rising college

prices. States essentially have three large expenditure buckets: public safety, health care, and education. With respect to education, the K-12 sector is first in line. State policymakers might not want to think of higher education as primarily a private rather than a public good, but the fiscal pressures they face may make that distinction easier to rationalize.

Few public policy options at the national level can directly affect the rising cost of a college education. Rather, the policy options—and this has been the case since the HEA was enacted in 1965—have focused on how best to provide the resources necessary to ensure access to higher education by those who are most in need of such assistance. Increasing resources is not simply an issue of increasing program appropriations every year, increasing the maximum Pell Grant, or raising student loan borrowing limits. It is necessary to have an efficient system that achieves its stated goal, namely, best serving the population it is intended to serve in an efficient manner that helps to ensure optimal results for the program's beneficiaries.

FAFSA Simplification

No college student can receive federal student financial assistance without completing the Free Application for Federal Student Aid (FAFSA). FAFSA simplification is at the top of the college affordability checklist and thus a primary issue for HEA reauthorization. The paper FAFSA has 108 numbered questions, although applicants actually see 142 questions. No applicant will answer every question, but most will read each one, even if the applicant ultimately leaves the answers blank. Senator Lamar Alexander, chairman of the Senate HELP Committee, is fond of holding a copy of the paper form over his head and letting it cascade its full nine-foot length to the floor. A neat bit of stagecraft—the form is five sheets of fan-fold paper printed on both sides, so fully expanded it is still an impressive four-and-a-half feet long. The U.S. Department of Education (2015) says that fewer than 1% of FAFSA applicants submit the paper form; the vast majority use one of the Department's electronic options. With the skip logic embedded in these electronic products, the average applicant answers about 61 FAFSA questions (Weko, 2014). Reducing this number requires a deeper dive into the apparatus for determining financial aid eligibility.

Congress first wrote two federal need analysis formulas (one for Pell Grants and a second for student loans and the campus-based programs) in the Higher Education Amendments of 1986 (P.L. 99-498). Previously, the U.S. Department of Education defined these formulas in its regulatory process. In the 1992 HEA Amendments, Congress took elements from each formula and combined them into a single formula (known as the "Part F" formula because its language resides in Part F of Title IV of the HEA). Under current law, the Department cannot regulate the federal need analysis formula. Therefore, the model the Department employed for designing the FAFSA has always been "form follows formula." In short, revising the need analysis formula must always precede simplifying the FAFSA.

Since 1992, changing the basic financial aid eligibility formula in substantive ways has not held much allure for Congress. To embark on this path is to invite a formula fight, and Congress knows that no legislative activity compares to a formula fight. Any change to an existing formula immediately identifies winners, but, more importantly, it identifies losers. Congress knows it can never redesign a formula to achieve simplification goals and simultaneously maintain, at a minimum, current benefit levels for all beneficiaries.

Sometimes Congress has faced unpleasant circumstances, such as when it created the single federal need analysis formula in the 1992 Amendments by combining elements from each formula in a way that excluded more income from the expected family contribution (EFC) calculation. This change made more students eligible for larger Pell Grants. The new formula produced almost all winners, as EFCs were generally lower. Paradoxically, it also produced many losers, because the increased eligibility created increased demand for

Pell Grants. As a result, the 1993-94 award year was the first time (and still the only time) Congress reduced the maximum Pell Grant award from the previous year. Although the total Pell Grant appropriation increased by 17%, it was nonetheless insufficient to maintain the previous year's $2,400 maximum award, which Congress reduced by $100 (U.S. Department of Education, 2013). Students who received the maximum Pell Grant in 1992-93 saw their awards reduced by $100 the following year.

Although this policy change had an immediate downside, Congress also provided for a single, no-charge application form for financial aid in this legislation. At that time, like today, there were many providers of financial aid in addition to the federal government that helped students and their families pay for college. Unlike today, most had their own financial aid application forms, and policymakers felt that requiring multiple forms could be a nonfinancial yet practical barrier to postsecondary education access. Betting that encouraging states to use the FAFSA would reduce the proliferation of applications, in the 1992 Amendments, Congress provided the Department with the authority to include data elements on the FAFSA that are not needed for federal purposes but are necessary for state financial aid programs.

