113TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
113–205

SUPPORTING ACADEMIC FREEDOM THROUGH REGULATORY RELIEF ACT

SEPTEMBER 10, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. KLINE, 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. 2637]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 2637) to prohibit the Secretary of Education from engaging in regulatory overreach with regard to institutional eligibility under title IV of the Higher Education Act of 1965, and for other purposes, 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 "Supporting Academic Freedom through Regulatory Relief Act".

SEC. 2. REGULATORY RELIEF.

(a) REGULATIONS REPEALED.—

(1) REPEAL.—The following regulations (including any supplement or revision to such regulations) are repealed and shall have no legal effect: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 clauses (i)(A), (ii), and (iii) of subsection (k)(2) of section 668.8 of such title, as amended by such final regulations (75 Fed. Reg. 66949 et seq.).

(C) GAINFUL EMPLOYMENT.—Sections 600.10(c), 600.20(d), 668.6, and 668.7, of title 34, Code of Federal Regulations 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. and 75 Fed. Reg. 66665 et seq.) and June 13, 2011 (76 Fed. Reg. 34386 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(2) EFFECT OF REPEAL.—To the extent that regulations repealed by paragraph (1) amended regulations that were in effect on June 30, 2011, the provisions of the regulations that were in effect on June 30, 2011, and were so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) CERTAIN REGULATIONS PROHIBITED.—

(1) STATE AUTHORIZATION AND GAINFUL EMPLOYMENT.—

(A) IN GENERAL.—The Secretary of Education shall not, during the period described in subparagraph (B), promulgate or enforce any regulation or rule not in effect on the date of enactment of this Act for any purpose under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) with respect to—

(i) the State authorization for institutions of higher education to operate within a State; or

(ii) the definition or application of the term "gainful employment".

(B) PERIOD OF PROHIBITION.—The period during which the Secretary is prohibited from promulgating or enforcing a regulation described in subparagraph (A) shall be the period beginning on the date of enactment of this Act and ending on the date of enactment of a law that extends by not less than 2 fiscal years the authorization or duration of one or more programs under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

(2) CREDIT HOUR.—The Secretary of Education shall not, on or after the date of enactment of this Act, promulgate or enforce any regulation or rule with respect to the definition of the term "credit hour" for any purpose under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

SEC. 3. THIRD-PARTY SERVICE PROVIDERS.

Section 487(a)(20) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)(20)) is amended by adding at the end the following: "Notwithstanding the preceding sentence, an institution described in section 101 may provide payment, based on the amount of tuition generated by the institution from student enrollment, to a third-party entity that provides a set of services to the institution that includes student recruitment services, regardless of whether the third-party entity is affiliated with an institution that provides educational services other than the institution providing such payment, if—

"(A) the third-party entity is not affiliated with the institution providing such payment;

"(B) the third-party entity does not make compensation payments to its employees that are prohibited under this paragraph;

"(C) the set of services provided to the institution by the third-party entity include services in addition to student recruitment services, and the institution does not pay the third-party entity solely or separately for student recruitment services provided by the third-party entity; and

"(D) any student recruitment information available to the third-party entity, including personally identifiable information, will not be used by, shared with, or sold to any other person or entity, including any institution that is affiliated with the third-party entity.".

PURPOSE

H.R. 2637, Supporting Academic Freedom through Regulatory Relief 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 colleges and universities and restores the authority of states and accrediting agencies over our nation's higher education system. The bill repeals the credit hour, state authorization, and gainful employment regulations and amends the statute to clarify the incentive compensation regulation. Additionally,

the bill prohibits the U.S. Department of Education from issuing related regulations until after Congress reauthorizes the Higher Education Act.

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 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 March 1, 2011, the Committee on Education and the Workforce held a hearing in Washington, D.C. 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, D.C.; 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, D.C.

On March 11, 2011, the Committee on Education and the Workforce Subcommittee on Higher Education and Workforce Training held a hearing in Washington, D.C. 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 credit hour and state authorization regulations—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, D.C.

On March 17, 2011, the Committee on Education and the Workforce held a hearing in Washington, D.C. on "Education Regulations: Roadblocks to Student Choice in Higher Education." The purpose of the hearing was to explore the harmful consequences of the U.S. Department of Education's gainful employment regulation and discuss how these requirements impede college access, stifle job creation, and demonstrate federal overreach into the nation's postsecondary education system. Testifying before the committee were: Ms. Catherine Barreto, Graduate, Monroe College and Senior Sales Associate, Doubletree Hotels, Brooklyn, New York; Ms. Jeanne Herrmann, Chief Operating Officer, Globe University/Minnesota

School of Business, Woodbury, Minnesota; Mr. Travis Jennings, Electrical Supervisor of the Manufacturing Launch Systems Group, Orbital Sciences Corporation, Chandler, Arizona; and Dr. Arnold Mitchem, President, Council for Opportunity in Education, Washington, D.C.

On July 8, 2011, the Committee on Education and the Workforce Subcommittee on Higher Education and Workforce Training held a joint hearing with the Committee on Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight, and Government Spending in Washington, D.C. on "The Gainful Employment Regulation: Limiting Job Growth and Student Choice." The purpose of the hearing was to explore the harmful consequences of the U.S. Department of Education's gainful employment regulation and how the new requirements impede college access, stifle job creation, and continue the administration's federal overreach into the nation's postsecondary education system. Testifying before the subcommittees were: Mr. Harry C. Alford, President and Chief Executive Officer, National Black Chamber of Commerce, Washington, D.C.; Dr. Dario A. Cortes, President, Berkeley College, New York City, New York; Ms. Karla Carpenter, Graduate, Herzing University and Program Manager, Quest Software, Dane County, Wisconsin; and Dr. Anthony P. Carnevale, Director, Georgetown University Center on Education and the Workforce, Washington, D.C.

