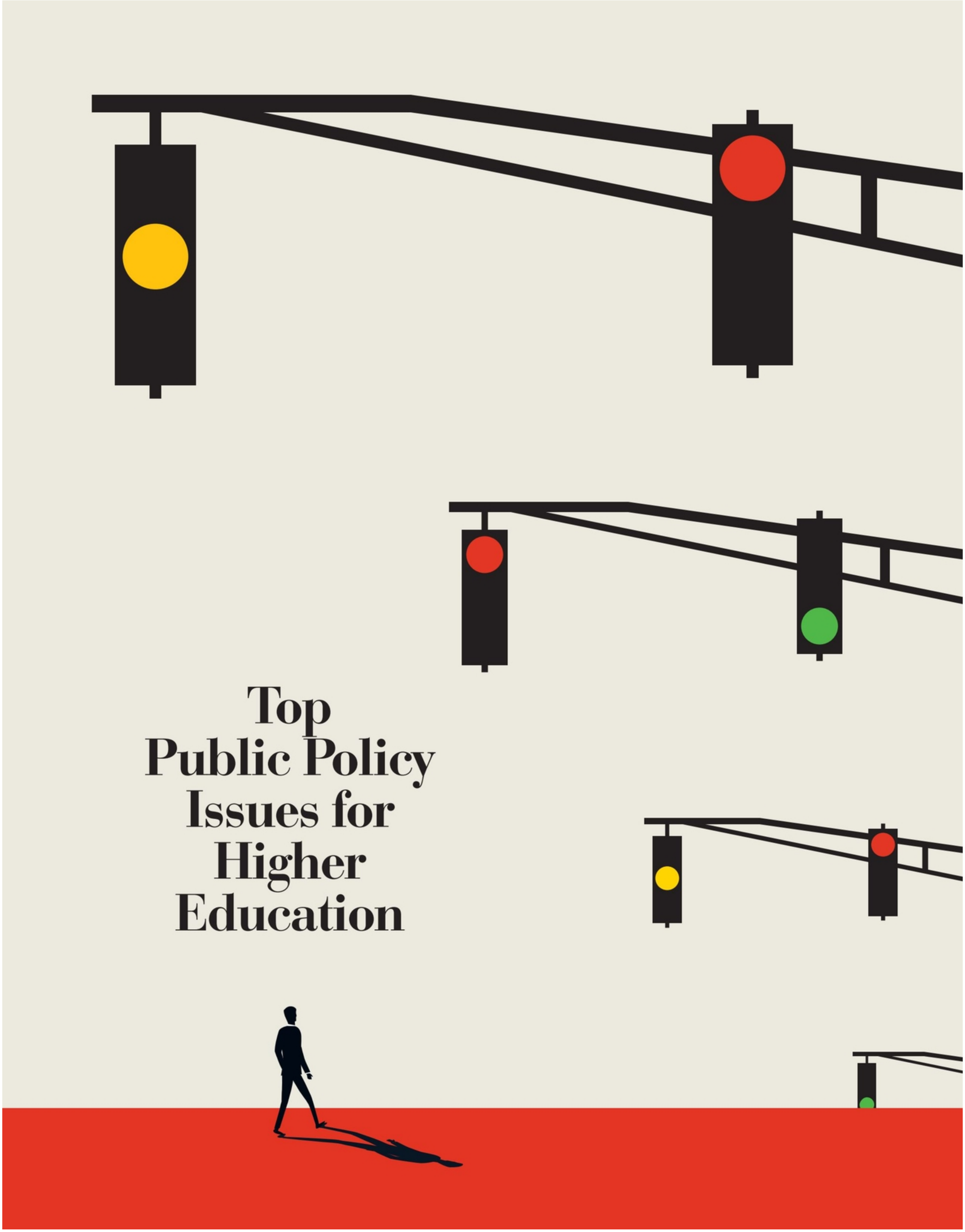
Top Public Policy Issues for Higher Education



AGB recently released the Top Public Policy Issues for Higher Education 2021–2022. *The resource serves to outline and predict what public policy decisions most likely will affect higher education in the next two years. As fiduciaries, board members have a responsibility to understand the effects of public policies on their students, institutions, and the broader higher education landscape. The following article is an excerpt of the report.*

