The Higher Education Act Reauthorization: Issues and Prospects

By Thomas R. Wolanin

Thomas R. Wolanin is senior associate, at the Institute for Higher Education Policy, Washington D.C. Since October 1996, Wolanin has been a senior associate at The Institute for Higher Education Policy focusing on issues concerning postsecondary education financing, higher education governance, student access and equity and international education.

Prior to joining The Institute, he served as Deputy Assistant Secretary for Legislation and Congressional Affairs at the U.S. Department of Education under Secretary of Education Richard W. Riley. In that position, he worked on the enactment of the President's education program, including the Federal Direct Loan Program, GOALS 2000: Educate America Act, the Improving America's Schools Act and the School-to-Work Opportunities Act.

Wolanin's career has included service as Staff Director of the Subcommittee on Postsecondary Education in the U.S. House of Representatives. In that capacity, he managed the reauthorizations of the Higher Education Act in 1980, 1986 and 1992 under the leadership of Chairman William D. Ford. He also served in a variety of other legislative positions in the Congress and did staff work on the reauthorizations of the Higher Education Act in 1972 and 1976 and the Middle Income Student Assistance Act in 1978. He played a major staff role in the enactment of the Tech-Prep Education Act in 1990.

Wolanin's academic career has included teaching positions at George Washington University, the University of Wisconsin-Madison and Oberlin College. He also served as Executive Assistant to the President at New York University. He has published widely, including works on education policy, international education and American politics. He has received a number of awards, including election to Phi Beta Kappa and a Woodrow Wilson Fellowship.

Wolanin, a native of Detroit, Michigan, received his B.A. magna cum laude from Oberlin College and an M.A. and Ph.D. in Government from Harvard University.

The Higher Education Act (HEA) is the federal statute that authorizes the broadly available federal student financial assistance programs, including Pell Grants, student loans, and Work-Study. These programs provide educational opportunities to many students who could not otherwise afford the costs of college. HEA made about $69 billion available to students in the 2004–2005 academic year[1]—about two-thirds of financial aid from all sources.[2] The act also includes programs for student services, minority serving institutions, teacher education, innovation, international education, and graduate studies.

The large sums available under the HEA necessitate measures to prevent fraud and abuse, including regulating accreditation and standards for the financial responsibility and administrative capacity of institutions. Student aid—often an institution's lifeblood—also provides the federal government leverage to impose mandates. These mandates include limits on financial aid for students with drug convictions, requirements to collect and report data on graduation rates and campus crime, and mandatory participation in the Integrated Postsecondary Education Data System (IPEDS) "to the satisfaction of the Secretary [of Education]."[3] HEA therefore imposes a substantial regulatory burden on colleges, and it is also a potential threat to academic freedom.

First adopted in 1965, Congress reauthorized HEA in 1968, 1972, 1976, 1980, 1986, 1992, and 1998—for six years in this cycle—as its current authorization expires. Its programs terminate at the end of a cycle without an extension or a reauthorization. Reauthorization allows Congress to respond to current needs and address emerging problems.

Congress and the administration failed to reauthorize the HEA on schedule in 2004—the first time in the act's history. But the current programs did not end since Congress extended the programs for one year. These programs can continue on a year-by-year basis, but a six-year authorization provides stability and reaffirmation. In contrast, HEA programs are now tenuous and vulnerable; lost also were substantial investments in resources and time by the government and the higher education community. Perhaps most important, the public lost an opportunity to address critical issues. The 109th Congress (2005–06) will consider HEA reauthorization, but the process will largely start from scratch with new players, priorities, issues, opportunities, and constraints.

Why the failure? The short answer: the Bush administration and Congress failed to do their jobs. Reauthorizations, though often difficult, time consuming, and controversial, are the meat and potatoes of responsible governance. But the executive and legislative branches refused to invest the time, energy, and political capital necessary to conclude the process successfully. Some observers cite mitigating circumstances: a tight budget that turned policy making into a zero-sum game, the lack of a perceived "crisis" to force action, the existence of politically and substantively thorny issues, a partisan political climate, a short legislative schedule in a presidential election year, and competition for attention from other education bills.[4] But previous reauthorizations faced similar difficulties, and Congress and the executive branch got the job done.

This was the first HEA reauthorization in which Republicans controlled both houses of Congress and the Administration. Indifference to the act's goals and programs may explain Republican inaction; it is not signature legislation for the current Republican leadership. Some Republicans, including President Nixon and Senators Jacob Javits (NY), Robert Stafford (VT), and James Jeffords (VT), played key roles in developing the HEA, though many of its programs originated in President Johnson's War on Poverty and Great Society. The programs are too politically popular to oppose openly, but the Republican leadership saw no reason to invest the personal and political resources needed for a successful reauthorization.

Key evidence for this assertion: the decision in early 2003 by House committee and subcommittee chairmen to break the reauthorization into seven separate bills. This strategy allowed members to sponsor many bills and to issue multiple press releases. House passage of four smaller bills created an illusion of productivity, but the process was ultimately ineffective and inefficient.[5] Congress duplicated much effort in processing multiple bills, maximized opportunities for delay and obstruction, and minimized opportunities for trade-offs and bargains. Trade-offs—often essential for building a coalition for passage—are easier to negotiate in an omnibus bill.