Legislative action—first session

On February 17, 2011, the House of Representatives considered an amendment offered by Reps. John Kline (R–MN), Virginia Foxx (R–NC), and Alcee Hastings (D–FL) to H.R. 1, the *Disaster Relief Appropriations Act* of 2013. The amendment prohibited the use of funds by the U.S. Department of Education to implement and enforce the gainful employment regulation. The amendment was agreed to by a bipartisan vote of 289 to 136.

On February 19, 2011, the House of Representatives passed H.R. 1 by a vote of 235 to 189. The amendment was not included in the conference agreement.

On June 3, 2011, Reps. Virginia Foxx (R–NC) and John Kline (R–MN) introduced H.R. 2117, the Protecting Academic Freedom in Higher Education Act. The bill repealed the federal credit hour and state authorization regulations and prohibited the Secretary of Education from defining "credit hour" for any purpose under the *Higher Education Act* of 1965.

On June 15, 2011, the Committee on Education and the Workforce considered H.R. 2117 in legislative session, and reported it favorably, as amended, to the House of Representatives by a bipartisan vote of 27 to 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 the state authorization regulation's complaint process and the re-

quirement 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. 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 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.

Second session

On February 28, 2012, the House of Representatives passed H.R. 2117 by a bipartisan vote of 303 to 114. The bill was sent to the Senate and referred to the Senate Committee on Health, Education, Labor, and Pensions.

113TH CONGRESS

Hearing—first session

On July 9, 2013, the Committee on Education and the Workforce held a hearing in Washington, D.C. on "Keeping College Within Reach: Improving Higher Education through Innovation." The purpose of this hearing was to highlight innovation in higher education occurring at the state and institutional level and in the private sector, and discuss federal roadblocks to those innovative practices. Testifying before the committee were: Mr. Scott Jenkins, Director of External Relations, Western Governors University, Salt Lake City, Utah; Dr. Pamela J. Tate, President and Chief Executive Officer, Council for Adult and Experiential Learning, Chicago, Illinois; Mr. Burck Smith, Chief Executive Officer and Founder, StraighterLine, Baltimore, Maryland; and Dr. Joann Boughman, Senior Vice Chancellor for Academic Affairs, University System of Maryland, Adelphi, Maryland.

Legislative action—first session

On July 10, 2013, Reps. Virginia Foxx (R–NC), John Kline (R–MN), and Alcee Hastings (D–FL) introduced H.R. 2637, Supporting Academic Freedom through Regulatory Relief Act. The bill, which includes the text of the Protecting Academic Freedom in Higher Education Act (H.R. 2117) and the Kline/Foxx/Hastings amendment to H.R. 1 from the 112th Congress, repeals the credit hour, state authorization, and gainful employment regulations and amends the statute to clarify the incentive compensation regulation. Additionally, the bill prohibits the U.S. Department of Education from issuing related regulations until after Congress reauthorizes the Higher Education Act.

On July 24, 2013, the Committee on Education and the Workforce considered H.R. 2637 in legislative session, and reported it favorably, as amended, to the House of Representatives by a bipartisan vote of 22 to 13. The committee considered and adopted the following amendment to H.R. 2637:

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

The committee further considered the following amendment to H.R. 2637, which was not adopted:

• Rep. Tim Bishop (D–NY) offered an amendment to strike the prohibition on the U.S. Department of Education from issuing regulations related to state authorization, gainful employment, and credit hour. The amendment failed by a vote of 13–22.

Below is a summary of H.R. 2637.

SUMMARY

The Supporting Academic Freedom through Regulatory Relief Act eliminates the most burdensome "program integrity" regulations and prevents future federal overreach in postsecondary academic affairs. Specifically, the bill:

• Repeals the federal definition of a credit hour. It would also prohibit the secretary from defining "credit hour" in the future.

• Repeals the state authorization regulation, which forces states to follow federal requirements when deciding whether to grant an institution—including those offering online education programs—permission to operate within the state.

• Repeals the gainful employment regulation, which would levy reporting burdens on community and proprietary colleges and force administrators to seek federal approval before creating programs.

• Amends the statute to clarify the incentive compensation regulation to ensure third-party service providers are allowed to enter into tuition-sharing agreements with nonprofit colleges and universities to aid in the development of distance education platforms.

• Prohibits the U.S. Department of Education from issuing regulations on the state authorization and gainful employment regulations until after Congress reauthorizes the *Higher Education Act* and permanently prohibits the promulgation of a federal definition of credit hour.

BACKGROUND ON THE REPEALED REGULATIONS

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 on 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 for other academic activities, such as laboratory work, internships, and practice, as established by the institution.

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 allowed states to determine what requirements institutions of higher education must meet to carry out this requirement. The state authorization regulation mandates the following:

- *Established by Name*. States must establish an institution of higher education by name. The institution established by name must comply with all applicable state approval or licensure requirements, *unless* exempted by the state based on its accreditation or having 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 is "owned, controlled, operated, and maintained" by a religious corporation *and* awards *only* religious degrees or certificates.
- *Distance Education.* An institution offering distance education courses must be able to document it is authorized by any state in which it would otherwise be subject to state jurisdiction. This provision raised questions as to whether online programs must be authorized in every state in which they have enrolled students. On June 5, 2012, the provision was struck down by the U.S. Court of Appeals for the District of Columbia because it was not a "logical outgrowth" of the rest of the proposed regulation. On April 16, 2013, the department announced in the Federal Register its intentions to re-regulate on this issue.
- *Disclosure/Compliant Process.* A college or university must disclose to current and prospective students information on filing complaints about institutions of higher education with an accreditor, a state approval or licensing agency, and any other appropriate state agency. States must have a process to review and act on complaints about institutions of higher education. Currently, all accreditors must have a process to review and act on complaints against institutions because they are responsible for institutional quality. The regulation requires states to duplicate this process.

Because of continuing questions from states as to whether their laws are in compliance and confusion from institutions of higher

education, the department conditionally delayed implementation of the state authorization regulation on two separate occasions. The regulation is slated to go in effect on July 1, 2014.

