



Legislative Bulletin.....February 7, 2008

Contents:

H.R. 4137—College Opportunity and Affordability Act of 2007

H.R. 4137, the College Opportunity and Affordability Act of 2007 (sponsored by Rep. George Miller, D-CA), is scheduled to be considered on the House floor today, Thursday, February 7, 2008, subject to a structured rule ([H.Res. 956](#)), making in order the following 27 amendments, each debatable for 10 minutes, except for the Manager’s Amendment, which is debatable for 20 minutes.

The rule waives all points of order against consideration of the bill, except those regarding PAYGO and earmarks, waives all points of order against the bill itself—except the PAYGO rule—and allows the Chair to postpone consideration of the legislation at any time during its consideration. The rule allows one motion to recommit with or without instructions.

Note: The summaries below are based on RSC staff review of *actual amendment text* and thus often differ significantly from what’s on the Rules Committee website. For a summary of the underlying bill, see a separate RSC document released yesterday.

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AMENDMENTS MADE IN ORDER UNDER THE RULE

1. *Miller (D-CA)*. Manager’s Amendment.

The following is a summary of the major issues addressed by the Manager’s Amendment (MA):

Title I

- Clarifies that institutions that admit and/or provide aid to homeschool students will not lose their federal aid eligibility for such activities.
- In regards to the college costs section of H.R. 4137, the amendment seeks to amend the state maintenance of effort (MOE) provision to clarify which state funds count toward the MOE. In addition, the MA removes the second “test.” **Note: This does not address many of the concerns made by some conservatives regarding the MOE provision, as the mandate will still exist.**
- The MA strikes and replaces Sec. 109 of H.R. 4137, rewriting the college cost provisions. The amendment includes:
 - a. The creation of a sortable and searchable list of all institutions in the country to provide information on tuition and fees, average price after grant aid, recent price increases, and change in per-student spending;

- b. A requirement for the Secretary to publish “Cost Affordability and Transparency Lists,” three transparent lists (by type of institution) listing the 5% most expensive institutions in the country, the 5% least expensive institutions in the country, and the 5% of institutions that had the largest percentage increase over the last three years.
- Regarding the Watch List created in H.R. 4137, the MA states that institutions will be exempt from the requirements of the Quality Efficiency Task Force (and will not show up on the third list) if 1) their tuition is in the lowest quartile for their sector; or 2) the dollar increase over the 3 year period was less than \$500.
- The MA includes language requiring the Bureau of Labor Statistics (BLS) to develop postsecondary education price indices that accurately reflect the annual change in tuition and fees for undergraduate students enrolled in specific types of institutions.
- The MA requires that institutions publish their average net price of aided students by income category and requires institutions to post a new price calculator on their website.
- Regarding private loans, the MA changes the date—from August 1 to March 1—for lenders who are required to provide institutions of higher education information about the terms, conditions, and benefits of the educational loans to be provided by the lender to the borrowers attending the institution. In addition, the MA clarifies and expands the types of financial literacy activities that lenders, guarantors, or servicers of educational loans may provide to institutions of higher education, and the students attending such institutions, without violating the ban on gifts given to institutions.
- Regarding the gift bans, the MA clarifies that State education grants, scholarships, or financial aid funds administered by or on behalf of a State are not considered “gifts” for purposes of the ban on gifts given to institutions. In addition, the MA increases the amount of the penalty from \$25,000 to \$27,500 for violations of lender and institution requirements relating to educational loans, to make the penalty consistent with the pecuniary penalties assessed for violations of other provisions of the higher education act.

Title II

- In regards to the Early Childhood provisions in the underlying bill, the MA clarifies that Migrant and Seasonal Head Start and American Indian/Alaska Native Head Start programs, as well as IDEA Part C programs qualify as early childhood programs under the definition in Title II.
- The MA includes professional development as activities of a partner institution under the Title II Partnership Grants. In addition, the MA removes the ability of eligible partnerships to provide merit or performance pay to teachers who serve as mentors within a teacher residency program.

Title III

- The MA changes the HBCU Capitol Financing Program by increasing the loan cap of the program.
- The MA amends the Minority Science and Engineering Improvement Program to allow the Department of Defense and the National Science Foundation to participate as partners.

