Briefing: Federal Issues for Theatre Administrators

Paul Florek, Accreditation and External Affairs Associate

The webinar will begin momentarily
Briefing: Federal Issues for Theatre Administrators

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Institutional Autonomy and Independence

❖ Rules of Practice and Procedure, Part II., Article I., Section 1.
❖ To encourage the diversity of American education, and allow institutions to achieve their particular objectives and goals
❖ To endeavor to protect institutions against encroachments which might jeopardize their educational effectiveness or their freedom to make academic and associated decisions
Higher Education - The Context

❖ Over 4,000 institutions of higher education
❖ Local control
❖ Institutional choice
❖ The “triad”
Higher Education - The Triad

- States
- Institutions
- Federal Government

❖ Funding
❖ Reporting Requirements
Higher Education - The Triad

- States
- Accreditors
- Federal Government

❖ Institutional/Specialized or Programmatic
❖ USDE Recognition (Free-Standing Institutions)
Higher Education - The Triad

 States

 Institutions

 Federal Government

❖ Financial Aid
❖ 10th Amendment and USDE Founding Statutes
Higher Education - The Federal Role

- Federal Funding
  - Loans, Grants, Work-Study
- Legislation - (ex. Higher Education Act)
- Regulation - (ex. DOL Overtime Rule-Fair Labor Standards Act; USDE Gainful Employment-Higher Education Act)
  - Negotiated Rulemaking Process
- Guidance - (ex. Dear Colleague, Interruptions of Study, HEERF, Rescinded)
- Staff Conversation (Department of Education/FSA - Reorganization)
- Executive Actions (ex. Executive Orders)
Federal Activity - Congress

❖ Congress
  ❖ Reauthorization of Higher Education Act (HEA)
    ❖ Series of hearings and legislative proposals
    ❖ Senate vs. House approach to HEA reauthorization
  ❖ Reauthorization of Elementary and Secondary Education Act (ESEA)
Federal Activity - ESEA

- Elementary and Secondary Education Act (ESEA)
  - Reauthorized on December 10, 2015 (Every Student Succeeds Act - ESSA)
  - Includes study of the arts as part of a “well-rounded education”
  - Effective 2017 - replaced No Child Left Behind Act
  - All state plans approved by Secretary
Federal Activity - Senate

- Committee on Health, Education, Labor & Pensions (HELP)
  - Chair: Lamar Alexander (R-TN); Ranking Member: Patty Murray (D-WA)
    - Subcommittee on Employment and Workplace Safety
- Introduced Bills (D): College Transparency Act (S. 800); Student Aid Improvement Act (S. 2557)
- Introduced Bills (R): Student Aid Improvement Act (S. 2557)
Federal Activity - House

❖ Education and Labor Committee
❖ Chair: Robert “Bobby” Scott (D-VA); Ranking Member: Virginia Foxx (R-NC)
   ❖ Subcommittee on Higher Education and Workforce Investment
   ❖ Subcommittee on Early Childhood, Elementary, and Secondary Education
❖ Introduced Bills (R): PROSPER Act (H.R. 4508) - Advanced
❖ Introduced Bills (D): AIM Higher Act (H.R. 6543); College Affordability Act (H.R. 4674) - Advanced; FUTURE Act (H.R. 5363) - Became Public Law
Federal Activity - Personnel Changes

- Office of the President and Cabinet
  - Changes in regulatory activity
  - Congressional Review Act (CRA)
  - Executive and Presidential considerations
    - Executive Orders
Federal Activity - Personnel Changes

✧ 115th Congress (ended January 3, 2019)
  ✧ Senate (51 R, 47 D, 2 I) and House (237 R, 196 D, 2 vacant)
✧ 116th Congress (current ends January 3, 2021)
  ✧ Senate (53 R, 45 D, 2 I) and House (232 D, 197 R, 1 L, 5 vacant)
✧ 117th Congress (January 3, 2021 - January 3, 2023)
Federal Activity - Higher Education Act

- **Program Integrity Regulations**
- **Regulatory Reform Taskforce**
- **Gainful Employment Regulations**
- **Borrower Defense to Repayment Regulations**
- **State Authorization Regulations**
- **Accreditation and Innovation Regulations**
- **Title IX**
- **Distance Education And Innovation**

2010 USDE Release:

- Mispresentation, State Authorization, Federal Definition of the Credit Hour, etc.
Federal Activity - Higher Education Act

