

Western Interstate Commission for Higher Education
(WICHE)

Reauthorization of the Higher Education Act
Statement of Principles and Positions

Adopted: February 28, 2018

Established in 1953, the Western Interstate Commission for Higher Education (WICHE) is a federal compact that was created to promote and facilitate resource sharing, collaboration, and cooperative planning. Today, WICHE has a multifaceted portfolio of research, policy, resource-sharing, and student access programs and priorities. With a mission to expand educational access and excellence for all citizens of the West, WICHE's 16 members include: Alaska, Arizona, California, Colorado, Hawai'i, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming, and entities (including Guam and the Commonwealth of the Northern Mariana Islands) under the auspices of the U.S. Pacific Territories and Freely Associated States. The largest of the country's four geographical regions in terms of land mass, the West serves over 25 percent of the nation's postsecondary students. The region's population is increasing while also growing more diverse. As such, with its independent and innovative tradition and spirit, the West will be central to the future of higher education and America's talent pipeline.

Originally passed in 1965, the Higher Education Act intended to "strengthen the educational resources of our colleges and universities and to provide financial assistance for students in postsecondary and higher education".¹ The most recent reauthorization of the Higher Education Act (then renamed the Higher Education Opportunity Act) occurred in 2008, and so revisiting the law is well overdue. As the U.S. Congress prepares to reauthorize this significant legislation, WICHE encourages Congress to reaffirm the original intent of the law—providing access to higher education—and submits a set of principles and positions for consideration in this effort.

The five positions outlined below are guided by the following principles:

- **Principle 1. States and territories, including the postsecondary systems and institutions within them, are significant partners in ensuring access to high-quality higher education for all students, and in ensuring accountability of our nation's postsecondary enterprise; as such, they have a unique and critical role to play in the higher education policymaking process.**
- **Principle 2. As solutions to our nation's higher education challenges and problems are considered for adoption and implementation, the focus should be on how to support positive outcomes for all students, including protecting students and taxpayers from fraud.**
- **Principle 3. Higher education policy decisions should be informed by data, rigorous research, and evidence.**

¹ Pub. L. No. 89-329.

With these principles in mind, WICHE has adopted the following five positions related to issue areas in which WICHE has deep experience and expertise:

- **Position 1. Actionable Data and Information are Key to Better Outcomes for Students and any Data System(s) Must be Developed Carefully**
- **Position 2. The Time has Come to Create a Federal-State Partnership for Enhancing Affordability**
- **Position 3. The Federal Financial Aid System Should Support Positive Student Outcomes, Be Navigable, and Reduce Fraud and Abuse**
- **Position 4. Innovations are the Future in Higher Education, but Efforts Should be Made to Protect Students and Reduce Fraud**
- **Position 5. Student Protection Should be the Top Priority When Adopting Regulations Regarding the State Authorization of Out-of-State Students**

Position 1. Actionable Data and Information are Key to Better Outcomes for Students and Any System(s) Must be Developed Carefully

The federal government facilitates the development of data and information about the effectiveness of postsecondary education through three main approaches. First, institutions are required to submit aggregated data to the Integrated Postsecondary Education Data System (IPEDS) as a condition of participation in federal financial aid programs. Second, the Department of Education also collects student-level data on students who participate in federal financial aid programs. Third, the federal government has provided substantial funds to states to create longitudinal data systems linking together their own individual-level education and employment data systems. As an overlay to this context, the federal government is legislatively prohibited from creating a comprehensive student-level data system.

These data resources have important gaps that limit their utility. IPEDS has generally only considered first-time, full-time students in its required reporting (although this is changing with the recent Outcome Measures survey), which leaves out an increasing number of students. Additionally, IPEDS data, which are aggregated at the institution-level, can be difficult to use as a tool for state policy analysis and evaluation. The federal student-level records for students receiving financial aid have been used to create the College Scorecard, but there are meaningful differences between the subset of the population included in these data and the actual population. These data are also difficult to use for state policy analysis and evaluation. State Longitudinal Data Systems, when functioning well, can provide a wealth of information about most students in a state but may have gaps when students or workers cross state lines or when student outcomes are not captured in Unemployment Insurance because of self-employment or military service.