Gainful employment

Under the *Higher Education Act* of 1965, proprietary institutions are permitted to participate in federal student aid programs as long as their programs prepare students for "gainful employment in a recognized occupation." Short-term programs offered at community colleges or other nonprofit colleges must also meet this requirement. The term "gainful employment" has been in the law since 1965, and Congress did not elaborate further when it reauthorized the law in 2008. The final regulation contains three separate components:

Determination of Eligibility for Academic Programs: Programs are categorized as: (1) eligible for federal student aid; (2) eligible but restricted; and (3) ineligible for federal student aid based on debt-to-income ratio and loan repayment rate calculations.

• Debt-to-Income Ratio Calculation. The debt-to-income ratio would be determined by examining the median annual loan payment made by students in the program compared to the average annual income of the same group of students over a three-year period. Two types of income would be compared to the median debt level of each program: actual income, which reflects the average annual income of students in a particular program, and discretionary income, which is defined as the difference between the average annual income of the program's students and 150 percent of poverty.

Under the regulation, the debt-to-income ratio would be "reasonable" if the median annual loan payment amount for a program's graduates is less than 12 percent of the average annual earnings for these same students and less than 30 percent of the graduates' discretionary income. The income data required for this calculation would be provided to the U.S. Department of Education by the Social Security Administration at the program level rather than on a student-by-student basis.

• Loan Repayment Rate Calculation. The loan repayment rate would be based on the number of graduates in active loan repayment, defined by examining the average percentage of former students who have reduced the principal on their federal loans over a four-year period. Borrowers who are in a repayment plan in which their principal is not being reduced—which is common among new graduates—would not be counted as in repayment on their loans, despite the fact those borrowers would be in good standing and not in delinquency or default on their loans. For purposes of the loan repayment rate calculation, the department believes a program would have a "reasonable" repayment rate if more than 35 percent of its former students (graduates and those who dropped out) are in repayment.

New Programs: The U.S. Department of Education is required to approve every new program created at a proprietary institution prior to the start of enrollment and institutions must comply with a number of new reporting requirements.

Disclosure: All proprietary institutions and the nonprofit colleges and universities that offer short-term programs are required to

make public the following set of data elements, much of which is different from what the federal government collects on all institutions of higher education:

- Information Published on the Institution's Website
  - Cost of the institutional program.
  - Median debt of the students over the past three years (including a separate identification of federal loans, private loans, and institutional loans).
  - Identification of the careers for which the institutional program is providing training.
  - On-time graduation rates.
  - Job placement rates.
- Information Reported to the Department Annually
  - Each student who completed the institutional program.
  - The date the student completed the institutional program.
  - The amount of private and institutional loans received by the student.

On June 30, 2012, the U.S. District Court for the District of Columbia upheld the department's authority to regulate on gainful employment, but struck down the loan repayment rate calculation because the standard was chosen arbitrarily. The court struck down the debt-to-income ratio calculation because it was so closely intertwined with the repayment rate standard. The court also struck down the new program requirement. Finally, the court held that institutions are not required to report any data to the department under the disclosure requirements, but are required to make data public. On April 16, 2013, the department announced in the *Federal Register* its intentions to re-regulate on this issue. The negotiated rulemaking sessions are scheduled to start in early September 2013.

Incentive compensation

The *Higher Education Act* of 1965 prohibits institutions of higher education from paying any commission or bonus based on employees' success in recruiting students if those employees are engaged in student recruitment, admissions, or student financial aid. Regulations for this provision used to include 12 "safe harbors," or activities in which schools could engage without violating the incentive compensation ban. One of the safe harbors allowed for tuition-sharing agreements between institutions and third-party providers for recruitment activities. The U.S. Department of Education's incentive compensation regulation eliminated all allowable safe harbors.

On March 17, 2011, the department released informal guidance in the form of a "Dear Colleague Letter" (DCL) delineating acceptable activities. To address concerns voiced by smaller colleges and universities who use third-party providers for a variety of services, the DCL clarified that a tuition-sharing plan between a college and a third-party service provider does not violate the incentive compensation prohibition as long as the payment compensates an entity unaffiliated with the college or university making the payment. To further clarify the department's position, the DCL provided several examples, one of which stated the third-party provider *could not be affiliated with any other college or university*, even if the af-

filiated college has nothing to do with the third-party entity providing the services.

COMMITTEE VIEWS

In late 2010 and early 2011, the U.S. Department of Education released several packages of regulations purportedly to improve the integrity of student financial aid programs, such as Pell Grants and federal student loans. Two of these so-called "program integrity" rules—the credit hour and state authorization regulations—expand the reach of the federal government into issues that are traditionally academic or state affairs. A third regulation—the gainful employment rule—harms job creation and imposes federal cost controls on institutions. The final regulation—the incentive compensation rule—hampers the ability of nonprofit colleges and universities to move coursework online. These regulations, combined, increase the regulatory burden on institutions, impede innovation, and expand the federal footprint on college campuses across the country, making it difficult for colleges and universities 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 participate 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 used the suggestions from this project to streamline regulatory and reporting requirements in 2002.

The Higher Education Opportunity Act (HEOA), the 2008 reauthorization of the Higher Education Act, 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 examine the regulatory burden on institutions of higher education.[2] The committee is currently awaiting the results from the National Research Council.

[1] Higher Education Opportunity Act § 492(a)(2)(F)
[2] Higher Education Opportunity Act § 1106

Recent efforts to examine regulatory red tape

In the 112th Congress, the committee 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, during a March 1, 2011 hearing before the Committee on Education and the Workforce, Mr. Christopher Nelson, the president of St. John's College, 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."[5] 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 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

[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.
[5] Ibid.

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, jeopardizing the nation's fragile economic recovery.