Title IV

- The MA makes the following changes to the TRIO program:
 - a. The MA specifies that TRIO grantees may focus programs on persons from disadvantaged backgrounds that have particular lower educational access or outcomes, disconnected students, and students with disabilities.
 - b. The MA also rewrites the appeals process to allow for an applicant to appeal their funding decision to the Secretary.
- The MA amends the GEAR-UP program to remove the “last-dollar” requirement.

- The MA clarifies service requirements in the Byrd Scholarship program.
- The MA establishes a **new** program, the Adjunct Teach Corps, to allow school districts to recruit content specialists from among mid-career professionals (focusing on those with expertise in math, science, and critical foreign languages).
- The MA includes clarifying language intended to prohibit the third party servicer from selling or transferring information to others parties.
- The MA requires a **new** report for authorizing committees on the program outcomes that voluntary flexible agreements have had with respect to program integrity, default aversion, and consumer education.
- With regard to the GradPLUS loans, the MA applies the same six month deferment after graduation provision which is permitted in other loan programs.
- With regard to the Cohort Default Rate, the MA defers the implementation of the three year cohort default rate for three years and permits institutions who hit certain rate levels to appeal to the Secretary if mitigating circumstances are involved.
- With regard to the 90/10 rule, the MA permits proprietary institutions to count institutional loans as revenue for a three year period. This provision is meant to address current market conditions that may be preventing lenders from making loans to certain categories of students.
- The MA adds dentists, audiologists, and individuals involved in STEM areas to the list of “national need” occupations (who are eligible for loan forgiveness in the underlying bill).
- With regard to graduation and completion rates, the MA would allow institutions of higher education to use alternative methods to calculate graduation rates in order to account for students who are serving in the armed forces, etc. Under current law, these individuals are often excluded in the calculation of graduation and completion rates.
- The MA makes several clarifications with regards to the accreditation provisions. The MA clarifies current law, that an institution has the ability to determine the manner in which it will meet the standards for student achievement set by the accreditor. In addition, the MA includes a proposal to permit accreditors to expand their scope to include distance education programs so long as they notify the Secretary in writing of their decision.

Title VII

- The MA creates a **new** program for HBCUs that have Master’s degree programs, but not PhD programs (which would qualify them for the HBGI program in Title III).
- The MA creates a priority within the rural education programs for applicants who partner with local businesses.
- The MA would allow institutions to use their campus safety funds to purchase and install access control, video surveillance, and perimeter security technologies
- The MA includes a proposal which would require that the Secretary consult with the Administrator of the Environmental Protection Agency before the development of the sustainability planning grants created in the underlying bill.

Title VIII

- The MA includes a **new** study that would require the GAO to review the needs analysis methodology to ensure regional sensitivity.
- The MA includes a **new** study by the Center for Education of the National Academy of Sciences to examine the quality of teacher education programs and their ability to teach students with dyslexia effectively.
- The MA includes a **new** study by the Secretary to assess the impact of the standard repayment plan on a borrowers’ ability to pay if the borrower lives in a low-income area.

Title IX

- The MA includes a statement that loan forgiveness does not qualify as bribe for government employees.
- The MA restores the current law regarding the Education of the Deaf Act by removing the reference to the Rochester Institute of Technology and by permitting the Secretary to seek supplemental audit materials from the National Technical Institute for the Deaf that correspond to the federal fiscal year.

Title X

- The MA clarifies the penalties for disregarding the Truth in Lending Act (TILA). The MA states that the penalties are the same for private loans as for other consumer loan products covered under TILA.
- The MA clarifies that lenders who offer private loans are able to provide financial literacy materials to students and institutions.

2. McKeon (R-CA). The amendment would require the Secretary of Education to contract with the National Research Council of the National Academies in order to conduct a study which would “ascertain the amount of scope of all federal regulations and reporting requirements with which institutions of higher education must comply.” The report must include recommendations for consolidating and eliminating redundant and burdensome federal regulations on institutions of higher education.

