



BILL SUMMARY

EDUCATION & THE WORKFORCE COMMITTEE

PROTECTING ACADEMIC FREEDOM IN HIGHER EDUCATION ACT

Background: In October 2010, the U.S. Department of Education released a package of regulations to purportedly improve the integrity of the student financial aid programs. Two of these so-called “program integrity regulations” -- the credit hour and state authorization regulations -- inject the federal government into issues that are traditionally academic or state affairs. They will unnecessarily restrict colleges and universities and result in fewer choices for students.

Chairwoman Virginia Foxx (R-NC) recently introduced legislation (H.R. 2117) to repeal the new federal credit hour regulation that sets a federal definition of a credit hour and the state authorization regulation. The bill also prohibits the Department of Education from ever defining “credit hour” in the future. Below are specifics about both regulations.

Credit Hour

Federal student aid is awarded to students based on the number of credits they take each term. Historically, the Department of Education has relied on accrediting agencies to oversee how an institution defines a credit hour and assigns a specific number of credit hours to each course. The new regulation creates a federal definition of a credit hour, undermining the traditional role of institutions of higher education in order to impose a restrictive set of new requirements that could prove to be very harmful for the higher education community.

Under the regulation, an institution of higher education has only two ways to ensure that its students are enrolled in classes and earning the required credit hours. The first is based off of the “Carnegie Unit,” the traditionally accepted definition for one credit hour. Under this metric, one credit hour equals one hour of lecture and two hours of out of class work for approximately 15 weeks for one semester or trimester or for 10 to 12 weeks for one quarter. Under the second option, an institution must demonstrate an equivalent amount of work as required by the first option for other academic activities, such as laboratory work, internships, and practice, as established by the institution.

The regulation will stifle innovative teaching practices being developed by colleges and universities around the country, including accelerated learning programs, because the federal definition of credit hour is based on the number of hours a student is in class or may be studying outside of class, it does not measure how much the student is learning.

State Authorization

Under the Higher Education Act, every institution of higher education participating in the federal student aid programs must be authorized to provide a postsecondary educational program within the state it is located. Because student participation in federal financial aid programs is crucial to the financial viability to most institutions, state governments have substantial power to decide which institutions can offer higher education programs. The new regulation imposes a one-size-fits-all requirement that will harm students and schools. It strays away from long-standing federal policy and infringes on the right of states to regulate their higher education systems. The regulation will likely require many states to change how they currently authorize or license institutions of higher education within the state. In addition, this regulation may give states unprecedented authority over the private and religious institutions operating within the states. The regulation contains the following components:

- **Complaint Process.** States must have a process to review and act on complaints about the institution. Currently, all accreditors must have a process to review and act on complaints and many states do not have any process in place to address complaints from students. This requirement will be in addition to those mechanisms.
- **Established by name.** The institution must be established by name as an institution of higher education – not as a business or a charity. Typically, most public nonprofit institutions are established by name within states. However, many private nonprofit institutions and proprietary institutions are *not* established by name.
 - **State Regulations Waiver.** The institution that is established by name must comply with all applicable state approval or licensure requirements, unless exempted by the state based on its accreditation or being in operation for at least 20 years.
- **Established as Business or Charity.** If an institution is established as a business or a charity, the institution must then be approved or licensed to offer postsecondary programs and may not be exempt from the approval process based on accreditation, years in operation or other comparable exemption.
- **Impact on Religious Institutions.** Religious institutions that are already exempt from state authorization processes by nature of their religious affiliation are also exempt from this requirement.
 - A “**religious institution**” is one that is “owned, controlled, operated, and maintained” by a religious corporation and awards only religious degrees or certificates.
- **Distance Education.** An institution offering distance education courses must be able to document that it is authorized by any state in which it would otherwise be subject to state jurisdiction. This provision has resulted in a lot of confusion among the higher education community as to whether an institution offering online programs must be authorized in every state where it has students. Given this confusion, the Department issued a Dear Colleague letter stating that it will not enforce this provision until July 1, 2014 for institutions making “good faith efforts” to comply with the regulation.
- **Disclosure.** An institution must disclose to students and prospective students information about filing complaints with an accreditor, a State approval or licensing agency, and any other appropriate State agency.

The strength of the American higher education system is its diversity of institutions with widely ranging missions. This regulation would subject institutions to the whims of state bureaucrats

who have the power to restrict authorization to institutions on political or other non-educational grounds.

Instead of protecting students from fraud and abuse, both the credit hour and state authorization regulations will hamper our efforts to matriculate high quality graduates into the American workforce. They will also impose additional burdens on institutions of higher education, which could lead to higher costs being passed down to the students. They are clear examples of the federal government overreaching into the jurisdiction of states and institutions.