❖ Program Integrity Regulations
❖ Regulatory Reform Taskforce
❖ Gainful Employment Regulations
❖ Borrower Defense to Repayment Regulations
❖ State Authorization Regulations
❖ Accreditation and Innovation Regulations
❖ Title IX
❖ Distance Education And Innovation

Resultant from EO 13777 - “Enforcing the Regulatory Reform Agenda” published February 24, 2017

Over 150 regulations identified for repeal governed by the Department of Education
Federal Activity - Higher Education Act

- Program Integrity Regulations
- Regulatory Reform Taskforce
- Gainful Employment Regulations
- Borrower Defense to Repayment Regulations
- State Authorization Regulations
- Accreditation and Innovation Regulations
- Title IX
- Distance Education And Innovation

Effective July 1, 2020: rescinded in entirety
Intention to replace with expanded program level data and the possibility of risk-sharing
Effective July 1, 2020

Misrepresentation as “a statement, act, or omission by the school to the borrower that is 1) false, misleading, or deceptive, 2) made with knowledge of its false, misleading, or deceptive nature or with a reckless disregard for the truth, and 3) directly and clearly related to the making of a Direct Loan for enrollment at the school of the provision of educational service for which the loan was made.”

Each student must apply individually, limitations period of three years, specific evidence required

Congress overturned rule using a Congressional Review Act resolution which was vetoed by the President
Federal Activity - Higher Education Act

- Program Integrity Regulations
- Regulatory Reform Taskforce
- Gainful Employment Regulations
- Borrower Defense to Repayment Regulations
- State Authorization Regulations
- Accreditation and Innovation Regulations
- Title IX
- Distance Education And Innovation

Effective July 1, 2018

“An institution offering distance education or correspondence courses must be authorized by each State in which the institution enrolls students, if such authorization is required by the State.”

Guidance by USDE indicating that SARA agreements provide compliance

Further regulatory guidance offered in the Accreditation and Innovation Regulations
Federal Activity - Higher Education Act

- Program Integrity Regulations
- Regulatory Reform Taskforce
- Gainful Employment Regulations
- Borrower Defense to Repayment Regulations
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Effective July 1, 2020

Negotiated Rulemaking Consensus

Removal of “geographic area” from USDE recognition scope

Changes to federal definitions of substantive change

State Authorization - states may voluntarily participate in reciprocity agreements but must waive own rules; publication of determinations regarding professional licensure applicability
Federal Activity - Higher Education Act

- Program Integrity Regulations
- Regulatory Reform Taskforce
- Gainful Employment Regulations
- Borrower Defense to Repayment Regulations
- State Authorization Regulations
- Accreditation and Innovation Regulations
- Title IX
- Distance Education And Innovation

Effective August 14, 2020
Over 124,000 comments received
Amends definition of sexual harassment for Title IX; role of Title IX coordinator; mandatory response and reporting obligations; grievance processes and procedures
Requires confirmation of standard of evidence in place
Ongoing litigation
Extensive and complex - will affect policies, procedures, and protocols
Federal Activity - Higher Education Act

- Program Integrity Regulations
- Regulatory Reform Taskforce
- Gainful Employment Regulations
- Borrower Defense to Repayment Regulations
- State Authorization Regulations
- Accreditation and Innovation Regulations
- Title IX
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Effective July 1, 2021 (voluntary early implementation)
Defines “regular and substantive interaction”
Amends clock hour definition
Differentiates between distance education and correspondence education
Increases flexibility for direct assessment programs
<table>
<thead>
<tr>
<th><strong>Federal Activity - Continuing Issues</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>✤ <strong>Overtime Rule - Department of Labor (FLSA)</strong></td>
</tr>
<tr>
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</tr>
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**Effective January 1, 2020**

- Raises standard salary level for overtime eligibility from $455 to $684 a week/ $23,660 to $35,568 annually
- Faculty are exempt from salary requirements but may apply to staff and administrators
- Entitles ca. 1.3 million workers to be newly eligible for overtime
Federal Activity - Continuing Issues

- Overtime Rule - Department of Labor (FLSA)
- National Labor Relations Board Activities
- Admissions and Recruitment - NACAC/DOJ
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Notice of Proposed Rulemaking - September 23, 2019 (13,000 comments)
Ruling regarding jurisdiction over faculty at religious colleges and institutions
Federal Activity - Continuing Issues

- Overtime Rule - Department of Labor (FLSA)  
  September 28, 2019 - NACAC voted to remove three provisions

