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HOUSE OF REPRESENTATIVES
REPORT
107–225

INTERNET EQUITY AND EDUCATION ACT OF 2001

OCTOBER 2, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BOEHNER, from the Committee on Education and the Workforce, submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 1992]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 1992) to amend the Higher Education Act of 1965 to expand the opportunities for higher education via telecommunications, 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 "Internet Equity and Education Act of 2001".

SEC. 2. EXCEPTION TO 50 PERCENT CORRESPONDENCE COURSE LIMITATIONS.

(a) DEFINITION OF INSTITUTION OF HIGHER EDUCATION FOR TITLE IV PURPOSES.—Section 102(a) of the Higher Education Act of 1965 (20 U.S.C. 1002(a)) is amended by adding at the end the following new paragraph:

"(7) EXCEPTION TO LIMITATION BASED ON COURSE OF STUDY.—Courses offered via telecommunications (as defined in section 484(*l*)(4)) shall not be considered to be correspondence courses for purposes of subparagraph (A) or (B) of paragraph (3) for any institution that—

"(A) is participating in either or both of the loan programs under part B or D of title IV on the date of enactment of the Internet Equity and Education Act of 2001;

"(B) has a cohort default rate (as determined under section 435(m)) for each of the 3 most recent fiscal years for which data are available that is less than 10 percent; and

"(C)(i) has notified the Secretary, in a form and manner prescribed by the Secretary (including such information as the Secretary may require to meet

the requirements of clause (ii)), of the election by such institution to qualify as an institution of higher education by means of the provisions of this paragraph; and

"(ii) the Secretary has not, within 90 days after such notice, and the receipt of any information required under clause (i), notified the institution that the election by such institution would pose a significant risk to Federal funds and the integrity of programs under title IV.".

(b) DEFINITION OF ELIGIBLE STUDENT.—Section 484(*l*)(1) of the Higher Education Act of 1965 (20 U.S.C. 1091(*l*)(1)) is amended by adding at the end the following new subparagraph:

"(C) EXCEPTION TO 50 PERCENT LIMITATION.—Notwithstanding the 50 percent limitation in subparagraph (A), a student enrolled in a course of instruction described in such subparagraph shall not be considered to be enrolled in correspondence courses if the student is enrolled in an institution that—

"(i) is participating in either or both of the loan programs under part B or D of title IV on the date of enactment of the Internet Equity and Education Act of 2001;

"(ii) has a cohort default rate (as determined under section 435(m)) for each of the 3 most recent fiscal years for which data are available that is less than 10 percent; and

"(iii)(I) has notified the Secretary, in form and manner prescribed by the Secretary (including such information as the Secretary may require to meet the requirements of subclause (II)), of the election by such institution to qualify its students as eligible students by means of the provisions of this subparagraph; and

"(II) the Secretary has not, within 90 days after such notice, and the receipt of any information required under subclause (I), notified the institution that the election by such institution would pose a significant risk to Federal funds and the integrity of programs under title IV.".

SEC. 3. DEFINITION OF ACADEMIC YEAR.

Section 481(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)) is amended by adding at the end the following new paragraph:

"(3) For the purposes of any eligible program, a week of instruction is defined as a week in which at least one day of regularly scheduled instruction or examinations occurs, or at least one day of study for final examinations occurs after the last scheduled day of classes. For an educational program using credit hours, but not using a semester, trimester, or quarter system, an institution of higher education shall notify the Secretary, in the form and manner prescribed by the Secretary, if the institution plans to offer an eligible program of instruction of less than 12 hours of regularly scheduled instruction, examinations, or preparation for examinations for a week of instructional time.".

SEC. 4. INCENTIVE COMPENSATION.

(a) AMENDMENT.—Part G of title IV of the Higher Education Act of 1965 is amended by inserting after section 484B (20 U.S.C. 1091b) the following new section:

"SEC. 484C. INCENTIVE COMPENSATION PROHIBITED.

"(a) PROHIBITION.—No institution of higher education participating in a program under this title shall make any payment of a commission, bonus, or other incentive payment, based directly on success in securing enrollments or financial aid, to any person or entity directly engaged in student recruiting or admission activities, or making decisions regarding the award of student financial assistance, except that this section shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

"(b) EXCEPTIONS.—Subsection (a) does not apply to payment of a commission, bonus, or other incentive payment—

"(1) pursuant to any contract with any third-party service provider that has no control over eligibility for admission or enrollment or the awarding of financial aid at the institution of higher education, provided that no employee of the third-party service provider is paid a commission, bonus, or other incentive payment based directly on success in securing enrollments or financial aid; or

"(2) to persons or entities for success in securing agreements, contracts, or commitments from employers to provide financial support for enrollment by their employees in an institution of higher education or for activities that may lead to such agreements, contracts, or commitments.

"(c) EXCEPTION FOR FIXED COMPENSATION.—For purposes of subsection (a), a person shall not be treated as receiving incentive compensation when such person re-

ceives a fixed compensation that is paid regularly for services and that is adjusted no more frequently than every six months.".

(b) CONFORMING AMENDMENT.—Paragraph (20) of section 487(a) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)(20)) is repealed.

(c) TECHNICAL AMENDMENT.—Section 487(c)(1) of the Higher Education Act of 1965 (20 U.S.C. 1094(c)(1)) is amended by striking "paragraph (2)(B)" each place it appears in subparagraphs (F) and (H) and inserting "paragraph (3)(B)".

SEC. 5. EVALUATION AND REPORT.

(a) INFORMATION FROM INSTITUTIONS.—

(1) INSTITUTIONS COVERED BY REQUIREMENT.—The requirements of paragraph (2) apply to any institution of higher education that—

(A) has notified the Secretary of Education of an election to qualify for the exception to limitation based on course of study in section 102(a)(7) of the Higher Education Act of 1965 (20 U.S.C. 1002(a)(7)) or the exception to the 50 percent limitation in section 484(*l*)(1)(C) of such Act (20 U.S.C. 1091(*l*)(1)(C));

(B) has notified the Secretary under section 481(a)(3) of such Act (20 U.S.C. 1088(a)(3)); or

(C) contracts with outside parties for—

(i) the delivery of distance education programs;

(ii) the delivery of programs offered in nontraditional formats; or

(iii) the purpose of securing the enrollment of students.

(2) REQUIREMENTS.—Any institution of higher education to which this paragraph applies shall comply, on a timely basis, with the Secretary of Education's reasonable requests for information on changes in—

(A) the amount or method of instruction offered;

(B) the types of programs or courses offered;

(C) enrollment by type of program or course;

(D) the amount and types of grant, loan, or work assistance provided under title IV of the Higher Education Act of 1965 that is received by students enrolled in programs conducted in nontraditional formats; and

(E) outcomes for students enrolled in such courses or programs.

(b) REPORT BY SECRETARY REQUIRED.—The Secretary of Education shall conduct by grant or contract a study of, and by March 31, 2003, submit to the Congress, a report on—

(1) the effect that the amendments made by this Act have had on—

(A) the ability of institutions of higher education to provide distance learning opportunities to students; and

(B) program integrity;

(2) with respect to distance education or correspondence education courses at institutions of higher education to which the information requirements of subsection (a)(2) apply, changes from year-to-year in—

(A) the amount or method of instruction offered and the types of programs or courses offered;

(B) the number and type of students enrolled in distance education or correspondence education courses;

(C) the amount of student aid provided to such students, in total and as a percentage of the institution's revenue; and

(D) outcomes for students enrolled in distance education or correspondence education courses, including graduation rates, job placement rates, and loan delinquencies and defaults;

(3) any reported and verified claim of inducement to participate in the student financial aid programs and any violation of the Higher Education Act of 1965, including any actions taken by the Department of Education against the violator; and

(4) any further improvements that should be made to the provisions amended by this Act (and related provisions), in order to accommodate nontraditional educational opportunities in the Federal student assistance programs while ensuring the integrity of those programs.

SEC. 6. LEARNING ANYTIME ANYWHERE PARTNERSHIPS.

Section 420J of the Higher Education Act of 1965 (20 U.S.C. 1070f–6) is amended by adding at the end the following new sentence: "If for any fiscal year funds are not appropriated pursuant to this section, funds available under part B of title VII, relating to the Fund for the Improvement of Postsecondary Education, may be made available for continuation grants for any grant recipient under this subpart.".