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 the agencies avoid strict standards to maximize flexibility in accounting for differing institutional policies and developing innovative ways to deliver educational content. During the March 11, 2011 hearing before the Subcommittee on Higher Education and Workforce Training, members 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 into effect this year. Dr. G. Blair 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.[6]

Ms. Pamela Tate, President and Chief Executive Officer for the Council for Adult and Experiential Learning, highlighted the flaws to students of maintaining a seat-based federal definition of credit hour during a July 9, 2013 hearing before the Committee on Education and the Workforce. She stated:

> The main policy issue is that, currently, federal financial aid programs like Pell grants and federal loans support only traditional time-based learning. The financial aid system under Title IV is not structured for an outcomes-based and assessment-based approach to postsecondary completion. It excludes assessment of prior learning fees, even though these fees significantly reduce the student's overall student loan debt or the amount to be covered by Pell grants or other educational benefits.[7]

Across the country, institutions like Huntington University and Western Governors University (WGU), which use a competency-based model to award credit, are undertaking innovative and creative approaches to student learning. The committee believes 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 competencies are

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[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 G. Blair Dowden).

[7] "Keeping College Within Reach: Improving Higher Education through Innovation," hearing before the House Committee on Education and the Workforce, 113th Congress, 1st Session (July 9, 2013) (written testimony of Pamela J. Tate).

relegated to exceptions, which could lead to accrediting bodies further questioning what they are doing and how they are doing it.

While H.R. 2637, Supporting Academic Freedom through Regulatory Relief 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 challenges, the affected parties agreed to them in order to protect against potential fraud and abuse, and the Act does not change those regulations.

Unfortunately, the federal definition of "credit hour" is the one issue on which the department did not abide by the tentative agreement reached by the negotiated rulemaking panel. In defense of this provision, the committee notes the department relies on an Inspector General report of the Higher Learning Commission (HLC) and its review of American InterContinental University,[8] which was an isolated incident that does not represent a systemic problem in accreditation.

During the March 11, 2011 Subcommittee on Higher Education and Workforce Training hearing, Rep. Rob Andrews (D–NJ) asked Ms. 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.[9] 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, Mr. Ralph Wolff, President of the Western Association of Schools and Colleges 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." [10]

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 colleges. In issuing the regulation, the federal government is overstepping its traditional role of utilizing the knowledge and expertise of states and accrediting agencies to

[8] "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.

[9] "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.

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

measure and ensure institutional quality. The rule also infringes on the right of states to regulate their higher education systems and will likely require most, if not all, states to change how they currently authorize or license institutions of higher education to comply with the new requirements. For almost 50 years, the *Higher Education Act* included language that an institution of higher education participating in federal student aid programs must be authorized to provide a postsecondary educational program within a state.[11] The state authorization regulation micromanages how states comply with this long-standing requirement.

One of the more troubling aspects of the state authorization regulation is its consequences for distance education programs. Even though the requirement was struck down by the U.S Court of Appeals for the District of Columbia,[12] the Secretary of Education announced[13] his plans to re-regulate on this issue in the near future. Under the previous regulation, institutions of higher education that offer distance education programs may be forced to seek authorization in each state in which the students it serves 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.

The rapid expansion of distance education demonstrates colleges and universities are utilizing new technology to provide cost-effective ways to deliver postsecondary education to students, especially nontraditional students. The distance education component of the state authorization regulation could 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, 2011 hearing, the Subcommittee on Higher Education and Workforce Training heard from Mr. John Ebersole, President of Excelsior College, an online institution of higher education. In his testimony, 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

[11] Higher Education Act § 101(a)(2)

[12] *Association of Private Sector Colleges and Universities* vs. *Arne Duncan.* United States Court of Appeals for the District of Columbia Circuit. (June 5, 2012).

[13] "Negotiated Rulemaking Committee; Public Hearings," 78 Federal Register 73 (16 April 2013), pp. 22467–22469.

> cost which will eventually be passed to students of $500 million.[14]

In a letter sent to the committee on July 22, 2013, Dr. Robert Mendenhall, President of Western Governors University, discussed the cost the state authorization regulation has already had on his campus. He stated, "Simply put, State Authorization has cost WGU more than $1,000,000 over the past two-years. Those precious dollars could have been spent much more effectively on students." [15]

The overriding consequence of the new regulation will be to put postsecondary education out of reach for students, many of whom are low-income or disadvantaged. In this tough economic climate, the federal government needs to put forward policies that improve college access and completion, thereby helping more skilled individuals enter 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 on Higher Education and Workforce Training also heard during the March 11, 2011 hearing about the negative consequences the state authorization regulation would have for 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 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." [16]

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, consequently opening the institution up to unwarranted state interference:

> . . . 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.[17]

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.

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[14] "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).

[15] Mendenhall, Robert W., Western Governors University. Letter to Chairman John Kline, House Committee on Education and the Workforce. July 22, 2013. <http://edworkforce.house.gov/UploadedFiles/Dr_Mendenhall_Support_Letter_for_H_R_2637.pdf>.

[16] "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).

[17] Ibid.

The Gainful Employment Regulation stifles job creation

The committee strongly opposes the gainful employment regulation as an unprecedented attack on the proprietary sector of higher education that will limit student choice and jeopardize local economic and workforce development. Instead of working with Congress during the upcoming reauthorization of the Higher Education Act, the department proposed and finalized a regulation that contained a complex matrix of metrics involving debt-to income ratios and loan repayment rates. The regulation also gave unprecedented authority to the U.S. Secretary of Education to approve each new program created by a proprietary institution, taking away these institutions' ability to remain flexible to ensure their academic offerings meet the needs of the local economy. Finally, the regulation imposes new, burdensome disclosure requirements on all programs at proprietary institutions and select short-term programs at nonprofit institutions—information that is, in some cases, different from what colleges are already required to make public through the Integrated Postsecondary Education Data System (IPEDS).