3. Kildee (D-MI). The amendment would give the Secretary the authority to reserve 30% of the fund, currently reserved for awarding one-year grants to Tribally Controlled Colleges and Universities for construction and maintenance at such institutions. In addition, the amendment would require that recipient institutions have not received grants under HEA in the past year have priority for these funds.

4. Petri (D-WI). The amendment would require the Education-Treasury Study Group to evaluate an alternative market-based reform to the Federal Family Education Loan Program (FFELP). The amendment suggests that the alternative reform should reduce federal costs and transfer any savings incurred toward need-based grants. **Some conservatives may be concerned that this amendment would actually raise interest rates and limit competition among lenders. The following concerns were expressed by numerous conservatives to Chairman Miller and Ranking Member McKeon when the College Cost Reduction Act was considered in July or 2007:**

Although there have been numerous “market mechanism” concepts previously proposed, they all have one thing in common—they would drastically reduce the number of lender-participants in FFELP. At the outset of an auction, multiple bidders could temporarily drive-down government costs by eliminating value-added benefits and services which would result in a bare-bones student loan program. This will push many of the lenders out of the program and hurt students. Eventually, because very few providers would be left in the program, the remaining participants would no longer have an incentive to provide meaningful student services. With a low supply of providers, and a high demand for loans, market forces would actually reduce the services to students, increase the rates of default, and eventually drive-up government costs.

5. Petri (D-WI). The amendment would attempt to apply new auditing requirements, which are put in place for Direct Loans in H.R. 4137, to FFELP loans as well. According to some who are concerned about the amendment’s actual impact, this amendment effectively changes the audit requirements so

that it is the guarantor agencies that are being audited for un-reconciled loan balances, not the Direct Loan program. Because this audit is already occurring, this amendment effectively holds Direct Loans up to a lesser standard than FFELP loans. **Some conservatives are concerned that this amendment actually weakens the independent audit of the Direct Loan program. In a Dear Colleague sent by Rep. McKeon (R-CA) and Rep. Price (R-GA), they noted the following concerns:**

“Section 454 is important because the Direct Loan program is not currently subject to routine audits that examine all of the issues found in this section. Further, the government finances the Direct Loan program by borrowing, so it contributes directly to the national debt. Transparency is critical if Congress is going to get a handle on evaluating student lending programs and make the best decisions for college access and affordability.

“Unfortunately, an amendment, Petri #8, is being offered which would gut Section 454. While it adds another audit of the Federal Family Education Loan (FFEL) program, it also weakens the independent audit of the Direct Loan program. In addition, it eliminates the portion requiring disclosure of the program’s impact on national debt. This is no way to effectively manage a program, and such an alteration hinders Congress’ very ability to understand the costs of the student lending programs.

“Improving transparency in the Direct Loan program will help Congress improve the entire federal student aid system. Both the Direct Loan and Federal Family Education Loan programs should be held up to the light of day so taxpayers know what they are getting out of their dollars. If that is to happen, Section 454 must be preserved and transparency saved.”

6. Castle (R-DE). The amendment would require the Quality Efficiency Task Forces (set up under Sec. 133 of H.R. 4137) to “develop annual benchmarks for the institutions to reduce costs”. These benchmarks would apply to the top 5% of institutions in each category (determined in Sec. 133) that have the largest increase in their tuition and fees. In addition, the amendment would require any institution that does not meet the benchmarks to submit an explanation to the Secretary of Education describing why they have not met the benchmarks. Some College and University groups are opposed to this amendment because they do not want to see the Quality Efficiency Task Forces expanded. According to one University who weighed in on the amendment, “Colleges and universities are making strides to become more efficient and reduce their costs, and they in fact, already employ benchmarks and use comparative information to help assess their operations. Another unfunded federal mandate added is ill-advised and unproductive.”

7. Davis, Danny (D-IL). This amendment allows the discharge of *private* student loans via bankruptcy because of “undue hardship” on the debtor and the debtor’s dependents. (Government-funded and government-guaranteed loans are already dischargeable via bankruptcy for undue hardship.) The amendment would also limit the time in which such discharge could be granted to five years, between the time a loan is due and the filing of a bankruptcy petition, excluding any time the debtor is in the relevant school.