REAUTHORIZATION ISSUES

The needs and demands of stakeholders, including students and their families, institutions of higher education, and the student loan industry, will drive most issues confronting the new Congress as it begins to reauthorize the HEA. Student financial aid programs—HEA's centerpieces—receive over 90 percent of the funds appropriated under the act. This allocation reflects a consensus that *access* is the primary purpose of the HEA, and that the key barrier to access is the lack of enough money to pay the cost of higher education. But the act also addresses social and cultural barriers, including a belief that college is not "a place for people like me," insufficient information about the admissions process and financial aid, and inadequate academic preparation. Congress will likely consider several initiatives to help students and their families overcome the financial and nonfinancial barriers.

Loan Limits. Loan programs provided about three-fourths of the federal student aid ($53 billion) in the 2004–05 academic year. Students borrowed $47 billion though these programs; parents borrowed another $7 billion through the Parent Loans to Undergraduate Students (PLUS) program.[6] Most loans come through the Federal Family Education Loan (FFEL) and the Direct Loan programs. The main difference: the source of capital-private for FFEL; the federal government for Direct Loans.

Increasing the amount that students can borrow annually and cumulatively would provide the largest increase in funds among all policy options Congress is likely to consider—and this action *assures* a boost in available funds. Here's why. Student loans are the only programs in the HEA that provide mandatory or entitlement spending—a one-step process. In contrast, increasing funds for grants and other student aid programs is a two-step process that only begins with reauthorization. An authorization in law—though necessary before Congress can appropriate money and the Treasury can send funds out—does not guarantee any funds. An authorization is like a hunting license: you need it before you hunt, and it sets an upper limit on your take, but it does not guarantee you will bag any game. Funding these programs requires a separate second step—annual action by Congress through the appropriations process.

Loan limit increases are also attractive because the leveraging effect of federal spending for loans gives students and parents many more dollars per federal dollar spent than grant programs. It costs the federal government just over one dollar to give a student one dollar in grant assistance, including administrative expenses. But student loans are repaid with interest, and the federal government pays only for administration, default costs, and subsidies to low-income borrowers and private lenders. Students received about $11 in FFEL funds per federal dollar spent in 2001–02, while Direct Loans *made money* for the federal government.[7]

A strong case can be made for increasing loan limits. Annual limits, particularly for first-year students, have not kept pace with price increases. For example, Congress set the annual limit for first-year dependent undergraduates at $2,500 in 1972; that amount remains virtually unchanged more than 30 years later. Average tuition and fees in all sectors of higher education increased by about 900 percent during the same period.[8] Meanwhile, unmet need—college expenses not covered by students, parents, and all sources of aid, including loans—has grown to unprecedented levels. Unmet need for low-income students averages $3,200 at two-year public colleges, $3,800 at four-year public colleges, and $6,200 at four-year private colleges.[9] Inability to pay the bills discourages many college-qualified high school graduates from enrolling and persisting in college.[10]

Finally, students are borrowing immense sums from sources outside the HEA's loan programs. Nongovernmental student loans increased from $1.1 billion in 1995–96 to $7.5 billion in 2002–03.[11] These private loans often require a creditworthy cosigner, high loan-insurance fees, and higher interest rates. They present a smaller choice of repayment plans, and provide no in-school interest subsidy for low-income borrowers. These loans offer no deferments, cancellations, grace period, or consolidation option. Student use of credit cards to borrow for tuition and expenses has also increased rapidly.[12]

Clearly, the loan limits in the federal programs do not restrain student borrowing; instead these limits force students who qualify for private credit, to borrow on far less favorable terms. Low-income students who cannot qualify for private credit do not have access to enough funds to pay for college.

What are the obstacles to increasing loan limits? First, according to congressional budget rules, the increase in mandatory spending needed to pay for raising loan limits must be offset by reducing other costs of the loan programs authorized by HEA. Analysts have identified many cost-saving provisions, but each offset would adversely affect some current participants. One example: reducing federal subsidies for former students who refinance their loans through consolidation after they begin repayment to take advantage of lower interest rates. Resistance from these former students is inevitable.

Second, the higher education community is divided on increasing loan limits. A recent poll shows that 91 percent of students support higher federal loan limits, but the main organization representing students in Washington, the United States Student Association (USSA), opposes the proposal.[13] So do the associations representing community colleges and state colleges and universities. The already excessive loan repayment burdens on students, argues USSA, would increase. Increasing federal grants, which need not be repaid, is the best way to meet the growing financial needs of students, the group adds.

Most other associations support loan limit increase, but disunity reduced the prospects for their enactment. Formation of The Coalition for Better Student Loans, a new group advocating loan limit increases and other loan program changes, may shift the political ground in the new Congress. The coalition includes several key higher education associations, and the major organizations representing the student loan industry-banks, secondary markets, servicers, and guarantors.[14]

Naturally companies in the loan industry want to make more loans, but they find it politically unseemly to advocate increasing student debt burdens. Partnership with key higher education associations gives the businesses political cover and legitimacy needed to follow their natural inclinations, while supplying the political muscle for the coalition. This first time partnership may prove decisive in raising loan limits.