The committee notes the House of Representatives has been clear in its opposition to the promulgation of this regulation. On February 18, 2011, the House voted to prohibit the secretary from regulating on gainful employment by a strong bipartisan vote of 289 to 136, including members of the Republican and Democratic leadership. On July 13, 2012 and April 18, 2013, a bipartisan group of members sent letters urging the secretary to abandon his plan to re-examine the flawed gainful employment regulation and work with Congress. Despite these efforts and a federal court ruling striking down the bulk of the regulation,[18] the department recently announced plans to convene a negotiated rulemaking panel to revise the regulation; the panel is expected to meet and begin consideration in September 2013. This shortsighted action will surely result in another round of legal proceedings and continuing instability for students at career colleges, most of whom seek the skills necessary to retain or access employment. The committee strongly urges the secretary to abandon his efforts to re-regulate this flawed regulation and work with Congress to reauthorize the *Higher Education Act.*

While supportive of efforts to increase institutional transparency, the committee believes the federal government needs to streamline and develop consistent disclosure requirements across all institutions, not just proprietary colleges. As demonstrated by Mr. Alex Garrido, the student veteran witness who testified during the April 24, 2013 Subcommittee on Higher Education and Workforce Training hearing, students do not utilize the vast federal resources available online when looking for a college. Instead they frequently visit the college, look at the website, and talk to friends when selecting their institution.[19] Mr. Garrido stated, "After selecting the schools I was interested in, I began to visit the campuses and speak to admissions advisors. I wanted to get a feel for the environments of

[18] *Association of Private Sector Colleges and Universities* vs. *Arne Duncan.* U.S. District Court for the District of Columbia. (June 30, 2012).

[19] "Keeping College Within Reach: Enhancing Transparency for Students, Families, and Taxpayers," hearing before the House Subcommittee on Higher Education and Workforce Training, 113th Congress, 1st Session (April 24, 2013) (oral testimony of Alex Garrido).

each individual school and this is hard to gauge solely from school websites." [20]

If federal policymakers hope to help students make informed decisions about their postsecondary pathways, then Congress needs to scale back the amount of information it requires institutions to disclose to the public and make sure that information is consistent and helpful to the consumer: students and families.

As has been discussed at length since the rule's initial release, the gainful employment regulation has a number of unintended and harmful consequences for institutions, students, and working adults. Despite the claims of the administration and opponents of private sector education, the regulation will harm economic development in communities across the country. Many of the institutions harmed by this regulation are students' last hope as they try to gain new skills or update their skills to enter into the workforce. The true harm to students will come to those smaller to mid-sized institutions that do not have the same resources as bigger institutions to deal with the regulations. Many of these schools operate in areas that are underserved by other colleges and universities.

During a joint hearing held on July 8, 2011 between the Subcommittee on Higher Education and Workforce Training and the Committee on Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight, and Government Spending, Mr. Harry Alford, President and Chief Executive Officer of the National Black Chamber of Commerce stated:

> The black owned businesses that I represent rely on graduates of proprietary colleges targeted by the recent Gainful Employment Rule. These proprietary colleges serve minority, low-income, and high-risk students at much greater numbers than traditional four-year institutions and have more success doing it.[21]

The committee believes students should have the ability to choose a higher education institution that best meets their unique needs. That choice should not be undermined by an arbitrary regulation proposed and enforced by federal bureaucrats.

The Incentive Compensation Regulation should encourage higher education innovation

The committee believes the U.S. Department of Education's effort to clarify the role of third-party providers in the incentive compensation regulation has hampered competition and picked winners and losers in the higher education marketplace. Independent third-party providers are permitted to engage in tuition-sharing plans with other universities, but affiliated third-party providers, including those held by private companies that may also own institutions, are not allowed to continue the business practice. Many of these affected third-party entities help nonprofit public and private institu-

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[20] "Keeping College Within Reach: Enhancing Transparency for Students, Families, and Taxpayers," hearing before the House Subcommittee on Higher Education and Workforce Training, 113th Congress, 1st Session (April 24, 2013) (written testimony of Alex Garrido).

[21] "The Gainful Employment Regulation: Limiting Job Growth and Student Choice," joint hearing before the Subcommittee on Higher Education and Workforce Training and the Committee on Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight, and Government Spending, 112th Congress, 1st Session (July 8, 2011) (written testimony of Harry C. Alford).

tions develop online platforms for their courses; these institutions would not be able to afford such costs if a large up-front fee for services was charged. The statute must be changed to ensure the regulation and sub-regulatory guidance to not discourage innovation in higher education and instead restore competition in the postsecondary marketplace.

The language included in H.R. 2637 is nearly identical to H.R. 2525, the Collaborative College Services Act, introduced by Reps. Matt Salmon (R-AZ) and Rob Andrews (D-NJ). The legislation would ensure all third-party service providers are treated the same in the eyes of the law, regardless of whether those providers are affiliated with another college or university.

Current protections against fraud and abuse

The committee takes its responsibility to protect the accountability of federal funds seriously. The committee notes the *Higher Education Act* already includes numerous provisions to prevent waste, fraud, and abuse of federal student aid programs. The federal government—in partnership with accrediting agencies—conducts audits and program reviews. Institutions must stay below caps on cohort default rates and meet satisfactory academic progress standards, and report on a whole host of information regarding institutional and program quality. The law also makes clear states and accrediting agencies have an important role as part of the triad governing federal funds.

While the ongoing conversations among states, accrediting agencies, and institutions may have started because these regulations pushed states and accreditors to pay more attention to their own duties, maintaining these burdensome regulations is likely to hamper innovation moving forward. Instead of setting a federal definition of credit hour, the U. S. Department of Education should leave it to accrediting agencies and institutions, which have a strong record of appropriately measuring academic quality. Rather than dictating to states how they must approve institutions to operate within their boundaries, the department should allow them to determine the best way to protect their citizens. Instead of singling out the proprietary sector for additional regulation, the department should increase transparency for all colleges and universities.

Conclusion

Instead of protecting students from fraud and abuse, the credit hour, state authorization, gainful employment, and incentive compensation regulations are clear examples of federal overreach into the academic affairs of states, accrediting agencies, 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.