In short, this amendment would make it easier for students to get out of paying back their privately-granted student loans.

Opposing this amendment are the American Bankers Association, Citigroup, Consumer Bankers Association, Huntington Bancshares, Independent Community Bankers of America, National City

Corporation, the Financial Services Roundtable, Wachovia Corporation, the Mortgage Bankers Association, Wells Fargo & Company, Bank of America, and the U.S. Chamber of Commerce.

The Financial Services Roundtable argues that, because this amendment would make it easier to discharge private school loans, “Enactment of the Davis amendment reduces competition in the market, will force lenders to either not make student loans, or find some way to offset the increased risk. This could mean raising interest rates, or reducing the term of the loan (perhaps to 5 years) which would increase monthly payments. None of this will benefit students, and we strongly urge you to reject the Davis amendment.”

8. *Davis, Susan (D-CA)*. The amendment would prevent interest from accruing for active duty service members (including National Guard members) for the duration of their activation and up to 60 months when serving in a combat zone.

9. *Sestak (D-PA)*. Rep. Sestak’s amendment would add physical therapists to the list of “national need” occupations that would be eligible for loan forgiveness under Sec. 428(K) of H.R. 4137.

10. *Sestak (D-PA)*. Rep. Sestak’s second amendment would amend the articulation agreement strategies (Sec. 486(A) of H.R. 4137) to include management systems regarding course equivalency, transfer of credit, and articulation.

11. *Yarmuth (D-KY)*. The amendment provides competitive, five-year Teach to Reach grants to eligible partnerships to provide general education teacher candidates with the knowledge and skills to effectively instruct students with disabilities in their classrooms. Eligible partnerships must include an institution of higher education, a special education department within that institution, and a high-need local education agency.

12. *Hastings (D-FL)/Sánchez, Linda (D-CA)*. The amendment authorizes a nationwide pilot program through the Department of Education of grants to accredited community colleges to promote holistic community-centered partnerships aimed at mitigating gang violence and reducing recidivism rates among juvenile ex-offenders previously detained for gang-related offenses.

13. *Welch (D-VT)*. Amendment would require annual reporting by colleges and universities on how much of their endowment was paid out each year for the purpose of containing college costs.

14. *Lantos (D-CA)/Watt (D-NC)*. The amendment makes a technical correction to the Graduate Assistance in Areas of National Need (GAANN) program to clarify Congressional intent that a Masters Degree level institution or program is eligible to be the lead recipient of a grant under the GAANN program.

15. *Edwards (D-TX)/Boyda (D-KS)*. The amendment prohibits a state from charging members of the armed forces who are on active duty for more than 30 days and whose domicile or permanent duty station is in such state, and such members' dependents, more than the in-state tuition for attending a public institution of higher education (IHE) in that state. In addition, the amendment provides that, even if such members' permanent duty station is subsequently changed to a location outside the state, they or their dependents must continue to be charged no more than the in-state tuition if they remain continuously enrolled at such IHE in the state.

16. Johnson, Eddie Bernice (D-TX)/Young, Don (R-AK). This amendment expands Pell Grant eligibility to children who lost a parent or guardian as a result of the conflicts in Iraq or Afghanistan since September 11, 2001. These children will be eligible for the maximum amount of Pell Grant assistance.

17. Stupak (D-MI). The amendment provides federal student loan relief to borrowers who go into school administration in low-income school districts. In addition, the amendment specifies that this loan relief applies to any borrower who has been employed as a full-time school superintendent, principal, or other administrator for five consecutive complete school years in a school district in a low-income area. The amendment provides up to \$2,000 in student loan relief annually, up to a lifetime maximum of \$10,000.

18. Doggett (D-TX). The amendment encourages the pre-population of the Free Application for Federal Student Aid (FAFSA) with income and asset information, by taxpayer consent, using tax data provided directly from the IRS to the Department of Education, allows the Secretary of Education to provide for the use of second preceding tax year information, and strikes a Department of Education study on pre-populating tax data in the FAFSA form included in the reported bill.

19. Baird (D-WA). This amendment would direct the Secretary of Education to conduct a study on the costs and benefits of making student aid available to less than half-time students. The Secretary would then make recommendations on how to best design a demonstration loan program targeted for less than half-time students.