- National Labor Relations Board Activities  
  April 17, 2020 - United States of America v. National Association for College Admission Counseling

- Admissions and Recruitment - NACAC/DOJ

- Deferred Action for Childhood Arrivals (DACA)

- Revamped College Scorecard/Field of Study

- Fixed Time Visas - INA
Federal Activity - Continuing Issues

- Overtime Rule - Department of Labor (FLSA)  
  September 5, 2017 - formal announcement to rescind the program effective March 5, 2018
- National Labor Relations Board Activities
- Admissions and Recruitment - NACAC/DOJ  
  July 6, 2020 - Supreme Court decision to block the administration’s actions
- Deferred Action for Childhood Arrivals (DACA)  
  July 28, 2020 - Administration memo rejecting all new initial applications and shortening renewal periods from two years to one year
- Revamped College Scorecard/Field of Study
- Fixed Time Visas - INA
Federal Activity - Continuing Issues

- Overtime Rule - Department of Labor (FLSA)  
  Originally released September 2015
- National Labor Relations Board Activities  
  Presents data down to the program level
- Admissions and Recruitment - NACAC/DOJ
- Deferred Action for Childhood Arrivals (DACA)
- Revamped College Scorecard/Field of Study
- Fixed Time Visas - INA
Federal Activity - Continuing Issues

- Overtime Rule - Department of Labor (FLSA)
- National Labor Relations Board Activities
- Admissions and Recruitment - NACAC/DOJ
- Deferred Action for Childhood Arrivals (DACA)
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- Fixed Time Visas - INA

September 25, 2020 - NPRM - “Establishing a Fixed Time Period of Administration and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives for Foreign Information Media” (Immigration and Nationality Act)

Comment period ends October 26, 2020 (ca. 25k comments)

Transition F, J, and I visas to a two-year or four-year period based on the date of admission and program end date rather than current “duration of student’s studies”

Decreases from 60 to 30 days the allowed period for individuals on F visas to depart after completion of study

Initiates routine biometrics collection
Economy - Trends

❖ Monies
❖ Federal Debt: $27.06 trillion (2009 Federal Debt - $13.5 trillion)
❖ Gross Domestic Product (GDP) 2020 Q2 est.: $19.41 trillion
❖ US Federal Budget Deficit: 2019 - $984 billion; 2020 - $3.1 trillion (highest ratio of debt to GDP since 1945)
❖ Federal Annual Tax Revenue Per Citizen (est.): $9k; Federal Debt Per Citizen (est.): $81k

❖ Population
❖ Total Population estimate: 328.2 million
❖ Unemployment (September 2020): 7.9%

❖ Markets
❖ Market Gain (DOW): 2017 +25.6%; 2018 -5.6%; 2019 +22.3%; 2020 YTD +0.2%
❖ Consumer Price Index (CPI): September 2020 +0.2%; +1.4% in past 12 months
❖ Higher Education Price Index (2020 Preliminary Forecast): 2.2%
❖ Annual Expenditure on student aid by Federal Government - ca. $150 billion
Economy - Federal Funds in Higher Education

❖ Annual Expenditure on student aid by Federal Government
  ❖ ca. $150 billion

❖ Outstanding Loans / Default Rate
  ❖ ca. $1.54 trillion (second to mortgage debt at $15.8 trillion) (Q2-2020)
  ❖ 9.2% delinquency rate - $37 billion in default (Q2-2020)

❖ Student Loan Debt Holding Individuals
  ❖ 30 million in 2010 (average balance $25k) vs 45 million in 2020 (average balance $36k)

❖ Burden of forgiveness deferred to taxpayers
  ❖ $200 billion in loans signed up for IBR / Forgiveness of loans of closed institutions
  ❖ PSLF - 1.3 million borrowers averaging $87k (Q2 2020)
  ❖ Ongoing temporary 0% interest and administrative forbearance due to pandemic
Philanthropy/Tax Policy

- Charitable Giving (Giving USA, Report 2020 for FY 2019)
  - Total Charitable Giving: $449.64 billion (increase of 4%)
  - Giving to Education: $64.11 billion (increase of 12%) (70% to Higher Ed)
  - Giving to Arts, Culture, and Humanities: $21.64 billion (increase of 12%)
- Charitable Deduction for Giving
  - 14% of all giving goes to Education (~70% to Higher Ed), 5% to Arts
  - Individuals: $309 billion; Foundations: $75 billion; Bequests: $43 billion; Corporations: $21 billion
## Taxes/Budget/Appropriations