BY STEPHEN G. PELLETIER

A confluence of powerful, even disruptive trends—economic, technological, social, and political—will shape the policy landscape for higher education in 2021–22. The impact of COVID-19 and the financial turmoil that ensued will persist, exacerbating existing strategic pressures around institutional revenue streams and expense management. For the preponderance of colleges and universities that depend on student enrollment to help balance budgets, overall declines in enrollment and the shrinking pool of potential students will loom as central concerns. More institutions will have to invest more significantly in technology to help them deliver education online, analyze data to make informed institutional decisions, and manage functions like enrollment, admissions, student services, fundraising, and communications. Tensions will also persist around social issues, including affirmative action, free speech, and racial inequity.

The landscape for policymaking offers its own challenges. The political divide among the electorate and in Congress and state legislatures will continue to factor in legislative actions. Some of this tension is mirrored in the growing percentage of Americans who believe colleges and universities have a negative effect on society and is perhaps reflected among those who question the fundamental value of higher education. An explosion of misinformation, disagreements about facts, and the rise of conspiracy theories impede civil discourse and rational debate—cases in point being divergent perceptions of the science of the pandemic and climate change and the validity of the results of the 2020 presidential election.

Given the narrow divide between political parties in both chambers of Congress, look for a piecemeal approach to federal policymaking to continue. In the absence of full Higher Education Act (HEA) reauthorization, legislation related to higher education may likely be enacted outside that umbrella law. The Biden administration may rely heavily on regulations and executive orders to more quickly advance its education policies.

Recent events have had a dramatic impact on the higher education sector as well as policymaking.

Prior to 2020, higher education as an industry was significantly in a state of transformation.

A cascade of economic factors—from record student debt and pressures to keep tuition levels in check to constricted revenue streams to states striving to return public appropriations for higher education to levels equal to those prior to the Great Recession—challenged fundamental assumptions about the sustainability of traditional business models at colleges and universities.

Other transformational factors, including the rise of technology, the growth of short-term credentials, more diverse learners, and an aging student body, were also in play.

Continuing Effects of COVID-19

In the midst of this already roiling environment, 2020 introduced an unforeseen but exceptionally powerful new threat: the specter of COVID-19 and the financial turmoil that ensued. The pandemic could not have come at a worse time for colleges and universities, most of which were already struggling with deep financial challenges. As summarized in the *Chronicle of Higher Education*, "COVID-19 touched off a financial wildfire for colleges, fanned by short-term losses and expenses but fueled by the fundamental fiscal precarities that many institutions have been facing—or failing to face—for some time." Noting specific problems, the *Chronicle* observed that "faltering tuition revenue, private colleges' use of high tuition-discount rates to attract students, and years of trimming every possible expense left many institutions ill-prepared to absorb the financial crisis brought on by the pandemic."[1]

The rise of the coronavirus pandemic meant that many institutions had to close or greatly curtail on-campus operations and switch very quickly from classroom learning to remote instruction. That often required unplanned investments in technology and staff

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training. Institutions that remained open were forced to make considerable investments in COVID-19 testing, physical modifications to help maintain social distancing and provide quarantine spaces, and maintenance practices to prevent the spread of the virus.

The pandemic simultaneously depressed institutional revenues from tuition, room and board, and auxiliary services. A survey by the National Association of Independent Colleges and Universities (NAICU) found that nearly all private, nonprofit colleges and universities saw revenues drop in the wake of COVID-19 regardless of the size or type of institution.[2] By one early estimate, the pandemic resulted in some $120 billion in added expenses and revenue losses across higher education.[3] The loss of revenue in turn led to staff hiring freezes, pay cuts, furloughs, and layoffs at many institutions. One analysis found that higher education shed some 650,000 jobs after the pandemic began, representing a 13 percent consolidation of its workforce overall.[4] Many institutions cut academic programs and athletic teams. A few institutions had to close their doors entirely—and experts suggest many others may be at risk of the same fate. Private gifts could cushion the blow for some colleges and universities, but it remains to be seen how the national recession will affect philanthropic giving. (Private giving to higher education was essentially flat between the fiscal years 2019 and 2020, although nearly half of all reporting institutions saw an increase in fiscal 2020.[5])

