112TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
112–177

PROTECTING ACADEMIC FREEDOM IN HIGHER EDUCATION ACT

JULY 22, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Ms. FOXX, from the Committee on Education and the Workforce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2117]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 2117) to prohibit the Department of Education from overreaching into academic affairs and program eligibility under title IV of the Higher Education Act of 1965, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protecting Academic Freedom in Higher Education Act".

SEC. 2. REPEAL OF REGULATIONS RELATING TO STATE AUTHORIZATION AND DEFINING CREDIT HOUR.

(a) REGULATIONS REPEALED.—

(1) REPEAL.—The following regulations (including any supplement or revision to such regulations) are repealed and shall have no legal effect:

(A) STATE AUTHORIZATION.—Sections 600.4(a)(3), 600.5(a)(4), 600.6(a)(3), 600.9, and 668.43(b) of title 34, Code of Federal Regulations (relating to State authorization), as added or amended by the final regulations published by the Department of Education in the Federal Register on October 29, 2010 (75 Fed. Reg. 66832 et seq.).

(B) DEFINITION OF CREDIT HOUR.—The definition of the term "credit hour" in section 600.2 of title 34, Code of Federal Regulations, as added by the

final regulations published by the Department of Education in the Federal Register on October 29, 2010 (75 Fed. Reg. 66946), and subsection (k)(2)(ii) of section 668.8 of such title, as amended by such final regulations (75 Fed. Reg. 66949 et seq.).

(2) EFFECT OF REPEAL.—To the extent that regulations repealed by paragraph (1) amended regulations that were in effect on June 30, 2011, the provisions of the regulations that were in effect on June 30, 2011, and were so amended are restored and revived as if the regulations repealed by paragraph (1) had not taken effect.

(b) REGULATIONS DEFINING CREDIT HOUR PROHIBITED.—The Secretary shall not promulgate or enforce any regulation or rule that defines the term "credit hour" for any purpose under the Higher Education Act of 1965 on or after the date of enactment of this section.

PURPOSE

H.R. 2117, the Protecting Academic Freedom in Higher Education Act, reduces the federal government's overreach into postsecondary academic affairs and helps increase access to higher education for our nation's most disadvantaged students. It protects the academic autonomy of institutions of higher education and restores the authority of states and accrediting agencies over our nation's higher education system. The bill repeals the state authorization regulation, one piece of the credit hour regulation and prohibits the Secretary of Education from defining "credit hour" in the future.

COMMITTEE ACTION

As the Committee on Education and the Workforce continues to evaluate the appropriate role of the federal government in education, we are committed to ensuring that students are afforded the freedom to choose institutions of higher education that best meet their unique needs, and colleges and universities are protected from unnecessary and burdensome federal regulatory schemes.

112TH CONGRESS

Hearings

On Tuesday, March 1, 2011, the Committee on Education and the Workforce held a hearing in Washington, DC, on "Education Regulations: Weighing the Burden on Schools and Students." The hearing was the first in a series examining the burden of federal, state, and local regulations on the nation's education system. The purpose of the hearing was to uncover the damaging effects of federal regulations that increasingly stifle growth and innovation, raise institutions' operating costs, and limit student access to affordable colleges and universities throughout the nation. Testifying before the Committee were: Mr. Gene Wilhoit, Executive Director, Council of Chief State School Officers, Washington, DC; Dr. Edgar Hatrick, Superintendent, Loudoun County Public Schools, Ashburn, Virginia; Mr. Christopher B. Nelson, President, St. John's College, Annapolis, Maryland; and Ms. Kati Haycock, President, The Education Trust, Washington, DC.

On Friday, March 11, 2011, the Committee on Education and the Workforce Subcommittee on Higher Education and Workforce Training held a hearing in Washington, DC, on "Education Regulations: Federal Overreach into Academic Affairs." The purpose of the hearing was to discuss the most egregious and intrusive pieces of the U.S. Department of Education's program integrity regulations—the state authorization regulation and the credit hour regu-

lation—and uncover their unintended consequences on states and institutions of higher education. Testifying before the Subcommittee were: Mr. Ralph Wolff, President, Western Association of Schools and Colleges, Alameda, California; Mr. John Ebersole, President, Excelsior College, Albany, New York; Dr. G. Blair Dowden, President, Huntington University, Huntington, Indiana; and the Honorable Kathleen Tighe, Inspector General, U.S. Department of Education, Washington, DC.

Legislative Action

On Friday, June 3, 2011, Rep. Virginia Foxx (R–NC) and Rep. John Kline (R–MN) introduced H.R. 2117, the Protecting Academic Freedom in Higher Education Act. The bill repeals the state authorization regulation, one piece of the credit hour regulation and prohibits the Secretary of Education from defining "credit hour" for any purpose under the Higher Education Act of 1965.

The Committee on Education and the Workforce considered H.R. 2117 in legislative session on Wednesday, June 15, 2011, and reported it favorably, as amended, to the House of Representatives by a bipartisan vote of 27–11. The Committee considered and adopted the following amendment to H.R. 2117:

• Rep. Virginia Foxx (R–NC) offered an amendment in the nature of a substitute to add a short title to the legislation. The amendment was adopted by voice vote.

The Committee further considered the following amendments to H.R. 2117, which were not adopted:

• Rep. Raúl Grijalva (D–AZ) offered an amendment to maintain pieces of the state authorization regulation, including the complaint process, strike the repeal of the state authorization regulation, except for the portion to create a complaint process, and the requirement for authorization by name. The amendment failed by a vote of 17–22.

• Rep. George Miller (D–CA) offered an amendment to prohibit implementation of the Act until the U.S. Department of Education's Inspector General certifies there are equal or greater protections in place related to program integrity under Title IV of the Higher Education Act of 1965. The amendment failed by a vote of 17–22.

• Rep. Rush Holt (D–NJ) offered an amendment to stipulate that the Act will be effective only if the maximum Pell Grant award is at least $5,550 for the 2012–2013 school year. The amendment was ruled out of order.