Early in 2004, President Bush's recommended budget called for an increase in the loan limit from $2,625 to $3,000 for first year dependent students. The bill introduced in the House by the Republican leadership dealing with student aid programs (H.R. 4283) proposed increases in the loan limit for first- and second-year dependent students: from $2,625 to $3,500 and from $3,500 to $4,500, respectively.[15] This proposed legislation would increase the *annual*—but not the *aggregate*—loan limit. This proposal was shell game—students could borrow more in the first and second years, but not in total. But the proposal placed loan limit increases on the table and they remain a key option in the reauthorization debate.

Loan Fees. Reducing or eliminating the origination and guarantee fees that lenders can charge is another way to increase the funds available to students in the loan programs. Congress adopted the current three percent origination fee as a "temporary" expedient to meet the budgetary stringencies of the early 1980s; that fee comes on top of a one percent guarantee fee. Lenders normally deduct these fees from the proceeds of a student's loan, thereby reducing the funds available to pay for college costs.

Proposals to raise loan limits typically envision increases of a thousand dollars or more. Repealing the loan fees would increase the funds available to a first year dependent student by about $100 at current borrowing limits. This increase augments student access to funds, but does not pack nearly the same financial punch as loan limit increases.[16] Proposals to lower or eliminate these fees face the same obstacle as increasing loan limits—the need to find offsetting savings elsewhere in the student loan programs.

H.R. 4283 proposed to phase down the origination fee from three percent to one percent over several years, and many higher education associations consider the elimination of these fees a priority. The repeal of loan fees will therefore remain a key reauthorization issue.

Pell Grant Increases. The Pell Grant program provided about $13 billion to 5.3 million students in the academic year 2004–05.[17] The maximum grant, based on a student's financial need, is $4,050. More than 95 percent of Pell Grant recipients come from families with an income of $30,000 or less.[18] These grants are more effective than loans in encouraging students to enroll in college and to persist to graduation.

The purchasing power of the Pell Grant has eroded considerably as college prices increased. Between 1975–76 and 1999–2000 the proportion of the average price of attending a four-year public college covered by the maximum Pell Grant declined from 89 percent to 39 percent.[19] In dollars, the difference represented by this proportion increased from $2,348 to $4,738 between 1975–76 and 1999–2000.[20] Freezing the maximum Pell Grant at $4,050 for 2003–04, 2004–05, and 2005–06 has further increased the burden on students to meet rapidly rising college prices.

Raising the maximum Pell Grant award is a serious option for increasing the funds available to students. But students do not automatically receive awards at the authorized level. Congress must appropriate enough money in subsequent legislation, but it has rarely done so in practice. The awards received by students are therefore often substantially less than the authorized maximum. The authorized and appropriated maximums were equal only three times since the creation of the program in 1972; the last time was in 1979–80.[21] The current authorized maximum is $5,800, but the amount appropriated determines the current $4,050 limit.

Should Congress place Pell Grant and student loan funding on the same footing; that is, make Pell Grants an entitlement? This proposal, despite long-standing broad support—at least in principle—is likely to go unheeded. Neither party in Congress has an appetite for new entitlement programs, now often characterized as "uncontrollable spending." The House Republican's bill (H.R. 4283) did not even increase the Pell Grant authorized maximum, and thereby acknowledge the desirability of expanded funding. But raising Pell Grant maximums remains a major issue in the reauthorization deliberations.

Pell Grant Front-loading. Increases in loan limits seem to be more likely than Pell Grant increases, but the HEA reauthorization could also create winners and losers by modifying the Pell Grant program. Under front-loading—an idea that has circulated since 1989—students would have access to Pell Grants only during their first two years of undergraduate study, but would then take out loans. Candidate George W. Bush mentioned front-loading during the 2000 campaign; the idea re-emerged in the 2003–04 reauthorization deliberations. Front-loading could reduce or eliminate need for low-income students to borrow by increasing the amount of grant assistance they receive in their first two years. After the first two years—when most dropouts occur—students presumably would be better prepared to assume debt and to complete their education. Front-loading also could reduce loan defaults, which are highest for dropouts.

The problem: nearly 70 percent of Pell Grant funds *already* go to students in their first two years; so front-loading would not dramatically increase the Pell Grant maximum. Assuming the appropriation remains constant, front-loading would increase the maximum award from $4,050 to about $5,800—still far below the cost of attendance at most public or private colleges. Low-income students, with no financial resources other than federal aid, would still have to borrow a significant amount. Front-loading also encourages students to enroll in two-year programs, and to discontinue afterwards because of the need for substantial borrowing.

Front-loading is not a silver bullet for access for low-income students, and there are many uncertainties about its effects. Most important, it provides no additional funds for needy students; some low-income students receive more funds, others less. Discussions will continue, but the risks and dislocations accompanying front-loading make its adoption unlikely.

Campus-based programs. Students also receive federal financial aid through campus-based programs, including grants (Supplemental Educational Opportunity Grants), loans (Perkins Loans) and work opportunities (Federal Work Study).[22] The colleges use funds received through these programs to make awards to financially needy students. These programs will provide approximately $3.4 billion to students in 2004–05. This significant amount is nonetheless dwarfed by the amounts available through FFEL and Direct Loan programs ($52 billion) and Pell Grants ($13 billion). These programs could, of course, effectively and efficiently deliver far larger amounts to students if more funds were available.