SEC. 7. IMPLEMENTATION.

(a) NO DELAY IN EFFECTIVE DATE.—Section 482(c) of the Higher Education Act of 1965 (20 U.S.C. 1089(c)) shall not apply to the amendments made by this Act.

(b) IMPLEMENTING REGULATIONS.—Section 492 of the Higher Education Act of 1965 (20 U.S.C. 1098a) shall not apply to the amendments made by sections 2 and 3 of this Act.

PURPOSE

The purpose of H.R. 1992, the Internet Equity and Education Act of 2001, is to amend the Higher Education Act of 1965 to expand access to higher education for all Americans through distance education and programs offered on a nontraditional basis, while maintaining the integrity of our federal financial aid programs. H.R. 1992 implements recommendations made by the Web-based Education Commission and its report, "The Power of the Internet for Learning: Moving from Promise to Practice."

COMMITTEE ACTION

The Subcommittee on 21st Century Competitiveness held a hearing on the Internet Equity and Education Act of 2001 on June 20, 2001. This hearing focused on reviewing and evaluating the provisions contained within H.R. 1992. The Subcommittee heard testimony from Dr. Stanley Ikenberry, President, American Council on Education (ACE), Washington, DC; Ms. Lorraine Lewis, Inspector General, U.S. Department of Education, Washington, DC; Dr. Richard Gowen, President, South Dakota School of Mines and Technology, Rapid City, SD; Mr. Omer Waddles, Executive Vice President, ITT Educational Services, Inc., Indianapolis, IN; and Dr. Joseph DiGregorio, Vice Provost for Distance Learning, Continuing Education, and Outreach, Georgia Institute of Technology, Atlanta, GA.

LEGISLATIVE ACTION

On May 24, 2001, Representative Johnny Isakson (R–GA), Vice Chairman of the Subcommittee on 21st Century Competitiveness, introduced H.R. 1992, the Internet Equity and Education Act of 2001. After considering the bill on June 28, 2001 and July 11th 2001, the Subcommittee on 21st Century Competitiveness ordered the bill favorably reported to the Full Committee on Education and the Workforce, as amended by voice vote.

On the basis of a hearing on June 20, 2001, and the recommendations of the Administration, the Subcommittee on 21st Century Competitiveness, and higher education associations, an amendment in the nature of a substitute was prepared and presented by Representative Johnny Isakson (R–GA). The Full Committee on Education and the Workforce considered the substitute in legislative session on August 1, 2001, during which two additional amendments were offered. The amendment in the nature of a substitute, along with an amendment concerning "Learning Anytime Anywhere Partnerships," offered by Representative George Miller (D–CA), were adopted by a vote of 31–10.

SUMMARY

H.R. 1992, the Internet Equity and Education Act of 2001, modifies the "50 percent rule" to allow institutions to offer more than

50 percent of their classes by telecommunications. This modification only applies if the institution already participates in the student loan programs, if its student loan default rate is less than 10 percent for the three most recent years, and if the institution has notified the Secretary of its election to qualify by means of these provisions and the institution has not, within 90 days, been notified by the Secretary that such election would pose a significant risk to federal funds and the integrity of the Title IV programs.

The Act also eliminates the burdensome 12-hour rule applicable to programs not offered on a traditional basis, and instead requires that these programs be held to the same attendance criteria as those offered on a traditional quarter or semester basis. Under this provision, certain institutions must notify the Secretary if they intend to offer an eligible program with less than 12 scheduled hours of instruction per week.

Furthermore, H.R. 1992 addresses the incentive compensation provision with regard to student recruiting so that it is clear that the prohibition only applies to non-salary payments to persons directly involved in recruiting students or awarding financial aid as a result of their success in enrolling students at the institution. Additionally, the provision clarifies that salaries (not incentive compensation) must be paid on a regular basis and must not be adjusted more than once every six months. Under the bill, third party servicers would be exempt from the incentive compensation provision if they have no direct control over admissions, enrollment, or the direct awarding of financial aid. In addition, employees who secure contracts with employers for postsecondary education of employees would also be exempt from the incentive compensation provision.

The Act requires a study and report by the Secretary of Education on the results of the Internet Equity and Education Act of 2001. Institutions that qualify under the 50 percent exception, the 12-hour rule exception, or that contract with outside parties for the delivery of instruction and securing student enrollment must report to the Secretary information on the method or amount of instruction offered, the types of programs or courses offered, their enrollment by type of program or course, the types of federal student aid received by students enrolled in nontraditional programs, and student outcomes. The Secretary must study, through grant or contract, and report on the effect of the amendments contained in this bill on the ability of institutions to provide distance learning opportunities and on program integrity, on verified claims of student aid inducement, and additional needed improvements to nontraditional educational opportunities. Additionally, with respect to distance education and correspondence courses, the Secretary must study and report on the method or amount of instruction offered, the types of programs or courses offered, the number and type of student enrolled in distance or correspondence courses, the amount of federal student aid provided to such students, and student outcomes. The Secretary's report shall be submitted to Congress by March 31, 2003.

The Act would allow for the funds under the Fund for the Improvement of Postsecondary Education to be used for continuation grants for the Learning Anytime Anywhere Partnerships Program.

Lastly, the Act exempts its provisions from master calendar requirements regarding regulations and exempts the 50 percent exception and the 12-hour rule exception from the negotiated rulemaking requirements.

BACKGROUND AND NEED FOR LEGISLATION

Background

The Web-based Education Commission was authorized by Congress in the Higher Education Amendments of 1998 to determine how the Internet could be utilized to expand access to education. Chaired by former Senator Bob Kerry (D–NE) and Representative Johnny Isakson (R–GA), the Commission set out to discover how the Internet was being used to enhance learning opportunities for all learners regardless of age. The Commission heard testimony from a number of experts and witnessed several demonstrations of how technology can be successfully used in education. In the fall of 2000, the Web-based Education Commission issued its report, "The Power of the Internet for Learning: Moving from Promise to Practice."

Throughout the report, several recommendations were made for improving and expanding the use of the Internet to increase access to educational opportunities. One specific recommendation made by the Commission was to "[r]evise outdated regulations that impede innovation and replace them with approaches that embrace anytime, anywhere, any pace learning." H.R. 1992, the Internet Equity and Education Act, by driving regulatory reform in higher education programs, addresses this recommendation.

The Commission identified specific areas that should be addressed immediately in order to truly embrace anytime, anywhere and any pace learning. H.R. 1992 provides a modest expansion of Internet-based educational opportunities for students. These amendments will give the Committee a base of experience to draw from. By the next reauthorization of the Higher Education Act, it will be apparent if our efforts to provide increased access to Internet education opportunities were successful and if greater expansion is warranted.

The Internet Equity and Education Act of 2001 will expand access to higher education to all Americans regardless of their distance from a college or university. In the process, it will expand opportunities for nontraditional students, and give potential students greater access to information on the availability of postsecondary education programs.

Need for legislation

During the last reauthorization of the Higher Education Act (HEA) of 1965, it was apparent that distance education was expanding opportunities for postsecondary education beyond the Higher Education Act's capacity to accommodate them. Unfortunately, information available to the Committee limited the ability to take advantage of the true potential of distance education, without the risk of increasing fraud and abuse within the Title IV programs. As a result, the Committee's response to these new technologies was limited. Since that time, the potential of distance education has continued to expand. Fortunately, our knowledge base

has increased as well. By taking the modest steps included in H.R. 1992, the Committee will acquire a greater knowledge base, and will be able to take advantage of the promise of new technologies without risking the integrity of our student financial aid programs.

Perhaps the best summation of the need for action now is found in the testimony of Dr. Stanley Ikenberry, President of the American Council on Education (ACE), before the Subcommittee on 21st Century Competitiveness on June 20, 2001. In his testimony, Dr. Ikenberry stated:

> One key question that needs to be answered is why make these changes now just two years before we start to reauthorize the Higher Education Act? I think there are three basic reasons.
>
> • First, despite widespread recognition of problems with all three provisions, the Department has been unable or unwilling to make changes as part of the regulatory process. Indeed, as part of negotiated rulemaking, the Department considered changes in incentive compensation but decided, at the last minute, not to proceed. When the regulatory process fails on an important matter, legislative action becomes the only alternative.
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> • Second, by making the changes now, Congress will have two years to monitor the impact of the amendments and can easily make any necessary mid-course corrections as part of the coming reauthorization.
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> • Third, we need to make the changes now because distance education is changing the postsecondary education landscape so quickly. If changes are not made now, we will have to wait until after the Higher Education reauthorization and, most likely, until after the rulemaking process that follows a reauthorization. This could easily mean a delay of four or five years.