In the 2008 HEA reauthorization, the Higher Education Opportunity Act (HEOA, P.L. 110-315), Congress seemed more intent on trying to simplify the FAFSA without making significant changes to that which ultimately drives the content and utility of the FAFSA form: the need analysis methodology. Perhaps this was due, at least in part, to the Department's inability to implement a particular provision from the Higher Education Amendments of 1998 (P.L. 105-244), which was definitely driven by the policy objective of simplifying the FAFSA.

In section 483(e) of P.L. 105-244, Congress authorized the Treasury Secretary and the Education Secretary to develop a process by which the Internal Revenue Service (IRS) would disclose certain tax return information of FAFSA applicants and their parents to the U.S. Department of Education for the purpose of verifying income and other data common to the FAFSA and individual income tax returns. However, Treasury and the IRS would not agree to a straightforward data exchange. In their view, the controlling legislation with respect to disclosing taxpayer information was the Internal Revenue Code (IRC), not the Higher Education Act. Said a bit differently, while an amendment to the HEA provided for the authority to share information, an amendment to the IRC was necessary to implement such a sharing arrangement.

The two departments, along with the Office of Management and Budget (OMB), produced a legislative proposal to modify the IRC in a way that would allow for information sharing. Both Treasury and OMB insisted that the proposed legislation maintain strict adherence to the confidentiality and disclosure provisions in section 6103 of the IRC. In other words, the proposal did nothing to diminish the existing taxpayer privacy and confidentiality protections. The proposed legislation would have established a data-sharing protocol between the Department of Education and the IRS that would have been largely unworkable on campus, or perhaps workable but not in a timely fashion. Representative Sam Johnson (R-TX) introduced the Student Aid Streamlined Disclosure Act of 2003 (H.R. 3613) on November 21, 2003, but no hearings were held and the bill went nowhere.

The fundamental impediment to sharing common income tax return and federal aid application data was and remains the fact that IRS rules require taxpayers to use an IRS form to consent to disclose tax return information to a third party. As a practical matter, it is impossible for the IRS to process 20 million or more such consents every year (U.S. Department of Education, n.d.).

In 2010, the administration found a technological solution to implementing the operational goal of transmitting information from individual income tax returns resident on IRS systems to the U.S. Department of Education. The IRS Data Retrieval Tool (IRS-DRT), which is built into the FAFSA on the Web (FOTW) application, allows FAFSA applicants to retrieve their own tax return information directly

from the IRS system and then choose to make that information available for inclusion on the FAFSA. All of this occurs while the applicant remains logged on in a FOTW session. Thus, there is no consent process as the IRC would otherwise require. The taxpayer always initiates the data transfer and then chooses to share information that he or she possesses with a third party, that is, the U.S. Department of Education.

This process works well for applicants who are able to use it; the Department has said this is about one-fourth of FAFSA applicants (Dynarski & Wiederspan, 2015). Financial aid applicants are encouraged to file their FAFSAs early in the calendar year—well before the April 15 filing deadline for individual tax returns—to take maximum advantage of nonfederal sources of aid. The mismatched FAFSA and tax return-filing calendars precluded increased usage until the formula was modified. A need analysis formula using income tax return information from the second prior year would allow many more applicants to take advantage of the IRS-DRT. Further, having income and other financial information come directly from the IRS obviates the need for institutions to verify those FAFSA data elements.

Recognizing these benefits and confident that any increased program costs would be manageable, the Department announced in summer 2015 that it would use existing authority in the HEA to implement a "prior-prior year" approach for income and other information resident on IRS systems in the fall of 2016 for the 2017-18 school year. However, the existing authority does not extend to modifying other elements of the need analysis formula, such as the various income offsets. Congress will need to address these other aspects of the formula in reauthorization.