The formula for allocating funds for the campus-based programs among institutions compares the financial need of students at each school with the financial need of all students. But schools are also guaranteed the funding they received in FY 1999.[23] There has been little growth in appropriations for the campus-based programs in recent years, so this hold-harmless or "base guarantee" gives long-time participants the greater proportion of funds. Institutions that do not receive their "fair share" have long agitated for changes in this guarantee.

The House Republican's bill (H.R. 4283) proposed a gradual phase out of the base guarantee between 2006 and 2015. Ending the hold-harmless provision, one study notes, produces winners and losers in every sector of higher education and in every state.[24] Only eight states—Arizona, California, Florida, Nevada, New Jersey, New York, Ohio, and Pennsylvania-would gain in all three programs. But many individual institutions in these states would be losers in one or more programs. New England would be hard hit; losers include Massachusetts ($9.4 million), Maine ($7.2 million), and Vermont ($4.4 million). Other large losers: Wisconsin ($7.4 million) and Mississippi ($4.5 million).[25] Historically black colleges and universities would reportedly suffer large losses.[26]

By sector, public four-year institutions would lose $27.8 million; winners include proprietary schools ($12.6 million), private four-year institutions ($9.3 million), and public two-year colleges ($5.3 million).[27] Proprietary schools benefit least from the base guarantee since many are of recent origin. But we lack a good explanation for the large projected changes in the other categories.

A seemingly arbitrary, capricious pattern of changes in the campus-based allocations that produces many winners and losers makes this proposal controversial. Also, like front-loading Pell Grants, this change would not provide additional funds for financially needy students. Again we have a zero-sum game. Congress is unlikely to have the appetite for mediating the resulting Hobbesian "war of every man against every man."[28]

An unprecedented provision of H.R. 4283 would freeze appropriations for the Supplemental Educational Opportunity Grant and Federal Work Study programs for one year. Under this provision, the authorized funding levels for these programs for the first year of the new law would equal the current level of appropriations. Past Higher Education Acts specified a first year authorization significantly above the current appropriation level—a signal to the appropriators that the programs merited increased funding. The freeze proposal would send the opposite message.

Discretionary Grant Programs. The HEA contains many discretionary grant programs that require colleges to apply for funds that are awarded for a period of years based on the merits of the applications. The largest of these programs are the TRIO programs—a catchall term for Upward Bound, Talent Search, and Student Support Services—and GEAR UP—short for Gaining Early Awareness and Readiness for Undergraduate Programs. These programs help low-income and first-generation-in-college students to overcome non-financial barriers to access and persistence. The programs may begin as early as middle school and last through the higher education of participating students. Students receive information about college admissions and financial aid; tutoring to remedy poor academic preparation and study skills; academic, career, and personal counseling; and mentoring. TRIO and GEAR UP received total funding of more than $1.1 billion for the 2004–05 academic year.

Other programs provide about $400 million for minority-serving institutions—historically black colleges and universities, Hispanic-serving institutions, tribal colleges and Alaska Native and Native Hawaiian-serving institutions. Colleges may use these funds to enhance their academic quality, institutional management, student services, and fiscal stability.

The 14 discretionary grant programs grouped under HEA's Title VI trace their origin to the 1958 National Defense Education Act. These programs make nearly $100 million available to develop knowledge, resources, and trained personnel in the fields of language and international affairs. The goals: to stimulate foreign language acquisition and fluency; to enhance the international skills of the business community; and to increase the number of underrepresented minorities in international service. The war on terrorism and the demonstrable lack of national expertise in critical languages such as Arabic, Farsi, and Pashto and about countries and societies where Islam is the dominant religion have increased interest in Title VI.

The Strengthening Institutions program in Title III provides $81 million in 2004–05 to help upgrade institutions with large enrollments of low-income students. Along with the programs that assist minority-serving institutions, the Strengthening Institutions program is the only substantial form of aid in the HEA aimed at generally improving the recipient institutions.

Title II of the HEA includes programs to support teacher education, mostly at institutions of higher education. The two largest Title II programs (about $40 million each for 2004–05) provide grants to states and to partnerships that include ed schools to promote reform and improvement of teacher education. A third program ($9 million) provides funds for scholarships for students in teacher training programs to help recruit teachers for high-need local educational agencies. Title II requires three annual report cards intended to measure the quality and success of teacher training programs and to spur improvements.

On June 2, 2004 the House passed H.R. 4409, the "Teacher Training Enhancement Act," reauthorizing Title II of the HEA.[29] The bill focused on implementing the requirement of No Child Left Behind for "highly qualified" teachers in the nation's classrooms. The bill also absorbed the Preparing Tomorrow's Teachers to Use Technology (PT3) program into the title's two other grant programs and tried to improve the effectiveness of the accountability report cards.

Most discretionary grant programs in the HEA have been around for decades, and enjoy broad bipartisan support. The reauthorization process will subject these programs to some tinkering, but all most likely will be extended without major alterations.

H.R. 4283, the primary reauthorization bill of the House Republicans in 2004, also included a "single definition" of an institution of higher education that covered both non-profit and for-profit (proprietary) institutions. Current law includes separate definitions for the two types of institutions that enable for-profit institutions to have access to the student financial aid programs but not to the other discretionary grant programs such as the Title II teacher education programs. A single definition would allow for-profit institutions to compete for funds in these discretionary grant programs. The single definition, the American Council on Education (ACE) estimates, would add 110 schools to the 165 that are currently eligible to compete for funds as Hispanic-serving institutions.[30] Changing the definitions raises two policy issues: more institutions competing for limited pots of money, and whether the federal government should make grants to for-profit schools (private businesses) to develop and improve their programs.