The federal government provided some relief.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, enacted in March 2020, provided nearly $14 billion to help colleges and universities in the wake of the pandemic and assist students with paying for food, housing, and educational technology. The Consolidated Appropriations Act of 2021, which was signed into law in December 2020, earmarked some $22.7 billion in additional stimulus funding for higher education. Additional help of some $40 billion came in March 2021 with passage of the American Rescue Plan. Experts say that while such support is welcome, it does not come close to fully replacing the financial losses that colleges and universities have experienced as a result of the pandemic.

In the states, meanwhile, the outlook for funding is murky but unpromising. Fifteen states cut support for higher education after COVID-19 hit. Although the CARES Act and the Consolidated Appropriations Act have helped cushion the blow to state budgets by providing direct aid to individuals and many state services, the true impact of the pandemic on state appropriations for higher education may not become fully clear until states start planning their next budget cycles for FY22 and FY23.[6] Meanwhile, as many institutions struggle to balance their finances, two credit rating agencies, Moody's Investors Services and Fitch Ratings, predict that revenue declines for higher education could go as high as 10 percent in fiscal year 2021.[7] For the fourth consecutive year, S&P Global Ratings recently gave higher education a negative outlook for bond stability.[8]

Pressing Institutional Strategic Concerns

The pandemic alone raises many difficult questions. Will vaccines for COVID-19 make it possible for institutions to bring students back to campus, and when? To what extent will institutions need to continue behaviors changed by the pandemic, such as enforcing social distancing and supporting both remote learners and remote workers?

Overall, will the national economy recover to the extent needed to ensure that institutions can regain their financial footing in the short term and sustain their financial viability over the long term?

At the same time, larger issues are also in play—some predate the coronavirus, and others are exacerbated by it. The challenge of meeting enrollment targets and the potential effects on institutional revenues, for example, looms large. Before the pandemic, college enrollments were threatened by general declines in the pool of students of traditional college-going age. The pandemic led to further erosion, as more high school students postponed college and more enrolled students had to suspend their studies. In October 2020, for example, overall undergraduate enrollment was 4.4 percent below the previous year; enrollment of first-year students was down 13 percent.[9] In one survey, more than half (54 percent) of college and university presidents reported that their institution had experienced a decline in enrollment for fall 2020; the drop was especially widespread among community colleges.[10] The global pandemic and policy changes in the United States led to a decline in the number of foreign students in U.S. institutions, eroding a vital source of both institutional revenue and valued research and scholarship.

The pandemic caused some students to lose their jobs, or even their homes, and brought issues about student food insecurity to the fore. Further, the financial challenges sparked by the pandemic are especially felt by some of higher education's most vulnerable student populations, including low-income students and students of color, drawing greater attention to how well colleges and universities provide equitable access for all to higher education.

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The pandemic also highlighted the deepening tension between institutions' need to raise more revenue through tuition and growing public resistance to rising college prices. As a short- term aid for students during the pandemic, some institutions lowered tuition temporarily. But in the face of increasingly untenable tuition discount rates, some institutions made deep permanent cuts in tuition—some slashing their price by as much as 25 percent—and announced wholly new approaches to student financial aid. That degree of fundamental change speaks to a conversation that is taking place at many institutions about the sustainability of their traditional business models—particularly the need to find new ways to streamline

operations, find new efficiencies, and establish new revenue sources.

Prior to the pandemic, many institutions were experimenting with online learning, a paradigm shift in course delivery. While many institutions eagerly pursued that modality as a new or increased revenue stream, some academics questioned the pedagogical integrity and efficacy of online learning versus face-to-face instruction in classrooms. The broad and sudden pivot by many institutions to remote learning when COVID-19 was first detected led many faculty members to gain a deeper understanding of the methodologies, tools, and potential of online learning. Today, it seems likely that the wide adoption of remote instruction during the pandemic will help expand online learning's footprint in higher education. That evolution embodies the broad inroads that technology is making as an agent for change in higher education. At the same time, technology's inroads in higher education also force institutions to devote more attention and resources to uphold data privacy and cybersecurity and guard against theft of data and intellectual property.

