



## **Preparing for 2018: Confronting Federal Challenges to Research and Higher Education**

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Since World War II, the federal government and institutions of higher education have collaborated to advance scientific research, education and training, and innovation. This partnership has resulted in fundamental discoveries that have enhanced the safety and wellbeing of millions of people, spurred economic development in the U.S., and contributed to the development of a world-class workforce. Through competitive, merit-review, the taxpayer funds scientific research, and through need-based and other aid, resources are made available for students to further their education. Significant changes to funding structures for research and student aid have done little to change this fundamental relationship. However, this partnership, in which the government must rely on universities for research, training, and innovation and where universities seek federal funding and support, is challenged. The concerns are not limited to one political party or faction – there is criticism of higher education across the political spectrum. 2017 was a challenging and confusing year that calls for further anticipation and preparation.

This document provides an overview of structural challenges and vulnerabilities facing institutions of higher education as the country enters the 2018 mid-term elections and Congress begins discussions on fiscal year (FY) 2019 funding. These vulnerabilities can be categorized as impacting the research enterprise and the education mission of institutions. Institutions of higher education must convey and advocate for their priorities in the context of recently passed tax reform, an anticipated *Higher Education Act* (HEA) reauthorization, the President’s FY 2019 budget request and appropriations process, and other major policy initiatives. Lewis-Burke Associates LLC (Lewis-Burke) will continue to monitor these developments and provide strategy and advocacy support.

### **Education Mission Vulnerabilities**

In national education policy, higher education continues to dominate legislative developments, policy debates, and media headlines. The implicit trust higher education institutions have long enjoyed as nonprofit and academic entities can no longer be taken for granted. Critics charge that profit motives should play a larger role in shaping education and research policies and practices. Other observers feel that more regulations are needed to ensure higher education is fulfilling the broader mission of improving outcomes for Americans. Recent efforts to eliminate higher education tax benefits; debates over the purpose of higher education; and headlines like, “Americans Losing Faith in College Degrees,” illustrate the pressures facing higher education.<sup>i</sup> Policies impacting the nature of internet access, including current debates around net neutrality, will also have significant consequences on how content is accessed and delivered. Changing demographics, technological innovations in instructional delivery, and evolving job markets, are reshaping the higher education landscape.

Several recent surveys indicate a shifting perception about the value of higher education amongst Americans. A 2017 Wall Street Journal/NBC News survey found that 49 percent of Americans believe earning a four-year degree will lead to a, “good job and higher lifetime earnings,” compared to 47 percent who do not share that belief.<sup>ii</sup> A 2017 Pew Research Center national survey of U.S. adults on the impact of several national institutions revealed that 58 percent of Republicans and Republican-leaning

independents, “say that colleges and universities have a negative effect on the country, up from 45 percent last year.”<sup>iii</sup>

Policymakers and the public frequently cite the rising costs of higher education as a criticism. The National Center for Education Statistics (NCES) notes that, “between 2004–2005 and 2014–2015, prices for undergraduate tuition, fees, room, and board at public institutions rose 33 percent, and prices at private nonprofit institutions rose 26 percent, after adjustment for inflation.”<sup>iv</sup> Calls for “free college” have intensified, as have state efforts to implement programs, with mixed success. These initiatives have the potential to impact institutional quality, add to already burdened state and federal budgets, and draw resources from institutional efforts devoted to research. Many institutions are committed to improving access for low-income, historically disadvantaged students. That said, charges about elitism have been levied against many universities and the higher education sector in general. A report by the Equality of Opportunity Project notes that, “access to college varies substantially across the income distribution... these findings challenge the perception that colleges foster interaction between children from diverse socioeconomic backgrounds.”<sup>v</sup>

In the context of shifting views on the value proposition of higher education, there are several structural vulnerabilities impacting the education mission of institutions that are likely to receive continued attention as Congress prepares to reauthorize HEA. These include threats to financial aid, the lessening of support for graduate students, debates around free speech and sexual harassment, and tightening of U.S. immigration policies.

