



Spring brings promises of change in federal higher education policy

April 2, 2019

Like the cherry blossoms now emerging in Washington, D.C., there are signs that after recent years rife with partisan congressional gridlock, 2019 may bring changes to the Higher Education Act of 1965 (HEA), the sweeping law governing federal higher education programs. Not to be outdone, the U.S. Department of Education (ED) is moving forward at a steady pace to revise its regulations to implement the HEA as currently written. While the final outcome of these processes is far from certain, spring will provide various opportunities for higher education policymakers to make their voices heard in hopes that their own policy proposals will take root.

Movement to reauthorize the HEA

Traditionally, Congress reauthorizes the HEA, the Great Society-era statute that enables the federal student grant and loan programs, with amendments approximately every seven years but the HEA was last authorized over a decade ago in 2008 at the end of the Bush administration. Since that time, federal higher education policy activity has largely been accomplished through the federal rule-making process, with the Obama administration introducing several major rule-making packages related to program integrity (see our summary [here](#) and [here](#)), [gainful employment programs](#), and [borrower defense to repayment](#). In response, the current administration under Secretary DeVos has attempted to delay or rewrite both the gainful employment and borrower defense rules. During the Obama years, numerous attempts to revise the HEA floundered on Capitol Hill.

Now that dynamic may be about to change. On March 13, 2019, the House Education & Labor Committee conducted the first of a [series of five hearings](#) related to reauthorization of the HEA. The committee recently released [a foundational report](#) detailing its policy goals, which center on furthering the original purposes of the HEA to foster access to higher education to lower income and minority students. Of note is the committee's focus on providing federal student aid to "high-quality, stackable" nondegree programs that provide specialized skills and may be used toward a college degree. The committee's chairman, Representative Bobby Scott (D-VA), has [promised](#) to work towards a bipartisan bill, making it likely the House will pass an HEA reauthorization bill this year.

On the Senate side, Senator Lamar Alexander (R-TN), the outgoing chairman of the Senate Committee on Health, Education, Labor & Pensions (HELP), has also been pushing for a bipartisan bill this year before he retires. As in the past, Senator Alexander [proposed](#) a number of substantive reforms last month, including a new income-based repayment approach and

simplification of the federal student aid application, or the Free Application for Federal Student Aid (FAFSA), but it remains to be seen whether Senator Alexander can find common ground with Senate Democrats. In [a recent speech](#), ranking member Senator Patty Murray (D-WA) sounded a less conciliatory note, suggesting that a limited bill was not necessarily worth doing and emphasizing her desire to maintain accountability measures for "predatory" for-profit colleges. Senator Alexander [responded](#) by noting that "Senator Murray and I . . . have a good history of working together to find areas of agreement, and I expect that we will be able to do the same this year." To have time to get a bill through the Senate during this congressional session amid competing legislative priorities and with the 2020 election looming, negotiators may need to reach agreement on a legislative framework this spring.

ED's negotiated rule-making agenda

Meanwhile, on a parallel track, ED continues to pursue policy reforms of its own through an ambitious negotiated rule-making process, which [we summarized previously](#). Thus far, progress in the latest "neg reg" has been slow, but there are signs that the process will produce fruit of some kind. ED has walked back some of its more controversial ideas proposed at the outset of the process, including its proposals to limit the territories of regional accreditors, to reduce key limitations on outsourcing programs to non-Title IV providers, and to eliminate in its entirety the requirement that institutions demonstrate state authorization of distance education programs as a condition to Title IV eligibility. ED hosted its third negotiating session March 25-28, 2019, and added [another session](#) April 1-3, 2019. Although we do not expect the negotiators to come to consensus on the full package of issues under discussion, we expect a rule package of reforms will emerge later this year so as to meet ED's goal of completing final rules in 2020.

Interestingly, the substance of that final rule package from ED may vary in part based on what sort of progress is made in Congress. For example, if Congress fails to pave the way to greater access to funding for nondegree, vocational programs, seen by many as essential to maintain a competitive workforce, or to clarify rules related to innovative distance learning programs, ED may push harder for its own solutions. In [recent remarks](#), Secretary DeVos emphasized her priorities and indicated her desire to work with Congress to reauthorize the HEA: "There should be multiple educational pathways to a successful career, and the federal government shouldn't pick winners and losers amongst them. At the same time, higher education should be more affordable, nimble and relevant. Institutions of higher education need to be freed-up to implement new ideas that could fill the many gaps between education and the economy."

While it is premature to say what changes may ultimately occur, the chances of broad-based changes in education law and policy seem much stronger this year than they have in recent years. Republicans and Democrats may continue to disagree about the role of the federal government in education, how much money to spend on higher education, and how best to hold colleges accountable for federal aid, but the world of higher education has certainly changed since 2008, and momentum is building to address at least some of those changes.

We are available to respond to questions and will report further as future events warrant.

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