Tensions Around Social Issues

Significant social issues are also prominently in play across higher education. Many individual institutions find themselves buffeted by controversies on topics including affirmative action, free speech, and racial inequity. Many universities wrestle with policies and practices to ensure freedom of speech on campus and that a wide range of voices can be heard in civil discourse.

The Black Lives Matter movement led many institutions to engage in deep conversation about race, racial divides, income inequality, and related issues. AGB President and Chief Executive Officer Henry Stoever provided salient context in a statement in June 2020:

> Higher education has often been referred to as the "great equalizer" as it contributes to the fight for equity. The fundamental tenets of education—that we are preparing graduates committed to making the world a more just place, graduates who have come to understand the importance of thinking critically and of welcoming multiple perspectives, graduates who value civil discourse—can be instrumental in fighting bigotry on campuses and across the country. Diversity and inclusion are critical to higher education and should be inherent in our values and actions . . . Our institutions of higher learning must be intentional in promoting social justice and a sense of purpose and belonging.[11]

Yet another perplexing social issue is that of mental health. An issue before the pandemic, this challenge is exacerbated by COVID-19-related concerns. In a fall 2020 survey, nearly 70 percent of university presidents cited student mental health as among their most pressing issues. In that same study, 60 percent of university leaders said they also worried about the mental health of faculty and staff.[12]

The current policy climate for colleges and universities is further informed by the erosion in higher education's public reputation. In general, society no longer seems to share a consensus about the value of higher education. Studies show that the general public is increasingly skeptical about higher education's intrinsic value, particularly as measured by the kind of direct financial return on investment that college graduates can expect. Some legislators are skeptical about how well higher education spends public funding. Some employers aver that higher education does not imbue learners with the right set of skills they need to succeed in today's workplace. At some four-year institutions, the liberal arts continue to lose ground to academic programs that have a direct connection to workforce development. The pandemic further erodes public belief that higher education is worth the cost and also sparks deeper interest in short-term, skills-based training versus more traditional academic degrees.[13] It should be noted that public opinion about higher education is nuanced—a survey of voters in 2019, for example, found that while the public believes in the value of higher education, it also believes that colleges and universities must work harder to be more affordable and more efficient.[14]

Landscape for Public Policy

While legislation and other governmental actions can help address or alleviate some of these perplexing issues, the landscape for policymaking offers its own challenges. The last several years have seen a more pronounced political divide among the electorate, Congress, and state legislatures. Political divisions have become more pronounced. A recent survey from the Pew Research Center found, for example, that only half of American adults believe that higher education is having a positive effect on the country. Further, the percentage of Americans who believe colleges and universities have a negative effect has increased by 12 points since 2012, with the increase in negative viewpoints coming primarily from Republicans and independents who lean Republican, Pew found.[15] An explosion of misinformation, disagreements about facts, and the rise of incendiary conspiracy theories all impede civil discourse and the rational debate of issues—cases in point being divergent perceptions of the science of both the pandemic and climate change and disputation about the results of the 2020 election. Those divisions came into stark realization when rioters stormed the U.S. Capitol on January 6, 2021, and during the subsequent impeachment of Donald Trump and his second Senate trial.

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AGB's 2021
Federal and State Policy Priorities

The AGB public policy team has reviewed and prioritized the top federal and state policy issues for the association and its members for 2021. These priorities are outlined below.