A broad array of organizations, representing a diverse group of colleges and universities, support this legislation because they know it promotes access to an affordable postsecondary education. The higher education institutions and organizations include the:

American Council on Education, Association of American Universities, Association of Jesuit Colleges and Universities, Association of Private Sector Colleges and Universities, Council for Christian Colleges & Universities, Council for Higher Education Accreditation, Excelsior College, Middle States Association of Colleges and Schools—Commission on Higher Education, National Association of Independent Colleges and Universities, National Association of Student Financial Aid Administrators, New England Association of Schools and Colleges Commission on Institutions of Higher Education, North Central Association of Colleges and Schools—The Higher Learning Commission, Northwest Commission on Colleges and Universities, Rebuilding America's Middle Class, Southern Association of Colleges and Schools—Commission on Colleges, Western Association of Schools and Colleges—Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges—Accrediting Commission for Senior Colleges and Universities, and Western Governors University.

H.R. 2637, Supporting Academic Freedom through Regulatory Relief Act, ensures 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 "Supporting Academic Freedom through Regulatory Relief Act."

Section 2. Regulatory relief

Repeals the state authorization regulation.

Repeals the definition of the term "credit hour" in regulation.

Repeals the gainful employment regulation.

Prohibits the Secretary of Education from issuing regulations on state authorization or gainful employment for the purposes of carrying out the *Higher Education Act* of 1965 until such time when Congress reauthorizes the Act.

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

Section 3. Third party service providers

Amends the statute to clarify the incentive compensation regulation to ensure third-party service providers affiliated with institutions of higher education are allowed to enter into tuition-sharing agreements with nonprofit colleges and universities to aid in the development of distance education platforms.

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. 2637 repeals the credit hour, state authorization, and gainful employment regulations, amends the statute to clarify the incentive compensation regulation, and prohibits the U.S. Department of Education from issuing related regulations until after Congress reauthorizes the Higher Education Act.

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. 2637 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of House Rule XXI.

ROLL CALL 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: July 24, 2013

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 1 Bill: H.R. 2637 Amendment Number: 2

Disposition: Defeated by a vote of 13 yeas and 22 nays

Sponsor/Amendment: Mr. Bishop, Mr. Hinojosa/ Strike the prohibition on the Department of Education from establishing protections for students and safeguards for taxpayer dollars

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. KLINE (MN) (Chairman)		X		Mr. MILLER (CA) (Ranking)	X		
Mr. PETRI (WI)		X		Mr. ANDREWS (NJ)		X	
Mr. McKEON (CA)		X		Mr. SCOTT (VA)	X		
Mr. WILSON (SC)		X		Mr. HINOJOSA (TX)	X		
Mrs. FOXX (NC)		X		Mrs. McCARTHY (NY)			X
Mr. PRICE (GA)		X		Mr. TIERNEY (MA)	X		
Mr. MARCHANT (TX)		X		Mr. HOLT (NJ)			X
Mr. HUNTER (CA)		X		Mrs. DAVIS (CA)	X		
Mr. ROE (TN)		X		Mr. GRIJALVA (AZ)	X		
Mr. THOMPSON (PA)		X		Mr. BISHOP (NY)	X		
Mr. WALBERG (MI)		X		Mr. LOEBSACK (IA)	X		
Mr. SALMON (AZ)		X		Mr. COURTNEY (CT)	X		
Mr. GUTHRIE (KY)		X		Ms. FUDGE (OH)	X		
Mr. DesJARLAIS (TN)		X		Mr. POLIS (CO)	X		
Mr. ROKITA (IN)			X	Mr. SABLAN (MP)			X
Mr. BUCSHON (IN)		X		Mr. YARMUTH (KY)			X
Mr. GOWDY (SC)		X		Ms. WILSON (FL)	X		
Mr. BARLETTA (PA)		X		Ms. BONAMICI (OR)	X		
Mrs. ROBY (AL)			X				
Mr. HECK (NV)		X					
Mrs. BROOKS (IN)		X					
Mr. HUDSON (NC)		X					
Mr. MESSER (IN)		X					

TOTALS: Aye: 13 No: 22 Not Voting: 6

Total: 41 / Quorum: 14 / Report: 21

Date: July 24, 2013

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 2 Bill: H.R. 2637 Amendment Number:

Disposition: Ordered favorably reported to the House, as amended, by a vote of 22 yeas and 13 nays.

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 the bill as amended do pass.

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. KLINE (MN) (Chairman)	X			Mr. MILLER (CA) (Ranking)		X	
Mr. PETRI (WI)	X			Mr. ANDREWS (NJ)	X		
Mr. McKEON (CA)	X			Mr. SCOTT (VA)		X	
Mr. WILSON (SC)	X			Mr. HINOJOSA (TX)		X	
Mrs. FOXX (NC)	X			Mrs. McCARTHY (NY)			X
Mr. PRICE (GA)	X			Mr. TIERNEY (MA)		X	
Mr. MARCHANT (TX)	X			Mr. HOLT (NJ)			X
Mr. HUNTER (CA)	X			Mrs. DAVIS (CA)		X	
Mr. ROE (TN)	X			Mr. GRIJALVA (AZ)		X	
Mr. THOMPSON (PA)	X			Mr. BISHOP (NY)		X	
Mr. WALBERG (MI)	X			Mr. LOEBSACK (IA)		X	
Mr. SALMON (AZ)	X			Mr. COURTNEY (CT)		X	
Mr. GUTHRIE (KY)	X			Ms. FUDGE (OH)		X	
Mr. DesJARLAIS (TN)	X			Mr. POLIS (CO)		X	
Mr. ROKITA (IN)			X	Mr. SABLAN (MP)			X
Mr. BUCSHON (IN)	X			Mr. YARMUTH (KY)			X
Mr. GOWDY (SC)	X			Ms. WILSON (FL)		X	
Mr. BARLETTA (PA)	X			Ms. BONAMICI (OR)		X	
Mrs. ROBY (AL)			X				
Mr. HECK (NV)	X						
Mrs. BROOKS (IN)	X						
Mr. HUDSON (NC)	X						
Mr. MESSER (IN)	X						

TOTALS: Aye: 22 No: 13 Not Voting: 6

Total: 41 / Quorum: 14 / Report: 21

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause (3)(c) of House Rule XIII, the goals of H.R. 2637 are to reduce the federal government's overreach into postsecondary academic affairs and help increase access to higher education for our nation's most disadvantaged students. The Committee expects the Department of Education to comply with these provisions and implement the changes to the law and regulations in accordance with these stated goals.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 2637 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The committee estimates that enacting H.R. 2637 does not specifically direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

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. 2637 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 30, 2013.