Indeed, the most compelling reason to enact this legislation now is the fact that we have the opportunity to gather needed information to address this issue for the next reauthorization of the Higher Education Act without significant risk to program integrity. At the same time, we have an opportunity to expand access to higher education to those with the most need, and to those who cannot afford to take classes on a traditional quarter or semester basis. An initial report has been issued by the Department of Education on the Distance Education Demonstration Program. With respect to the 50 percent rules and the 12-hour rule, to date there have been no problems with waivers or relaxations of these provisions. In addition, a letter from Secretary Paige to Chairman Boehner (July 31, 2001) stated that:

> The Administration supports the Isakson substitute to H.R. 1992, which would allow needy students who require federal student aid to have access to the many new educational opportunities now available to other students.

Secretary Paige's letter went on to affirm that sufficient safeguards existing in current law, in combination with aggressive enforcement by the Department, ensures that enactment of H.R. 1992 does not jeopardize program integrity.

COMMITTEE VIEWS

H.R. 1992, the Internet Equity and Education Act of 2001, implements the recommendations of the Web-based Education Commission with respect to expanding access to postsecondary education. It will allow needy students who require federal student aid to have access to the many new educational opportunities now available to other students, expand educational opportunities to nontraditional students who cannot afford to take courses on a traditional quarter or semester basis, and provide potential students with better information on their educational opportunities while protecting the integrity of our federal financial assistance programs.

50 percent rules

Under the Higher Education Act of 1998, an institution may not offer more than 50 percent of its courses by telecommunications or correspondence without losing eligibility, or allow more than 50 percent of its students to take courses by telecommunications without risking a substantial amount of federal financial aid for those students. The Web-based Education Commission identified these provisions as a significant impediment to the delivery of distance education courses. As a measured response, the amendment in section 2 eliminates this impediment for low-risk institutions by allowing them to exceed these limits without sanctions if they:

(1) Are already participating in the federal student loan programs;

(2) Have student loan default rates which do not exceed 10 percent for each of the three most recent fiscal years; and

(3) Report to the Secretary their intent to qualify as an eligible institution under this provision, and are not notified by the Secretary that such an election would pose a significant risk to federal funds or the integrity of the Title IV programs within 90 days of the notification.

By carefully controlling the scope of this exemption, the Committee intends to gain greater experience with programs offered through telecommunications without increasing the potential for fraud or abuse of our student financial aid programs. In addition, the reporting requirements will enhance the Secretary's ability to monitor the use of this provision. Finally, the Committee intends that an institution that qualifies for this exemption but has a default rate in excess of 10 percent in a subsequent year will remain an eligible institution until the end of that academic year before being required to comply with the 50 percent rules. The Committee does not intend for any institution to lose eligibility part way through the academic year as a result of the cohort default rate determinations.

12-hour rule

The amendment made in Section 3 eliminates the 12-hour rule for programs offered on a nontraditional basis, and replaces it with the one-day rule that is in effect for programs offered on a traditional quarter or semester basis. The 12-hour rule is a Department of Education regulation that requires each week of instructional time in a non-standard term or non-term program to include at

least 12 hours of regularly scheduled instruction, examinations, or preparation for examinations. This quantitative seat time standard for nontraditional programs does not apply to traditional programs utilizing standard terms. For those programs, the regulations require that a week of instruction provide at least one day of regularly scheduled instruction, examinations or preparation for examinations. Hence, if an institution offers the exact same program in both a standard term format and a non-standard or non-term format, in the first instance they must provide at least one day of regularly scheduled instruction, and in the second instance, they must provide 12 hours of regularly scheduled instruction.

Since early last year, the higher education community has been raising concerns with respect to the application of the 12-hour rule to nontraditional programs. However, with the dramatic growth in distance education and the proliferation of nontraditional degree programs particularly designed for working adults, confusion has turned into widespread dissatisfaction with the 12-hour rule, and for good reason. The Department of Education, in its report to Congress on the Distance Education Demonstration Program, dated January 2001, states:

> It is difficult if not impossible for distance education programs offered in nonstandard terms and non-terms to comply with the 12-hour rule. The regulation would seem to require that full-time distance education students spend 12 hours per week "receiving" instruction. There is no meaningful way to measure 12 hours of instruction in a distance education class.

At a time when we are looking for new ways to expand access to higher education, we should not be clinging to outdated and obsolete regulations. The Report to Congress cited above goes on to say:

> The rules tend to limit the options institutions have to configure academic programs in ways they believe best meet the needs of students and the curriculum. Anecdotal information also suggests that where institutions offer programs in configurations other than standard terms, they often do not provide federal student aid to the students enrolled in those programs simply because of the complexity of Title IV requirements.

The Committee does not support regulations that limit a student's access to federal student aid and academic enrichment unless there is a known significant risk to the federal student aid programs. In the case of the 12-hour rule, there is no such risk. In repealing the rule, the Committee maintained the existing one-day rule that applies to all standard term programs. In addition, as Secretary Paige noted in his letter in support of H.R. 1992, other safeguards against course length manipulation, such as the 30-week academic year minimum and the clock-hour/credit-hour conversion requirements all remain in place. Finally, in order to provide the Secretary with the ability to monitor institutions that offer programs that would be subject to the 12-hour rule except for this legislation, the Committee included a provision requiring institutions with non-standard term and non-term programs to notify the

Secretary if they will be offering less than 12 hours of regularly scheduled instruction each week.

Incentive compensation

As the Web-based Education Commission indicated in its report, the incentive compensation prohibition was enacted to protect students against misleading and abusive recruiting tactics and to maintain the integrity of the federal financial aid programs. However, as a result of the broad language in the Higher Education Act and the lack of clear regulatory guidance, the Department of Education's application of the incentive compensation prohibition has been inconsistent and at times, has exceeded the original intent of Congress.

Removing the term "indirectly" from the current provision of the Higher Education Act and making reference to payments based directly on success in securing enrollments clarifies that institutions may provide incentive compensation based on the performance of legitimate recruiting activities that are commonly undertaken on behalf of institutions of higher education prior to admission, enrollment and the awarding of financial aid. These activities include advertising and otherwise providing information about an institution to stimulate inquiries and interest from prospective students. In addition, the reference to persons or entities directly engaged in recruiting or awarding financial aid clarifies that the statutory prohibition applies only to those whose primary job responsibility is to directly recruit students or award financial aid and not to those with managerial or supervisory responsibilities for recruitment, admissions or financial aid.

In addition to amending the prohibition on the payment of incentive compensation, section 484C(b) specifically recognizes contractual arrangements that are outside the scope of the prohibition. Payments made pursuant to contracts with third party service providers that have no control over admissions or enrollment or the awarding of financial aid are exempt from the prohibition so long as no employee of the third party service provider is paid a commission, bonus or other incentive payment based directly on success in securing enrollments or financial aid. The Committee intends that this exception will allow institutions to make payments to entities that provide any number of services to the institution, which may include legitimate recruiting activities, so long as the entity does not pay commissions or bonuses to its employees based directly on success in securing enrollments or financial aid. Third party service providers that create web sites, provide online services, provide marketing and advertising materials, or provide similar services that post or offer information about an institution could be paid based upon the number of hits on a particular web site, the number of inquiries to the institution resulting from those who accessed the web site or received the marketing materials or even the number of enrollments that result from such information sources. For this exception to apply, institutions of higher education must ensure that all decisions related to admissions, eligibility for enrollment and the awarding of financial aid are under the control of the institution. Under these circumstances, employees of the third party service provider will have no incentive to use misleading, aggressive, or intimidating recruiting tactics or to refer

unqualified applicants to an institution of higher education, two of the key protections envisioned in the underlying legislation.