Federal Priorities:

1. Additional COVID-19 Relief for Colleges and Universities
2. Increasing Aid to Ensure College Access and Completion
3. Supporting Innovation Across Higher Education
4. Repealing the Federal Excise Tax on College and University Net Investment Income
5. Supporting the Universal Charitable Deduction
6. Supporting Benefits for Students in the Federal Tax Code
7. Advocating for DACA Students and Sensible Immigration Reform
8. Revising the Title IX Regulations

State Priorities:

9. Protecting Institutional Autonomy and Board Independence
10. Supporting Requirements for Annual Statewide Programs for Public Board Members
11. Promoting Merit-Selection and Board Member Nominating Committees in States
12. Increasing Public Investment in Higher Education

Federal Priorities

1 Additional COVID-19 Relief for Colleges and Universities

Three congressional packages totaling $76 billion have provided COVID-19 aid to colleges and universities. This aid has enabled institutions to take steps to ensure student education can continue in person and remotely. Unfortunately, these packages have not collectively met the total financial need of institutions of higher education to respond to both the health and education impacts of COVID-19. AGB supports additional COVID-19 aid to meet the $120 billion estimated by the American Council on Education that is needed to meet the needs of colleges, universities, and their students.

2 Increasing Aid to Ensure College Access and Completion

AGB supports robust investments that would help ensure that all students are able to access and complete a higher education. Specifically, AGB supports increasing investments in campus-based aid programs and federal TRIO and GEAR UP programs; doubling the maximum Pell Grant; increasing funding for Historically Black Colleges and Universities, Hispanic-Serving Institutions, and other Minority-Serving Institutions; and expanding programs that ensure high-speed broadband access for low-income postsecondary students. In addition, AGB supports improvements to income-driven repayment plans.

3 Supporting Innovation Across Higher Education

AGB's members work to support and spur academic innovation at their institutions, which is why AGB is in favor of expanding competency-based education (CBE) programs, institutional alternatives to remedial coursework, transfer credit policies, stackable credentials, workforce innovations, and industry partnerships.

4 Repealing the Federal Excise Tax on College and University Net Investment Income

Private colleges and universities with endowments deemed to be large relative to their student enrollment, as defined by the Tax Cuts and Jobs Act of 2017 (and amended by the Bipartisan Budget Act of 2018) must pay a 1.4 percent federal excise tax on the net investment income of their endowments and other institutional assets. Significant amounts of endowment dollars are now being redirected to the U.S. Treasury and away from student financial aid, scientific research, and other critical mission-related activities. AGB supports the repeal of this tax because it reduces the amount of available endowment funds for institutional priorities.

5 Supporting the Universal Charitable Deduction

Initial COVID-19-focused legislation established a universal charitable deduction, enabling tax filers who do not itemize their returns to deduct up to $300 of their cash gifts. Recent reports suggest that the deduction has increased small gifts to nonprofit organizations during the COVID-19 pandemic, colleges and universities included. The $300 deduction was extended for 2021 with a $600 deduction for joint filers. AGB supports making the universal charitable deduction a permanent part of the tax code and increasing the amount of the deduction to as much as $4,000 for individuals and $8,000 for joint filers.

6 Supporting Benefits for Students in the Federal Tax Code

AGB supports continuing efforts to simplify, consolidate, and increase the value of the American Opportunity Tax Credit and the Lifelong Learning Tax Credit. These tax credits benefit low- and middle-income students and complement direct student financial aid programs.

AGB also supports expanding employee educational assistance programs. The CARES Act enabled the benefit to be used for employer repayment of student loans through 2025. The benefit level of $5,250 has not increased since 1978. AGB supports increasing the benefit level and making employer loan repayments a permanent feature of the federal tax code.

7 Advocating for DACA Students and Sensible Immigration Reform

AGB has remained an ally of DACA recipients. DACA students enrolled in higher education enrich our communities, contribute to institutional research and service missions, pay taxes, and are an important part of our country's workforce pipeline. AGB encourages Congress to pass a permanent legislative solution to allow these individuals to remain in the United States and be placed on a path to citizenship. Additionally, since institutions benefit from the international exchange of students, scientists, and researchers, AGB supports sensible visa policies that encourage and enable foreign students and scholars to study and work in the United States.

8 Revising Title IX Regulations

AGB remains concerned about the impact of the current Title IX regulations pertaining to sexual harassment on college campuses. These regulations present compliance difficulties for colleges, which are expected to provide counsel for both parties and permit cross examination. AGB encourages the Biden administration to work with higher education and other stakeholders to revise this regulation in a manner that provides equal treatment and can be practically implemented by institutions.