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. 2637, the Supporting Academic Freedom through Regulatory Relief 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.

Enclosure.

H.R. 2637—Supporting Academic Freedom through Regulatory Relief Act

H.R. 2637 would repeal three regulations previously published by the Department of Education and prohibit future rulemaking in those areas. It also would amend the Higher Education Act of 1965 (HEA) to permit institutions of higher education to make certain payments to third parties for student recruiting services. CBO estimates that enacting H.R. 2637 would not have any significant impact on the federal budget.

The bill would repeal regulations that require institutions of higher education to be authorized by the state or states in which they offer a curriculum. It also would repeal regulations that require certain institutions of higher education to meet benchmarks related to the repayment of student loans and debt-to-income ratios of former students in order to be eligible to participate in the federal student aid programs (this rule is commonly referred to as "gainful employment"). The bill would prohibit the department from defining or enforcing rulemaking related to these terms until the Congress extends the authorizations in the HEA for at least two years.

A federal court invalidated portions of both of the rules described above, and the Department of Education has announced that it is restarting the negotiated rulemaking process to develop new rules. Thus, CBO assumes that neither rule is currently in effect and that repealing the rulemaking would have no impact. Finally, the bill would repeal a rule that defines the term "credit hour" and would prohibit the department from defining or enforcing rulemaking related to this term any time after the date of enactment of H.R. 2637.

Enacting the bill could affect discretionary spending for Pell grants and direct spending for student loans and Pell grants; therefore, pay-as-you-go procedures apply. However, CBO estimates that the effects on both direct spending and discretionary spending would be insignificant for each year and over the 2013–2023 period. Enacting the bill would have no impact on revenues.

H.R. 2637 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

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. 2637. 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

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

HIGHER EDUCATION ACT OF 1965

* * * * * * *

TITLE IV—STUDENT ASSISTANCE

* * * * * * *

PART G—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

* * * * * * *

SEC. 487. PROGRAM PARTICIPATION AGREEMENTS.

(a) REQUIRED FOR PROGRAMS OF ASSISTANCE; CONTENTS.—In order to be an eligible institution for the purposes of any program authorized under this title, an institution must be an institution of higher education or an eligible institution (as that term is defined for the purpose of that program) and shall, except with respect to a program under subpart 4 of part A, enter into a program participation agreement with the Secretary. The agreement shall condition the initial and continuing eligibility of an institution to participate in a program upon compliance with the following requirements:

(1) * * *

* * * * * * *

(20) The institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except that this paragraph shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance. *Notwithstanding the preceding sentence, an institution described in section 101 may provide payment, based on the amount of tuition generated by the institution from student enrollment, to a third-party entity that provides a set of services to the institution that includes student recruitment services, regardless of whether the third-party entity is affiliated with an institution that provides educational services other than the institution providing such payment, if—*

(A) the third-party entity is not affiliated with the institution providing such payment;

(B) the third-party entity does not make compensation payments to its employees that are prohibited under this paragraph;

(C) the set of services provided to the institution by the third-party entity include services in addition to student recruitment services, and the institution does not pay the third-party entity solely or separately for student recruitment services provided by the third-party entity; and

(D) any student recruitment information available to the third-party entity, including personally identifiable information, will not be used by, shared with, or sold to any other person or entity, including any institution that is affiliated with the third-party entity.

* * * * * * *

MINORITY VIEWS

OVERVIEW

H.R. 2637 props open the door to waste, fraud and abuse within the Title IV system. The bill repeals three regulations that are intended to better ensure that students and taxpayers receive a quality education for their investment. It then restricts the Secretary of Education from issuing any new versions of these rules. It also codifies several loopholes in the nation's long-time ban on incentive compensation. Lastly, the bill fails to offer constructive solutions or alternatives to these measures to ensure the integrity of federal investments in higher education. Laws and regulations for the effective and efficient use of taxpayer dollars should be strengthened, not weakened or repealed, particularly in this tough budget environment.

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 4 percent a year in inflation adjusted dollars over the last decade.[1] Additionally, more students are attending college and using federal student aid. In 2013, 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 and 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.

[1] *Trends in College Pricing 2012,* The College Board.
[2] Department of Education Budget Justifications.

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 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.

Two of the rules repealed by H.R. 2637, the federal definition of a credit hour and state authorization, are written in a way that respects the current 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. 2637 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.

INSPECTOR GENERAL REPORT ON 'EGREGIOUS' CREDIT HOUR POLICIES

A 2009 Alert Memorandum by the Department of Education Inspector General reported a lack of clear standards and policies in accounting for credit hours, as well as a questionable decision by one accrediting agency to accredit an institution which peer reviewers observed had "egregious" credit hour policies. The policy increased revenue to the institution, but raised the cost of higher education for their students, and for the taxpayer.

Following the memorandum, the Department's Inspector General conducted reviews at three of the seven regional accrediting agencies and found the oversight of institutional assignment of credit hours insufficient at all three agencies. These three agencies accounted for more than 70 percent of the Federal student aid funds awarded in 2009–10. The potential for a small number of unscrupulous institutions to exploit this lack of minimum standards led the Department to regulate in this manner to safeguard taxpayer funds.

The Inspector General testified in front of the Committee on two occasions, on June 17, 2010 and March 11, 2011, to discuss her

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

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 AND INNOVATION

The definition of a credit hour for federal purposes is necessary, in part, because more than $150 billion of federal financial aid is awarded annually based on an individual student's enrollment, as represented in number of credits. The rule works to appropriately balance the need for accountability while providing the freedom for colleges to innovate and accommodate new technologies.

