

# Reauthorizing the Higher Education Act: A Chat with Terry Hartle

On August 14, 2008, President George W. Bush signed the Higher Education Opportunity Act (HEOA) into law. Reauthorizing the Higher Education Act (HEA) of 1965, this long and complicated legislation covers a variety of programs and regulations related to student aid, accreditation, and other issues. Whereas the 1965 HEA was a mere 55 pages long, the recently passed reauthorization numbers about 1,200 pages. Terry Hartle, Senior Vice President of Government and Public Affairs at the American Council on Education (ACE), recently sat down with EDUCAUSE to discuss the HEOA process.

## Lessons from the Reauthorization

The 2008 HEOA authorizes seventy new programs, most of which will likely never receive funding. It also creates a considerable amount of new reporting and federal regulatory requirements, including those for peer-to-peer file sharing, textbooks, and tuition and fees. Hartle noted that implementing and complying with the sheer volume of the new requirements will challenge colleges and universities for the next few years. Understanding how to implement the rules, however, will start institutions in the right direction.

Hartle stated that the U.S. Department of Education is charged with implementing the mandates, requirements, and programs as outlined in the HEOA—certainly no small task. In December 2008, the department issued a 219-page document that provided institutions with preliminary guidance on how to follow the new law.<sup>1</sup> However, a much more official process is now under way. In this process, the HEOA's provisions can be distributed among three categories: (1) data analysis;

(2) standard regulatory process; and (3) negotiated rulemaking.

The numerous reporting and data requirements would fall under the “data analysis” category. The Education Department’s National Center for Education Statistics (NCES) will convene Technical Review Panels to determine how best to collect the data that Congress is seeking from colleges and universities. These panels will also attempt to ensure that the data is calculated in a meaningful way and is presented well. NCES began convening the first of its panels in the fall of 2008.

In the second category, the “standard regulatory process,” the Department of Education must examine the new requirements found in a law and publish a series of draft regulations to help with compliance. This process is referred to as a Notice of Proposed Rulemaking (NPRM), which is printed in the *Federal Register*. Once the regulations are printed, the public is allowed to submit comments for a period of time that may last from 30 to 90 days. After analyzing the public’s feedback, the Education Department then submits its regulations as final. Most of the HEOA’s titles will be handled through this process. Hartle stressed that timeliness is an important factor here. If everything goes according to plan, the department will publish final regulations by November 1, 2009, and the rules will

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be officially implemented on July 1, 2010. However, if the department fails to publish final rules by the November deadline, the regulations will not take effect until July 1, 2011. With the threat of losing a year, there is a fair amount of pressure on the Education Department to meet this deadline.

The last category—“negotiated rulemaking”—provides the greatest opportunity for public involvement in regulation writing. Although this category also involves publishing an NPRM, Hartle explained that negotiated

rulemaking goes beyond the standard practice in which the Education Department writes regulations and seeks public comment in a limited window of time. This particular process is limited to the HEOA’s Title IV, the longest title. Title IV contains the student aid provisions and also the many reporting and regulatory requirements. In addition, an issue of particular importance to the EDUCAUSE community—restrictions on peer-to-peer file sharing—will cycle through this process.

## What Is Negotiated Rulemaking?

“Under negotiated rulemaking, the Department works to develop an NPRM in collaboration with representatives of the parties who will be affected significantly by the regulations.”<sup>2</sup> In September and October 2008, the Department of Education held six public meetings around the

country in order to gather comments on issues likely to be handled by negotiated rulemaking teams. In February 2009, the department organized five teams: (1) loans: lender/general loan issues, (2) loans: school-based loan issues, (3) accreditation, (4) discretionary grants, and (5) general and non-loan programmatic issues. As of this writing, these teams had met in March and

of Education has an easier time learning how best to implement the law, as well as how the law will affect colleges and universities. Regarding peer-to-peer file sharing, the department has selected a university representative, who will be able to provide facts on this issue as well as share the concerns of the institutions he represents. This affords the higher

uled for September 30, 2014. However, the most recent reauthorization was five years late and passed only after “an unprecedented 14 extensions of the statutory deadline.”<sup>3</sup> When asked what might be expected for the next one, Hartle answered that issues change and that it is “impossible” to predict which matters will dominate a future reauthorization. But he added that with technology forming an integral part of the higher education space today, colleges and universities will need the help of an ally who understands



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April and were planning one last meeting in May 2009 to work out the final details.

Hartle noted that the challenges here are great. The teams, which can typically have up to twenty-five members, will have a large number of issues to address. Furthermore, the November 1 deadline applies. After the teams publish their NPRM in the *Federal Register*, they still have to collect public comments, analyze them, and publish final rules by that date. Finally, the change in administrations is a complicating factor. Because the Bush administration was leaving in early January 2009, delaying the team formation was the logical course of action. Unfortunately, doing so also resulted in lost time for the Education Department.

By having the affected community take such an active role, the Department

education community an opportunity to make a valuable impact on rulemaking.

### The Present and the Future

Technically, higher education institutions were required to follow the HEOA as soon as it was activated in August 2008. However, as Hartle explained, it is understandable that confusion may arise without the help of published regulations. As noted, in December 2008 the department published a document to assist people before more comprehensive regulations are posted. In the meantime, those institutions that make a “good faith effort” to comply will not be penalized.

Reauthorizations generally take place every six years. The next round is sched-

uled for September 30, 2014. However, the most recent reauthorization was five years late and passed only after “an unprecedented 14 extensions of the statutory deadline.”<sup>3</sup> When asked what might be expected for the next one, Hartle answered that issues change and that it is “impossible” to predict which matters will dominate a future reauthorization. But he added that with technology forming an integral part of the higher education space today, colleges and universities will need the help of an ally who understands

### Notes

1. “Dear Colleague” letter, GEN-08-12, FP-08-10—The Higher Education Opportunity Act, <<http://ifap.ed.gov/dpeletters/attachments/GEN0812FP0810AttachHEOADCL.pdf>>.
2. “The Negotiated Rulemaking Process for Title IV Regulations—FAQs,” U.S. Department of Education website, <<http://www.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html>>.
3. “ACE Analysis of Higher Education Act Reauthorization,” <[http://www.niu.edu/u\\_council/attachments/2008-2009/ACEAnalysis.html](http://www.niu.edu/u_council/attachments/2008-2009/ACEAnalysis.html)>.

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