State Priorities

9 Protecting Institutional Autonomy and Board Independence

Institutional autonomy and board independence are central to effective governance. Strategic and effective boards receive input from various constituencies, but at the end of the day, AGB urges that board members make decisions based on their own judgement about what is in the best interest of students and the public, not external or undue influences. Policymakers and other individuals or groups must respect the legal responsibilities of the board and understand the contours of the institutions' autonomy as established by charter, state law, or constitution. AGB supports safeguarding institutional autonomy and board independence from external intrusion.

10 Supporting Requirements for Annual Statewide Programs for Public Board Members

State-level board education convenings and programs can be an important strategy to build board capacity for higher education's quality and effectiveness and increase board member understanding of broader responsibilities beyond the institution or system board upon which they serve. AGB is a proponent of state efforts to create and continually improve these programs that offer important educational opportunities for board members.

11 Promoting Merit-Selection and Board Member Nominating Committees

AGB supports public board member appointment processes that facilitate the placement of the most able, experienced, and deserving citizens on public boards of higher education—institutional and multicampus—as well as the boards of statewide coordinating agencies. No selection process is perfect, but a process with standards and some level of rigor sends the message that preparation along with skills and experiences matter when it comes to public higher education governance. Nonpartisan board member nominating committees are one proven way to instill such standards and rigor in the selection processes.

12 Increasing Public Investment in Higher Education

AGB believes that higher education is a private *and* public good, one that benefits both graduates and society. Colleges and universities produce individuals with practical and soft skills, preparing them to contribute in innumerable ways to our democracy and society. AGB supports increases in public investments in higher education, as well as heightened communication and advocacy about its value and benefits.

Some observers view the current state of contention and discord as perhaps threatening the very effectiveness of a functioning democracy. Regardless of whether democratic society has reached the edge of a precipice or not, the divisions that are currently extant make it more difficult for agreements about policy to be reached and legislation passed. In practice, that raises profound questions for policy making over the next two years. In the short term, will the Biden administration be able to hit the ground running? Over the next two years, will Congress continue to be gridlocked, especially as the 2022 midterm elections approach, or might some semblance of compromise and bipartisanship emerge? What effect will the slight Democratic majorities in the Senate and House have on what kind of legislation is allowed to progress and which proposals will be stymied? Will the Senate eliminate the filibuster as a result? Might federal policy be limited to administration and executive agency actions and only the most critical pieces of legislation necessary to keep the country, economy, and government functioning? Broadly speaking, how might recent disruptions of the political process, including those by powerful individuals like former President Trump and social media, continue to affect policymaking?

How will national concerns about issues around race and economic inequality affect public policy? Will foreign countries play any role in meddling with U.S. policy? Looking at the states, where Republican candidates won 295 additional seats in the November 2020 elections, will we see more contentious redistricting debates in legislatures for congressional and state legislative seats?

Against that backdrop, other pressing questions also remain. When will the country be able to overcome the pandemic with vaccines and when will the economy start to recover? Will Congress legislate additional stimulus packages to speed those processes? How will growing concerns about annual federal deficits and cumulative federal debt—now totaling some $32 trillion—affect policymaking? Looking beyond our shores, how might international geopolitical uncertainty affect domestic policy? What response might be needed to such threats as computer hacking of U.S. government agencies, corporations, and university research centers by foreign actors?

These are some of the key considerations that provide a national context for public policy for higher education in 2021–2022. With that as background, we have identified the following specific issues that are likely to take prominence in that timeframe.

Top Policy Considerations

■ **Regulatory Activity.** The Biden administration has taken steps toward a likely roll back and rewrite of the Trump administration's rules on Title IX regarding how colleges respond to reports of sexual misconduct. Among other initiatives, the administration may also reinstate Obama-era guidance on the use of race in admissions.