Potential for New Programs. New programs in the HEA could address some important needs. For example, a crisis of capacity will accelerate in coming years. Colleges lack enough places to accommodate everyone who is qualified and motivated to attend. The high school graduating class of 2007 is expected to be the largest in U.S. history, and the demand for higher education is expected to increase by 2.6 million students (17 percent) between now and 2015.[31] Meanwhile, efforts to improve K-12 education and increase college-going rates, to reduce college dropouts and increase retention, and to attract more students into lifelong learning programs are underway. The capacity crunch will worsen if these policies succeed.

Existing plans for expanding and constructing facilities will fall far short of meeting this demand. For example, for 40 years the California master plan for higher education guaranteed admission to a state university to the top one-eighth of high-school graduates. But "a staff analyst at the California Postsecondary Education Commission (CPEC) has estimated that by 2013, California higher education institutions will have turned away 1.8 million eligible students—1.35 million of whom would otherwise have attended a community college."[32] Virginia, Florida and Washington are also limiting enrollments in public four-year institutions for qualified in-state students, and are over capacity in their community colleges.[33] The federal government substantially supported classroom, laboratory, library, and dormitory construction when higher education faced a comparable surge of G.I. Bill and baby-boomer enrollments. But Congress repealed the relevant programs in the 1998 HEA reauthorization, and prospects for their revival are non-existent.

Higher education now confronts an expensive, urgent challenge to provide first-rate technology for academic programs and administrative services. Federal support could help strengthen technology infrastructure, software systems, and personnel training. Congress provided such support in elementary and secondary education through the Educational Technology State Grants, funded for 2004–05 at nearly $700 million.[34] But a federal initiative for colleges does not appear to be on the horizon, outside of limited resources for the technology needs of minority-serving institutions.

The leadership of the Republican congressional majority displayed a knee-jerk opposition to any "new" programs during the 2003–04 reauthorization debates. The new leadership may be more sympathetic to meeting urgent national priorities via HEA when Congress again gears up for the HEA reauthorization.

Curbing College Tuition Increases. College prices have risen rapidly in recent years. Tuition and fees at four-year public institutions increased by 47 percent in constant dollars between 1993–94 and 2003–04, for example.[35] These increases generated intense concern that colleges are pricing Americans out of opportunities for higher education. Notes a 2002 survey, "69 percent of the parents of high school students are very (29 percent) or somewhat (40 percent) worried about being able to afford their children's college education."[36] The same survey found that 70 percent of Americans "think that higher education is being priced beyond the income of the average family, as compared to only 44 percent who feel that the cost of a house is being priced out of reach, 36 percent who feel this way about the cost of a secure retirement, and 24 percent who feel this way about the cost of a car."[37]

One measure of the affordability of higher education is the ratio of college prices to family income. For the top 20 percent of families by income, the average price of attendance at an undergraduate public four-year college is five percent of their income; this percentage has remained constant for more than 20 years.[38] This percentage rose moderately over the past two decades for the second and third income groups—to 11 percent and 16 percent, respectively.[39] Most dramatic: an increase to nearly 70 percent of income for the lowest 20 percent of families—a 50 percent increase over the past 20 years.[40]

Comparable increases in income have accompanied increases in college prices for high-income and middle-income families. In contrast, low-income families face a real affordability crisis in meeting college prices.[41] But high-income and middle-income families complain the loudest, and their complaints have generated state tuition-prepayment and college-savings plans and federal tuition-tax credits in recent years.

College affordability is a matter of perception. Protests of high- and middle-income families might represent a decrease in their *willingness*—not their *ability*—to pay. But complaints about the declining affordability of college have become political gospel, regardless of their "objective" merit. This grievance, amply reflected in public opinion polls, letters to the editor, and congressional testimony, resonated strongly in the 2003–04 HEA reauthorization debates and will continue to do so. A 2003 report by Congressmen John A. Boehner (R-Ohio) and Howard (Buck) McKeon (R-California) began, "'Higher education is deemed such an essential piece of the success puzzle, colleges feel justified in routinely kicking middle-America in the teeth'" by raising tuition.[42] This quotation captures the quality and tenor of the debate.

Students from high-income and middle-income families rarely qualify for Pell Grants, campus-based programs, or subsidized loans. The Republican leadership therefore did not consider increased funding for these programs adequate responses to the college affordability problem. Instead, Congressman McKeon, chair of the House subcommittee with jurisdiction over most of the reauthorization, introduced the Affordability in Higher Education Act (H.R. 3311) in October 2003. McKeon's bill threatened colleges with a loss of federal student-aid funds if their tuition increased by more than twice the rate of inflation for a set number of years. McKeon at first considered withholding all HEA student aid funds as a penalty.[43] The bill as introduced would withhold only campus-based funds—five percent of the money made available by the HEA in 2003-04.

