

## FEDERAL AFFAIRS

### General Observations

To say the last four years – the 115th and 116th Sessions of Congress – have been chaotic is, at best, an understatement. Norms like the adoption of a Federal budget, agreeing to ensure the debts of the nation are paid, and the typical sequence of legislation simply has not taken place. Americans in the last four years have borne witness to a month-long shut-down of the Federal government, the longest in the 243-year history of the United States; the third Impeachment of a President; the most rapid and radical hiring and firing and turn-over of key staff in the White House; the most executive orders issued by a President and the most deaths of a still-ongoing pandemic in our nation's history. This pandemic has, for all intents and purposes, shut down the operation of Congress and much of the Federal government.

Only legislation attached to the key 12 funding bills of the Federal government – Appropriations spending – has even been considered. Still, Congress is currently operating under a temporary spending decree until December 11, 2020, when this all comes to the fore again. The House passed 10 of the 12 annual spending bills; the Senate has passed four. None have been signed into law. Since March 2020, Congress has appropriated over \$7 trillion for COVID-19 related issues. This spending is equivalent to two full typical Federal budget cycles (with another tranche of funding that will hopefully come through). This will have significant repercussions for future discretionary and non-discretionary funding that is not related to defense – meaning there will, in all likelihood, be less funding for higher education and research in future years.

### The 2020 Elections

The upcoming elections will be the defining moment for colleges and universities. The key reason? The importance, and necessity, of reauthorizing the Higher Education Act (HEA). HEA is easily the single most important piece of legislation overseeing the relationship among the federal government, colleges and universities, and students. It authorizes various federal aid programs within the Department of Education that support students pursuing a postsecondary education, including grant programs that support efforts to expand and increase access for low-income and first-generation students, such as Pell Grants. The HEA also includes rules and regulations that higher education institutions must comply with to be eligible for Title IV federal student aid programs, including the Clery Act, which requires annual campus crime reports; rules governing the accreditation process; and financial responsibility requirements.

The HEA, first signed into law in 1965, is supposed to be renewed every five years. However, the last reauthorization was in 2008, and it has been running on a series of temporary extensions ever since.

President-elect Biden's \$750 billion legislative plan for higher education would send money to states to make community college free for all students and eliminate tuition at four-year public colleges for families earning \$125,000 or less. The proposal also calls for setting aside \$70 billion to help cover tuition for some students who enroll at historically black colleges and universities and other minority-serving institutions. It would also double the maximum value of the Pell grant, which is now \$6,345.

More immediately, the Biden administration is expected to undo the current Administration's regulatory rollbacks at the Education Department that benefited for-profit colleges. Democrats were livid at the Administration's decision to hire so many top Education Department officials who had ties to the for-profit education industry, including key policymakers who reversed policies implemented by President Barack Obama designed to crack down on those schools.

President-elect Biden has said he will require for-profit colleges to "prove their value" to the Education Department before they can receive federal aid. Many in the industry expect that a Biden administration's hostility toward for-profit colleges will pose a threat, even as for-profit colleges see booming enrollment during the coronavirus pandemic compared to plummeting enrollment at other types of institutions. Progressive and consumer groups are also urging the Biden administration to go further than the Obama-era policies on for-profit colleges, including calling for the Education Department to hold company executives personally liable for misconduct. Finally, the Biden Administration will reverse the current Administration's Title IX regulations.

### Student loan forgiveness

The Biden administration will have to immediately contend with the looming expiration of pandemic relief for roughly 40 million federal student loan borrowers. Barring any federal action in the coming weeks, those benefits will end on December 31, 2020, setting up a scenario in which tens of millions of loan payments will come due in the New Year — even before Inauguration Day on January 20, 2021. It is not clear if the outgoing Administration or a lame-duck Congress will further extend the benefits, which include a suspension of interest and payments for most federal student loans.

President-elect Biden endorsed House Democrats' stimulus plan, which calls for extending the pause on monthly payments until next November and keeping the interest rate at 0 percent until at least that time. Progressive Democrats are also gearing up to press Biden to provide sweeping forgiveness of student loan debt. That idea was popularized during the Democratic primary campaign by Biden's then-rivals, Sens. Bernie Sanders and Elizabeth Warren.