#### *Financial Aid*

Simplification of student aid programs and streamlining regulations around financial aid enjoy broad support. Simplifying programs, however, often becomes eliminating and reducing aid. The “one grant, one loan” (ONE) initiative, popular among Republicans in Congress, has led to proposals to eliminate Federal Supplemental Educational Opportunity Grants (FSEOG), PLUS loans, and the almost certain termination of the Perkins Loan program. The sentiment among some policymakers is that too much federal financial aid has led to colleges charging more and students taking on too much debt.

#### *Free Speech and Sexual Assault*

Among cultural and societal issues impacting institutions, free speech and sexual assault have consistently been areas of concern. Demonstrations on campuses, navigating controversial speakers, increased event security costs, and other associated issues will continue to confront institutions. The charge and perception of political bias by universities is a continued theme, though one that can be addressed by the review of institutional policies around so-called “free speech codes” and “free speech zones.”

The wider conversation around sexual assault and harassment in the workplace has spread to higher education, and adds to the ongoing issue of campus sexual assault. Institutions are familiar with Title IX developments, but should be cognizant of the faculty and staff component of workplace climate and culture. A study of faculty-student harassment cases found that 53 percent of all cases included in the study involve a professor who is alleged to have harassed more than one student.<sup>vi</sup> Increased action by the federal government, including the Department of Justice (DOJ), will require institutions to examine policies in these areas, and in areas where they could be subject to litigation.

### *Graduate Students*

Graduate education is another area of higher education that is experiencing increased scrutiny. Recent policy proposals have specifically targeted graduate students, including proposals to terminate graduate student eligibility for Federal-Work Study (FWS) and under the proposed “ONE” loan program, there is consideration of eliminating GRAD PLUS loans and implement annual and lifetime borrowing caps. Some policymakers believe that funding for graduate education should be left largely to the private market. Stakeholders are continuing to analyze the structure of graduate education, especially as it relates to employment outside of the academy and the proliferation of graduate programs. Graduate students, in particular, straddle the education and research missions of institutions, and changes that impact them will impact universities on both fronts.

### *Immigration*

A top priority of the Trump Administration has been and will continue to be tightening the nation’s immigration policies and pursuing more secure borders. In addition to formal executive orders limiting foreign nationals traveling to the U.S. and a repeal of the Deferred Action for Childhood Arrivals (DACA) program, the Administration has pursued and outlined future internal policy changes at the Department of Homeland Security (DHS), resulting in increased immigration difficulties for foreign employees and their families, foreign students, and foreign visitors.

Although likely uneven across institutions and programs, higher education will be vulnerable to any international student enrollment declines. Given recent and pending immigration restrictions on foreign employees, such as increased vetting and a proposed elimination of H-1B spousal work authorization, international faculty and student recruitment will face challenges. It is anticipated that the Administration will continue to tighten immigration policies. The full impact to higher education of the Administration’s policy changes, combined with changing international perceptions of studying or researching in the U.S., has yet to be fully realized.

## **Research Enterprise Vulnerabilities**

As federal science agencies seek to optimize limited funds and in response to pressure to deliver more for less, policymakers are increasingly considering changes to grant policies that would have significant implications for the university research business model. Inherent to the well-established partnership between the federal government and research institutions is a decentralized, merit based, cost sharing approach. University-based researchers compete for federal funding that is awarded based on merit, and research institutions and federal agencies share the costs of sponsoring the research through facilities and administrative (F&A) costs, faculty salary support, and direct research costs, among others. Changes to the federal government’s approach to this partnership, in the form of changes or new limitations on how research funds may be spent, could have significant impacts on the ability of universities to support and conduct federally sponsored research.