- **Tax Cuts and Jobs Act**
  - December 22, 2017 - became law
  - Comprehensive tax bill

- **Bipartisan Budget Act of 2019**
  - Investment tax changes; expiration of tuition and fees deduction; expansion to the deduction for charitable contributions; increase to the standard deduction; caps for state and local taxes; changes to 529 plans; loan forgiveness change

- **Further Consolidated Appropriations Act 2020**

- **Coronavirus Aid, Relief, and Economic Security (CARES) Act**

- **Budget Process**
  - Published October 15, 2020 - Final rule on investment tax (effective October 14, 2020)
Taxes/Budget/Appropriations

- **Tax Cuts and Jobs Act**
  - August 2, 2019 - became law

- **Bipartisan Budget Act of 2019**
  - Increases discretionary spending limits through FY 2021 (No debt ceiling)

- **Further Consolidated Appropriations Act 2020**
  - September 30, 2020 - Continuing Resolution funding the government through December 11, 2020 - extends COVID-related nutrition benefits but not expanded unemployment benefits included in the CARES Act

- **Coronavirus Aid, Relief, and Economic Security (CARES) Act**

- **Budget Process**
Taxes/Budget/Appropriations

- **Tax Cuts and Jobs Act**
  - December 20, 2019 - became law

- **Bipartisan Budget Act of 2019**
  - Eight-bill minibus appropriations bill

- **Further Consolidated Appropriations Act 2020**
  - Includes the delay of mandatory distribution of IRA funds to age 72; other changes to contributions and beneficiary rules

- **Coronavirus Aid, Relief, and Economic Security (CARES) Act**

- **Budget Process**
## Taxes/Budget/Appropriations

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
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</tr>
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</tr>
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Includes six-month automatic forbearance with no interest from monthly payments for federal student loans
Taxes/Budget/Appropriations

- **Tax Cuts and Jobs Act**
- **Bipartisan Budget Act of 2019**
- **Further Consolidated Appropriations Act 2020**
- **Coronavirus Aid, Relief, and Economic Security (CARES) Act**
- **Budget Process**

Fiscal Year runs October 1-September 30

President submit budget request; House and Senate pass resolutions; markup appropriations bills; vote and reconcile; sign into law

Congress currently using emergency supplemental appropriations bills (Current Congressional D Proposal - $2.2 trillion; R Proposal - $500 billion; Executive Proposal - ca. $1.8 trillion)
Communications

❖ Stay Informed and Triangulate
  ❖ NAST Advisories on Federal Issues
    ❖ USDE, Senate HELP Committee, House Education and the Workforce Committee
❖ Consider Consequences
❖ Study, Communicate, and Stay Involved
❖ Counter Myths by Offering Facts
<table>
<thead>
<tr>
<th>Communications - External Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Inside Higher Ed</td>
</tr>
<tr>
<td>• Chronicle of Higher Education</td>
</tr>
<tr>
<td>• Politico - Weekly ED</td>
</tr>
<tr>
<td>• <a href="http://www.govtrack.us">www.govtrack.us</a></td>
</tr>
<tr>
<td>• Alliance for Excellent Education</td>
</tr>
<tr>
<td>• AASCU - Daily Higher Ed Report</td>
</tr>
<tr>
<td>• Daily Lumina News</td>
</tr>
<tr>
<td>• EdWeekly Updates</td>
</tr>
<tr>
<td>• UB Daily Newsletter</td>
</tr>
<tr>
<td>• American Enterprise Institute -</td>
</tr>
<tr>
<td>Reports</td>
</tr>
<tr>
<td>• Smart Brief for the Higher Education Leader</td>
</tr>
<tr>
<td>• The Alliance for Charitable Reform</td>
</tr>
<tr>
<td>• American Council on Education</td>
</tr>
<tr>
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</tr>
</tbody>
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Communicate/Stay Involved

- Study Issues in sufficient depth, review various sources of information
  - Strength in unity/cohesive voice
- Determine whether issue is federal, state, or local
  - Review law, regulation, guidance, and relationships among
- Work to correct misperceptions using depth of knowledge
- Stay in touch with the National Office
- Questions/Comments?
Thank you

❖ Paul Florek - pflorek@arts-accredit.org

11250 Roger Bacon Drive, Suite 21
Reston, VA 20190-5248

703-437-0700 ext. 119