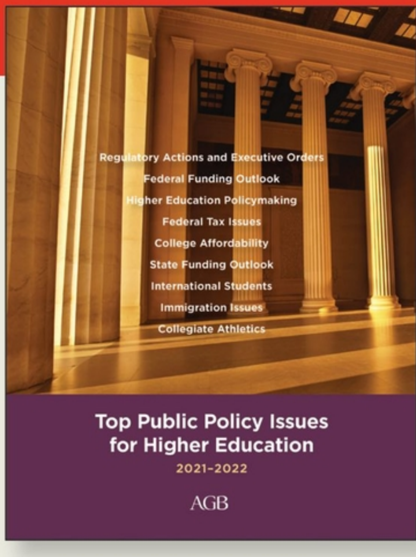
■ **Federal Funding Outlook.** Higher education will watch closely to see whether Congress will enact further pandemic relief funding that includes institutional aid for colleges and universities. The ongoing bipartisan interest in making college more affordable might lead to increases in federal student financial aid. The value of research will get a big boost in visibility and may see increased funding. Any federal legislative action on infrastructure could result in funding for colleges and universities.

■ **State Funding and Policy Outlook.** The pandemic eroded tax revenues in the states. Even with federal stimulus aid to state and local governments, we can expect continued budget problems due to declines in state tax collections and constitutional balanced budget requirements. Downstream, that may mean that public institutions will be under more pressure to increase tuition. Lawmakers (and boards and higher education leaders) may pay more attention to merging or otherwise restructuring state colleges and universities. Expect to see continued focus from governors and state legislators in pushing higher education institutions to do more to support workforce development. State legislators will continue to enact policies on social issues and in areas that traditionally have been the sole purview of higher education institutions.

■ **College Affordability.** While learners and their parents face the daunting task of paying ever- increasing tuition bills, lawmakers and other stakeholders continue to raise pointed questions about the return on investment of a college degree and the efficiency with which colleges and universities spend public funds. While President Biden campaigned on a platform that included doubling the amount of Pell Grants, an increase on that scale seems unlikely. Given how closely divided Congress is politically, it remains to be seen whether free college legislation could be signed into law. The administration plans to seek cancellation of $10,000 or more in student debt for all borrowers.

■ **Impact of the Judiciary.** The courts will continue to shape education policy, particularly in such areas as affirmative action and free speech.

■ **International Students and Immigration.** With the Biden administration likely to look favorably on immigration, higher education will be watching to see how new policies and regulations affect the flow of international students and scholars into the United States. President Biden signed an executive order that restored legal protections for DACA students. Legislation introduced in the House and Senate in early 2021 would allow DACA recipients to gain permanent residence and eventual citizenship. Comprehensive immigration reform legislation, introduced in Congress in February 2021, would create a pathway to citizenship for the millions of immigrants whose legal status is undocumented



Top Public Policy Issues for Higher Education 2021–2022 **reveals key issues for boards of institutions, systems, and institutionally related foundations to know, discuss, and follow in the year ahead. A complimentary e-book version of the full report is available for AGB members at https://agb.org/product/top-public-policy-issues-for-higher-education-2021-2022/.**

or otherwise tenuous. President Biden is likely to have bipartisan support if he takes a strong stance in protecting the country from any undue influence or malfeasance from China, including concerns about Chinese influence on colleges and universities.

■ **Federal Tax Issues.** As tax policy evolves, higher education will be advocating tax deductions that benefit colleges and universities, including incentives for charitable giving. Hope for repeal of the excise tax on the net income of private college and university endowments and other assets may reside in the possibility of it being rolled into a large tax bill or future legislative or budget reconciliation package. Higher education will advocate for the simplification and consolidation of the American Opportunity Tax Credit and the Lifelong Learning Tax Credit; reinstituting the ability of institutions to advance refund tax-exempt bonds; increasing the annual limit on employer-provided educational assistance; and elimination of the taxation of scholarship and grant aid used for nontuition expenses.

■ **Collegiate Athletics.** Federal and state legislators have expressed interest in legislation related to compensation of student athletes, and that issue has also found its way to the courts. On June 21, the Supreme Court of the United States ruled (9-0) that the National Collegiate Athletics Association cannot bar or restrict institutions from providing education-related benefits to athletes. Separately, look for scrutiny of college athletic programs in the context of both Title IX compliance, especially in the wake of program cuts due to COVID-19, and gambling on sporting events.

As the federal and state policy agendas for the next biennium become clearer, AGB will offer its members updates and guidance that can be found at https://agb.org/public-policy-resources/. ■

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