In the context of constrained budgets and an Administration focused on cutting spending and identifying “efficiencies” in the federal government’s research enterprise, there are several vulnerabilities related to the structure of the university research business model that are likely to receive continued attention as Congress and the Administration begin work on FY 2019 federal spending. These include F&A costs, attempts to cap the total number of grants per investigator, the provision of salary support on grants, intellectual property and tech transfer, and federal funding for capacity building activities.

### *Facilities and Administrative Costs*

In response to the Administration's FY 2018 budget proposal to implement a 10 percent cap on F&A costs on National Institutes of Health (NIH) awards, the research and higher education community pursued an aggressive strategy through the appropriations process to prevent any changes in F&A cost reimbursement to universities and research institutions. Targeted outreach to congressional policymakers focused on illustrating the essential nature of F&A costs to supporting our nation's research infrastructure. As a result, legislative provisions to prevent the Administration from making changes to F&A cost reimbursement policies and procedures have been included in both the House and Senate FY 2018 Labor-Health and Human Services-Education appropriations bills and the current continuing resolution (CR). Although FY 2018 appropriations have yet to be finalized, we are confident that there will be no changes to F&A cost reimbursement policies for the remainder of the fiscal year. However, we anticipate that the Administration will continue to focus on F&A costs as it seeks to identify efficiencies and cut spending. Proposals could target research funding agencies beyond the NIH (e.g. the National Science Foundation, the Department of Energy); propose a cap, but one that is higher than 10 percent; introduce a formula model for calculating a university's F&A rate; or a combination of these.

### *Attempts to Cap Grants Per Investigator*

In May 2017, NIH leadership announced their attempt to cap the total number of grants available to individual investigators. Termed the Grant Support Index (GSI), the metric was ostensibly aimed at providing additional support for early and mid-career investigators in danger of losing all NIH funding and leaving the biomedical research workforce. In effect, however, it would have marked a departure from the agency's reliance on the peer review process to mete out funding to those research proposals judged most meritorious. Despite three consecutive years of funding increases, when adjusted for inflation, the NIH budget has declined 19.2 percent since 2003.<sup>vii</sup> In this context, NIH is under increasing pressure from Congress to enhance efficiency and effectiveness while providing more support for early and mid-career researchers. Given this, in 2018, NIH is likely to revisit placing restrictions on investigators, such as limiting the number of awards per investigator and/or limiting total funding per investigator.

### *Salary Support on Grants*

Historically, the conduct of federally sponsored research was based on cost sharing, with universities providing the majority of support for research facilities and faculty salaries, and NIH providing funding for conducting research. A 2012 report from the Biomedical Research Workforce Working Group of the Advisory Committee to the NIH Director noted that these trends appear to have reversed in recent decades—NIH funding is increasingly being used for faculty salary support, while universities have seen larger amounts of institutional funding being devoted to research costs.<sup>viii</sup> The same 2012 report included a recommendation that NIH consider a long-term approach to reduce the percentage of NIH funds devoted to salary support for faculty. Since this time, the agency has continued to explore this issue, while recognizing that any change or reduction in NIH salary support on grants would have major consequences for research institutions. As the NIH continues to explore new funding models to enhance sustainability of the research enterprise in a time of constrained budgets, changes in agency policies related to salary support on grants will remain under consideration.

### *Intellectual Property and Technology Transfer*

In the current political climate, the ongoing debate over universities' patent rights for publicly sponsored research presents a major challenge to the research enterprise. In 1980, Congress passed the

*Bayh-Dole Act* in recognition that the federal government was failing to license technologies developed from taxpayer-funded research, and more importantly, that universities were better off managing the nation's innovation portfolio. The legislation created an enduring framework that allows universities to retain the title to innovations generated by federally funded research, incentivizing the transfer of these technologies from the lab to market. In a climate of political vitriol, there is an existential threat to the fundamentals of the research enterprise through the reexamination of long-standing technology transfer policies, such as Bayh-Dole.