• Rep. Tim Bishop (D–NY) offered an amendment to strike the repeal of the credit hour regulation that establishes a federal definition of a "credit hour." The amendment failed by a vote of 11–27.

• Rep. Tim Bishop (D–NY) offered an amendment to strike the prohibition on the Secretary of Education from defining credit hour in the future. The amendment failed by a vote of 16–22.

Below is a summary of H.R. 2117.

SUMMARY

Short title

Section 1 establishes the short title of the bill as the Protecting Academic Freedom in Higher Education Act.

Regulations repeal

Section 2 repeals the U.S. Department of Education's state authorization regulation and the regulation that creates a federal definition of "credit hour." This section also includes a prohibition on the Secretary of Education from creating a federal definition of credit hour.

SUMMARY OF THE REGULATION

State Authorization. Under the Higher Education Act of 1965, an institution of higher education seeking to participate in federal student assistance programs must be authorized to provide a postsecondary educational program within a state. Historically, the U.S. Department of Education has allowed states to determine what requirements institutions of higher education must meet in order to carry out this requirement. The new federal regulation mandates the following:

- Established by Name. States must establish an institution of higher education by name. The institution that is established by name must comply with all applicable state approval or licensure requirements, *unless* exempted by the state based on its accreditation or that it has been in operation for at least 20 years.
- Exemption if Institution is Established as a Business or Charity. If a state establishes an institution of higher education as a business or charity (not established by name), the institution must be approved or licensed to offer postsecondary programs *and* may not be exempt from the approval process based on accreditation, years in operation, or other comparable exemption.
- Impact on Religious Institutions. States may exempt religious institutions from state authorization processes by nature of their religious affiliation. A "religious institution" is narrowly defined as one that that is "owned, controlled, operated, and maintained" by a religious corporation *and* awards *only* religious degrees or certificates. The definition is extremely narrow.
- Complaint Process. States must have a process in place to review and act on complaints about the institution of higher education. Currently, all accrediting agencies must have a process to review and act on complaints and many states lack a system to address complaints from students.
- Distance Education. An institution of higher education offering distance education courses must be able to document that it is authorized by any state in which it would otherwise be subject to state jurisdiction. The U.S. Department of Education issued a Dear Colleague letter stating that it will not enforce this provision until July 1, 2014, for institutions making "good faith efforts" to comply with the regulation.
- Disclosure. An institution of higher education must disclose to students and prospective students information about filing complaints with an accrediting agency, a state approval or licensing agency, and any other appropriate state agency.

Federal Credit Hour. Under Title IV of the Higher Education Act of 1965, federal student aid is awarded to students based on the number of academic credits in which they are enrolled each term. Historically, the U.S. Department of Education has relied on accrediting agencies to oversee how an institution of higher education

defines a credit hour and assigns a specific number of credit hours to each course. The new federal regulation creates a federal definition of a credit hour, under which an institution of higher education has only two ways to ensure its students are enrolled in classes and earning the required credit hours. Under the first option, an institution must base its credit hour off of the "Carnegie Unit," the traditionally accepted definition for one credit hour. Under this metric, one credit hour equals one hour of lecture and two hours of out-of-class work for approximately 15 weeks for one semester or trimester or 10 to 12 weeks for one quarter. Under the second option, an institution must demonstrate an equivalent amount of coursework as required by the first option for other academic activities, such as laboratory work, internships, and practice, as established by the institution.

COMMITTEE VIEWS

In October 2010, the U.S. Department of Education released a package of regulations to purportedly improve the integrity of federal student financial assistance programs. Two of these so-called "program integrity regulations"—the state authorization and credit hour regulations—inject the federal government into traditionally academic and state affairs. The burdens of these two regulations, as well as other statutory and regulatory requirements, tax the resources of colleges and universities, making it difficult for these entities to focus on their true mission of educating students.

History of examining regulatory red tape

The Committee has long championed bipartisan efforts to examine the regulatory burden imposed by the federal government on colleges and universities. In 2001, the Committee introduced a first-of-its-kind, web-based tool to enable higher education stakeholders across the nation to get involved in identifying ways to reduce red tape and bureaucracy for students, financial aid personnel, and colleges and universities. Known as the FED UP project, this bipartisan initiative, developed by Rep. Howard P. "Buck" McKeon (R–CA) and the late Rep. Patsy Mink (D–HI), was instrumental in fostering a more efficient and effective federal student aid system. The project solicited suggestions from the higher education community as to which provisions in the Higher Education Act, and corresponding regulations, should be changed or eliminated and why. More than 3,000 responses were received from loan professionals, financial aid officers, students, higher education associations, and concerned citizens. Congress and the Department of Education used the suggestions from this project to streamline regulatory and reporting requirements in 2002.

The 2008 reauthorization of the Higher Education Act, the Higher Education Opportunity Act (HEOA), also included efforts to examine the federal regulatory burden on institutions of higher education. The HEOA required the Advisory Committee on Student Financial Assistance to solicit comments from personnel working at colleges and universities about federal regulatory burdens and how to address them.[1] The HEOA also required the National Research Council at the National Academy of Sciences to conduct a study to

[1] Higher Education Opportunity Act § 492(a)(2)(F).

examine the regulatory burden on institutions of higher education.[2] The Committee is currently awaiting the results of both efforts.