Biden earlier this year committed to canceling \$10,000 in student loan debt for each borrower, as a pandemic relief measure. But he has not yet said whether he would pursue that loan forgiveness through legislation or more immediately cancel debt through

executive action, as a group of Senate Democrats, led by Warren and Senate Minority Leader Chuck Schumer have advocated.

If Biden doesn't pursue loan forgiveness through executive action, advocates for student loan forgiveness are eyeing budget reconciliation as a possible tool in the Senate to cancel student loan debt with a simple majority vote.

### Selecting a New Education Secretary

Few Cabinet secretaries were singled out on the campaign trail like Betsy DeVos, who Democrats have targeted as a top GOP enemy since her contentious confirmation process in 2017. President-elect Biden accused DeVos of working to undermine public education and repeatedly boasted that he would "fire" DeVos if elected. Biden has promised he will pick an education secretary who has been a public school teacher, though his campaign has not made clear how broad or narrow that criteria will be.

Many education policy experts also expect Biden's wife Dr. Jill Biden to play an influential role on education issues. During the Obama administration, Dr. Biden helped lead the Obama administration's outreach to community colleges and its effort to persuade states and cities to make it free. In 2020, Dr. Biden was sharply critical of the Administration's education policies on the campaign trail. She has said education will be one of her top priorities as First Lady and plans to return to her job as an English instructor at Northern Virginia Community College.

### Federal Funding for COVID-19

The biggest challenges facing higher education have not changed as a result of the coronavirus pandemic. Instead, the challenges have been exacerbated and have taken on a new urgency. Since March 10, 2020, Wayne State University has been at the forefront of fighting for increased funding, and more flexibility, for COVID-19 funding. Congress has provided a total of \$3.8 trillion in funding (another \$3.8 trillion in funding passed the House on May 15, 2020 and has not been considered by the Senate), the Federal Reserve has the ability to provide an additional \$7.8 trillion and the Administration has \$0.6 trillion to share.

The \$2.2 trillion of legislative support already spent includes about \$532 billion in forgivable loans and related bank fees from the Paycheck Protection Program (PPP), \$272 billion in Economic Impact Payments, \$242 billion in unemployment benefits, \$195 billion to support Federal Reserve loan facilities, \$180 billion in state and local funding, \$164 billion in Economic Injury Disaster Loans, \$159 billion in temporary relief from allowing employers to defer payroll tax payments, \$114 billion in health-related spending, \$113 billion in payroll tax credits for paid leave and employee retention, \$270 billion in other spending, loans, tax breaks and \$14 billion for higher education.

A needed and necessary boost in federal funds for higher education is within the HEROs Act, which passed the House with solely Democratic support on May 15, 2020. This legislation includes \$11.9 billion for Higher Education, with the flexibility for the funds to help balance the budgets of universities. This funding will help alleviate the burdens associated with COVID-19 for colleges and students. Negotiations for a smaller bill - \$1.8 trillion proposed by Republicans, \$2.2 by the Democrats – fell apart when the Administration called an end to the negotiations until after the elections.

### Immigration

Immigration is a signature issue for this Administration, even before Inauguration. This Administration has taken executive action to reshape asylum, deportation, and visa policy, which has had a chilling, and ripple effect on higher education. This Administration vowed to build an expanded wall on the U.S.-Mexico border under the premise of stopping drugs and gangs from entering the country. The impasse between the Democrats and Congress resulted in the longest shut-down of the Federal government in history an unsuccessful attempt to secure congressional funding for the wall. A national emergency was later declared, allowing the Administration to divert funds to build out the barrier; earlier, this Administration previously said Mexico would pay for the wall.

This Administration then launched an initiative commonly known as the Remain in Mexico program, which directs asylum seekers to wait in Mexico, and sought “safe third country” agreements with Guatemala, Mexico, Panama, and others, which would allow U.S. authorities to send asylum seekers back to those countries. For the record, the United States, along with most other nations, signed an agreement in 1944 allowing individuals seeking asylum to legally enter the United States.

In 2017, this Administration instituted a ban via executive order on immigration or travel from several Muslim-majority countries. The original order was rejected by the courts, but the Supreme Court upheld a more limited version.