The second exemption with respect to contractual arrangements would allow incentive payments when institutions of higher education and companies enter into contractual arrangements resulting in financial support for enrollment by company employees. The Committee understands that many institutions of higher education wish to seek and secure contracts with companies to provide for additional education and training of the companies' employees. Incentive payments for activities designed to secure such contracts do not raise the dangers about which Congress was concerned when it enacted the prohibition on bonuses, commissions and incentive payments for success in securing enrollment. The requirement that employers commit their own resources provides a significant demonstration of the quality of education. Employers can be expected to have the ability to negotiate contracts in an arm's-length manner that protects their interests and the interests of their employees. The abuses that led to enactment of the prohibition—recruiting tactics that took advantage of vulnerable and unsophisticated individuals simply to fill seats—are not present in these circumstances. On the contrary, allowing incentives to be paid for securing agreements of this sort serves the important goal of facilitating the ongoing upgrading of the skills and education of the work force and increasing access to higher education.

The Committee believes that institutions of higher education do not and will not intentionally enroll unqualified students. As Secretary Paige stated in his letter in support of H.R. 1992, there are safeguards in place to protect against fraud and abuse, including student eligibility requirements and stringent requirements applicable to the return of federal student aid funds when a student withdraws from an institution of higher education. The Committee expects the Department of Education to pay close attention to any sudden and significant increases in withdrawal rates at a particular institution of higher education that may indicate a problem at that specific institution. If reports of misleading or intimidating recruiting tactics come to the attention of the Department, the Committee expects them to be fully investigated. The purpose of these changes is to allow institutions of higher education to engage in reasonable and standard business practices that promote and encourage greater enrollment in higher education. The Committee does not intend for a return to the past when some institutions were engaged in recruiting unqualified students simply to take advantage of the student and the federal financial aid programs.

Additionally, under section 484C(c) a person shall be treated as receiving fixed compensation (and not as receiving incentive compensation) when such person is paid in accordance with a fixed annual salary or a fixed hourly wage and such salary or wage is adjusted no more frequently than once every six months. Routine changes to an employee's benefit package (including health and life insurance and retirement plans) should not be considered to be changes in salary. This definition of "fixed compensation" clarifies that schools may provide merit-based pay increases for employee performing legitimate job functions. However, "fixed compensation paid regularly for services" does not permit the payment of commissions, bonuses, or other incentive payments under the guise of sal-

ary or wages. In considering whether an institution is complying with this provision, the Secretary may consider whether the fixed compensation paid to employees covered by Section 484(c) includes large fluctuations in pay; is disproportionate to the increases and decreases received by other employees at the institution; or creates a significant incentive to enroll unqualified students. The Committee and Secretary Paige believe that this statutory limitation will guard against institutions using frequent salary or wage adjustments as de facto commissions.

Finally, by removing this provision from section 487 and creating a new section 484C, the Committee intends to clarify that fines or assessments of liabilities are to be commensurate with the seriousness of the violation and the harm that has been caused to students or federal taxpayers. It was never the intent of Congress that a violation of this prohibition should result in assessment of liabilities equal to the total amount of federal funding that the institution has disbursed. However, by moving this provision, the Committee does not intend to lessen the importance of violations of this provision. Such violations are a serious matter, and the Committee expects the Department to investigate such violations fully, and to impose sanctions that while appropriate to the violation, stifle any urge to skirt the intent of this provision.

Report

Section 6 requires the Secretary to commission a report on the effects of the Internet Equity and Education Act of 2001. This report will provide the Committee with much needed information on distance education for the next reauthorization of the Higher Education Act of 1965. This provision was offered as an amendment by Representative Wu (D–OR), and accepted by the Subcommittee on 21st Century Competitiveness. The Committee expects that the Secretary will ensure that the report will provide adequate information to guide the Administration and the Committee as they consider the next reauthorization of the Higher Education Act. In addition, the Committee recognizes that the information required from institutions will aid the Department in monitoring program integrity.

Learning Anytime Anywhere Partnerships

Section 6 amends the Learning Anytime Anywhere Partnerships (LAAP) program to allow funding of continuation grants from funds appropriated for the Fund for Improving Postsecondary Education (FIPSE) in the event that insufficient funds are appropriated for the LAAP program. This provision was offered by Representative Miller (D–CA) during full committee markup, and was accepted by the Committee. In approving this provision, the Committee notes that it coincides with the Administration's budget proposal, and supports the intent of this legislation.

Implementation

Section 7 exempts amendments made by this Act from master calendar provisions under the Higher Education Act of 1965, and exempts amendments to the 50 percent rules and the 12 hour rule from negotiated rulemaking provisions of the Higher Education Act. The Committee believes that provisions of this Act need to be

implemented as soon as possible and should not be delayed. However, the Committee recognizes that certain provisions must be implemented with the full participation of the higher education community. Specifically, it is essential that the Department and the community work together to ensure that common business practices are recognized as acceptable under the incentive compensation provisions of the Higher Education Act.

SECTION-BY-SECTION ANALYSIS

Section 1—sets forth the short title of this Act as the "Internet Equity and Education Act of 2001."

Section 2—provides for an exception to the 50 percent correspondence course limitations. Specifically, it allows institutions to exceed the 50 percent limitation on the number of courses they can offer through telecommunications, and the number of students an institution can enroll in telecommunications courses.

Section 3—amends section 481(a) of the Higher Education Act of 1965 to eliminate the 12-hour rule for programs offered on a nontraditional basis, and requires that these programs be held to the same standard as those offered on a traditional quarter or semester basis.

Section 4—amends part G of title IV of the Higher Education Act of 1965 by inserting after section 484B the following new section:

> Section 484C removes the current incentive compensation restrictions from the section dealing with program participation agreements and moves them into a new section which is enforced by program audits, clarifies that it only applies to recruiters that are directly involved in recruiting, provides that compensation can only be counted as salary if it is a fixed compensation that is paid regularly for services and is adjusted no more frequently than every sixth months, and clarifies that third party service providers (such as Web portals) are exempt from this provision as long as they have no direct control over admissions, enrollment, or the awarding of financial aid.

Section 5—requires institutions that qualify under the provisions of section 2 or section 3, or that contract with outside parties for the purpose of securing the enrollment of students to report certain information to the Secretary and requires the Secretary to conduct by grant or contract an evaluation and report on the results of the Internet Equity and Education Act of 2001.

Section 6—amends section 420J of the Higher Education Act of 1965 by allowing funds appropriated for the Fund for the Improvement of Postsecondary Education (FIPSE) to be used to fund continuation grants under the Learning Anytime Anywhere Partnerships (LAAP) in the event that no funds are made available for grants under LAAP.

Section 7—exempts amendments made by this Act from master calendar provisions under section 482(c) of the Higher Education Act of 1965 and exempts the amendments made by sections 2 and 3 from negotiated rulemaking provisions under section 492 of the Higher Education Act of 1965.

EXPLANATION OF AMENDMENTS

The Amendment in the Nature of a Substitute is 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. 1992 amends the Higher Education Act of 1965 to expand access to higher education for all Americans through distance education and programs offered on a nontraditional basis, while maintaining the integrity of our federal financial aid programs. The bill does not prevent legislative branch employees from receiving services provided under this legislation.

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. H.R. 1992 amends the spending programs under the Higher Education Act. As such, the bill does not contain any unfunded mandates.

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.

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 1 **BILL** H.R. 1992 **DATE** August 1, 2001

H.R. 1992 was ordered favorably reported as amended by a vote of 31 – 10

SPONSOR/AMENDMENT Mrs. Roukema / motion to report the bill to the House with an amendment in the nature of a substitute and with the recommendation that the bill as amended do pass

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman	X			
Mr. PETRI, Vice Chairman				X
Mrs. ROUKEMA	X			
Mr. BALLENGER	X			
Mr. HOEKSTRA	X			
Mr. McKEON	X			
Mr. CASTLE	X			
Mr. JOHNSON	X			
Mr. GREENWOOD	X			
Mr. GRAHAM	X			
Mr. SOUDER	X			
Mr. NORWOOD				X
Mr. SCHAFFER	X			
Mr. UPTON	X			
Mr. HILLEARY				X
Mr. EHLERS	X			
Mr. TANCREDO				X
Mr. FLETCHER	X			
Mr. DEMINT	X			
Mr. ISAKSON	X			
Mr. GOODLATTE				X
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. TIBERI	X			
Mr. KELLER	X			
Mr. OSBORNE	X			
Mr. CULBERSON	X			
Mr. MILLER				X
Mr. KILDEE	X			
Mr. OWENS	X			
Mr. PAYNE		X		
Mrs. MINK		X		
Mr. ANDREWS	X			
Mr. ROEMER		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Ms. RIVERS		X		
Mr. HINOJOSA				X
Mrs. McCARTHY	X			
Mr. TIERNEY		X		
Mr. KIND	X			
Ms. SANCHEZ		X		
Mr. FORD	X			
Mr. KUCINICH	X			
Mr. WU				X
Mr. HOLT		X		
Ms. SOLIS	X			
Ms. DAVIS		X		
Ms. McCOLLUM	X			
TOTALS	31	10		8

CORRESPONDENCE

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, August 6, 2001.