Recent efforts to examine regulatory red tape

In the 112th Congress, the Committee has continued its efforts to streamline the federal regulatory burdens imposed on states, institutions of higher education, school districts, schools, and other entities impacted by the programs under its jurisdiction. In furtherance of this goal, the Committee held a number of hearings that examined the regulatory burden imposed on schools, institutions, and students by the federal government. During these hearings, college presidents, accrediting agency heads, and students testified about the cost of complying with burdensome, overreaching federal laws and regulations. For example, the President of St. John's College, Christopher Nelson, testified about the harmful impact of excessive regulations on colleges and universities:

> The cost of compliance is large for institutions of all sizes, but particularly so for a school of our size that has no office of institutional research or staff dedicated to support that function. This means that literally dozens of people on our campus, myself included, assume this burden as part of our daily work.[3]

Mr. Nelson went on to discuss how the time spent by his faculty and other staff on reporting and compliance affects their ability to educate:

> When I step back from the mass of the more mundane record-keeping, reporting, and compliance environment, I try to see what the effect of all this is on our principal task, fulfilling our educational mission for the sake of our students. Every diversion or distraction from these primary purposes weakens our best attempts to achieve those ends.[4]

Finally, he offered a worthwhile suggestion, "As new requirements are created, get rid of some of the old at the same time. The concept would be something along the lines of a pay-go system for regulation that could be applied both to regulatory requirements and to data collection." The Committee believes this is a sensible suggestion that the U.S. Department of Education should consider as it enters into future negotiated rulemaking sessions to improve student aid programs. Our goal should be to reduce, not increase burdens.

The state authorization regulation will jeopardize college access and completion

The Committee believes the new state authorization regulation imposes a one-size-fits-all requirement that will harm students and public and private schools. In issuing the regulation, the federal government is overstepping its traditional role of utilizing the knowledge and expertise of states and accrediting agencies to

[2] Higher Education Opportunity Act § 1106.
[3] "Education Regulations: Weighing the Burden on Schools and Students," hearing before the House Committee on Education and the Workforce, 112th Congress, 1st Session (March 1, 2011) (oral testimony of Christopher Nelson).
[4] Ibid.

measure and ensure institutional quality. The rule also infringes on the right of states to regulate their higher education systems and will likely require them to change how they currently authorize or license institutions of higher education to comply with the new requirements. Under the Higher Education Act, an institution of higher education participating in federal student aid programs must be authorized to provide a postsecondary educational program within a state.[5] The state authorization regulation micromanages how states comply with this longstanding requirement.

One of the most troubling aspects of the state authorization regulation is its impact on distance education programs. Under the rule, institutions of higher education that offer distance education programs may be forced to seek authorization in each state in which the students it services live, no matter how small its presence. These institutions may be forced to comply with authorization requirements in multiple states, including paying new fees, which will increase the cost of providing a high-quality postsecondary education. Ultimately, these innovative colleges and universities may decide to stop serving students in a particular state, thereby denying access to students. Rural states may be the most affected by this regulation and an institution's decision to forego authorization in states with limited populations.

In addition, colleges and universities specializing in distance education will need to hire additional staff to monitor the varying state laws to ensure they are appropriately authorized in each state. The rapid expansion of distance education demonstrates that colleges and universities are utilizing new technology to provide cost-effective ways to deliver postsecondary education to students. The state authorization regulation would put this new, innovative tool in jeopardy, reducing options for students without the resources or time to attend a traditional college or university. Fewer students with access to postsecondary education mean fewer graduates entering the workforce with the skills necessary to meet local economic demands.

During the March 11 hearing, the Subcommittee on Higher Education and Workforce Training heard from John Ebersole, President of Excelsior College, an online institution of higher education. Mr. Ebersole discussed the burden the state authorization regulation will impose on his institution:

> We do know we have put money in our budget for compliance and we estimate that at our institution by the time we hire the additional staff that will be necessary to coordinate this and we pay the fees which each of these states requires we are going to have an annual recurring cost of somewhere between $150,000 and $200,000 which when multiplied by the number of institutions that offer online programs today, we are talking about an additional cost which will eventually be passed to students of $500 million.[6]

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[5] Higher Education Act § 101(a)(2).

[6] "Education Regulations: Federal Overreach into Academic Affairs," hearing before the House Subcommittee on Higher Education and Workforce Training, 112th Congress, 1st Session (March 11, 2011) (oral testimony of John Ebersole).

The overriding consequence of the new regulation will be to put postsecondary education out of reach for students, many of whom are disadvantaged or low-income. In this tough economic climate, the federal government needs to put forward policies that improve college access and completion, thereby helping to put more skilled individuals into the workforce. Instead, it is pushing policies that will deny students the ability to gain the skills necessary to succeed in the global economy.

The Subcommittee also heard during the March 11 hearing about the negative consequences this regulation could have on private or religious colleges. The new federal requirements could force states to exercise unprecedented authority over private colleges and universities, going far beyond granting the authority to operate as postsecondary institutions. Dr. G. Blair Dowden, President of Huntington University, highlighted his concerns with the new state authorization requirement, stating, "My concern is that there appears to be no limits to what factors a state can consider when granting or withholding authorization and no mechanisms for appeal or due process." [7]

He went on to discuss the extremely narrow definition of "religious institution" included in the regulation and pointed out that most religiously affiliated institutions would not qualify for the exemption, thereby opening the institution up to unwarranted state interference:

> In addition, the possibility exists that certain states may use this new state authorization requirement as leverage to achieve their own higher education policy agenda at the expense of institutional missions. For instance, a state could require a certain curriculum or text books in order to gain authorization potentially violating both the academic prerogatives and religious convictions of the institutions.[8]

These consequences clearly go beyond the existing federal requirement that states grant authority to operate as a postsecondary institution within the state—threatening the academic freedom and mission of private colleges and universities.

The credit hour regulation will shut down innovative programs for students

The Committee believes the new credit hour regulation, which creates a federal definition of credit hour for the first time, undermines the traditional role of institutions of higher education and may be harmful to students and their colleges and universities. By imposing a restrictive set of new requirements when measuring coursework, the regulation will stifle innovative teaching practices being developed by colleges and universities around the country, including accelerated learning programs. This will shut down the programs unemployed or underemployed workers rely on to gain the skills necessary to get back to work, thereby jeopardizing the nation's fragile economic recovery.