This Administration reduced the cap on the number of refugees the United States accepts each year to less than eighteen thousand, down from roughly eighty thousand before he took office. The U.S. Department of Justice has also narrowed the scope of asylum protections, including no longer allowing victims of domestic violence to make asylum claims. After coronavirus-related emergency measures took effect in March 2020, acceptance of refugees and asylum seekers almost totally stopped.

This Administration has proposed broad immigration reform that would create a merit-based system, rather than the current arrangement that prioritizes family reunification. This plan was not considered by the House. It would also increase border security and enforcement, including through a border wall and an employment verification system known as E-Verify. The plan doesn’t address the United States’ estimated eleven million undocumented residents, or the Dreamers who were brought to the country as children.

This Administration sought to end Deferred Action for Childhood Arrivals (DACA, or “Dreamers”), an executive action under President Barack Obama aimed at shielding Dreamers from deportation. The move raised legal challenges and in June 2020, the Supreme Court blocked it. He revoked similar protections for undocumented parents of U.S. citizens.

This Administration, in 2018, enacted a zero-tolerance policy for illegal border crossings, which led to mass detentions and the separation of children from their parents. The administration pledged to end family separations after public outcry (which has not happened).

This Administration has tried to punish so-called sanctuary cities/universities, or jurisdictions that refuse to enforce federal immigration directives, including through a 2017 executive order seeking to deny them federal funds. Those efforts have been blocked by the courts in most, but not all, cases.

This Administration has ended temporary protected status (TPS)—a program that allows migrants from certain crisis-stricken nations to live in the United States for a limited period—for several countries.

In July 2020, the administration moved to revoke the visas of international students whose coursework will take place entirely online, a move rescinded shortly afterward amid strong opposition. Lawsuits against the measure had been filed by universities including Wayne State University, Harvard and the Massachusetts Institute of Technology (MIT), as well as by seventeen states.

Finally, and most recently, the US Department of Homeland Security (DHS) is attempting to revamp visa rules for international students. Under these new proposals, the US is looking to stipulate maximum terms of up to four years for student visas. DHS is also aiming to limit visa terms to two years for students born in countries designated as sponsors of terrorism (Iran, North Korea, Sudan, and Syria) as well as those from countries with overstay rates of more than 10% for student and exchange visitor visas. It’s a restriction that disproportionately impacts African students as evidenced by the list of affected countries: Africa accounts for 36 of the 59 countries affected by the DHS’ proposals.

The record of the current Administration has not been favorable to our nation’s long-time record of accepting immigrants. Wayne State University even joined an amicus brief (along with the University of Michigan and Michigan State University) regarding one of these provisions. The Democratic candidates for President have vowed to make significant changes enabling more immigrants – including students – to live and study in the United States.

## Campus Sexual Assault

The U.S. Department of Education released its long-awaited final regulations governing campus sexual assault under Title IX, the law prohibiting sex discrimination at federally funded institutions.

It took nearly a year and a half for the department's Office for Civil Rights, or OCR, to review more than 124,000 public comments on the issue and finalize the proposed regulations, which were published in November 2018. The regulations will be the first Title IX guidance published by OCR to go through a formal notice-and-comment process since 1997, and unlike guidance issued by the Obama administration in 2011 and 2014, they will have the force of law behind them. Colleges and universities will be required to comply with the regulations by August 14, 2020.

Under the new rules, institutions must presume that those accused of sexual misconduct are innocent prior to the investigative and decision-making process, addressing a repeated criticism of 2011 guidance issued by the President Barack Obama administration. Those in favor of a Title IX overhaul said previous guidance caused colleges to over-enforce campus sexual misconduct and led to students being unjustly removed from campuses for false accusations. The Administration rescinded the letter in 2017.

Previous guidance stated college officials should use a "preponderance of the evidence" standard to determine guilt in sexual misconduct complaints, basing decisions on the most convincing evidence presented. It was followed by an explosion of civil lawsuits filed mostly by male students accused of sexual misconduct, who alleged their rights were violated by unfair Title IX procedures at their colleges. The 2020 regulations will instead allow Title IX officials at colleges to use either a preponderance of the evidence or "clear and convincing" standard, which sets a higher burden of proof.