The IRS-DRT is an arrangement between sister federal agencies, but it can also be viewed as a proof of concept. The government has demonstrated that real-time data transfers between disparate databases are possible. Extending the IRS-DRT model to transmit as well as receive information from other stakeholders could improve the interaction among the various student financial aid providers. It is not difficult to conceive of an integrated financial aid application system in which the student begins with FOTW, then accesses a state or institutional system to provide the information those entities require, and finally returns to FOTW to complete this series of transactions, all in a single electronic FAFSA session.

Merit-based Financial Aid

Few policymakers in Congress or the administration, or thoughtful higher education observers, feel that the country has finished the job of ensuring access to a postsecondary education by low-income students. However, many of those same policymakers seem to have a long-standing fascination with merit-based financial aid. Over more than two decades, they have generally found support for recognizing students' academic achievements by introducing a scholarship aspect to the existing Pell Grant program that otherwise has exclusively targeted low-income students.

The Department of Education's 1991 reauthorization proposal[1] included a new program, Presidential Merit Scholarships, that would provide additional Pell Grant funding to academically high-achieving, low-income students. Congress agreed with the principle underpinning the proposal, changed the name slightly to Presidential Access Scholarships (PAS), and authorized the program as part of the 1992 Amendments. Pell Grant recipients who met the PAS program eligibility requirements would receive a 25% increase in their "regular" Pell Grant for each of four years of undergraduate study. First-year scholars had to have graduated from a rigorous high school program, defined as four years of English, three years each of mathematics and physical sciences, and a combined three years of social sciences and/or a foreign language. Second-year and beyond scholars had to maintain a minimum 3.0 grade point average.

Even though the Department published regulations implementing the program, the incoming Clinton administration—more concerned with addressing the persistent Pell Grant funding shortfall it inherited and less concerned about implementing a policy preference of the previous administration—never requested funding for the program, nor did Congress ever provide an appropriation.

In the 1998 Higher Education Amendments, Congress replaced the PAS program with a new merit-based grant program, the Academic Achievement Incentive Scholarships. Like PAS, this new program was limited to Pell grant recipients. Unlike the older program, it supported just the first two years of undergraduate study and had much more straightforward and operationally simple eligibility requirements. First-year recipients had to have graduated in the top 10% of their high school graduating classes and were eligible for a second-year award if they maintained satisfactory academic progress according to the standards of their institution. The new grant was much more generous: it would double the student's Pell Grant award; however, like the PAS program, Congress never funded Academic Achievement Incentive Scholarships and the program did not survive its initial five–year authorization.

Although the next HEA reauthorization would not occur until 2008, as noted earlier, Congress had a number of legislative opportunities during the intervening years to consider and act on higher education policy issues. Of particular note is the 2005 budget reconciliation process, which resulted in the Higher Education Reconciliation Act of 2005. While Congress never provided an appropriation for either of the previous two efforts to "supersize" certain students' Pell Grants with a merit-based supplement, that was not the case this time. The federal budget reconciliation process allows Congress to modify participation or benefit rules in mandatory expenditure programs and redirect the resulting savings to other priorities on the mandatory spending side of the federal budget. In HERA, Congress reduced the subsidies the Department paid to private lenders and guarantee agencies participating in the FFEL program, and used those savings to create the Academic Competitiveness Grant (ACG) and National Science and Mathematics Access to Retain Talent Grants (SMART Grants) programs. Congress provided more than $4.5 billion in mandatory five-year funding for these two grant programs, providing awards of $750 to first-year students and $1,300 to second-year students (ACG), and $4,000 annually for the remaining two or three years of a student's undergraduate program (SMART Grants).

Like the two previous efforts, only Pell Grant recipients could receive ACG and SMART Grants. Successful completion of a rigorous high school curriculum was required of first-year ACG recipients, and a minimum 3.0 college GPA ensured receipt of the second-year grant. SMART Grant eligibility had this same GPA requirement coupled with pursuit of a science, technology, engineering, or mathematics (STEM) field or critical foreign language major. But student demand for the programs lagged well behind the annual mandatory funding levels that Congress provided—nearly $1.2 billion went unused—and after five years, Congress did not extend either program's authority.