There are numerous ways that Congress could seek to improve the way information (not just data) is developed and used to promote successful outcomes for students and to protect taxpayers' investments in postsecondary education. One proposal that purports to accomplish this is the development of a federal student-level data system, which is currently prohibited by law. **While WICHE remains neutral on whether a comprehensive federal student-level data system should be established, proposals that do not consider the needs of all data stakeholders, including students and their families, institutions, and states, could have grave, unintended consequences.** A federally-led data system is only one of

three potential solutions to the data gaps identified above. In considering solutions, WICHE supports the following principles:

1. **Student privacy and data security must be central considerations.** Data security must be a central consideration in the design, implementation, and use of any data resource and must be able to quickly adapt in the face of new threats or technological advancement. Current concerns about technology infrastructure at the U.S. Department of Education, as an example, would need to be remedied before its data collection authority is expanded. Further, limits on the use of data must be carefully proscribed. This would include strict limits on law enforcement uses, well specified uses, and strong limits on access to identifiable data.
2. **There are multiple potential solutions that would improve the postsecondary data ecosystem, but any such solution must provide actionable information to all data stakeholders, including students and their families, state and federal policymakers, accreditors, and institutional leaders.** There are three potential solutions to existing gaps in the data ecosystem: a privately held system, modeled on the existing National Student Clearinghouse; a state-led system that links together existing state data systems; or a federal system that collects individual-level data from states or institutions. Congress would have to include mechanisms to promote participation in any of these systems, which could range from state incentives to participate in data sharing, to mandates that institutions provide data (similar to the existing mandate requiring participation in IPEDS). Any of these options could use state or federal employment data. Each solution would have to provide data back to institutions at the program level, along with other relevant disaggregations. The private and federal solutions would also have to provide data back to states with custom disaggregations to account for state policy analysis as a crucial use case, as is discussed in greater detail below. WICHE remains neutral on which is the best option and the potential mechanisms for incentivizing participation but has substantial expertise in designing and implementing data infrastructure and can provide additional information and examples of a state-led data exchange.
3. **State policy analysis and state-level use cases must be central considerations of the development of any data resources.** Congress should also recognize the possibility that a poorly designed federal student-level data system could still “crowd out” state data systems while providing limited usability, which would potentially leave the data ecosystem worse off than it currently is. Above all, the data ecosystem must be able to provide data to all stakeholders safely and securely in ways that they can effectively utilize it to improve student outcomes and protect taxpayer investments. Any Congressional action on data collection and use must take into account and facilitate state efforts to use student-level data to support state policy and improvement efforts. Current proposals that allow the federal government to create a comprehensive student-level data system fall well short of this mark by not providing usable information to states.

Position 2. The Time has Come to Create a Federal/State Partnership for Enhancing Affordability

As the U.S. Congress deliberates reauthorizing the Higher Education Act, it should consider entering into an intentional partnership with the states, which serve three-quarters of all students through public higher education and often assist private institutions in promoting affordability. The states and the federal government, together, provide the bulk of public funding for higher education and it simply makes sense for these significant public investments to work in sync through intentional policy efforts.