The new evidence and cross-examination standards have been points of contention for advocates for survivors of campus sexual assault, who say live questioning could re-traumatize and prevent victims from coming forward to report sexual misconduct. Statements made by parties and not cross-examined as part of a Title IX investigation may not be used as evidence. The regulations also explicitly define the scope of colleges' responsibility to respond to complaints of sexual misconduct. Colleges must act upon complaints of misconduct that occurs within an education program, such as in off-campus housing for recognized Greek life organizations or at events that are part of a university program.

The Education Department was met with a wave of criticism as soon as the regulations, which were as equally anticipated as the final rule, were published. Several higher education associations and members of Congress urged the department for weeks to hold off on the release to allow colleges to focus on the impact of the coronavirus pandemic.

The final rule requires at least three separate officials to carry out different steps of the Title IX complaint process at a time most universities are facing significant shortfalls.

Very few universities have been able to comply with these rules, which have been universally regarded by virtually every major university organization to be extremely onerous and, in many instances, simply unfair. It would have been difficult to comply with these rules under a non-COVID-19 environment; the pandemic made this virtually impossible. If a change in the Administration occurs in the election, it is fully expected the rules will revert to at least a modified version of what existed before.

### Free Speech

This Administration signed an executive order that would hold colleges that receive federal research funding accountable for protecting free speech. While this was widely applauded by many conservatives, the executive order essentially directs federal agencies to ensure colleges are following requirements already in place. And it doesn't spell out how enforcement of the order would work. It directs 12 federal grant-making agencies to coordinate with the Office of Management and Budget to certify that colleges receiving federal research funds comply with existing federal law and regulations involving free academic inquiry.

The document also directs the Education Department to publish program-level data in the College Scorecard on measures of student outcomes, including earnings, student debt, default rates and loan repayment rates.

Many higher education leaders and groups have said the long-promised executive order is a solution in search of a problem. In general, research universities (such as Wayne State University) and other public colleges promote free speech and academic freedom as part of their mission. And Congress, not the president, controls appropriations to colleges and universities. Finally, this is typically a state-regulated, not federal, issue.

### Confucius Institutes

This summer, the U.S. State Department designated the Washington, D.C.-based Confucius Institute U.S. Center a "foreign mission" of the People's Republic of China. Wayne State University has a Confucius Institute site on our campus. The center coordinates language and cultural programs for the Confucius Institutes, Chinese government-funded centers for language education and cultural programming, at colleges across the United States. The institutes have run afoul of Congressional lawmakers who see them as vehicles for disseminating Chinese government propaganda in U.S. classrooms.

This latest move by the State Department reflects another way in which an increasingly adversarial and competitive relationship between the U.S. and China has affected

academic exchange. State Department officials said in a press briefing that the designation of the Confucius Institute U.S. Center does not directly affect campus-based Confucius Institutes, but does mean that the coordinating office in Washington will have to provide the State Department with regular reports about funding, personnel and operations of Confucius Institutes and Confucius classrooms across the U.S. and to provide information about curriculum and training material.

An estimated 45 U.S. colleges have closed their Confucius Institutes over the past couple years as they have increasingly come under pressure from lawmakers. A number of colleges closed the institutes after the passage of a defense spending bill in 2018 that barred colleges hosting Confucius Institutes from receiving funding for Chinese language funding from the Pentagon, which operates the Flagship Language program. Proponents of the Confucius Institutes welcome the funding they provide for Chinese language learning and cultural programming, and point out that the institutes are typically structured as partnerships between a Chinese university and an American host university. Again, the move against the Confucius Institutes comes against the backdrop of deteriorating academic relations between the U.S. and China. The Administration also issued an executive order requiring administration officials to end the Fulbright program in China and Hong Kong in retaliation for Beijing's encroachments on the relative autonomy of Hong Kong.

As long as the current Administration remains in power in the Executive and half of the legislative branch, universities with Confucius Institutes will always remain under higher scrutiny – warranted or unwarranted. Even under a new Administration, changes to the way in which Confucius Institutes are funded and operated are expected to take place.

### Lame-Duck Session

Congress will be focused on addressing COVID-19 relief, completing the National Defense Authorization Act and ensuring the government is able to function fiscally. The current temporary funding bill expires December 11, 2020, and it is fully expected that Congress will pass another bill that will expire mid-February 2021, leaving the final appropriation bill to be considered by the 117th Congress.