The HEOA provided a new approach for increasing Pell Grant awards for academically motivated students. Continuously enrolled and otherwise eligible students could receive a second grant in a single award year. However, the actual cost of this "year-round Pell" program significantly exceeded the government's estimate and the program was repealed after just two years (Department of Defense and Full-Year Continuing Appropriations Act, 2011 [P.L. 112-10]). Nevertheless, interest in the program remains and it is conceivable that policymakers may think about merit-based aid in terms of incentives to accelerate degree completion. One approach may be to modify student eligibility and funding for year-round Pell to encourage faster completions within reasonable program expenditure levels.

Institutional Quality

HEA Title IV program participants, students and their parents, and the federal government want solid assurances that colleges and universities provide a quality education. However, "quality" is an abstraction—it is only apparent in its absence. As a practical matter, the U.S. Department of Education might best ensure such quality by means of direct regulation of an institution's curriculum, instructional program, and personnel. However, the agency is simply precluded by law from doing so (Department of Education Organization Act, [P.L. 96-88]). Lacking authority to exercise direct supervision or control over an institution's academic operations, the government mostly relies on various proxy measures of quality.

For example, the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) authorized the Department to hold institutions accountable for defaulted student loans. This provision rests on the assumption that if too many of an institution's former students default on their federal loans too soon after graduation, then its academic program must have been of a lesser quality, and institutions of lesser quality should no longer participate in the federal student loan program. This tenuous approach to ensuring institutional quality continues.

Any student loan debt service metric is a tactic. The strategy for ensuring institutional quality lies with the HEA Program Integrity Triad—accreditation, state licensure, and certification of program eligibility by the Department. The HEA assigns Title IV responsibilities to each component of the triad. While each operates independently, the HEA further requires collaboration among the three with respect to Title IV program compliance.

Prior to the 1992 Amendments, the three actors tended to maintain strict independence from one another. A college or university was either accredited or it was not. It was recognized and licensed by the state in which it was located as a provider of postsecondary education or it was not. For the most part, the Department's certification process did little more than verify that the college was indeed accredited and authorized by its state.

In 1989, Senator Sam Nunn, chairman of the Senate Permanent Subcommittee on Investigations, initiated a thorough review of the federal student loan program through a series of hearings. Most telling was the subcommittee's finding that oversight of institutions via the program integrity triad of accreditation, state licensure, and the Department's certification of Title IV eligibility provided scarcely any assurance that institutions were delivering the education and training they promised their students. After hearing testimony from a number of witnesses over several hearings, the subcommittee issued its report with approximately two dozen recommendations for improving oversight of participants and improving departmental management for Congress to consider in the upcoming HEA reauthorization (Abuses in the Federal Student Aid Programs, Senate Report 102-58).

Today, policymakers are thinking about ways colleges and universities can have a greater stake in the educational outcomes of their students. A little more than two years ago, the administration announced its plan to rate colleges and universities on indicators of access for low-income students, affordability for families, and quality of educational offerings. As initially conceived, institutional Title IV funding would be tied to these measures. The administration has since retreated from this position, but these "skin in the game" conversations continue.

Accreditation

The original HEA legislation assigned a federal gatekeeping role to accreditation. Then, as now, institutions must be accredited in order to participate in the federal Title IV student aid programs. To perform its gatekeeping function, an accreditor must be "recognized" by the Secretary of Education as a reliable authority with respect to assessing the quality of the educational programs offered by an institution of postsecondary education.

Accreditation's historic role is to promote and enhance student learning, improve institutional performance, and encourage educational innovation. As a voluntary and nongovernmental process, accreditation operated with relatively little federal oversight. Indeed, the Department of Education Organization Act prohibits the Department from exercising direct supervision or control over accreditors and their activities.

In the aftermath of the Nunn hearings, the 1992 Amendments strengthened the Secretary's recognition process by establishing standards that an accreditor must apply to colleges and universities in its review of those institutions. While the new standards generally reflected the historic role of accreditation—assessing institutional success with respect to student achievement, curricula, faculty, and the like—it required accreditors for the first time to review and act upon an institution's record of compliance with the requirements of the Title IV student aid programs. Accreditors were effectively deputized to help the Department enforce its rules—a significant addition to their historic role.