In March 2004, McKeon dropped H.R. 3311.[44] His initiative failed because the core political beliefs of a Congress and an administration run by conservative Republicans did not permit imposing federal cost controls on colleges and universities. The bill would have crudely and rudely injected the federal government into the market for higher education and overridden governance by the states and private boards of trustees. Officials in the Bush Administration and many of McKeon's Republican colleagues in the House publicly opposed his bill.[45] So, of course, did the higher education community.

The proposal also flunked the pragmatism test; it probably would not have worked, at least not as intended. Threatening loss of federal financial aid—especially when the threatened loss was only five percent of HEA student aid funds—would not necessarily restrain tuition increases. There would be gross inequities in the application of the proposal, depending on how well individual institutions were able to match revenues and costs. Colleges with a history of hefty recent increases would receive the same treatment as institutions nearing the end of a long history of tuition restraint. The bill would have created perverse incentives to accelerate tuition increases before it took effect; some colleges would have raised tuition at a rate just below twice the rate of inflation to hedge against future revenue needs, whether needed or not. Enforcement and compliance posed enormous problems, such as devising uniform definitions of the appropriate prices to control and ensuring the accuracy of data reporting.

The House Republican effort to control college prices was not over. In May 2004, they imported most provisions of H.R. 3311 into H.R. 4283, the major House Republican reauthorization bill. The bill still required institutions to report on their tuition and fee increases that would be compared to a "college affordability index"—twice the rate of inflation. Colleges that exceeded this federal standard no longer face the loss of HEA student financial aid; instead, they would be publicly identified and required to provide extensive reports, explanations, plans, and schedules for controlling their tuition.

But these burdensome requirements were just the tip of a reporting iceberg in H.R. 4283. ACE identified "some 30 separate new requirements embedded in this bill."[46] It mandated, for example, reporting "institutional instructional expenditure per full-time equivalent student" without providing for a contextual explanation of how geography and state laws could affect this number, or how it would differ between community colleges and graduate programs.

ACE and the higher education community expressed deep concern about "the enormous regulatory and reporting burden imposed by the bill" Some requirements, ACE added, "are unbelievably complex while others are too vague to be meaningful and several demand information that simply is not available." "These provisions," ACE concluded, "will impose a huge cost on campuses."[47] The result: for the first time, the higher education community flatly refused to support a reauthorization bill drafted by the majority party in Congress.[48]

Encroachments on Academic Freedom and Institutional Autonomy. "A free society" depends on "free universities," wrote Supreme Court Chief Justice Earl Warren in his majority opinion in *Sweezy v. New Hampshire* (1957).[49] "The essentiality of freedom in the community of American universities is almost self-evident," he argued. "To impose any straitjacket upon the intellectual leaders in our colleges and universities would imperil the future of our nation." "Teachers and students," he added, "must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.[50]

The concurring opinion of Justice Felix Frankfurter also argued for "the exclusion of governmental intervention in the intellectual life of a university."[51] He specified "four essential freedoms of a university"—the heart of the intellectual life of a university: the freedom "'to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught and who may be admitted to study.'"[52]

Congress threatened the freedom of universities and colleges in four areas during the 2003–04 reauthorization deliberations: curriculum content, transfer of credit, accreditation, and admissions.

On June 19, 2003, Congressman Peter Hoekstra (R, MI) convened a hearing of his Subcommittee on Select Education of the House Education and Workforce Committee. The ominous title: "International Programs in Higher Education and Questions about Bias." One purpose of the hearing, noted Congressman Phil Gingrey (R, GA), was to learn whether "teachings" in international education programs supported by HEA Title VI were "associated with efforts to undermine American foreign policy.[53] Stanley Kurtz, a Research Fellow at the Hoover Institution testified, "Title VI-funded programs in Middle Eastern Studies (and other area studies) tend to purvey extreme and one-sided criticisms of American foreign policy."[54] Kurtz then criticized the "extremist bias" of a specific "Title VI-funded reading list."[55]

This subcommittee later reported H.R. 3077, the "International Studies in Higher Education Act of 2003"—one of the seven House Republican reauthorization bills. The bill reauthorized and amended HEA Title VI to include a new International Higher Education Board, that could "monitor, apprise, and evaluate" activities supported by Title VI. The board could also make recommendations to "assure" that activities in Title VI-supported programs "reflect diverse perspectives and represent the full range of views on world regions, foreign languages, and international affairs."[56] The Secretary of Education and the leadership of the two Houses of Congress would appoint the board's members. This bill passed in the House of Representatives on October 21, 2003 by voice vote.

Hearings held in 2003 by the Senate Committee on Health, Education, Labor and Pensions addressed the question, "Is Intellectual Diversity an Endangered Species on America's College Campuses?"[57]

H.R. 4382, the primary reauthorization bill of the House Republicans, also contained a "sense of Congress" provision urging colleges to "ensure" that students are "evaluated solely on the basis of their reasoned answers and knowledge of the subjects and disciplines they study and without regard to their political, ideological, or religious beliefs" and are "presented diverse approaches and dissenting sources and viewpoints within the instructional setting."[58]

Again, the higher education community strongly objected. "For the first time," ACE noted, "the federal government will establish academic standards that colleges and universities are expected to meet."[59] Requiring colleges to present "diverse approaches and dissenting sources and viewpoints" would, claimed ACE, promote "complete moral and academic relativism." The requirement would, for example, grant legitimacy to Holocaust deniers, ACE added.[60] The president of Appalachian Bible College expressed outrage at the prospect of presenting material that contradicted the mission of his institution, including "homosexuality, lesbianism, or sex outside marriage as an alternative lifestyle"[61]

The House and Senate hearings, the Title VI bill, and the sense of Congress provision are instances of inappropriate government intrusion into a key dimension of free universities: control over the curriculum—what is taught and how it is taught.