In 2010, the Kauffman Foundation released a high-profile report that proposed “free agency,” urging the federal government to revisit the regulatory framework created under the *Bayh-Dole Act* and amend Department of Commerce rules to allow for a researcher to choose his or her licensing agent.<sup>ix</sup> Proponents of free agency assert that amending the regulations would address underperforming technology licensing offices by removing obstacles to propel innovation and spur economic growth. Adoption of free agency would likely slow the development of technologies and lower universities' resources to promote technology transfer activities.

Critics of the current framework also allege technology transfer “bottlenecking.” This includes, for example, that NIH's budget continues to increase while the number of new drugs continues to decline. The Trump Administration has also criticized pharmaceutical companies on the cost of drugs, an issue that transcends partisan lines and was a key component of Senator Bernie Sanders' (I-VT) presidential campaign. Critics have long argued that the “march-in” provision in Bayh-Dole that allows for federal agencies to intervene has been underutilized and have recommended President Trump leverage this power to combat high drug prices. Despite this rhetoric, the Administration has yet to provide specific guidance or policy related to rolling back Bayh-Dole.

Senator Angus King (I-ME) recently introduced an amendment in Department of Defense (DOD) authorization legislation with respect to Bayh-Dole. The amendment would authorize third parties to use DOD-funded inventions when the cost of the drug, vaccine, or technology is higher in the U.S. than other countries. The university community is concerned that these provisions could set a precedent for a more expansive – and unintended – exercise of march-in rights by other federal funding agencies. Given the investments the private sector makes to develop basic research discoveries into successful and safe treatments, if the applicable scope of march-in rights is broadened beyond Congress' original intent, the private sector may be hesitant or unwilling to license federally funded inventions from universities.

#### *Capacity Building and Formula Funding*

The Heritage Foundation and other leading conservative voices have long-since criticized the use of federal formula-based funding in education, research, farm, and nutrition programs. Moreover, research programs, such as the Established Program to Stimulate Competitive Research (EPSCoR), continue to be scrutinized in the annual appropriations process, with both Republicans and Democrats questioning the program's criteria, qualifications, and impact. As Congress begins work on the next Farm Bill, conservative postures that crop insurance and other farm support programs are federal welfare may threaten similarly structured programs, such as formula and capacity-building funding through the U.S. Department of Agriculture (USDA).

### **Conclusion**

Following 2017, in which higher education confronted obstacles and adapted to a changing federal landscape, Lewis-Burke encourages institutions to prepare for new challenges in 2018. Institutions

should consider how the structural vulnerabilities highlighted in this document, and the ways in which they may be in play as Congress begins discussions on FY 2019 funding and a possible HEA reauthorization, would affect them. Lewis-Burke will continue to monitor these developments and provide strategy and advocacy support.

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<sup>i</sup> <https://www.wsj.com/articles/americans-losing-faith-in-college-degrees-poll-finds-1504776601>

<sup>ii</sup> <https://www.wsj.com/articles/americans-losing-faith-in-college-degrees-poll-finds-1504776601>

<sup>iii</sup> <http://assets.pewresearch.org/wp-content/uploads/sites/5/2017/07/11101505/07-10-17-Institutions-release.pdf>

<sup>iv</sup> <https://nces.ed.gov/fastfacts/display.asp?id=76>

<sup>v</sup> [http://www.equality-of-opportunity.org/assets/documents/coll\\_mrc\\_summary.pdf](http://www.equality-of-opportunity.org/assets/documents/coll_mrc_summary.pdf)

<sup>vi</sup> <https://www.insidehighered.com/news/2017/07/18/study-finds-large-share-cases-involving-faculty-harassment-graduate-students-are>

<sup>vii</sup> <https://www.statnews.com/2018/01/03/nih-biomedical-research-funding/>

<sup>viii</sup> [https://acd.od.nih.gov/documents/reports/Biomedical\\_research\\_wgreport.pdf](https://acd.od.nih.gov/documents/reports/Biomedical_research_wgreport.pdf)

<sup>ix</sup> <https://hbr.org/2010/01/the-hbr-list-breakthrough-ideas-for-2010>