Hon. JOHN BOEHNER,
Chairman, Committee on Education and the Workforce, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Due to other legislative duties, I was unavoidably detained during Committee consideration of H.R. 1992, "Internet Equity and Education Act of 2001." Consequently, I missed roll call number 1, the vote on final passage of the bill. Had I been present, I would have voted in favor of the bill.

I would appreciate your including this letter in the Committee Report to accompany H.R. 1992. Thank you for your attention to this matter.

Sincerely,

TOM TANCREDO,
Member of Congress.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, August 1, 2001.

Congressman JOHN BOEHNER,
Chairman, House Committee on Education and the Workforce, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN BOEHNER: Due to a scheduling conflict, I was unavoidably detained during Committee consideration of HR 1992, the Internet Equity and Education Act. Consequently, I missed the vote on final passage of the bill offered by Rep. Johnny Isakson. Had I been present, I would have voted in favor of the bill.

I would appreciate your including this letter in the Committee Record to accompany HR 1992. Thank you for your attention to this matter.

Sincerely,

BOB GOODLATTE,
Member of Congress.

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 CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has re-

ceived the following cost estimate for H.R. 1992 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 21, 2001.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed estimate for H.R. 1992, the Internet Equity and Education Act of 2001.

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

Sincerely,

DAN L. CRIPPEN,
Director.

Enclosure.

H.R. 1992—Internet Equity and Education Act of 2001

Summary: H.R. 1992 would make various changes to the Higher Education Act of 1965 that could affect the eligibility of institutions and academic programs that participate in federal financial aid programs. It would also modify the current-law prohibition on incentive payments from institutions of higher learning to private entities engaged in student recruitment activities. CBO estimates that the bill would have negligible effects on the federal budget. However, because H.R. 1992 would have some impact on direct spending, pay-as-you-go procedures would apply.

H.R. 1992 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. Enactment of this legislation would benefit institutions of higher education, including state universities, that offer courses through the Internet. The bill would allow some of these schools to offer more courses via telecommunications and still qualify for federal aid programs.

Estimated cost to the Federal Government: CBO estimates that implementing H.R. 1992 would cost less than $500,000 a year, assuming the availability of appropriated funds. We also estimate that any changes in direct spending, primarily for federal loan programs, under the bill would total less than $500,000 a year—at least over the next five years.

Modification of the Definition of Eligible Institution. H.R. 1992 would modify the definitions that determine the eligibility of institutions of higher education to participate in the federal Pell grant, student loan, and other financial aid programs. Under current law, institutions are ineligible to participate in these programs if more than 50 percent of courses offered at the institution are correspondence courses, or if more than 50 percent of the institutions students enroll in correspondence courses—including courses via telecommunications. The bill would allow courses offered via telecommunications to be excluded from the definition of correspondence courses for the purpose of these two restrictions if an institution is currently participating in the federal loan programs, has a

cohort default rate of less than 10 percent for the last three years, and the Secretary of Education does not deny a request for providing such courses based on financial integrity grounds.

There are few data available upon which to base an estimate of federal costs. Staff at the Department of Education indicate that no low-default institutions currently exceed the 50 percent limitations. With the potential growth in distance education, however, it is possible that a number of schools could be affected by this provision in the future if the Secretary of Education does not restrict participation based on financial integrity grounds. In addition to this uncertainty, it is unclear now distance education would supplement or substitute for more traditional education. To the extent that this form of education substitutes for other forms, no additional federal costs would result from this provision. At this time, CBO has no basis for estimating any significant costs from implementing this provision.

Modification of the Definition of Academic Year. H.R. 1992 would amend the definition of an academic year. For programs that use credit hours but are not on a semester, trimester or quarter system, a week of instruction is currently defined in the regulations as at least 12 hours of regularly scheduled instruction, examination, or preparation for examination. The bill would define a week of instruction as at least one day of instruction, examination, or preparation of examination—the same definition that is currently used for all other credit hour programs. Institutions affected by this rule change would be required to notify the Secretary of Education if they plan to offer programs of less than 12 hours of classroom time per week. Based on information from the Department of Education, CBO estimates that the costs associated with this provision would be less than $500,000 annually on both direct spending and discretionary programs.

Prohibition on Incentive Payments. The bill would also prohibit institutions from making any payment of a commission, bonus, or other incentive payment based directly on success in securing enrollments or financial aid, to any person or entity directly engaged in student recruiting or admission activities, or making decisions regarding the award of student financial assistance. The current-law prohibition focuses on people or entities that indirectly engage in these activities as well. CBO estimates that this provision would have no effect on federal spending.

Report by the Secretary of the Department of Education. The bill would require the Secretary of Education to complete a report on the effect of these amendments by March 31, 2003, and would require the report to be completed by grant or contract. Given the relatively limited scope for the report, CBO estimates the cost of the report would be less than $500,000 with the costs spread over fiscal years 2002 and 2003.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Enacting H.R. 1992 would affect direct spending, but CBO estimates that such effects would be less than $500,000 a year—at least for the next five years.

Intergovernmental and private-sector impact: H.R. 1992 contains no intergovernmental or private-sector mandates as defined in

UMRA and would impose no costs on state, local, or tribal governments. Enactment of this legislation would benefit institutions of higher education, including state universities, that offer courses through the Internet. The bill would allow some of these schools to offer more courses via telecommunications and still qualify for federal aid programs.

Estimate prepared by: Federal costs: Donna Wong and Deborah Kalcevic. Impact on State, Local, and Tribal Governments: Elyse Goldman. Impact on Private Sector: Nabeel Alsalam.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with Clause (3)(c) of House rule XIII, the goal of H.R. 1992 is to expand access to higher education for all Americans through distance education and programs offered on a nontraditional basis, while maintaining the integrity of our federal financial aid programs. The Committee expects the Department of Education to comply with H.R. 1992 and implement the changes to the law in accordance with these stated goals.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by H.R. 1992. The Committee believes that the amendments, made by this bill to the Higher Education Act, are within Congress' authority under Article I, section 8, clause 1 of the Constitution.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 1992. However, clause 3(d)(3)(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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

HIGHER EDUCATION ACT OF 1965

* * * * * * *

TITLE I—GENERAL PROVISIONS

PART A—DEFINITIONS

* * * * * * *

SEC. 102. DEFINITION OF INSTITUTION OF HIGHER EDUCATION FOR PURPOSES OF TITLE IV PROGRAMS.

(a) DEFINITION OF INSTITUTION OF HIGHER EDUCATION FOR PURPOSES OF TITLE IV PROGRAMS.—

(1) * * *

* * * * * * *

(7) EXCEPTION TO LIMITATION BASED ON COURSE OF STUDY.—Courses offered via telecommunications (as defined in section 484(l)(4)) shall not be considered to be correspondence courses for purposes of subparagraph (A) or (B) of paragraph (3) for any institution that—

(A) is participating in either or both of the loan programs under part B or D of title IV on the date of enactment of the Internet Equity and Education Act of 2001;

(B) has a cohort default rate (as determined under section 435(m)) for each of the 3 most recent fiscal years for which data are available that is less than 10 percent; and

(C)(i) has notified the Secretary, in a form and manner prescribed by the Secretary (including such information as the Secretary may require to meet the requirements of clause (ii)), of the election by such institution to qualify as an institution of higher education by means of the provisions of this paragraph; and

(ii) the Secretary has not, within 90 days after such notice, and the receipt of any information required under clause (i), notified the institution that the election by such institution would pose a significant risk to Federal funds and the integrity of programs under title IV.