Institutions assess their success in meeting their missions via accreditation-a nongovernmental review process that relies heavily on external peer evaluation-the judgments of informed experts. But the HEA requires the accreditor of colleges whose students receive financial aid through an HEA program to be an agency recognized by the Secretary of Education as a "reliable authority as to the quality of the education or training offered."[62] Thus, accreditation is used by institutions assess the quality of what is taught and how it is taught *and* by the federal government to assure that student aid funds are spent on quality education and training programs.

Accreditation has become tied to determining institutional standards for deciding on the acceptance of the transfer of credits—essentially the definition of comparable academic quality. These standards may include the accreditation status of another institution of higher education.

The House and the Senate held hearings on accreditation and transfer of credit during the 2003-04 reauthorization deliberations.[63] The hearings focused on allegations that accreditation was too subjective and opaque, that it did not demonstrably deliver improved educational quality, and that it did not treat proprietary schools fairly in transfer of credit decisions. H.R. 4382 proposed remedies that entangled the accreditation and transfer of credit processes in new requirements, purportedly to enhance transparency and consumer protection. The bill, for example, specified that the accreditation standards for evaluating institutions would include student achievement related to "desired learning outcomes."

Telling accreditors and institutions how to measure student achievement related to "desired learning outcomes" is complex, expensive, and perhaps impossible for some courses. Most important, it is inappropriate. ACE opposed these provisions as requiring a high regulatory burden and as substantially intruding on the intellectual life of colleges and universities. The bill "imposes a large number of new [accreditation] requirements that are vague, difficult to comply with or in some cases wildly inappropriate." If approved, ACE representatives continued, "these provisions would made accreditation agencies a regulatory arm of the Department of Education and undermine their independence and proven effectiveness."[64]

The landmark June 2003 Supreme Court decisions in *Gratz v. Bollinger* and *Grutter v. Bollinger* relating to affirmative action and the use of race in admissions' decisions at the University of Michigan brought federal discussions deeply into the topic of "who may be admitted to study," to use Justice Frankfurter's term. The reauthorization discussions also addressed this topic. "Early decision [in admissions] is fundamentally unfair.... Many schools reward applicants [in the admission's process] because their parents went to the same school," Senator John Edwards (D, NC) said, for example. "So today I want to challenge America's colleges and universities," he continued, "If you have an early admission policy, end it. If you have a legacy policy, end it." "This isn't an area where government should have to act," he concluded. "If schools don't end these policies, then other action may well be necessary."[65] President Bush also urged colleges to abandon admissions preferences for legacies.[66]

In 2003–04, none of these threats to the intellectual life of higher education—who teaches, what is taught, how it is taught, and who is admitted to study—were realized. But the number of proposed incursions and their unprecedented scope are cause for continued alarm as the reauthorization deliberations begin in the new 109th Congress.

CONCLUSION

The 2004 national election produced no major changes in the Washington political landscape. George W. Bush retained the presidency and Republicans continued in control of the House and Senate by somewhat larger margins. A new Senate chairman will be responsible for the HEA when the congressional committees are organized in 2005. The counterpart chairman in the House may also change and substantial turnover in the committee members is likely, especially in the Senate. The Republican leaders in the 108th Congress (2003–04) lacked the interest and energy to move forward the reauthorization of HEA programs that are not signature Republican initiatives. It therefore seems unlikely the same or new and inexperienced Republican leaders will be any more aggressive and effective in the 109th Congress (2005–06).

Four other factors may also impede the progress of HEA reauthorization. First, the budget situation is worse. A tight budget, likely to be exacerbated by making recent tax cuts permanent, limits all options for expanding HEA programs, especially the loan programs. Changes in the student loan programs, such as raising loan limits, produce direct expenditures that go beyond authorizing possible future expenditures.

Second, the HEA issues that generate the most buzz among Washington lobbyists and policymakers concern technical adjustments to the student loan programs—"the single-holder rule," "9.5% floor loans," "school as lender" and "variable rate consolidation loans," for example. These issues are irrelevant to the central purpose of the HEA: broadening opportunity for higher education. But these adjustments may result in shifting hundreds of millions of dollars in student loan volume and profits among financial institutions. Interested parties will deploy their battalions of lobbyists, and the competition among these financial interests could gridlock progress on HEA reauthorization.

Third, conservative cultural warriors, newly encouraged by the 2004 election, are likely to attempt to use the HEA to force colleges and their faculties to incorporate "diverse" opinions and ensure "balance" in their curriculum as a whole, individual courses, and the points of view allowed on campus. Such attempts would further complicate moving the HEA reauthorization forward.

Finally, the President promised in his campaign to broaden and strengthen the reach of No Child Left Behind in secondary schools. In addition, the 108th Congress did not complete the reauthorizations of the Carl D. Perkins Vocational and Technical Education Act or the Head Start Act. These laws—along with the President's initiative in the 109th Congress—will stand in the way of rapid action on the HEA reauthorization.

