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Senate to Complete ESEA work; Free community college legislation introduced; Department seeking comments on pay as you earn proposed rules

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Legislative Activity

Elementary and Secondary Education Act Reauthorization

Last week, the House and Senate brought their respective versions of the Elementary and Secondary Education Act (ESEA) to the floor in each chamber. While the House passed its bill, the Student Success Act (H.R. 5), by a 218-213 vote on Wednesday, the Senate will continue to consider amendments to its bill, the Every Child Achieves Act (S. 1177), through this week. Senate Majority Leader Mitch McConnell has indicated that the Senate will likely complete its work on reauthorizing ESEA by Wednesday.

Last week, the White House issued a Statement of Administration Policy (SAP) on the Senate ESEA bill, which indicated that the President would not veto the bill but did note that the White House does not fully support S. 1177 in its current form. The SAP noted specific sections the Administration is looking to improve, including the accountability provisions in the bill, which the White House and Senate Democrats would like to change to expand data collection and put new requirements in place for improving low-performing schools. When the House first began considering the Student Success Act in February, the White House issued a SAP indicating that it would veto the House version of the bill if it were to reach the President's desk.

Once the Senate completes its work on the Every Child Achieves Act, the House and Senate will appoint conferees to work out the differences between the two ESEA bills and conference them together. The conference negotiations are likely to stretch into the fall given that both chambers will be on recess during the month of August. Once the conference is complete and a negotiated bill is finalized, both chambers must approve the legislation before it can move to the President for his signature. Given the bipartisan nature of the Senate measure and the fact that there is little in the House bill for the White House to support, we expect a negotiated conference bill to emerge that is more similar to the Senate's ESEA bill. House Republican leadership likely will have to rely on House Democrats to pass the conferenced bill given that many conservative Republicans in the

House are unlikely to vote for a more moderate version that has the potential of being signed into law by the President.

House and Senate Introduce Free Community College Legislation

Last week, House Education and the Workforce Committee Ranking Member Bobby Scott (D-VA) and Senator Tammy Baldwin (D-WI) introduced the America's College Promise Act in both chambers, which models President Obama's proposal for state and federal funding to cover community college tuition for two years. Similar to the President's proposal, the federal government would match every dollar spent by states to waive community college tuition and fees with three dollars of federal funding. The legislation also proposes a new $10 billion federal grant program to cover the first-two years of tuition and fees of low-income students who attend minority-serving institutions that enroll large numbers of low-income students. Currently, the House version has 65 Democratic co-sponsors, while the Senate version introduced has 13 Democratic co-sponsors. No Republicans have sponsored either bill at this time, a likely indication that it will stall as a standalone bill; however, there will be an effort by Democrats to incorporate it into the Higher Education Act reauthorization bill.

At the state level, last week Oregon announced its Oregon Promise plan, making it the second state to adopt a free community college plan after Tennessee.

Executive Branch Activity

Department Seeking Comments on Pay As You Earn Proposed Rules

On Thursday, July 9, the Department of Education published a Notice of Proposed Rulemaking (NPRM) to implement President Obama's Revised Pay As You Earn (or REPAYE) plan by expanding the income-based repayment program for all Direct Loan student borrowers regardless of when the borrower took out the loans. Specifically, the rule would establish a third income-contingent repayment (ICR) under which a borrower's monthly payment amount is determined based on his or her income and family size, potentially affecting an additional six million borrowers. The effort to make ICR more widely available was first announced in a June 2014 Presidential Memorandum, followed by a December 2014 Notice of Intent to Establish a Negotiated Rulemaking Committee. In April 2015, negotiators reached consensus on the Department's proposed regulations. While negotiators and the organizations they represent must refrain from commenting negatively on the proposed language, the Department is seeking feedback from the public on its proposal. The regulations also seek to address the following:

- Expand the circumstances under which an institution may challenge or appeal the potential consequences of a draft or official cohort default rate based on the institution's participation rate index.
- Reduce the burden on active duty servicemembers who may be eligible for a lower interest rate under the Servicemembers Civil Relief Act.
- Improve communication and assistance to borrowers who rehabilitate a defaulted loan and transition to repayment.

The deadline for comment is August 10, 2015. Comments must be submitted online through the

Federal eRulemaking Portal at www.regulations.gov.

Moody’s Investors Service Higher Education Ratings Methodology

On Wednesday, July 8, Moody’s Investors Service announced that it is requesting comment on its new methodology proposal for higher education ratings. The Request for Comment (RFC) proposal consolidates two ratings methodologies: (1) the US Not-for-Profit Private and Public Higher Education Rating Methodology published in August 2011; and (2) the Public Universities Outside of the US Rating Methodology published in August 2007. According to Moody’s, the combined proposed methodology “incorporates the continued evolution of public universities outside of the US into market-driven organizations.” It includes a scorecard to provide guidance for the four most important factors Moody’s considers when assigning a credit rating to colleges and universities, including:

1. Market Profile (measured by operating revenue)

2. Operating Performance (measured by annual change in operating revenue)

3. Wealth and Liquidity (measured by operating cash flow margin and revenue diversity)

4. Leverage (measured by total cash and investments, spendable cash and investments to operating expenses, and monthly days cash on hand)

Moody’s expects that this new consolidated ratings system proposal will affect less than 5% of its “rated universe,” which includes approximately 230 US four-year public universities and university systems, 275 not-for-profit private colleges and universities, and 21 universities outside of the US. The proposed methodology, according to Moody’s, will allow investors, colleges and universities, and other interested market participants to better understand how key quantitative and qualitative characteristics are likely to affect rating outcomes of colleges and universities.

Moody’s is accepting comments on the RFC until September 9, 2015.

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