* * * * * * *

TITLE IV—STUDENT ASSISTANCE

PART A—GRANTS TO STUDENTS IN ATTENDANCE AT INSTITUTIONS OF HIGHER EDUCATION

* * * * * * *

SEC. 420J. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this subpart $10,000,000 for fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding fiscal years. *If for any fiscal year funds are not appropriated pursuant to this section, funds available under part B of title VII, relating to the Fund for the Improvement of Postsecondary Education, may be made available for continuation grants for any grant recipient under this subpart.*

* * * * * * *

PART G—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

SEC. 481. DEFINITIONS.

(a) ACADEMIC AND AWARD YEAR.—(1) * * *

* * * * * * *

(3) For the purposes of any eligible program, a week of instruction is defined as a week in which at least one day of regularly scheduled instruction or examinations occurs, or at least one day of study for final examinations occurs after the last scheduled day of classes. For an educational program using credit hours, but not using a semester, trimester, or quarter system, an institution of higher education shall notify the Secretary, in the form and manner prescribed by the Secretary, if the institution plans to offer an eligible program of instruction of less than 12 hours of regularly scheduled instruction, examinations, or preparation for examinations for a week of instructional time.

* * * * * * *

SEC. 484. STUDENT ELIGIBILITY.

(a) * * *

* * * * * * *

(l) COURSES OFFERED THROUGH TELECOMMUNICATIONS.—

(1) RELATION TO CORRESPONDENCE COURSES.—

(A) * * *

* * * * * * *

(C) EXCEPTION TO 50 PERCENT LIMITATION.—Notwithstanding the 50 percent limitation in subparagraph (A), a student enrolled in a course of instruction described in such subparagraph shall not be considered to be enrolled in correspondence courses if the student is enrolled in an institution that—

(i) is participating in either or both of the loan programs under part B or D of title IV on the date of enactment of the Internet Equity and Education Act of 2001;

(ii) has a cohort default rate (as determined under section 435(m)) for each of the 3 most recent fiscal years for which data are available that is less than 10 percent; and

(iii)(I) has notified the Secretary, in form and manner prescribed by the Secretary (including such information as the Secretary may require to meet the requirements of subclause (II)), of the election by such institution to qualify its students as eligible students by means of the provisions of this subparagraph; and

(II) the Secretary has not, within 90 days after such notice, and the receipt of any information required under subclause (I), notified the institution that the election by such institution would pose a significant risk to Federal funds and the integrity of programs under title IV.

* * * * * * *

SEC. 484C. INCENTIVE COMPENSATION PROHIBITED.

(a) PROHIBITION.—No institution of higher education participating in a program under this title shall make any payment of a commission, bonus, or other incentive payment, based directly on success in securing enrollments or financial aid, to any person or entity directly engaged in student recruiting or admission activities, or making decisions regarding the award of student financial assistance, except that this section shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(b) EXCEPTIONS.—Subsection (a) does not apply to payment of a commission, bonus, or other incentive payment—

(1) pursuant to any contract with any third-party service provider that has no control over eligibility for admission or enrollment or the awarding of financial aid at the institution of higher education, provided that no employee of the third-party service provider is paid a commission, bonus, or other incentive payment based directly on success in securing enrollments or financial aid; or

(2) to persons or entities for success in securing agreements, contracts, or commitments from employers to provide financial support for enrollment by their employees in an institution of higher education or for activities that may lead to such agreements, contracts, or commitments.

(c) EXCEPTION FOR FIXED COMPENSATION.—For purposes of subsection (a), a person shall not be treated as receiving incentive compensation when such person receives a fixed compensation that is paid regularly for services and that is adjusted no more frequently than every six months.

* * * * * * *

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.**]**

* * * * * * *

(c) AUDITS; FINANCIAL RESPONSIBILITY; ENFORCEMENT OF STANDARDS.—(1) Notwithstanding any other provisions of this title, the Secretary shall prescribe such regulations as may be necessary to provide for—

(A) * * *

* * * * * * *

(F) the limitation, suspension, or termination of the participation in any program under this title of an eligible institution, or the imposition of a civil penalty under [paragraph (2)(B)] *paragraph (3)(B)* whenever the Secretary has determined, after reasonable notice and opportunity for hearing, that such institution has violated or failed to carry out any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation, except that no period of suspension under this section shall exceed 60 days unless the institution and the Secretary agree to an extension or unless limitation or termination proceedings are initiated by the Secretary within that period of time;

* * * * * * *

(H) the limitation, suspension, or termination of the eligibility of a third party servicer to contract with any institution to administer any aspect of an institution's student assistance program under this title, or the imposition of a civil penalty under [paragraph (2)(B)] *paragraph (3)(B)*, whenever the Secretary has determined, after reasonable notice and opportunity for a hearing, that such organization, acting on behalf of an institution, has violated or failed to carry out any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation, except that no period of suspension under this subparagraph shall exceed 60 days unless the organization and the Secretary agree to an extension, or unless limitation or termination proceedings are initiated by the Secretary against the individual or organization within that period of time; and

* * * * * * *

ADDITIONAL VIEWS

We share the excitement over the vast potential of distance education to transform higher education. Used properly, it could improve both the quality and affordability of higher education and lifelong learning. Its promise is the greatest when it is applied to those left behind today, who are disproportionately likely to be low-income students, minorities, and Americans with disabilities.

The Challenge of Ensuring Program Integrity

While distance education creates new opportunities, it also creates new challenges. It was not very long ago that the student aid programs were plagued by widespread fraud and abuse. We sympathize with the concern—expressed eloquently by Ms. Mink and others—that unless we proceed very carefully, we risk returning to those days.

We appreciate the majority's willingness to strengthen H.R. 1992 and reduce the risk of fraud and abuse. Mr. Isakson has made three important changes to this bill since he first introduced it.

First, the Secretary of Education may continue to apply the 50 percent rules when necessary to avoid "a significant risk to federal funds and the integrity of programs." Exercising this discretion is an important new responsibility, and we urge the Secretary to take it seriously.

Second, schools offering non-traditional academic programs in which full-time students receive less than 12 hours of instruction a week must so notify the Secretary.

Finally, H.R. 1992 includes Mr. Wu's proposal to independently assess the impact of this bill in two years. The Wu study will give Congress early warning of potential problems or unintended consequences of this legislation.

With the help of these safeguards, we will keep a close eye on the implementation of this new law. We recognize the Secretary of Education's assurances in his July 31st letter to the Committee that he will "closely monitor institutions, enforce the many safeguards that are in place, and aggressively pursue any instances of fraud and abuse in the Federal student aid programs." If necessary, we can improve the balance between promoting distance-learning opportunities and maintaining program integrity when we consider the reauthorization of the Higher Education Act in two years.

Moreover, a bipartisan group of Members of the Committee is requesting a General Accounting Office study on distance education and the digital divide at minority-serving institutions. It is our hope that this report will inform the Committee's efforts to fully tap the potential of distance education in the pending reauthorization of the Higher Education Act.

Learning Anytime Anywhere Partnerships

We are gratified that the Committee bill includes a provision ensuring that if the Learning Anytime Anywhere Partnerships (LAAP) initiative is abolished—as President Bush proposes—worthy LAAP projects can be continued through the Fund for the Improvement of Postsecondary Education.

Alone, H.R. 1992 does not do enough to unleash the potential of distance education. Due to the well-documented "digital divide," students who are low-income or minority, who live in rural areas, or who have disabilities are far less likely to enjoy the opportunities created by this legislation. While distance education threatens to make old measures obsolete—like the 12–hour rule eliminated by H.R. 1992 and academic credits based upon class time—we haven't developed new measures to replace them. And too often, institutions invest in easily marketed and profitable courses like business and computer programming, while neglecting innovative approaches to meet community needs.

A bipartisan, three-year-old initiative—Learning Anytime, Anywhere Partnerships—is making a modest investment in addressing these concerns. LAAP projects, in which federal funds are matched dollar-for-dollar, include efforts to:

- Reach underserved communities, such as rural Americans, American Indians, and Hispanic Americans;
- Create new educational and career opportunities for Americans with disabilities;
- Develop new standards to measure student learning, and to accredit distance education programs; and
- Reach displaced workers and solve worker shortages from oilrig technicians in Texas to nurses in Detroit.