Although required to serve as Department of Education surrogates in matters related to Title IV institutional eligibility, accreditors lack the Department's authority to take an emergency action against a miscreant institution. As a condition of official recognition, again as a result of a provision in the 1992 Amendments, an accreditor proposing to take an action against an institution that could result in revoking that institution's accreditation must provide for a due process procedure that provides for written notice of identified deficiencies, offers an opportunity for the institution to respond, and otherwise complies with federal law.

This is the nub of today's policy discussions with respect to accreditors, namely, how to establish an appropriate balance between the federal government's need to ensure accountability for the expenditure of taxpayer funds with the need of colleges and universities to retain responsibility for and control over their academic missions. Perhaps additional Title IV oversight responsibilities could be assigned to the states.

State Authorization

In recent years, the U.S. Department of Education, wielding its regulatory authority, has attempted to strengthen state authorization. Citing significant concerns with respect to Title IV program integrity, especially with regard to the rapid expansion of distance education opportunities for students over the past several years, the Department proposed a regulatory scheme that would strengthen the process by which states recognize institutions as legal providers of postsecondary education.

The Department's efforts in this regard recalls an earlier effort by the government to address concerns that states were lax in their licensing and consumer protection activities with respect to postsecondary education. The Nunn Committee noted that few states regulated the for-profit sector of higher education, and it recommended that the Congress and Department take steps to improve state oversight so that colleges and universities operating within their boundaries only offer students quality education and training programs.

The Committee focused on the lax oversight of postsecondary institutions, especially with regard to the for-profit sector. While accreditors and the Department took their fair share of criticism, the Committee singled out the states for their *laissez-faire* attitude toward the for-profit sector. Indeed, many states did not regulate the for-profit sector as institutions of postsecondary education but rather as tax-paying businesses, albeit tax-paying businesses highly reliant on revenues from Title IV financial aid received by their students.

To address these state-level shortcomings, the 1992 Amendments created State Postsecondary Review Entities (SPREs), which were responsible not only to review but also to take appropriate action against those schools operating within their boundaries that the Department had identified as problematic players in the Title IV programs. Although enactment of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4) was still several years in the future, Congress recognized that states would be disinterested in a partnership that required them to direct significant resources to that effort. Consequently, Congress provided funding authority to reimburse states for the costs of implementing their new Title IV program enforcement activities.

The Department was supportive of the creation of SPREs, inasmuch as SPREs would be an important enhancement to the state component of the triad. State review of colleges and universities based on triggers that the Department identified could lead to a state's determination that an institution was not—or was no longer—eligible for the Title IV programs. Colleges and universities, on the other hand, were opposed to what they viewed simply as another layer of accreditation, and worse yet, one controlled by government. After all, colleges and universities were already subject to periodic review by entities—accreditors—that were in a position to rule on their continued Title IV participation. SPREs were given responsibilities more akin to those traditionally reserved for accreditors.

Unlike accreditors, it was never clear if the review activities of the SPREs would differentiate among the various institutional sectors or among institutions within a sector. Colleges and universities rightly complained that applying the same standards to institutions with fundamentally different missions would do far more harm than good and SPREs were never fully implemented. Congress no longer provided the appropriation necessary for SPREs to do their work by the third year of their existence. In the 1998 Amendments, Congress eliminated the authority altogether and the states reverted to their pre-1992 role in the triad of licensing postsecondary institutions according to state law.

The idea of a federal-state partnership retains its appeal among policymakers, although not necessarily strictly in the context of Title IV program oversight. Last year, then-Senator Tom Harkin included a provision in his HEA reauthorization bill that would provide federal funding to states in exchange for their demonstrated commitments to maintain financial support for their public colleges and universities (Section 499 of the Higher Education Affordability Act [S. 2954]). While the Harkin proposal addressed college affordability rather than program compliance, policymakers could structure a set of federally-funded incentives that would encourage states to better perform their Triad responsibilities.