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[7] "Education Regulations: Federal Overreach into Academic Affairs," hearing before the House Subcommittee on Higher Education and Workforce Training, 112th Congress, 1st Session (March 11, 2011) (oral testimony of G. Blair Dowden).

[8] Ibid.

While H.R. 2117, the Protecting Academic Freedom in Higher Education Act, repeals the federal definition of "credit hour," it leaves in place two other components of the credit hour regulation. First, it retains the requirements for accrediting agencies to review institutional policies on credit hour. Second, it leaves in place requirements for states to examine institutional policies on credit hour as the state decides whether to grant authorization to institutions of higher education to operate in their state. These two requirements were tentatively agreed to during the U.S. Department of Education's negotiated rulemaking session. While these remaining items still have their challenges, the affected parties agreed to them, and the Act does not change those regulations.

Unfortunately, the federal definition of "credit hour" is the one issue on which the Department of Education did not abide by the tentative agreement reached by the negotiated rulemaking panel. In defense of this provision, the Department relies on an Inspector General report of the Higher Learning Commission (HLC) and its review of American InterContinental University,[9] which was an isolated incident that does not represent a systemic problem in accreditation.

During the March 11 Subcommittee on Higher Education and Workforce Training hearing, Rep. Rob Andrews (D–NJ) asked Kathleen Tighe, the Department's Inspector General, whether the issues she found in reviewing HLC represented one limited incident or a systematic problem and questioned whether the federal definition is a solution in search of a problem.[10] The Inspector General pointed out that she had concerns with HLC's practices, but that other accrediting agencies her office reviewed did not have similar problems. In his testimony before the Subcommittee, Ralph Wolff, President of the Western Association of Schools and Colleges (WASC) and one of the participants in the negotiated rulemaking session, pointed out that participants continually asked the Department about the problems it was trying to solve. He noted the Department kept relying on the isolated incident with HLC without citing any other examples, "We asked repeatedly at the negotiated rulemaking, what is the scope of this problem so that we could help define a resolution. And we were never told what the scope was, beyond this one incident."[11]

The credit hour is at the heart of an academic decision. Institutions develop their credit hour policies and work with faculty to determine how many hours should be assigned to each course. Accrediting agencies then review each institution's policy and assignment of credit hours for the programs. Many of these agencies avoid strict standards to maximize flexibility in accounting for differing institutional policies and developing innovative ways to deliver educational content. During the hearing on March 11, the Subcommittee heard from numerous presidents of institutions of higher education and accrediting agencies who will be forced to comply with the new federal credit hour regulations when they go

[9] "Management Information Report—Review of The Higher Learning Commission of the North Central Association of Colleges and Schools' Standards for Program Length," Office of the Inspector General, U.S. Dep't of Education, May 24, 2010.

[10] "Education Regulations: Federal Overreach into Academic Affairs," hearing before the House Subcommittee on Higher Education and Workforce Training, 112th Congress, 1st Session (March 11, 2011), p. 67.

[11] Ibid. (oral testimony of Ralph Wolff).

into effect this year. Dr. Dowden, President of Huntington University, stated:

> For the credit hour, I think the definition is . . . confusing and how it relates to a variety of educational experiences that we offer at the institution including practicums and student teaching experiences and many other experiences that don't include the formula of seat time and that might be difficult to find out an equivalency as proposed in the regulations.[12]

Across the country, institutions like Huntington University and Western Governors University (WGU), which uses a competency-based model to award credit, are undertaking innovative and creative approaches to student learning. The Committee believes that the federal government should encourage more universities to adopt these models that are improving the higher education landscape. Under the federal credit hour regulation, WGU's credit hour definitions are relegated to exceptions, which could lead to accrediting bodies further questioning what they are doing and how they are doing it.

Conclusion

Instead of protecting students from fraud and abuse, both the state authorization and credit hour regulations are clear examples of federal overreach into the academic affairs of states and public and private institutions of higher education. These unnecessary regulations will impose additional regulatory burdens on colleges and universities, which could lead to higher costs being passed down to low-income and disadvantaged students. More importantly, students who are looking to gain the skills necessary to succeed in the workforce will be denied access to innovative instructional programs that will keep us competitive in the global economy.

H.R. 2117, the Protecting Academic Freedom in Higher Education Act, ensures that colleges and universities are able to focus their energy and resources on educating students. Congress and the Administration should focus on increasing educational opportunities for students and streamlining federal regulations that inhibit innovation in higher education.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

States the short title as the "Protecting Academic Freedom in Higher Education Act."

Section 2. Repeal of regulations relating to state authorization and defining credit hour

Repeals the state authorization regulation.

Repeals the definition of the term "credit hour."

Prohibits the Secretary of Education from defining the term "credit hour" for the purposes of carrying out the Higher Education Act of 1965.

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[12] "Education Regulations: Federal Overreach into Academic Affairs," hearing before the House Subcommittee on Higher Education and Workforce Training, 112th Congress, 1st Session (March 11, 2011) (oral testimony of G. Blair Dowden).

EXPLANATION OF AMENDMENTS

The amendments, including the amendment in the nature of a substitute, are explained in the body of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. H.R. 2117 repeals regulations relating to state authorization and defining credit hour under the Higher Education Act. H.R. 2117 would have no direct impact on the Legislative Branch.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104—4) requires a statement of whether the provisions of the reported bill include unfunded mandates. This issue is addressed in the CBO letter.

EARMARK STATEMENT

H.R. 2117 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of House Rule XXI.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote on a motion to report the measure or matter and on any amendments offered to the measure or matter the total number of votes for and against and the names of the Members voting for and against.