President Bush proposes to eliminate LAAP, arguing that its activities could be funded through the Fund for the Improvement of Postsecondary Education (FIPSE). However, the President's budget cuts FIPSE from $147 million to $51 million even while it asks FIPSE to assume this important new responsibility. It is a mistake to walk away from this promising new initiative. At a minimum, we ought to ensure that existing LAAP projects receive continuation funding, whether through LAAP or FIPSE.

Conclusion

We support H.R. 1992 because we believe that flawed or obsolete rules and regulations should not deny education opportunities to students. We look forward to continuing to expand those opportunities and ensure the integrity of federal student aid programs.

GEORGE MILLER.
MAJOR R. OWENS.
RON KIND.
DENNIS J. KUCINICH.
BETTY MCCOLLUM.
ROBERT E. ANDREWS.
HAROLD FORD.
RUBÉN HINOJOSA.
HILDA L. SOLIS.
CAROLYN MCCARTHY.

DISSENTING VIEWS

INTRODUCTION

We are disappointed that the Committee on Education and the Workforce has reported out a bill that could compromise the stability of the Federal student financial aid program. The debate on this bill raised many substantive issues that seriously question the wisdom of moving forward with such haste to eliminate crucial protections for hardworking students and taxpayers that were designed only recently to help guarantee that Federal student aid is spent on high quality programs that deliver the promised education. This bill is premature, and these changes should be considered when Congress reauthorizes the Higher Education Act when more information about the potential impact of eliminating these protections will be available. Congress can then appropriately view the changes in the context of the Higher Education Act as a whole.

The Committee has heard from many groups expressing reservations about the potential impact of these provisions and questioning the need to move this bill at this time. We share their concerns, and their recommendations against moving in haste to change provisions that have contributed to the reversal in the high default rates of the 1990's. These necessary safeguards have contributed significantly to ensuring the quality of education students receive, that the Federal government, and ultimately, taxpayers, pay for.

Combined with these reservations, the letter of July 24, 2001 from the Secretary of Education, Rod Paige, to Congresswoman Mink offered further reason to delay the enactment of this bill and to oppose changing these provisions at this time. Despite the Secretary's ultimate support for this bill on July 31st, just a week earlier he had stated that he could not make any recommendations on how to change either the 12-hour rule or the incentive compensation ban. Even the Secretary saw the need for further discussion with the higher education community on these difficult issues, stating, "We will continue to monitor the issue closely and may propose additional changes if necessary during the reauthorization process."

Along with the letter of July 24th, the Department of Education released its report on the 12-hour rule, and strongly made the case for not rushing through these changes. The Department specifically chose not to make any recommendations for next steps on the 12-hour rule, and chose not to issue guidance on the Incentive Compensation ban at this time. In both cases, the Department committed to going back and working further with the higher education community to find responsible ways to address the difficult issues of the 12-hour rule and the Incentive Compensation ban. Regarding incentive compensation, the Secretary said, "I want to listen to the views of the higher education community before pro-

viding any new guidance on prohibited activity." Despite the contradictory statement of the Department to endorse this bill, the Secretary's message from July 24th was clear that these changes are complex, will have significant impact on higher education generally, and further work needs to be done to consider any impact or potential alternatives.

Clearly, the potential of future studies, such as the Distance Education Demonstration Program, of the provisions affected by H.R. 1992, and the need to delay implementing these changes, seems greater than ever in light of Secretary Paige's letter of July 24th and the release of the 12-hour rule report.

As the Committee has moved through this process, it has not been at all clear that these are the right changes, nor that this is the right time to try to make these changes. At the time of the full Committee markup of H.R. 1992, the Committee had incomplete information from the Demonstration Program. Additionally, the Department decided it needed to go back to the community to work more on the 12-hour rule and the Incentive Compensation guidance. Furthermore, the Web-Based Commission's recommendations, on which this bill was based, merely encouraged "the federal government to review and, if necessary, revise" these provisions, but made no clear recommendations. And the Committee heard from the National Association of Independent Colleges and Universities, the American Federation of Teachers, the American Association of University Professors, the United States Student Association, the State Public Interest Research Groups, the Inspector General of the U.S. Department of Education, and the Advisory Committee on Student Financial Aid, all raising concerns about these changes and advising delay or caution in proceeding until we know more from the Demonstration Program and other studies. It's clear that this bill has raised real concern in the higher education community that changes to these provisions may fracture the stability of the student aid programs.

As has been stated previously in Subcommittee and Committee, members opposing these changes fully appreciate the staggering potential for web-based education to provide greater access to higher education for many Americans. Working students, older students, mothers at home with families, and other non-traditional students are the kinds of people who could benefit from distance learning programs. No one wants to get in the way of that.

However, it is the responsibility of Congress to protect these very same hard-working students and taxpayers from getting taken advantage of. These provisions were enacted to curb abuses that were responsible for default rates of 22 percent; as a result of these provisions, and other significant steps taken by the Clinton Administration to reform the student aid programs, the default rate is now 5.6 percent. And if this Committee is going to undermine this same Committee's well thought-out Demonstration Program to find the appropriate solution to this issue, the Committee needs to keep the responsibility of Congress to students and taxpayers at the forefront of its actions.

Congress should also keep in mind that while the intent of this bill is to help expand distance education, the impact of these changes would reach far beyond distance education courses. This

bill will affect every student taking courses in a nontraditional format, and could result in those students getting less instruction than taxpayers are providing financial support for. At the same time, the changes to the Incentive Compensation ban will affect every school currently participating in the Title IV programs, and could result in a return to the days when students found themselves victims of aggressive recruiting tactics. So this bill may be addressing distance education issues, but its impact is much wider than that. Furthermore, it's not entirely clear that distance education needs this help. The Advisory Committee on Student Financial Aid noted in its letter from June 19 that, "Most existing distance education programs can and do benefit significantly from federal student assistance already." If that's true, has the Committee properly weighed the potential benefits of these changes with the potential problems it may cause?

H.R. 1992 has raised some serious issues that will be facing the Committee as we approach the reauthorization of Higher Education. The technology revolution is affecting all aspects of our lives, and has made an impact on higher education as well. How technology changes our system of higher education is clearly a major issue that will likely impact most aspects of the HEA reauthorization, and this is an important precursor of those debates. As we work through this process, however, we should remember that in many of the ways technology has impacted our lives, it has not always replaced the existing way we live. In some cases, technology simply did not fit; in others, it has augmented and improved the way we live; but not always is there a wholesale revolution.

The impact of technology on higher education is also not a new issue for this Committee. In 1998, this Committee first grappled with the issues we're dealing with here. At that time, the Committee, and eventually Congress, decided that these issues were thorny enough, and that insufficient information existed to properly deal with them, that it was prudent to create a laboratory of sorts to investigate how to deal with these issues in a responsible, thoughtful manner.

As a result, Congress created the Distance Education Demonstration Program to look at how to change the 50 percent rules and the 12-hour rule in a way that doesn't jeopardize the student financial aid programs. These provisions, along with the ban on incentive compensation, were put in place to protect against fraud and abuse—changing these provisions prematurely could have serious consequences.

THE DISTANCE EDUCATION DEMONSTRATION PROGRAM

Congress recognized that the 50 percent rules and the 12-hour rule were important provisions, so a very controlled experiment was developed, with significant oversight and reporting requirements. Indeed, the report from this Committee, which accompanied the authorization of the Demonstration Program, states that, although "Distance education is emerging as an increasingly important component of higher education * * * There are provisions in the HEA designed to control fraud and abuse in distance education programs, and the Committee believes that these programs and courses must be carefully monitored to protect against such occur-

rences." The report language goes on to make absolutely clear that the Committee was very concerned about the impact of changing these provisions. The purpose of creating the Demonstration Program, the report clearly stated, was so that "In these controlled circumstances, the potential of distance education can be tested without unduly increasing the risk of fraud and abuse."

Fraud and abuse was, and remains, a very real concern. These provisions were developed in the early 1990s, when more than one student in five was defaulting on loans within two years of leaving school—and the rates were much higher than that at some schools. Cases of fraud and abuse were widespread, and were the subject of congressional hearings, led by Senator Nunn, who documented remarkable abuses. Many of the cases came from the for-profit schools and correspondence schools and included:

- An auto repair shop operating out of a fruit stand;
- A school enrolling Spanish-speaking students that offered only classes in English; and
- A Texas truck-driving school that has lost eligibility, but formed a new partnership with a Kansas liberal arts college.

