

Reauthorizing the Higher Education Act: After 60 Years, Looking at What Still Works – Or Not

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The Higher Education Act (HEA), the foundation law for the financing of American higher education, was enacted in 1965, when telephones still had dials and computers filled large rooms. It last was reauthorized in 2008, when the digital revolution was just taking hold. Over the course of six decades, very little has changed: a modern-day Rip Van Winkle awakening from slumber would have to look very hard to find significant change – notwithstanding a profoundly different world outside his chamber window.

Now Congress is poised to give the HEA a much-needed update. Whether this will be the time Congress gets serious about bringing the HEA into the 21st century or is just another cycle of more-of-the-same remains to be seen. While it is welcome news that the House of Representatives have introduced legislation and discussions are picking up in the Senate, questions remain as to the scope of the final reauthorization product and the timing for completing action.

Since the start of the 115th Congress last January, Rep. Virginia Foxx (R-NC), chair of the House Committee on Education and the Workforce, and Senator Lamar Alexander (R-TN), chair of the Senate Health, Education, Labor and Pensions (HELP) Committee, have stated that reauthorizing the HEA was a priority, and both have talked about the need for significant changes. However, other legislative issues such as healthcare reform, passage of a budget and tax reform chewed up much of the 2017 congressional calendar. Now, with many of those issues nearing resolution (one way or another), both leaders are returning to their reauthorization efforts.

To be fair, the House Committee on Education and the Workforce has been considering issues and drafting its reauthorization bill throughout 2017. Over the first half of the year, the committee held four higher education-related hearings – one in [February](#) on what it termed “opportunities and challenges,” another in [March](#) on the topic of Federal Student Aid, a third in [April](#) on accreditation and a fourth on “empowering informed decisions” in [May](#). On Friday, December 1, Chairwoman Foxx (with Higher Education and Workforce Development Subcommittee Chairman Brett Guthrie (R-KY), introduced the Promoting Real Opportunity, Success, and Prosperity through Education Reform ([PROSPER](#)) Act. Discussed further below, the PROSPER Act marks a major step forward in reauthorization of the HEA.

On the other side of the Capitol, for much of 2017 the Senate HELP Committee was consumed by debate and negotiations on healthcare reform. The hyper-partisan nature of healthcare not only took all the committee’s attention, but also strained relations between Senator Alexander and Ranking Minority Member Patty Murray (D-WA), as well as between their respective staffs. This discord has made it difficult to make much headway on higher education issues, which historically have been bipartisan. However, as the tone and tenor associated with healthcare has receded somewhat, the committee has embarked on an exploration of issues for HEA reauthorization. The committee held a bipartisan [hearing](#) on simplifying the Free Application for Federal Student Aid and is likely to schedule one or more additional ones in the weeks remaining before the end of 2017.

It’s not clear which of the myriad issues that have arisen or changed since 2008 ultimately can be addressed in the current political climate. With the PROSPER Act, the House has made its opening move. The bill is sure to please many conservatives, but the [reaction](#) from a wide swath of traditional higher education was less than enthusiastic – but not surprising. Many felt that the bill would limit access to higher education for disadvantaged students and [undermine](#) efforts aimed at increasing affordability.

The PROSPER Act attempts to tackle thorny higher education issues such as federal student loans, accreditation and access. Here are some noteworthy provisions:

- Creation of a single definition for all institutions of higher education, regardless of the nature of ownership and control; all schools, whether public, for- or nonprofit, would for most purposes, including access to other than Title IV funds, be treated alike.
- Shifting accreditation to an outcome-focused model by eliminating the current 10 statutory standards and replacing them with the requirement that accreditors focus on student learning and an institution’s mission.
- The first attempts to improve performance of the Office of Federal Student Aid to include increased stakeholder

involvement. This would be the first real examination of the performance-based organization since its creation in 1998.

- Creation of a risk-sharing scheme that places the burden of returning unearned aid on the institution in the case of non-completion. The thought is that this will get institutions to focus on completion.
- Elimination of the existing Federal Direct Loan Program to be replaced by a “One Loan, One Grant, One Work Study” system with yearly and aggregate caps for undergraduate, graduate and parent borrowers.
- New statutory clarity around distance education and competency-based education, including a definition of “regular and substantive” interaction.

The role of the Department of Education is clearly a focus for change. Since 2008, both Alexander and Foxx have been skeptical of what they have seen as the department's expanding role in higher education, and they have questioned the department's regulatory oversight of such areas as state authorization, borrower defense to repayment and gainful employment. The PROSPER Act eliminates these regulations (notwithstanding the fact the GE and BDTR are in the midst of negotiated rulemaking). Moreover, the PROSPER Act prevents department regulation unless “explicit statutory authority.” It is clear that Foxx wants to curtail this and future leadership of the department from regulatory overreach.

The role played by Democrats will be quite different between the House and Senate. In the House, committee Democrats, led by Rep. Bobby Scott (D-VA) have blasted the substance and process for PROSPER. In fact, the day before, Representative David Price and Higher Education and Workforce Development Ranking Member Susan Davis introduced their own [legislation](#) to reauthorize Title IV of the HEA. Their opposition is largely symbolic. With Republicans in the majority, the chair could, and most likely will, move her bill through the committee and the House without any Democratic votes. However, this approach is not without its downsides. If the margin by which a partisan HEA reauthorization passes the House is thin, it could send a message to the Senate that they should take a different path.

It is clear that the PROSPER Act in its current form faces long odds in the Senate. There are provisions that could find their way into a bill that passes the HELP committee, but the process for crafting that bill will be very different. In the Senate, the HELP Committee is likely to take the approach used when drafting the significant healthcare legislation, known as the 21st Century Cures Act. That bill was a product of several discrete pieces of legislation that were introduced with Republican and Democratic co-sponsors, which were marked up in three separate sessions and then combined into a single bill for full Senate consideration. While this markup process took months to complete, it resulted in a bill that garnered broad bipartisan support. If the HELP Committee follows this approach for HEA, look for bills addressing reducing college cost, broadening ability to access all forms of postsecondary education, and increasing outcomes and data transparency. Many of these ideas are not new, and there have been bills introduced over the years (see, the [FAST Act](#)). Chairman Alexander in particular has long been advocating for [regulatory relief](#), changes in [accreditation](#), treatment of alternative higher education providers and generally in support of measures that make American higher education better and more affordable. Look for the Senate HELP Committee's work to pick up in early 2018.

After nearly a decade of waiting and a patchwork of legislative fixes, Congress finally appears ready to tackle the task of updating the HEA. Whether what emerges seriously reflects supporting an American higher education system for the 21st century or just patches leaks in the plumbing remains to be seen.

We will be monitoring developments closely and regularly reporting on impacts across the entirety of postsecondary education.

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