20. Inslee (D-WA). The amendment ensures that competitive Sustainability Planning Grants explicitly provide for “greenhouse gas emissions reductions” to reduce the threat of global warming, and adds an eligibility requirement to the Fund for Improvement of Post-Secondary Education (FIPSE) to ensure that institutions meet current energy efficiency standards. Additionally, the amendment includes a sense of Congress that the Federal Perkins Loan Program, which provides low-interest loans to help needy students finance a degree in higher education, should remain a campus-based aid program and to support increased funds to provide more low-income students with options.

21. Crowley (D-NY). The amendment would allow community college students to have \$10 forgiven from their student loans for every hour they dedicate to mentoring an at-risk child, not to exceed \$10,000 in total loan forgiveness.

22. Cooper (D-TN). The amendment increases the authorization level, from \$300 million to \$500 million, for the 103 Historically Black Colleges and Universities. In addition, the amendment increases the authorization level, from \$100 million to \$125 million, for the 18 Historically Black Graduate Institutions. Increased authorizations apply to Fiscal Year 2009, with such sums as are necessary authorized for the four following fiscal years.

23. Ryan, Tim (D-OH)/Altmire (D-PA). This amendment creates a pilot competitive grant program (available to no more than 10 colleges) to assist institutions of higher education in setting up college textbook rental programs. The amendment authorizes appropriations of \$50 million for Fiscal Years 2009 and 2010.

24. Van Hollen (D-MD)/Castle (R-DE). This amendment authorizes Teach for America—incorporated as part of the Department of Education in the Committee-reported bill—at \$20 million for FY09, \$25 million for FY10, and such sums as may be necessary for the following three fiscal years.

25. Gillibrand (D-NY). The amendment requires Institutions of Higher Education to adopt a statement of current policy concerning the working relationship of campus security personnel with State and local law enforcement agencies for the investigation of felonies or a report of a missing student.

26. Murphy, Patrick (D-PA)/Myrick (R-NC). The amendment would help students and families plan financially for higher education by requiring that colleges provide information about the anticipated cost of a post-secondary degree. Institutions would have the option of offering either a multi-year tuition and fee schedule or a traditional, single-year tuition and fee schedule with a nonbinding, multi-year estimate of a student’s net costs. The following is additional supporting information provided by amendment sponsors:

Families can figure out how much they are going to pay for a house, for braces for their kids’ teeth, for a car; but they don’t know how much it’s going to cost to put their child through college. During these uncertain economic times, the ability for students and parents to plan ahead is even more essential. This amendment will help students and families plan for a higher education by making sure that Colleges and Universities give every student a clear picture of what their degree will cost. This is a very reasonable amendment that grants Schools great flexibility. There are no caps, and it does not freeze the price of tuition—Schools are free to set tuition rates as they see fit. Schools will either present each incoming class of students with a multi-year tuition and fee schedule or give each student a non-binding estimate of what their degree will cost. If schools can’t provide this information due to an economic hardship, they can get a waiver from the Secretary of Education. Hardships could include cuts in federal or state funding, or any number of economic issues that would disrupt a School’s budget.

It is a free market fundamental principal that the consumer knows how much they will pay when they enter into a contract. If schools can set multi-year contracts with food vendors, landscapers, their basketball coaches, and even University presidents, it’s hard for average Americans to understand why schools can’t set transparent multi-year tuition rates so they know the total cost of their child’s education. Truth-in-Tuition is not a new concept—this idea has succeeded state-wide in Illinois and at many other Schools across the country. By passing this amendment we can help stop tuition unpredictability, and help students and families. Rep. Myrick urges your boss to join us in supporting this amendment. *This amendment is supported by both Chairman Miller and Ranking Member McKeon.*

27. Shuler (D-NC). The amendment would authorize a competitive grant program through the Department of Education that would allow institutions of higher education or consortia to create longitudinal data systems to efficiently and accurately manage, analyze, disaggregate, and use individual student data. The amendment authorizes programs in no more than five states for a period of not more than three years, and authorizes the appropriation of such sums as are necessary to carry out the program.

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