These are all schools that, at the time, were eligible to participate in the student aid programs.

Students were also subject to deceptive or aggressive recruiting tactics. In congressional testimony, a representative of a New York legal clinic reported a deluge of "students defrauded by promises of free training and high-paying jobs, tricked into signing for loans they did not necessarily need or want, disgusted by broken equipment and teachers who do not teach or even show up for class, and, ultimately, sued or harassed because of defaulted student loans."

And schools worked the system to wring the most financial benefit out of it. At the time, the Inspector General's office found schools that gave "unreasonable" numbers of academic credits—two or three times more than the number of class hours justified—solely to increase their students' eligibility for federal aid.

So the record of abuses was clear. These provisions stripped eligibility from fraudulent operators, restored the integrity of the student aid programs, and have been very effective in protecting students and taxpayers. This Committee clearly recognized that in 1998 when, instead of simply doing away with these provisions, it created the Demonstration Program.

Now, this Committee has voted to prematurely end this Demonstration Program, long before it has had the opportunity to provide us with the answers it was created to provide. The Demonstration Program has only had time to issue one report. Indeed, the Demonstration Program states, in its first report from this past January, 2001, that "there are potential risks in the rapid expansion of distance education that require a certain degree of caution then considering the implications for the Title IV student financial assistance programs." Overall, the report speaks positively about the promise of distance education, and the difficulty such programs have in working under these provisions. At the same time, the report clearly acknowledges that "these changes carry with them new risks to the Title IV programs that must be anticipated and managed to protect the integrity of the programs."

It doesn't make sense to preemptively repeal the Demonstration Program while it is still investigating how to replace these provisions in a way that does not put the student financial aid programs at risk. In waiving these provisions for a carefully selected group of participants in the Demonstration Program, Congress is able to more carefully and properly monitor the impact of these changes on students and taxpayers. H.R. 1992 undermines the intent of Congress in 1998 and will short-circuit the Demonstration Program before we have an opportunity to learn from it.

THE 12-HOUR RULE

Regarding the 12-hour rule in particular, we are concerned that simply eliminating the 12-hour rule will mean students in non-traditional programs will get less instruction than students in traditional programs, yet will receive the same amount of Federal aid. Reading the Department of Education's report on the 12-hour rule only reinforces that concern, yet the report conspicuously fails to point to any clear alternatives to the 12-hour rule. This concern was manifested in the Committee markup by an amendment offered by Representative Holt (D–NJ) to strike the provision in H.R. 1992 that would eliminate the 12-hour rule. As a former college professor, he expressed significant concern that without the 12-hour rule, students would be given less instruction than they're paying for. Regrettably, after much debate, the amendment was defeated.

The 12-hour rule was adopted to ensure that non-traditional programs offered the same amount of instruction as traditional programs. For traditional programs, the requirement was "one day", however, as the report notes, "The Department did not establish a minimum number of instructional hours that must occur during that one day because, as stated in the preamble to the November 29, 1994 regulations, full-time students attending standard term programs were generally presumed to be in class attendance for at least 12 hours each week." For non-traditional programs, however, there were concerns that "nonterm and nonstandard term programs might be set up with elongated instructional schedules that did not provide the appropriate amount of instruction for a full-time student. As a result, a student could receive more Title IV funds than was appropriate for the amount of instruction received."

Now, it has been reported that distance education programs are having difficulty meeting the 12-hour rule, as the first report of the Distance Education Demonstration program states. Yet, the Demonstration Program report goes on to state that "changes carry with them new risks to the Title IV programs that must be anticipated and managed to protect the integrity of the programs." The report on the 12-hour rule reinforces this statement, noting that "Changes to the 12 hour rule have such broad implications and are so intertwined with other areas of Federal student financial assistance administration" that the effects of changes could be far-reaching. This seems to argue for taking a closer look at the Distance Education Demonstration Program and its potential to better inform this discussion as we move towards the HEA reauthorization.

As the 12-hour rule report rightly states, "The key issue is how to make changes that allow the continued development of innova-

tive educational programs while ensuring that the amount of educational instruction is adequate and comparable to that offered in traditional term-based programs." Yet the Department, in the 12-hour rule report, states clearly that "This report * * * contains no recommendations for next steps. It is the Department's intention to continue working with the higher education community on issues surrounding nontraditional education and, in particular, providing Federal student financial assistance to students enrolled in those programs." Currently, H.R. 1992 offers no guarantees, as Representative Holt correctly pointed out in offering his amendment to preserve the 12-hour rule, that students will receive comparable amounts of instruction without it.

Whether or not there's a way to accommodate the needs of distance education while keeping the intent of the 12-hour rule intact is something the Committee needs to consider. As the American Federation of Teachers put it in their 2001 report, A Virtual Revolution: Trends in the Expansion of Distance Education, "* * * deep knowledge of a subject is not simply a matter of passing a competency test. It does in fact require time—in the same room or in cyberspace—with teachers and other students chewing over ideas, hearing contrary points of view and defending conclusions. There is a reason for concern if time on task comes to be viewed as a luxury rather than a necessity in distance education on the corporate model."

THE INCENTIVE COMPENSATION BAN

Regarding the incentive compensation ban, there is concern that any weakening of this ban could result in loopholes developing and reports of growing abuses in the next few years. In Subcommittee, Representative Patsy Mink (D–HI) offered an amendment to strike these changes, but unfortunately it was not adopted. These concerns are strongly shared by the Inspector General of the Department of Education who stated that not only would the impact of these changes be unclear, the ban will be very difficult to enforce and provide students with protections against aggressive recruiting tactics that were such a problem in the past. The Inspector General recommended retaining a complete ban on awarding such incentive payments.

Secretary Paige has also stated, in his letter accompanying the 12-hour rule report, that the Department is not prepared to issue guidance on incentive compensation. Instead, the Department sees the need to begin "new discussions with the higher education community on the safeguards that must be in place to ensure accountability and integrity."

The Secretary, on July 24th, said that he would not be making any recommendations on how to change the 12-hour rule, nor is he prepared to issue guidance on the incentive compensation ban, stating that he needs to consult more with the community.

In light of the Inspector General's position, and the Secretary's stated need to continue working on this issue, we feel strongly that the degree to which this ban is weakened is the same degree to which the door is opened to fraud and abuse.

CONCLUSION

Distance education should not be viewed as a replacement for traditional educational systems. As the AFT notes in their report, Distance Education: Guidelines for Good Practice, while many students perform better in distance education than in traditional classrooms, many do not. Almost half of the AFT members providing distance education reported higher dropout rates in their distance education courses. Many also reported that "successful distance education students need to be highly motivated, and found the practice more problematic for younger, less-motivated students." Over 70 percent of these same AFT members advocate that half or less of an undergraduate degree be offered by distance education. As the report states, "These responses are important because they came from distance education practitioners who were generally favorable to the practice, considered it successful and indicated that they would teach a distance education course again if asked."

As Secretary Paige put it in his letter from July 24th, "We need to strive for a consensus on boundaries that allow our institutions of higher education to operate in a reasonable and predictable environment and that also protect the public from the types of abuses we saw in the past." We fully agree with the Secretary, and applaud his decision to not rush these changes through before their impact has been sufficiently studied. To quote him from July 31st, "Let me assure you that I am not about to open the door for fraud and abuse * * * we will closely monitor institutions, enforce the many safeguards that are in place, and aggressively pursue any instances of fraud and abuse in the Federal student aid programs." This is admirable and we hope that the Secretary and the other members of the Committee have a chance to work together to monitor the Demonstration program, and to learn from the Secretary's further consultation with the community.

It is clear that all sides of this debate—Congress, the Department of Education, advocates of distance learning, and those concerned about the impact of these changes—will benefit from having more information, from the Demonstration Program and from other sources, to address these issues responsibly as we progress towards reauthorization of the Higher Education Act. In the meantime, during a time of soaring levels of student debt we should be decreasing, not increasing, the likelihood that students will be saddled with enormous debt with no real benefit from their education. Congress must advocate for protecting students and taxpayers. And that must be this Committee's primary focus. As a result, at this time, we strongly believe this bill is premature and we oppose it.

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