The U.S. Congress has an opportunity to reintroduce “federalism” into federal higher education policy, a concept which is conspicuously missing today. At a time of heightened public concern about rising costs of postsecondary education, the federal government has surprisingly few tools to directly influence how those prices vary for individuals from diverse backgrounds and in different states. For the three-quarters of all students who attend public institutions, state policies affect how much they pay and how likely they are to achieve their educational aspirations. These policies directly and indirectly impact the “sticker price” of postsecondary education, through state-level appropriations and tuition-setting policies; net prices, through state-funded financial aid programs and other policies that steer institutional investment choices; and student success, through the incentives that state policies create to which institutions respond. Yet federal policies aimed at improving affordability – mainly financial aid programs and tax policies – are uniform across the nation and are intended to influence student behaviors. Other federal investments – for example, the U.S. Department of Labor’s Trade Adjustment Assistance Community College and Career Training (TAACCCT) grant program and the U.S. Department of Education’s First in the World grant, both competitive grants that have not been recently opened for competition – were for institutions. No current, significant federal program seeks to shape state policy choices (previous examples of such efforts include the College Access Challenge Grant and the American Recovery and Reinvestment Act of 2009 (ARRA)). **Instead, the federal government should seek to intentionally partner with states through a matching or incentive program that uses a metric for preserving or improving affordability for the students who face the highest financial barriers to accessing and completing a postsecondary education.** Such a program would recognize the critical role states play in setting policies that determine how high those barriers are.

Position 3. The Federal Financial Aid System Should Support Positive Student Outcomes, Be Navigable, and Reduce Fraud and Abuse

In FY 2017, the federal government processed more than 19.1 million Free Applications for Federal Student Aid (FAFSA) forms and provided approximately \$122.5 billion in Title IV aid to over 12.9 million postsecondary students and their families, through a combination of grants, loans, and work-study.² The largest of the grant programs is the federal Pell Grant program, which awards grants to students with demonstrated financial need and does not require repayment at a cost to the federal government of nearly \$27 billion in FY 2017. **This program is critical to the success of our nation’s students and support for the program should be maintained or increased.**

² U.S. Department of Education, Federal Student Aid, FY 2017 Annual Report, Washington, DC, 20002, <https://www2.ed.gov/about/reports/annual/2017report/fsa-report.pdf>.

In addition, WICHE recognizes the critical role that colleges and universities play in advancing the academic and financial success of students and likewise supports sensible accountability for institutions. Under consideration in the current reauthorization of HEA are proposals that create institutional risk-sharing, or requirements that institutions bear some responsibility when student default rates go above a certain level. Examples include requiring institutions to repay student loan defaults under certain circumstances, replacing borrower cohort default rates at the institutional level with programmatic repayment rates, and requiring institutions to repay unearned aid when a student withdraws. **When considering proposals that would hold bad actors more accountable, we urge Congress to identify fair policy solutions and ensure that the solutions identified address the problems they are designed to solve without creating undue burden for institutions or holding them responsible for situations they cannot control.**

Further, **WICHE supports actions that simplify applying for or receiving financial aid and making repaying loans more straightforward for students. In particular, in determining a student's financial aid eligibility through the FAFSA process, WICHE supports codifying the determination of a student's eligibility for financial aid based on prior-year assessments (a policy change made by the U.S. Department of Education in 2016).**

WICHE also supports efforts to simplify the FAFSA in ways that intentionally complement and take into account the impact of such proposals on state financial aid programs and disbursements. With respect to having federal financial aid work in sync with state level data, it simply makes sense. Today, a number of states actually integrate their state programs with the federal programs, however, this is not universal, and it makes much more sense to have the federal government focus on such alignment rather than expecting 50 different state governments to do so.

Position 4. Innovations are the Future in Higher Education, but Efforts Should be Made to Protect Students and Reduce Fraud

With each passing decade, technologies and teaching innovations have resulted in changes to the traditional educational experience, including for example, introducing new modes of instruction, upending the conventional academic calendar, and reworking faculty roles. What has not changed is our mutual responsibility to ensure that federal financial aid is used for instruction that moves students toward their educational goals while protecting against the fraudulent use of student grants and loans.

Over the years, the U.S. Congress and the federal government have implemented a series of measures related to educational innovations that were aimed at protecting students. Specifically, in response to instances of fraudulent use of correspondence study, federal aid was greatly restricted for correspondence students in 1992. Then, in the 1990s and 2000s, the growth of distance education resulted in several conditions that institutions were required to meet to be eligible to disburse aid to students enrolled in such courses and programs. More recently, with the recent expanded adoption of competency-based education (CBE), some of the safeguards written for correspondence and distance education stand in the way of those students seeking to receive federal financial aid. The U.S. Department of Education Office of Inspector General's Audit Report of Western Governors University (WGU) is a prime example of this problem. That report recommended that WGU return more than \$700

million in federal financial aid because of problems with how they meet the current definitions of “interaction” and “faculty.” The report, however, is focused on process over outcomes. The reviewers, themselves, said that they “did not assess whether the school’s model was improving educational quality or expanding access to higher education.”