## **STATE AFFAIRS**

### Budget Update and Projections

WSU is in the beginning stages of advocating for priorities to be included in the Fiscal Year '21-'22 budget. We anticipate the Governor will share her recommendations for state financing in February 2021, and we are working with the administration to ensure they are apprised of the multitude of programs and offerings currently happening at WSU. Following the Governor's recommendation, we anticipate working with the legislature as they craft their response budget recommendations. We are hopeful that the FY '21-'22

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budget cycle will be less influenced by outside tumult and will follow a more traditional route forward. However, all of the upcoming legislative work will be largely dictated by the outcomes of the November 2020 Election.

### Active FY '21 Budget Advocacy

WSU is actively advocating for investments across the University including, but not limited to, funding for the National De-Escalation Training Center, the Lycacki-Young Program, the Frontline Strong initiative, MiDOCS, investments in Psych-NP programming at the College of Nursing and lastly, broad reiteration of the importance of full funding for the University as a whole. In addition, we are working with leaders across the University to identify additional strategic opportunities to partner with the state.

### Legislation

We continue to monitor state legislation and regulations that could impact our students, our faculty, and our ability to carry out our mission. When formulating a university position, we work with internal subject matter experts to both craft the best position and to provide feedback to legislators. Legislation we are monitoring includes, but is not limited to, the following:

- House Bill 4437 (Wakeman) modifying the requirements for a mortuary science license, and creating new requirements for continuing education. WSU supports this legislation.
- House Bills 5217 (Iden), 5218 (Tate), and Senate Bill 660 (Hollier) requiring compensation for college athletes when their name, likeness, image, or athletic reputation is used as well as prohibiting the NCAA and other amateur sports organizations from preventing a student athlete from receiving compensation. HBs 5217-5218 were passed by the state House and are now in the Senate Regulatory Reform Committee. WSU is monitoring this legislation.
- House Bill 5603 (Reilly) creating a higher education ombudsman. This bill has been referred to the Education Committee and has yet to be acted upon. WSU is monitoring this legislation closely.
- Senate Bill 945 (Irwin) and House Bill 5837 (Peterson) requiring law enforcement in the state of Michigan to receive and maintain de-escalation training. WSU is supportive of this legislation, but also looking creatively at ways to be a partner with law enforcement agencies in need of training. Each piece of legislation has been passed by its respective chamber, further discussion is pending.
- Senate Bill 971 (MacDonald) prohibits a public institution from performing any testing on animals. WSU is concerned about the impact this legislation could have on important biomedical research at public institutions across the state. This legislation is currently in the Senate Judiciary and Public Safety Committee.

- Senate Bills 1022-1024 and House Bills 6030-6032 limit liability for businesses and universities associated with actions taken because of the pandemic. This legislation is slated to move in the House but has yet to be noticed for a committee hearing. WSU is monitoring closely and has worked with our Association and stakeholders across the state to support this legislation. House Bills 6030-6032 were signed by the Governor at the end of October.
- Senate Bill 1055 (Nesbit) allowing Community Colleges to offer a 4-year BSN degree program. This legislation has been introduced in the past, with other programs being added to the CC book of business but successful defeat of the BSN program being included. This legislation is a priority of the Senate Majority Leader, and WSU along with our other public and independent educational partners is sharing our concerns with members of the Senate.
- Task Force on Jail and Pre-Trial Incarceration Legislative Package enacting a number of the recommendations of the task force including making adjustments to driver's license suspensions, decriminalizing low level traffic misdemeanors, eliminating certain mandatory minimum jail sentences, prioritizing jail sentence alternatives, increasing arrest alternatives, and reducing jail admissions for individuals on probation and parole. WSU is supportive of this legislation, and proud that the Dean of the School of Social Work, Sheryl Kubiak, was an important member of the Task Force that crafted this legislation.

### Recent University Appointments

The Division of Government and Community Affairs actively monitors Gubernatorial appointments made and opportunities for University leaders to inform policy at the state level through appointments to task forces, councils, and commissions. Recent appointments include:

- **Eulonda N. Whitmore**, Director of Audits and the acting Associate Vice President and Chief Audit Executive for the Office of Internal Audit. Ms. Whitmore is appointed to represent the general public. The Michigan State Board of Accountancy is responsible for the certification, licensure, and regulation of certified public accountants and public accounting firms in Michigan. This appointment is subject to the advice and consent of the Senate.