The new regulations address vulnerabilities in the student aid programs that leave them open to fraud and abuse. The regulations are grounded in commonly accepted practice in higher education and do not intrude on core academic decisions made by institutions and their accrediting agencies. Additionally, the Department of Education took additional steps to broadly define a credit hour to provide more opportunities for colleges to experiment with new innovations and technologies. Experts have argued that some accreditors have been too conservative when allowing colleges to try new education models. The broadly defined credit hour definition opens the playing field for colleges to innovate.

By repealing this moderate and flexible definition, H.R. 2637 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.

H.R. 2637 takes a step beyond repealing the particulars of federal definition set in the 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.

The federal government must know families are getting what they paid for when borrowing thousands of dollars to pay for college. Democrats do not take this question lightly and this Congress must fully discuss the issue in the reauthorization of the Higher Education Act.

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

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

October 29, 2010, the Department specified how it will determine whether an institution is authorized by the State.

H.R. 2637 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.

H.R. 2637 would also prohibit the Department from promulgating or enforcing any rules related to state authorization until the successful reauthorization of the Higher Education Act. Such a prohibition would bind the hands of the Secretary from ensuring program integrity within the federal student aid program.

GAINFUL EMPLOYMENT

The Higher Education Act specifies that in order to obtain access to Title IV funds, public, private and proprietary colleges that offer career programs are required to ensure those programs adequately prepare students for "gainful employment in a recognized occupation". However, a common definition of "gainful employment" had not been established. In regulations published in 2011, the Department established a three part test for measuring a program's effectiveness in preparing students for "gainful employment" in an effort to judge eligibility for Title IV funding. In addition, the new rules were designed to provide important consumer disclosures to help students make smart economic decisions given high college costs.

By repealing gainful employment regulations, H.R. 2637 would eliminate critical consumer disclosures currently in effect that help students make more informed decisions about where to attend school. The bill would also prohibit the Department from promulgating or enforcing any rules related to gainful employment until the successful reauthorization of the Higher Education Act. Such a prohibition would bind the hands of the Secretary from ensuring program integrity within the federal student aid program.

INCENTIVE COMPENSATION

Incentive compensation allows colleges to reward college employees or individuals, through compensation or other means, for enrolling new students in their academic programs. Critics say it puts the financial interests of college employees or its partners before the needs of students. As a matter of transparency, when students discuss their enrollment with colleges they believe academic advisers are their advocates, not paid salesmen.

Congress adopted the ban on incentive compensation in 1992 with bipartisan cooperation, and has not acted to amend the statute since. The Bush Administration implemented a series of 12 regulatory loopholes, often referred to as "safe harbor provisions" to the incentive compensation statute in 2002, clearly outside of congressional intent. Studies conducted by the Government Accountability Office (GAO), the media and the Senate Health, Education, Labor and Pensions (HELP) Committee have shown that far too often, unscrupulous colleges could use these loopholes to enroll stu-

dents, encourage them to max out their financial aid and then fail to deliver on the value proposition of a good education. In 2011, the Department of Education brought the regulations back in line with the original legislative intent by eliminating the loopholes established in 2002.

H.R. 2637 would codify several of the 2002 loopholes directly into the Higher Education Act, providing companies the opportunity to return to deploying commissioned recruitment schemes.

DEMOCRATIC AMENDMENT

Committee Democrats strongly believe that the Secretary must be able to respond to waste, fraud and abuse. Taxpayers expect proper oversight of the nearly $170 billion investment into student aid they make yearly.

The Democratic amendment, offered by Representatives Bishop (D–NY) and Hinojosa (D–TX), would strike the prohibition on the Department of Education from establishing protections for students and safeguards for taxpayer dollars. Committee Republicans rejected the common sense amendment by a vote of 13–22.

CONCLUSION

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. H.R. 2637 fails to meet that goal by repealing three regulations that are intended to better ensure students and taxpayers receive a quality education for their investment, restricting the Secretary's ability to devise alternative measures, and codifying several loopholes in the nation's long-time ban on incentive compensation. Furthermore, the bill fails to offer any constructive alternative solutions even while it ties the Secretary's ability to act, thereby leaving students' and taxpayers' dollars vulnerable to waste, fraud, and abuse of federal programs.

At a time when the higher education market is in so much flux, and the demand for student financial aid is growing, program integrity should be a top priority. Instead, H.R. 2637 moves backwards in accountability measures, lacks any alternative approaches, and fails to protect the nation's students.

H.R. 2637 is opposed by the following organizations, which work on behalf of students, consumers, veterans, faculty and staff, civil rights and college access and affordability: Air Force Sergeants Association (AFSA); American Association of University Professors (AAUW); American Association of University Women (AAUP); American Federation of Teachers; Americans for Financial Reform; Association of the United States Navy (AUSN); Center for Law and Social Policy; Center for Responsible Lending; Consumer Action; Consumers Union; Crittenton Women's Union; The Education Trust; Initiative to Protect Student Veterans; The Institute for College Access & Success; The Leadership Conference on Civil and Human Rights; Iraq and Afghanistan Veterans of America (IAVA); League of United Latin American Citizens; Mississippi Center for Justice; National Association for Black Veterans, Inc. (NABVETS); National Association for College Admissions Counseling; National

Consumer Law Center (on behalf of its low-income clients); National Consumers League; National Education Association; The National Guard Association of the Association of the United States (NGAUS); NCLR (National Council of La Raza); New Economy Project (formerly NEDAP); NYPIRG; Paralyzed Veterans of America; Public Citizen; Rebuild the Dream; Service Employees International Union; United States Student Association; U.S. PIRG; Veterans Education Success; VetJobs; VetsFirst, a program of United Spinal Association; Veterans of America; and Young Invincibles.

GEORGE MILLER.
RUBÉN HINOJOSA.
JARED POLIS.
TIMOTHY H. BISHOP.
SUZANNE BONAMICI.
FREDERICA S. WILSON.
JOHN F. TIERNEY.
JOE COURTNEY.
RAÚL M. GRIJALVA.
JOHN A. YARMUTH.
GREGORIO KILILI SABLAN.
SUSAN A. DAVIS.

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