Even today, both chambers of Congress continue to struggle with defining CBE and other distance education innovations that have been around for decades. The House and Senate could better spend its time by preparing for future (currently unknown) innovations, rather than pursuing granular definitions that are instantly outdated.

A more flexible, yet rigorous, process for declaring institutional eligibility to offer aid via a new mode of instruction is needed, and the U.S. Department of Education needs increased ability to identify and adapt to instructional innovations.

In making this recommendation, **WICHE acknowledges these basic tenets:**

- **Policy formation lags innovation, and it always will.**
- **Change is inevitable, and new innovations that are not now envisioned are on the horizon.**
- **Students must be protected, and federal financial aid should not be used for non-productive or fraudulent purposes.**

As such, **WICHE recommends long- and short-term solutions. For the long-term:**

- **Create a commission to develop a new process and set of regulations to handle innovations. Rather than waiting for years after an innovation has already become main stream, adopt new processes that allow aid to be used for emerging innovations with clear safeguards.**
- **As a model for regulating innovative modes of instruction, consider a modified version of the medical model for approving drugs and treatments; one in which an innovation can emerge from small scale experiments, to successive medium-scale trials, to final approval for large-scale implementation.**
- **WICHE recognizes that this is a major change to current procedures that needs thoughtful development over time.**

For the short-term, until the new process to handle innovations is implemented:

- **Maintain the current definition of distance education with the exception noted below.**
- **Add a definition of CBE to allow financial aid to be provided to students studying in that mode.**
- **Replace the “regular and substantive interaction” definition as it is focused on process. Instead, implement a set of safeguards focused on outcomes that will protect students and curtail financial aid fraud.**

Position 5. Student Protection Should be the Top Priority When Adopting Regulations Regarding the State Authorization of Out-of-State Students

In the United States, state governments have always been responsible for the approval and oversight of postsecondary institutions offering degrees within their boundaries. In 2010, the U.S. Department of Education added a new requirement regarding federal financial aid eligibility for students enrolled through distance education. In addition to demonstrating that an institution had the authority to offer degrees in its home state, the institution was also expected to provide proof that it had that same authority in every state in which it enrolls students at a distance.

Since being issued, the regulation had been vacated by the federal courts and has undergone a failed negotiated rulemaking process. In December 2016, the U.S. Department of Education issued a new state authorization regulation for distance education that is set to go into effect on July 1, 2018. Although the U.S. Department of Education has made no such statement, it is widely believed that the regulation will be delayed or removed. The House version of a bill to reauthorize the Higher Education Act proposes to completely negate the regulation. The Senate is currently constructing its reauthorization bill and it is unclear what they will propose.

Regarding the state's role in higher education policy, WICHE states staunchly guard their responsibility to authorize and oversee institutions serving individuals within their boundaries. As for the federal government's role, it is reasonable for the U.S. Department of Education to ensure that institutions disbursing federal financial aid are following the laws of the states in which the student is located. Such assurance underscores the need for institutions to comply with state expectations when serving its citizens, as the states have the primary responsibility for protecting students. This assertion should extend beyond distance education to any institutional enrollments in a state. WICHE was at the forefront in developing interstate reciprocity to address these issues and strongly supports the State Authorization Reciprocity Agreement (SARA). **Therefore, to better protect students, WICHE supports a requirement that postsecondary institutions comply with authorization regulations for each state in which it serves students for eligibility to disburse federal financial aid. In addition, the U.S. Department of Education should recognize interstate reciprocity agreements as an acceptable method for an institution to obtain that authorization.**