Date: June 15, 2011

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 1 Bill: H.R. 2117 Amendment Number: 2

Disposition: Defeated by a vote of 17-22

Sponsor/Amendment: Mr. Grijalva / retains requirement that states have a process to address student complaints regarding institutions as part of the state authorization

Name and State	Aye	No	Not Voting	Name and State	Aye	No	Not Voting
Mr. KLINE (MN) (Chairman)		X		Mr. MILLER (CA) (Ranking)	X		
Mr. PETRI (WI)		X		Mr. KILDEE (MI)	X		
Mr. McKEON (CA)		X		Mr. PAYNE (NJ)	X		
Mrs. BIGGERT (IL)		X		Mr. ANDREWS (NJ)	X		
Mr. PLATTS (PA)		X		Mr. SCOTT (VA)	X		
Mr. WILSON (SC)		X		Ms. WOOLSEY (CA)	X		
Mrs. FOXX (NC)		X		Mr. HINOJOSA (TX)	X		
Mr. GOODLATTE (VA)		X		Mrs. McCARTHY (NY)	X		
Mr. HUNTER (CA)		X		Mr. TIERNEY (MA)	X		
Mr. ROE (TN)		X		Mr. KUCINICH (OH)	X		
Mr. THOMPSON (PA)		X		Mr. WU (OR)	X		
Mr. WALBERG (MI)		X		Mr. HOLT (NJ)	X		
Mr. DesJARLAIS (TN)		X		Mrs. DAVIS (CA)	X		
Mr. HANNA (NY)		X		Mr. GRIJALVA (AZ)	X		
Mr. ROKITA (IN)			X	Mr. BISHOP (NY)	X		
Mr. BUCSHON (IN)		X		Mr. LOEBSACK (IA)	X		
Mr. GOWDY (SC)		X		Ms. HIRONO (HI)	X		
Mr. BARLETTA (PA)		X					
Mrs. NOEM (SD)		X					
Mrs. ROBY (AL)		X					
Mr. HECK (NV)		X					
Mr. ROSS (FL)		X					
Mr. KELLY (PA)		X					

Date: June 15, 2011

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 2 Bill: H.R. 2117 Amendment Number: 3

Disposition: Defeated by a vote 17-22

Sponsor/Amendment: Mr. Miller / makes bill effective only if the Dept. IG certifies there are equal or greater safeguards to prevent waste, fraud and abuse regarding credit hour and state authorization

Name and State	Aye	No	Not Voting	Name and State	Aye	No	Not Voting
Mr. KLINE (MN) (Chairman)		X		Mr. MILLER (CA) (Ranking)	X		
Mr. PETRI (WI)		X		Mr. KILDEE (MI)	X		
Mr. McKEON (CA)		X		Mr. PAYNE (NJ)	X		
Mrs. BIGGERT (IL)		X		Mr. ANDREWS (NJ)	X		
Mr. PLATTS (PA)		X		Mr. SCOTT (VA)	X		
Mr. WILSON (SC)		X		Ms. WOOLSEY (CA)	X		
Mrs. FOXX (NC)		X		Mr. HINOJOSA (TX)	X		
Mr. GOODLATTE (VA)		X		Mrs. McCARTHY (NY)	X		
Mr. HUNTER (CA)		X		Mr. TIERNEY (MA)	X		
Mr. ROE (TN)		X		Mr. KUCINICH (OH)	X		
Mr. THOMPSON (PA)		X		Mr. WU (OR)	X		
Mr. WALBERG (MI)		X		Mr. HOLT (NJ)	X		
Mr. DesJARLAIS (TN)		X		Mrs. DAVIS (CA)	X		
Mr. HANNA (NY)		X		Mr. GRIJALVA (AZ)	X		
Mr. ROKITA (IN)			X	Mr. BISHOP (NY)	X		
Mr. BUCSHON (IN)		X		Mr. LOEBSACK (IA)	X		
Mr. GOWDY (SC)		X		Ms. HIRONO (HI)	X		
Mr. BARLETTA (PA)		X					
Mrs. NOEM (SD)		X					
Mrs. ROBY (AL)		X					
Mr. HECK (NV)		X					
Mr. ROSS (FL)		X					
Mr. KELLY (PA)		X					

Date: June 15, 2011

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 3 Bill: H.R. 2117 Amendment Number: 5

Disposition: Defeated by a vote of 11-27

Sponsor/Amendment: Mr. Bishop / strikes the repeal of the credit hour definition

Name and State	Aye	No	Not Voting	Name and State	Aye	No	Not Voting
Mr. KLINE (MN) (Chairman)		X		Mr. MILLER (CA) (Ranking)	X		
Mr. PETRI (WI)		X		Mr. KILDEE (MI)	X		
Mr. McKEON (CA)		X		Mr. PAYNE (NJ)	X		
Mrs. BIGGERT (IL)		X		Mr. ANDREWS (NJ)		X	
Mr. PLATTS (PA)		X		Mr. SCOTT (VA)	X		
Mr. WILSON (SC)		X		Ms. WOOLSEY (CA)	X		
Mrs. FOXX (NC)		X		Mr. HINOJOSA (TX)	X		
Mr. GOODLATTE (VA)		X		Mrs. McCARTHY (NY)		X	
Mr. HUNTER (CA)		X		Mr. TIERNEY (MA)	X		
Mr. ROE (TN)		X		Mr. KUCINICH (OH)			X
Mr. THOMPSON (PA)		X		Mr. WU (OR)		X	
Mr. WALBERG (MI)		X		Mr. HOLT (NJ)		X	
Mr. DesJARLAIS (TN)		X		Mrs. DAVIS (CA)	X		
Mr. HANNA (NY)		X		Mr. GRIJALVA (AZ)	X		
Mr. ROKITA (IN)			X	Mr. BISHOP (NY)	X		
Mr. BUCSHON (IN)		X		Mr. LOEBSACK (IA)		X	
Mr. GOWDY (SC)		X		Ms. HIRONO (HI)	X		
Mr. BARLETTA (PA)		X					
Mrs. NOEM (SD)		X					
Mrs. ROBY (AL)		X					
Mr. HECK (NV)		X					
Mr. ROSS (FL)		X					
Mr. KELLY (PA)		X					