The obstacles to reauthorizing the HEA in the 109th Congress are significant. Even if Congress gets it done, the law is unlikely to be expansive in extending access to higher education or in supporting colleges and universities.

NOTES

[1] U.S. Department of Education, 2004, 50.

[2] Calculated for the academic year 2002-2003 based on Table 1 in The College Board, 2003b, 6.

[3] HEA Section 487(a)(17).

[4] The lack of competence in enacting education legislation is stunning. The Administration and the 108th Congress also failed to reauthorize two other key expiring federal education laws: the Carl D. Perkins Vocational and Technical Education Act, and the Head Start Act.

[5] The House Republican leadership was so proud of this achievement that they passed two of the bills a second time and issued more press releases. See "Second Reading," 2004, 29.

[6] See "FY 2005 President's Budget Loan Volumes Policy," 2004.

[7] Wolanin, 2003, 49.

[8] The College Board, 2003a, 8, Table 5a.

[9] Advisory Committee on Student Financial Assistance, 2001, 11, Figure 10.

[10] Ibid., 27.

[11] College Board, 2003b, 6, Table 1.

[12] Wolanin, 2003, 56-57. See also The Institute for Higher Education Policy, 1998.

[13] The Coalition for Better Student Loans, 2004.

[14] Member associations include the American Council on Education (ACE), the National Association of Independent Colleges and Universities (NAICU), the National Association of State Universities and Land-Grant Colleges (NASULGC), the American Association of Universities (AAU), and the National Association of Student Financial Aid Administrators (NASFAA).

[15] H.R. 4283, College Access and Opportunity Act of 2004.

[16] Some lenders pay some or all of the origination fee on behalf of some borrowers and some guarantors do not charge a guarantee fee. But these practices only reinforce the point that repealing or reducing these fees would not provide much additional funding to students.

[17] U.S. Department of Education, 2004, 52.

[18] King, 2003, 10-12.

[19] St. John, 2003, Table 2.1, 19: "Purchasing Power of Pell Grant Maximum Awards at Four-Year Institutions, 1975 to 2000."

[20] *Ibid.* The dollar comparison is in constant dollars.

[21] The College Board, 2003b, 13.

[22] The amounts available to students include a 25 percent institutional match, and, in the case of Perkins loans, the new funds lent to students also include the repayments of previous borrowers under the program.

[23] This guarantee updates an earlier a similar guarantee than went back to 1986.

[24] American Council on Education, 2004a. The ACE analysis is not a simulation of the proposed legislation since it assumes that the base guarantee would simply be repealed rather than phased out. This approach, notes ACE, is used because "the variables and assumptions necessary to calculate the proposal's consequences over a 10-year implementation schedule simply are either unavailable or unreliable." But this analysis is a good indicator of the general effects of the proposal.

[25] *Ibid.*, "Table 1: Effects of Eliminating the Base Guarantee from the 2003-04 Campus-based Allocation Formula: State Summary."

[26] Field, 2004.

[27] American Council on Education, 2004a, "Table 2: Effects of Eliminating the Base Guarantee from the 2003-04 Campus-based Allocation Formula: Sector Summary."

[28] Hobbes, 1651, Part I, Chapter 13.

[29] This was one of the two small HEA reauthorization bills that the House passed twice in 2003-04.

[30] American Council on Education, 2004b, 9.

[31] Davies, 2004, B20.

[32] Piland, 2004, 23.

[33] Ibid.; Hebel, 2004, A19; and Briggs, 2004.

[34] Title II, Part D of the Elementary and Secondary Education Act (No Child Left Behind).

[35] The College Board, 2003a, 11, Table 6b.

[36] Immerwahr, 2002, 5.

[37] *Ibid.*

[38] The College Board, 2003a, 16, Figure 8, 16.

[39] *Ibid.*

[40] *Ibid.*

[41] Century Foundation, 2004, 2, Figure 1.

[42] Boehner and McKeon, 2003, 1.

[43] Winter, 2003.

[44] Burd, 2004, A1.

[45] *Ibid.*

[46] American Council on Education, 2004b, 1.

[47] American Council on Education, 2004c, 2.

[48] *Ibid.*

[49] 354 U.S. 234.

[50] 354 U.S. 250.

[51] 354 U.S. 262.

[52] 354 U.S. 263. Justice Frankfurter quoted senior South African scholars who attempted to establish the essential boundaries of academic freedom in the face of growing government repression that supported apartheid.

[53] Retrieved July 26, 2004 from http://edworkforce.house.gov/hearings/108th/sed/title-vi61903/osgringrey.htm."

[54] Retrieved July 26, 2004 from "http://edworkforce.house.gov/hearings/108th/sed/title-vi61903/kurtz.htm".

[55] *Ibid.*

[56] Section 633(d)(1)(B) and (D) of HEA Title VI as proposed in H.R. 3077.

[57] See http://health.senate.gov/what_new.html.

[58] Section 103 of H.R. 4283.

[59] American Council on Education, 2004b, 8.

[60] *Ibid.*

[61] Klein, 2004, A21.

[62] HEA Section 101(c).

[63] U.S. House of Representatives, 2004; U.S. Senate, 2004.

[64] American Council on Education, 2004c, 4.

[65] Edwards, 2002.

[66] Goldstein, 2004, A8.

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