Risk Sharing

The HEA and the programs it authorizes may indeed have reached middle age, but that is not to say that federal incentives cannot be better aligned and improved to help all students attain higher levels of postsecondary success and program completion. Fundamentally, colleges and universities are deeply invested in seeing their students succeed. In most cases, the price of tuition is less than the cost an institution incurs to provide an education, representing a strong commitment to the success of their students. The overwhelming majority of institutions demonstrate this commitment in a variety of ways,

reflecting the great diversity of structure and mission that is a hallmark of the American higher education system.

Recent events, including the spectacular failure of a large, publicly-traded chain of colleges, have renewed public policy interest in ideas for improving institutional accountability and protecting the federal investment in higher education through new risk-sharing policies. Most are predicated on requiring colleges and universities to join students and the federal government in bearing some financial risk for the students they enroll. In theory, then, institutions would have a clear financial stake in the success of their students. This notion of institutional skin in the game is not new. In fact, it predates the HEA.

The original 1958 authority for the National Defense Student Loan program (NDSL, now the Federal Perkins Loan program; Title II of the National Defense Education Act of 1958 [P.L. 85-864]), required institutions to match their dollars to the federal dollars provided as loan capital. Each loan made to students in the NDSL program comprised both federal and institutional dollars. This institutional matching requirement continues to this day (although Congress last appropriated funds for Perkins Loan capital in fiscal year 2004) and applies to Federal Supplemental Educational Opportunity Grants and Federal Work-Study jobs as well. For-profit institutions have had their skin in the game since 1992, when Congress added a new provision to the HEA requiring these institutions to have no more than 85% of their annual revenues derived from the Title IV student aid programs, and Congress increased this share to 90% in the Higher Education Amendments of 1998.

The 1993 Student Loan Reform Act (Title IV of the Omnibus Budget Reconciliation Act of 1993 [P.L. 103-66]) expanded the Direct Loan program beyond its original 1992 HEA authority as a pilot program and provided for federal student loan program cost sharing with the states. States would pay a share of the federal government's costs of student loan defaults for borrowers who attended institutions in the state. The change applied to defaulted borrowers at any institution in a state with a cohort default rate (CDR) greater than 20%. While the triggering event under this plan was the borrower-based CDR (used to assess continued institutional participation in the loan program), the calculation of the payment amount was based on the dollar amount of defaulted loans. States were permitted to charge a fee to the institutions located in that state under a rate plan approved by the Department. The fees would reflect the state's risk of loss, that is, payments to the Department under the student loan program, thereby permitting states to transfer their costs to their institutions. The HEA provided for an escalating scale of payments as an incentive for states and institutions to do more to rein in defaults at their institutions. However, the program proved unworkable and the Department never fully implemented it. Congress repealed the program's authority in the 1998 HEA Amendments.

Any plan that would impose financial penalties on institutions for the failures of their students must be appropriately structured. Sharing federal student loan default costs with states failed because many states lacked either the necessary administrative infrastructure or the authority to oversee private independent colleges in the way the program envisioned. Any such plan focused directly on institutions must anticipate and account for unintended consequences. If, for example, unacceptably low graduation rates become an accountability measure, institutions will tend to enroll only those students more likely to succeed. Similarly, if forced to share the cost of defaults, institutions will tend to enroll fewer students who need access to low-cost credit.

The 1993 plan was not a victim of unintended consequences; its flawed design simply proved unworkable. Likewise, the design of any "skin in the game" plan is vitally important. Institutional accountability measures that impede the goal of expanding college access for students from low-income families are worse than no such measures at all.

Student Safety

For the most part, the HEA requirements with respect to student safety have been limited to requiring colleges and universities to provide consumer information as a condition of Title IV program participation. In 1990, the Student Right-to-Know and Campus Security Act (P.L. 101-542) established the first set of institutional disclosure requirements related to outcomes—completion and graduation rates—as well as student safety.[2] The law required institutions to disclose their policies related to safety and security and report statistics describing the on-campus occurrence of certain criminal offenses. The HEA also has a long-standing requirement for institutions to have an on-campus drug and alcohol prevention program for students and employees. Colleges and universities demonstrate compliance with this provision by developing and annually distributing campus-wide standards of conduct that explicitly proscribe such behaviors.