Date: June 15, 2011

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 4 Bill: H.R. 2117 Amendment Number: 6

Disposition: Defeated by a vote of 16-22

Sponsor/Amendment: Mr. Bishop / strikes the repeal of the prohibition on the Secretary to define a credit hour

Name and State	Aye	No	Not Voting	Name and State	Aye	No	Not Voting
Mr. KLINE (MN) (Chairman)		X		Mr. MILLER (CA) (Ranking)	X		
Mr. PETRI (WI)		X		Mr. KILDEE (MI)	X		
Mr. McKEON (CA)		X		Mr. PAYNE (NJ)	X		
Mrs. BIGGERT (IL)		X		Mr. ANDREWS (NJ)	X		
Mr. PLATTS (PA)		X		Mr. SCOTT (VA)	X		
Mr. WILSON (SC)		X		Ms. WOOLSEY (CA)	X		
Mrs. FOXX (NC)		X		Mr. HINOJOSA (TX)	X		
Mr. GOODLATTE (VA)		X		Mrs. McCARTHY (NY)	X		
Mr. HUNTER (CA)		X		Mr. TIERNEY (MA)	X		
Mr. ROE (TN)		X		Mr. KUCINICH (OH)			X
Mr. THOMPSON (PA)		X		Mr. WU (OR)	X		
Mr. WALBERG (MI)		X		Mr. HOLT (NJ)	X		
Mr. DesJARLAIS (TN)		X		Mrs. DAVIS (CA)	X		
Mr. HANNA (NY)		X		Mr. GRIJALVA (AZ)	X		
Mr. ROKITA (IN)			X	Mr. BISHOP (NY)	X		
Mr. BUCSHON (IN)		X		Mr. LOEBSACK (IA)	X		
Mr. GOWDY (SC)		X		Ms. HIRONO (HI)	X		
Mr. BARLETTA (PA)		X					
Mrs. NOEM (SD)		X					
Mrs. ROBY (AL)		X					
Mr. HECK (NV)		X					
Mr. ROSS (FL)		X					
Mr. KELLY (PA)		X					

Date: June 15, 2011

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 5 Bill: H.R. 2117

Disposition: Ordered favorably reported, as amended, to the House by a vote of 27-11

Sponsor/Amendment: Mr. Petri / motion to report the bill to the House with an amendment, and with the recommendation that the amendment be agreed to and that the bill, as amended, do pass

Name and State	Aye	No	Not Voting	Name and State	Aye	No	Not Voting
Mr. KLINE (MN) (Chairman)	X			Mr. MILLER (CA) (Ranking)		X	
Mr. PETRI (WI)	X			Mr. KILDEE (MI)		X	
Mr. McKEON (CA)	X			Mr. PAYNE (NJ)		X	
Mrs. BIGGERT (IL)	X			Mr. ANDREWS (NJ)	X		
Mr. PLATTS (PA)	X			Mr. SCOTT (VA)		X	
Mr. WILSON (SC)	X			Ms. WOOLSEY (CA)		X	
Mrs. FOXX (NC)	X			Mr. HINOJOSA (TX)		X	
Mr. GOODLATTE (VA)	X			Mrs. McCARTHY (NY)	X		
Mr. HUNTER (CA)	X			Mr. TIERNEY (MA)		X	
Mr. ROE (TN)	X			Mr. KUCINICH (OH)			X
Mr. THOMPSON (PA)	X			Mr. WU (OR)	X		
Mr. WALBERG (MI)	X			Mr. HOLT (NJ)	X		
Mr. DesJARLAIS (TN)	X			Mrs. DAVIS (CA)		X	
Mr. HANNA (NY)	X			Mr. GRIJALVA (AZ)		X	
Mr. ROKITA (IN)			X	Mr. BISHOP (NY)		X	
Mr. BUCSHON (IN)	X			Mr. LOEBSACK (IA)	X		
Mr. GOWDY (SC)	X			Ms. HIRONO (HI)		X	
Mr. BARLETTA (PA)	X						
Mrs. NOEM (SD)	X						
Mrs. ROBY (AL)	X						
Mr. HECK (NV)	X						
Mr. ROSS (FL)	X						
Mr. KELLY (PA)	X						

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause (3)(c) of House Rule XIII, the goal of H.R. 2117 is to repeal regulations relating to state authorization and defining credit hour under the Higher Education Act. The Committee expects the Department of Education to comply with these provisions and implement the changes to the regulations in accordance with these stated goals.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for H.R. 2117 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 21, 2011.

Hon. JOHN KLINE,
Chairman, Committee on Education and the Workforce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2117, the Protecting Academic Freedom in Higher Education Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Justin Humphrey.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 2117—Protecting Academic Freedom in Higher Education Act

H.R. 2117 would repeal two regulations published by the Department of Education. The first requires institutions of higher education to be authorized by the state or states in which they offer a curriculum, and the second defines the term "credit hour." In addition, the bill would prohibit the department from defining the term "credit hour" after the date of enactment.

CBO estimates that implementing H.R. 2117 would have an insignificant effect on discretionary spending. Additionally, CBO projects that enacting the bill could affect direct spending by increasing eligibility for federal student aid, such as student loans and Pell grants; therefore, pay-as-you-go procedures apply. However, because only a small number of students would be eligible for additional student aid, CBO estimates that the direct spending ef-

fects would be insignificant for each year and over the 2011–2021 period. Enacting the bill would have no impact on revenues.

H.R. 2117 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Justin Humphrey. This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 2117. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

No changes are made to existing law.

MINORITY VIEWS

INTRODUCTION

H.R. 2117 repeals two regulations that are intended to better ensure that students and taxpayers receive a quality education for their investment, and it fails to offer constructive solutions or alternatives to these measures. Particularly in a tough budget environment such as the current one, laws and regulations to ensure the effective and efficient use of taxpayer dollars should be strengthened, not weakened or repealed.

