



AACC FEDERAL POLICY UPDATE: A FOCUS ON REGULATIONS

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AGENDA

- Legislative Update
- Title IX
- Gainful Employment and Financial Value Transparency
- Fair Labor Standards Act Overtime Rule
- Program Integrity and Institutional Quality Negotiated Rulemaking





LEGISLATIVE UPDATE

- FY 2024 Appropriations completed on March 22
 - Most programs saw level funding
 - Pell Grant maximum held steady at \$7,395
- FY 2025 Appropriations process underway
 - Funding caps are a shade above last year, efforts afoot to raise them
 - “Side money” still needs to be worked out
 - Barring increased caps, level funding likely for most programs
 - Pell Grant shortfall now a pressing concern (formal CBO estimate forthcoming)





LEGISLATIVE UPDATE

- Workforce Innovation and Opportunity Act reauthorization has passed House
 - A Stronger Workforce for America Act passed by a wide margin: 378 – 26
 - Authorizes Strengthening Community College Training Grants
 - Automatically includes workforce Pell programs on Eligible Training Provider List
 - 50% training mandate for local areas
 - H1B funds repurposed to Individual Training Accounts
- Bipartisan Workforce Pell Act pulled from floor vote
 - Opposition expressed largely, but not exclusively, on controversial offset
 - Committee leaders intend to bring bill back to floor, but no word on when





LEGISLATIVE UPDATE

- Senate HELP Committee working on WIOA reauthorization
 - Negotiations underway with goal of markup sometime in June
 - Advocacy push to include JOBS Act in markup
- House Ed/Workforce Committee has approved a series of Higher Education Act bills
 - College Cost Reduction Act (AACCC opposes)
 - Respecting the First Amendment on Campus Act (AACCC opposes)
 - Anti-Semitism Awareness Act (passed House on bipartisan basis)
 - DETERRENT Act (passed House)





TITLE IX

- Final Title IX Rules published in Federal Register on April 29
- Effective Date: August 1
 - Delay in regulation's issuance means very compressed time to implement
 - Lawsuits have already been filed, but campuses wise to assume regulations will take effect
- Key Word: "Broader"
 - Broader array of conduct taking place in a broader array of circumstances
 - Broader group of potential complainants
 - Broader percentage (100%) of employees that must be part of college's response





TITLE IX

- Entire regulation applies to all sex discrimination
 - Current regulation prohibits all sex discrimination but reserves grievance procedure and other requirements for sexual harassment cases
 - These requirements will now apply to all sex discrimination cases
 - Potentially including those involving institutional policies and practices
 - “Sex discrimination” not precisely defined but “includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity”
 - Sex-based harassment (as opposed to sexual harassment) is a form of sex discrimination
 - “Deliberate indifference” standard replaced by “prompt and effective”
 - Range of responses include supportive measures and informal resolution in addition to grievance procedures





TITLE IX

- Regulation still applies to discrimination within the college’s educational program or activity, with two significant changes
 - Conduct subject to the institution’s “disciplinary authority” included
 - Stark contrast to current rule, which requires colleges to dismiss cases under their Title IX procedures which do not take place within program or activity but allows them to address under normal disciplinary process
 - Under new rule, any “off-campus” conduct that an institution chooses to address through its disciplinary code is subject to the Title IX requirements if it could reasonably constitute sex discrimination
 - “Some” conduct outside of program or activity contributing to hostile environment on campus
 - Institutions no longer responsible for determining if off-campus conduct was sex-based harassment, but may still need to investigate conduct that occurred well outside its purview
 - Rule unclear as to outer limit of “percentages” off off-campus and on-campus conduct
 - Can a student’s mere presence on campus cause a “hostile environment” for another student because of incident outside of the educational program or activity?





TITLE IX

- Grievance procedure requirements more flexible
 - No more requirement for live hearing with cross examination by parties' advisors
 - No requirement for signed, formal complaint
 - Could include cases involving institutional policies
 - Broader spectrum of people can bring a complaint
 - Preponderance of the evidence evidentiary standard must be used unless "clear and convincing" standard used in other types of cases
 - Additional requirements for sex-based harassment cases involving students
- All employees play role in institutional response
 - Most employees – including administrators and faculty – must report incidences of what reasonably could be sex discrimination to Title IX coordinator
 - Other staff must either report or provide information
 - Various levels of training required for all employees annually





FINANCIAL VALUE TRANSPARENCY/GAINFUL EMPLOYMENT – TOP LINE

- Reporting covers ALL Title IV programs and is done through the new Financial Value Transparency (FVT) framework. Gainful Employment (GE) programs are a subset evaluated through FVT-generated information
- At community colleges, GE is essentially all Title IV-eligible certificate programs. (N.B.: Workforce Pell would become a GE program)
- Builds on College Scorecard earnings data but requires additional student and programmatic data





FINANCIAL VALUE TRANSPARENCY/GAINFUL EMPLOYMENT – TOP LINE

- New regulatory reporting framework will require extensive institutional compliance; some materials still not available
- Represents major Biden Administration transparency effort
- Requires student notifications and warnings in specified cases, both for GE and FVT