The Crime Awareness and Campus Security Act of 1990 (Title II of P.L. 101-542), now known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, also required colleges and universities to establish and publicize their policies related to campus safety, but allowed them to establish policies specific to their campus circumstances. In short, Congress did not demand a one-size-fits-all approach.

Over time, the Clery Act requirements have evolved and expanded. For example, colleges with their own police departments must maintain a daily crime log and make it publicly available. The "Clery geography" now extends beyond the physical boundaries of campuses—it requires institutions to report crimes that occurred on campus, in or on non-campus buildings or property, and on public property adjacent to the campus, as designated by the institution. "Clery crimes" now include stalking, domestic violence, and dating violence, none of which is defined by the Department of Justice. Historically, the Uniform Crime Reporting (UCR) program or the National Incident Based-Reporting System (NIBRS) defined Clery Act reportable crimes. Required Clery Act policies have also become more specific. Rather than stating that required policies address certain issues and circumstances on campus, the HEA now articulates more precisely the content of those policies. For example, while a college's Clery Act policy must still include education programs that promote awareness of sexual assault on campus, those programs must now include a specific statement of the college's prohibition of sexual assault, its definition of consent in reference to sexual activity, and safe options for bystander intervention (Section 304 of the Violence Against Women Reauthorization Act of 2013 [P.L. 113-4]).

Higher education continues to evolve and change, so further expansion of Clery requirements seems inevitable. Sexual assault on campus is perhaps the most important and difficult issue facing colleges and universities today, and campuses are morally and legally required to provide a safe learning environment for their students. Colleges and universities are working to improve educational programs and institutional policies in an effort to reduce sexual assault on campus and, when these cases do occur, to respond effectively and compassionately.

As of this writing, the U.S. Department of Education has been addressing this issue through its Title IX enforcement activities rather than Title IV program compliance. Eager to engage in this public policy debate, members of Congress have introduced several bills that would further amend the Clery Act. These proposals appear at odds with the Act's original purpose. Legislation currently under consideration (The Campus Accountability and Safety Act [S. 590]) would provide institutions with less flexibility in determining how they comply with their legal requirements compared with current law. For example, each institution would be required to enter into a Memorandum of Understanding (MOU) with local police with respect to crimes of sexual violence on campus. However, local police agencies typically require institutions to report all crimes to them as a condition for such an agreement. Also, campuses would be required to

designate confidential advisors to assist victims. While colleges support providing access to a confidential advisor whose sole responsibility is to counsel and support victims, these advisors would be assigned numerous, specific administrative functions that could lead to conflicts of interest. In short, Congress seems to be contemplating a policy approach that would heighten institutional accountability through additional regulation of participation in the Title IV programs.

Conclusion

For a half century the HEA has advanced federal higher education policy. Certain issues—application simplification, mix of programs, oversight and compliance—have long been discussed in the public policy arena. While there may be few new macro-level ideas related to the core purpose and ultimate goals of the HEA, this is not to say that the next reauthorization can do nothing to accelerate progress toward achieving the primary goal of the Title IV student aid programs: widespread access to postsecondary education. Other emerging issues—enhanced institutional risk-sharing and student safety, especially with respect to sexual assault—which are far less rooted in the history of the HEA and lack long-standing ties to the past, should provide more opportunities for broader discussions of policy options. The basic challenge for policymakers in the next HEA reauthorization will be finding a way to make the clusters of issues in each topic area fit together in a way that allows the Congress and the administration to find common ground. Finding a road to a mutually satisfactory result will be no easy task in the current political environment. But HEA reauthorizations have historically been bipartisan efforts and, in due course, policymakers have found acceptable ways to address policy differences. We can hope this time will be no different.

Endnotes

[1] Although the General Education Provisions Act provides for an automatic one-year extension of the HEA authority, the Department nonetheless submitted its proposal before that extension would take effect.

[2] P.L. 101-542 also established outcomes measures for certain students receiving athletically related financial aid.

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