Now more than ever the federal government has an obligation to students and taxpayers to ensure that there is a minimum standard of institutional eligibility for federal student aid. The cost of college continues to skyrocket; on average, in-state tuition and fees at a 4-year college increased by almost 8 percent between 2009 and 2010.[1] Additionally, more students are attending college and using federal student aid. In 2011, the Department of Education will provide over $170 billion in grants, loans, and work-study assistance to students at institutions of higher education.[2] It is imperative that federal laws and regulations ensure adequate accountability at our institutions of higher education.

THE "TRIAD" REGULATORY STRUCTURE IN HIGHER EDUCATION AND THE FEDERAL ROLE

Title IV of the Higher Education Act (HEA) authorizes the federal student aid programs and establishes a regulatory structure that includes three actors—the federal government, states, and accrediting agencies—known as the "triad." Because of concern about federal interference in school operations, curriculum, and instruction, the Department of Education (the Department) has relied on accrediting agencies and States to determine and enforce standards of program quality. The HEA recognizes the roles of the federal government, states, and accrediting agencies as providing a framework for a shared responsibility for ensuring that the "gate" to student financial aid programs opens only to those institutions that provide students with quality education or training worth the time, energy, and money they invest.

Although the Department relies on accrediting agencies to assess and certify program quality at institutions, the Department does perform an important oversight role. In particular, the federal government has a direct role in ensuring that the student aid programs are properly used by institutions and students. As the

[1] Trends in College Pricing 2010, The College Board.

[2] Department of Education Fiscal Year 2012 Justifications of Appropriation Estimates to the Congress.

funder and operator of more than $170 billion in student aid,[3] the federal government has a responsibility to ensure that institutions have policies and procedures that protect federal dollars, and are acting in the best interests of students and the taxpayers.

The two rules repealed by H.R. 2117, the federal definition of a credit hour and state authorization, continue to respect the triad structure, providing for greater accountability through consistent definitions while relying on institutions, accreditors, and states as strong partners in ensuring such accountability for federal dollars.

FEDERAL DEFINITION OF A CREDIT HOUR

H.R. 2117 repeals the regulatory definition of a credit hour and prohibits the Secretary of Education from promulgating any future rules that define a credit hour.

The HEA defines an academic year for an undergraduate program as requiring a minimum of 24 semester or trimester credit hours or 36 quarter credit hours in a course of study.[4] The amount of student financial assistance that can be awarded is based on the number of credit hours earned, but the term "credit hour" is not defined in the HEA. Therefore, the credit hour is not only the basic unit of an academic program at an institution of higher education; it is also the basic unit underlying the distribution of federal student aid. Yet, prior to the October 2010 regulation, this term had never been defined for federal aid purposes.

In recognition of the importance of the "credit hour" unit as an accounting measure for student financial assistance, and in response to Department of Education Office of Inspector General (OIG) reports finding that accrediting agencies—which are required by the HEA to assess an institution's measure of program length—did not have sufficient policies to ensure proper assignment of credit hours to educational programs or to justify the length of such programs, the Department of Education defined a "credit hour" in final regulations issued October 29, 2010.

INSPECTOR GENERAL REPORT ON THE HIGHER LEARNING COMMISSION

On May 24, 2010, the OIG issued a management information report of the Higher Learning Commission of the North Central Association of Colleges and Schools. The Higher Learning Commission (HLC) accredits 1,022 institutions in Arizona, Arkansas, Colorado, Iowa, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, North Dakota, Nebraska, Ohio, Oklahoma, New Mexico, South Dakota, Wisconsin, West Virginia, and Wyoming. In 2008, institutions accredited by HLC received $27.5 billion in Title IV funding.

During the course of its review, the OIG issued a preliminary report—or Alert Memorandum—on December 17, 2009 based on what the OIG believed was a serious issue regarding HLC's decision to accredit a particular institution. In particular, HLC performed a comprehensive review to evaluate American Intercontinental University (AIU) for initial accreditation and found issues related to AIU's assignment of credit hours to certain undergraduate and graduate programs. Peer reviewers found that some

[3] Ibid.
[4] Section 481(a)(2)(A) of the Higher Education Act of 1965, as amended.

courses were being awarded at approximately double the amount of credit they were worth. A student seeking a Bachelor's of Business Administration at AIU, who was enrolled in a 9-credit course that is inflated at twice its value, is overpaying by $1,600 ($355 per credit). Despite its findings, HLC approved AIU for accreditation on May 14, 2009. In its Alert Memo, the OIG concluded that HLC's accreditation of AIU called into question whether it is a reliable authority regarding the quality of education or training provided by the institution. The OIG recommended that the Department of Education determine whether HLC is in compliance with the Department's regulations and, if not, take appropriate action to limit, suspend, or terminate HLC's recognition by the Secretary.

The OIG's findings show the ability of an institution to use the definition of a credit hour not as an academic measure, but as part of a business plan. In this case, AIU was overcharging students for their academic preparation and making excess profit from the increased student fees, paid in large part through federal student aid. Without a safeguard of a federal definition of a credit hour, the government can not adequately protect students and taxpayers from such abuses.

The Inspector General testified in front of the Committee on two occasions, on June 17, 2010 and March 11, 2011, to discuss her findings in this matter. In both instances, she expressed the need for a federal definition of a credit hour in order to ensure that federal student aid dollars were protected from potential waste, fraud, and abuse.

THE CREDIT HOUR REGULATION

The federal definition of a credit hour is necessary to ensure that student and taxpayer funds are protected from potential waste, fraud, and abuse. The Department of Education awards student aid funds based on how many credit hours a student is taking in a given semester; therefore the credit hour unit is fundamental to the awarding of federal student aid. Without a federal definition, there was little transparency to ensure that students and taxpayers were receiving consistent amounts of federal aid for comparable amounts of work at programs within and across institutions.