## **GOVERNMENT HEALTH AFFAIRS**

### Graduate Medical Education (GME) Reform – MIDOCs

WSU and other members of the MIDOCs consortium currently have two cohorts of residents in the program. As a reminder, this program is funded through direct state appropriations, which are then leveraged to receive federal dollars. The federal government approved the state's plan of how it will use those funds and how we will flow

the money to the residency programs. The first cohort contains eight residents and the second cohort contains 24. This year the state appropriated \$5.1 million for the program. MIDOCs will leverage this funding, along with funds contributed from the consortium, to receive a federal match totaling \$16 million. For academic year 2021, we plan to recruit for a total of 20 residents. This slight reduction from the previous year is due to a lower appropriation from the state than we had requested.

### Lycaki-Young Fund

The Lycaki-Young fund was first introduced in the mid-1990s. Since that time, WSU has received more than \$100 million in state funds to support care for the mentally ill and those affected by substance abuse. WSU has been a leader in providing critically important services to those affected in Wayne County and beyond. For example, we host one of the largest Methadone clinics in the country.

The program received the requested appropriation of \$5.6 million from the FY21 budget. This funding provides psychiatric services annually to more than 47,000 patients.

### The Michigan Poison Center

The Michigan Poison Center (PC) receives more than 65,000 calls per year related to emergencies (most involving children). Tenet Corporation and the Detroit Medical Center (DMC) hosted the Center for more than 60 years, but it no longer fits into their scope of services plan. This is a significant opportunity for Wayne State to demonstrate our public health mission and expertise across the entire state. The Poison Center serves all counties in Michigan. The PC continues to play an active role in outreach on the COVID-19 pandemic. Additionally, they are focusing educational efforts on opioid overdoses and lead poisoning across the state.

The PC had a successful marketing campaign. The goal of the campaign was to increase awareness and engagement. The primary markets were Detroit, Grand Rapids, Flint, and Traverse City. The campaign capitalized on end of summer travel and utilized outdoor ads and Pandora. The state appropriated \$1,121,400 for the program for FY21.

### Wayne Pediatrics

In a court ruling earlier this fall, WSU was ruled against in a case regarding DMC's decision to revoke privileges of WSU pediatric faculty and the Children's Hospital of Michigan (CHM). This action will result in a number of negative consequences. WSU pediatricians will no longer be able to care for their patients who are admitted to the CHM. Additionally, while we have a number of medical students who train at the CHM at any given time, our physicians will no longer be able to oversee their education. We are currently working to communicate our concerns with the CEO of DMC and have also met with legislators in the Detroit Delegation to provide them with updates on the situation.

## COMMUNITY AFFAIRS

### WSU's Social Justice Action Committee

In July 2020, President Wilson created Wayne State University Social Justice Action Committee (SJAC). The purpose of SJAC is to drive culture change and foster a climate of inclusion and equity throughout the University. The SJAC consist of 7 seven committees. The committees consist of: Hiring and retention of diverse faculty, Hiring and retention of diverse staff, student access and success, Policing, Intercultural education and training, Campus Climate issues and University Diversity and Inclusion (DEI) Initiatives.

The SJAC for policing committee consist of 10 members (seven internal and three external members). Director Victor Green serves as the chair of this committee. The purpose of SJAC for policing is to examine WSU Police Department (WSUPD) current policies, procedures, and practices of engagement with the campus and external communities on surrounding the footprint of campus.

The committee has met several times throughout the summer and the fall semesters. All of the SJACs final reports are due to the President at the end of November. Community Affairs will include the recommendations of the final report of the SJAC on Policing in the December Board of Governors report.

### 2021 Rev. Martin Luther King, Jr. Tribute

Because of COVID-19 the 2021, the Rev. Martin Luther King, Jr. Tribute will be virtual. As of today, the virtual event will be pre-recorded and scheduled to show on Friday, January 15, 2021 and on Monday, January 18, 2021 (MLK's holiday). Additional information is forthcoming as we finalize the details of this event.