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REPORT
110–577

NEED-BASED EDUCATIONAL AID ACT OF 2007

APRIL 10, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 1777]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1777) to amend the Improving America's Schools Act of 1994 to make permanent the favorable treatment of need-based educational aid under the antitrust laws, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 1777 would make permanent an exemption to the antitrust laws that permits the Ivy League schools to agree to award financial aid on a need-blind basis and to use common principles of needs analysis in making their determinations. The exemption also allows for agreement on the use of a common aid application form

and the exchange of a student's financial information through a third party. Without this legislation, the exemption will expire on September 30, 2008.

BACKGROUND AND NEED FOR THE LEGISLATION

BACKGROUND

Beginning in the mid-1950's, a number of prestigious private colleges and universities agreed to award institutional financial aid (i.e., aid from the school's own funds) solely on the basis of demonstrated financial need. These schools also agreed to use common principles to assess each student's financial need and to give essentially the same financial aid award to students admitted to more than one member of the group. Among the schools engaging in this practice were the Ivy Overlap Group (Brown, Columbia, Cornell, Dartmouth, Harvard, Princeton, Penn, Yale, and MIT) and the Pentagonal/Sisters Overlap Group (Amherst, Williams, Wesleyan, Bowdoin, Barnard, Bryn Mawr, Mount Holyoke, Radcliffe, Smith, Vassar, Wellesley, Colby, Middlebury, Trinity, and Tufts).

From the 1950's through the late 1980's, this practice continued undisturbed. In 1989, the Antitrust Division of the Department of Justice brought suit against the nine members of the Ivy Overlap Group to enjoin this practice. In 1991, the eight Ivy League schools (i.e., all of the Ivy Overlap Group except for MIT) entered into a consent decree that for all practical purposes ended the practices of the Overlap Group.[1]

In 1992, Congress passed a temporary antitrust exemption authorizing the schools to agree to award financial aid on a need-blind basis and to use common principles of need analysis.[2] This temporary exemption specifically prohibited any agreement as to the terms of a financial aid award to any specific student. By its terms, it expired on September 30, 1994.

In the meantime, MIT continued to contest the lawsuit. After a non-jury trial, the district court ruled that the practices of the Overlap Group violated the antitrust laws, but specifically invited a legislative solution.[3] On appeal, MIT won a reversal of the district court's decision.[4] The appeals court held that the district court had not engaged in a sufficiently thorough antitrust analysis and remanded for further consideration. After that decision, the parties reached a final settlement.

In 1994, Congress passed another temporary exemption from the antitrust laws.[5] This exemption resembled the one passed in 1992 in that it allowed agreements to provide aid on the basis of need only and to use common principles of need analysis. It also prohibited agreements on awards to specific students. Unlike the 1992 exemption, however, it also allowed agreement on the use of a common aid application form and the exchange of the student's financial information through a third party. This temporary exemption

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[1] *See* United States v. Brown University, 1991 U.S. Dist. Lexis 21168, 1993–2 Trade Cases ¶70,391 (E.D. Pa. 1991).

[2] Higher Education Amendments of 1992, § 1544, Pub. L. No. 102–325, 106 Stat. 448, 837 (1992).

[3] United States v. Brown University, 805 F.Supp. 288 (E.D. Pa. 1992).

[4] United States v. Brown University, 5 F.3d 658 (3d Cir. 1993).

[5] Improving America's Schools Act of 1994, § 568, Pub. L. No. 103–382, 108 Stat. 3518, 4060 (1994).

roughly mirrored the settlement reached in 1993, and extended the exemption until September 30, 1997.

In 1997, Congress passed a law further extending the exemption until September 30, 2001,[6] as attempts to make the exemption permanent were unsuccessful. The exemption was extended again in 2001, and is now set to expire on September 30, 2008.[7] The 2001 law, H.R. 768, directed the GAO to conduct a study to determine the effect of the exemption on institutional financial aid and to issue a report by September 30, 2006.[8]

H.R. 1777, introduced by Rep. Bill Delahunt and Ranking Member Lamar Smith, would make the exemption passed in 1994 permanent. It would not make any change to the substance of the exemption.

NEED FOR THE EXEMPTION

The need-based financial aid system serves social goals that the antitrust laws do not address, namely, making financial aid available to the broadest number of students solely on the basis of demonstrated need. The schools are concerned that without this exemption, they would be required to compete, through financial aid awards, for the very top students. This could result in those students getting an excess of the available aid while other qualified applicants with similar or greater need would get less or none at all.

Ultimately, such a system would serve to undermine the principles of need-based aid and need-blind admissions. These schools are endeavoring to ensure that no student who is otherwise qualified is denied the opportunity to go to one of the Nation's most prestigious schools because of the financial situation of his or her family. H.R. 1777 will help protect need-based aid and need-blind admissions and preserve that opportunity.

HEARINGS

The Committee on the Judiciary held no hearings on H.R. 1777.

COMMITTEE CONSIDERATION

On April 2, 2008, the Committee met in open session and ordered the bill, H.R. 1777, favorably reported without amendment, by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 1777.

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[6] Need-Based Educational Aid Antitrust Protection Act of 1997, Pub. L. 105–43 (1997). The extension passed the Senate by unanimous consent and by voice vote in the House.

[7] Need-Based Educational Aid Act of 2001, Pub. L. 107–72 (2001). This was passed under suspension in the House by a vote of 400 to 0 and in the Senate by unanimous consent. The legislation passed by the House contained a permanent exemption, but the Senate passed amendments to the bill limiting the exemption to a specified number of years.

[8] The GAO completed the report in 2006. *See* U.S. Gov't Accountability Office, Schools' Use of the Antitrust Exemption Has Not Significantly Affected College Affordability or Likelihood of Student Enrollment to Date (2006).

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1777, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 7, 2008.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1777, the "Need-Based Educational Aid Act of 2007."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Leigh Angres, who can be reached at 226–2860.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 1777—Need-Based Educational Aid Act of 2007.

H.R. 1777 would make permanent a provision that exempts institutions of higher education from regulation under Federal antitrust laws when awarding need-based student aid. Under current law, the provision expires on September 30, 2008. CBO estimates that implementing the bill would have no significant effect on the Federal budget. Enacting H.R. 1777 would not affect direct spending or revenues.

H.R. 1777 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The staff contact for this estimate is Leigh Angres, who can be reached at 226–2860. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1777 continues the current antitrust clarification that enables participating colleges to coordinate policy on need-based financial aid awards.

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CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 3 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1777 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title. Section 1 sets forth the short title of the bill as the "Need-Based Educational Aid Act of 2007."

Sec. 2. Amendment. Section 2 repeals subsection (d) of section 568 of the Improving America's Schools Act of 1994. As a result, the exemption would be permanent.

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 and existing law in which no change is proposed is shown in roman):

SECTION 568 OF THE IMPROVING AMERICA'S SCHOOLS ACT OF 1994

SEC. 568. APPLICATION OF THE ANTITRUST LAWS TO AWARD OF NEED-BASED EDUCATIONAL AID.

(a) * * *

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[(d) EXPIRATION.—Subsection (a) shall expire on September 30, 2008.]

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