The definition in the October 2010 regulation is not a departure from the norm. It is based on the commonly accepted practice by most institutions of higher education, the Carnegie unit, and allows for flexibility at the institutional level. While the Carnegie unit is based on classroom and homework time, the federal definition includes the ability for an institution to define an equivalent alternative measure, specifically allowing for innovative and alternative means of instruction. Because of this allowance, the regulation will not prohibit institutions from offering course credit for internships, study abroad, self-study, and other alternative means of instruction.

The flexibility in the federal definition, along with its basis in widely accepted practice, will result in minimal or no adjustments for most institutions participating in Title IV programs, and will still allow institutions the freedom to set credit hours for courses using institution-based judgment and criteria. The definition recog-

nizes the role of institutions as well as that of the accreditors, by ensuring that accreditors—not the Department—assess the implementation of the federal definition.

Also, it is important to note that the federal definition is a minimum standard; institutions may require additional work per credit hour than the definition requires, and use separate measures of credit hours for their own academic purposes as long as they also use a credit hour measure for federal student aid programs that meets this regulatory standard.

By repealing this moderate and flexible definition, H.R. 2117 significantly undermines accountability, transparency and consistency in the awarding of federal student aid at a time when more students are attending postsecondary education, using more federal student aid, and institutions of higher education are growing and adapting to meet student demands.

PROHIBITING THE SECRETARY FROM FUTURE RULEMAKING

H.R. 2117 takes a step beyond repealing the particulars of federal definition set in the October regulation. The bill would prohibit the Secretary of Education from ever providing a federal definition of a credit hour. This prohibition would hinder the Secretary from addressing current or future issues of waste, fraud, and abuse without an act of Congress. Such a restriction would greatly limit the Secretary's authority and ability to adequately and responsibly operate the federal student aid programs in the best interests of students and the taxpayers.

STATE AUTHORIZATION

In order for students at an institution of higher education to be eligible for Title IV funds, an institution must be legally authorized by a State to provide a program of postsecondary education.[5] This requirement has always been a part of the HEA, though there have been few specifics in regulations. In its issuance of regulations on October 29, 2010, the Department specified how it will determine whether an institution is authorized by the State.

THE STATE AUTHORIZATION REGULATION

State laws and regulations are what govern the specific requirements for the authorization of institutions of higher education in a respective state. The October 2010 federal regulation acknowledges states' authority in this area and provides that for the purposes of federal student aid, institutions must simply be in compliance with what States require. Therefore, this regulation provides no new authority to states; rather, it makes clear that institutions must abide by state standards when operating in a given state.

As the landscape of higher education is growing and changing, it is important that states play a role in ensuring that institutions are, at a minimum, operating as an institute of higher education, and federal policies should support state efforts to protect students and taxpayers from institutions that are not operating in their best interests.

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[5] Sections 101(a)(2), 102(b)(1)(A)(ii)(II)(B), and 103(c)(1)(B) of the Higher Education Act of 1965, as amended.

H.R. 2117 repeals the state authorization rule issued in October 2010. This repeal would completely eliminate the definition of state authorization, including consumer protection provisions stipulating that institutions are only considered to be authorized by a state if such state has a process to review complaints against the institution.

By repealing this regulation, H.R. 2117 sets an alarming precedent and sends a message to institutions and states that the federal government believes it is acceptable to provide billions of dollars in federal student aid to institutions of higher education that are not in compliance with state laws. Further, as the regulation provides that state authorization policies must be transparent to students and families, repealing the regulation could result in less information to consumers, making it more difficult to choose an institution of higher education that best fits the student's needs.

CONSUMER PROTECTION

The federal state authorization regulation also requires that states have a process to resolve complaints about institutions of higher education from students, families, and employees. Currently, the complaint process is varied across the states,[6] and some states do not have a process at all or the only process available is the same process available for any consumer complaint, and not unique to higher education. Therefore, in many places, students are left without any recourse at the state level when an institution does not act in their interest.

In 2010, the Congress passed, and the President signed, legislation that protected consumers from bad practices at credit card companies and banks. We applaud the Department for ensuring that the nation's students are afforded similar protections at the state level.

DEPARTMENT ACTIONS

Understanding that many institutions had concerns with their ability to be in full compliance with the regulations by July 1, 2011, the Department is working extensively with states and institutions to address implementation concerns. Specifically:

• On March 17, 2011, the Department issued a Dear Colleague Letter clarifying that, although the regulation became effective July 1, 2011, institutions providing distance education will not be considered to be out of compliance on that date as long as they have applied for state approval in the States in which such approval is needed.

• The Department is also supporting efforts by the higher education community to develop a comprehensive directory of state requirements so states can clearly identify their specific requirements and institutions have the ability to easily understand the processes required by each state. Once developed, the directory will be publicly available on the Department's website.

• Additionally, the Department is actively engaging States and schools, including the distance education community, to support

[6] http://www.sheeo.org/stateauth/Links%20to%20Complaint%20Process.pdf.

their work in moving towards common applications and State reciprocity agreements.

The Department is taking appropriate action to ensure that the regulation will be implemented as intended; and will ensure accountability for students, taxpayers, and the federal government without disrupting education at institutions of higher education.

CONCLUSION

The Department has established rules defining a credit hour and providing other protections for students, including ensuring students have access to a complaint process through state authorization. The Department's regulation sets a minimum standard for credit hours for purposes of awarding federal student aid, and ensures that institutions are following state authorization laws. These do not interfere with academic freedom; rather, they ensure integrity for taxpayer dollars. These rules have closed loopholes in the accountability system protecting students and taxpayers in the student aid programs. We support these common sense measures to improve accountability.

H.R. 2117 would repeal those efforts and open the loopholes again. It would put taxpayer dollars at greater risk of fraud, waste, and abuse at a time when the higher education market is in so much flux, and the demand for student financial aid is growing. H.R. 2117 fails to protect the nation's students, moves backwards in accountability measures, and lacks any alternative approaches.

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