GAINFUL EMPLOYMENT - METRICS

- Regulation includes two debt-to-earnings metrics reflecting Obama Administration's 2014 regulation – debt-to-earnings and debt-to-discretionary income.
- Contains new “earnings premium” metric; completers' earnings compared to average earnings of high school graduates in state aged 25 to 34. *AACC opposed this metric.*
- Eligibility of vast majority of community college GE programs will not be impacted (cosmetology may be common exception)
- Student warnings will have to be given in limited cases where colleges do not meet D/E standards





FVT/GE REPORTING PROCESS

- Deadline for initial reporting: October 1, 2024
- Institutions may choose (and most are expected to) to report on two most recent cohorts (22-23 and 23-24). Otherwise, six previous years are required.
- A “student” is a Title IV aid recipient
- Cohorts must have 30 students; if not, no data are generated. Cohorts can include four years of data to constitute non-suppressed cell.
- General program data for all Title IV programs is also required
- ED will provide basic Title IV student, loan data for reporting cohorts; institutions may correct.





FVT/GE CAMPUS IMPLEMENTATION ISSUES

- Hopefully, all community colleges have developed a tentative implementation plan
- Institutional Research, Bursar, Registrar, IT, and Student Aid offices all likely involved
- Choose between regular and “transitional” reporting (most colleges are expected to opt for latter)
- [AIR 3/1 Power Point Presentation](#)





NEW LIMITS ON MAXIMUM PROGRAM LENGTH FOR GE PROGRAMS

- Regulations that take effect July 1, 2024, limit Gainful Employment programs to the length required to be employed in the field of practice in state
- This is a dramatic [change](#) that AACC opposed. AACC supports legislation to block it. For now, though, the regulation stands.
- ED recently [announced](#) that, until January 1, 2025, it will exercise "enforcement discretion" before acting against a college that is out of compliance. This does not eliminate the new requirements but is intended to provide some flexibility in adjusting to them.
- Students enrolled in currently eligible programs will not be impacted by the change; it applies only to new starts as of July 1 (and, again, enforcement will be phased in).





FLSA OVERTIME RULE

- The Department of Labor issued its final Fair Labor Standards Act overtime rule last month
 - As a reminder, FLSA requires employers to track employees' hours worked and pay an "overtime rate" for all hours in excess of 40 hours per week. FLSA includes exemptions to this requirement
 - This rule specifically addresses exemptions for executive, administrative and professional (EAP) employees, also known as "white collar" employees
- New rule raises the salary level at which white collar employees must be paid to be considered exempt
 - Mostly tracks with proposed rule
 - Excludes faculty and certain other academic support positions





FLSA OVERTIME RULE

- Rules goes into effect on July 1, increases the salary level in two tiers
 - By July 1, salary threshold increases to \$43,888
 - By January 1, 2025, salary threshold increases to \$58,656 (65% increase from current level of \$35,568)
- Includes requirement that the salary threshold be updated every three years
 - Amount keyed to 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region
- Two solutions for community colleges: increase employees' salary or reclassify employees and track hours—latter option appears more likely in most cases





FLSA OVERTIME RULE

- Legal challenges are expected, though it is unclear what the timing or nature of those challenges would be
- Colleges are encouraged to prepare for these changes but to wait until July 1 to implement





NEGOTIATED RULEMAKING

- The Department of Education (ED) convened three negotiated rulemaking sessions between January and March on Program Integrity and Institutional Quality
- Topics included:
 - Accreditation
 - Return of Title IV funds (R2T4)
 - State authorization
 - Distance education
 - Cash management
 - Federal TRIO program eligibility for undocumented students





NEGOTIATED RULEMAKING

- Community college representatives were “at the table”
 - Jo Blondin (Clark State College) and Michael Cioce (Rowan College at Burlington County) represented two-year institutions
 - JoEllen Price (San Jacinto College) was a negotiator for financial aid administrators and Dom Chase (Ivy Tech) represented business officers
- Negotiators only reached consensus on 1 of the 6 topics: ED’s proposal to expand TRIO eligibility to undocumented students





NEGOTIATED RULEMAKING

- ED put forth several proposals of concern for community colleges and that were objected to by our negotiators:
 - Requiring attendance-taking for fully online courses to more accurately capture students' withdrawal dates (Return to Title IV)
 - Requiring colleges to shift to opt-in models for inclusive access textbook programs (Cash Management)
 - Regulation of distance education programs, including limiting asynchronous options for clock-hour programs (Distance Education)
 - New provisions that would allow individual state laws to undermine reciprocity agreements for authorization of distance education programs (State Authorization)
- ED will likely publish a Notice of Proposed Rulemaking (NPRM) soon on some of the topics where consensus was not reached. AACC will submit comments.





Registration is open now!
www.aacc.nche.edu/advocates-in-action/



September 16-17, 2024
The Royal Sonesta Capitol Hill
Washington, DC





QUESTIONS?

