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105TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 105–144

NEED-BASED EDUCATIONAL AID ANTITRUST PROTECTION ACT OF 1997

JUNE 23, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 1866]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1866) to continue favorable treatment for 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. 1866 makes permanent an existing, but temporary, antitrust exemption for certain practices relating to need-based financial aid for college students.

BACKGROUND AND NEED FOR THE LEGISLATION

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. Last year, institutional aid at all colleges and universities amounted to about $8.6 billion as compared to federal aid of about $6.6 billion. 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, Dartmouth, Barnard, Bryn Mawr, Mount Holyoke, Radcliffe, Smith, Vassar, Wellesley, Colby, Middlebury, Trinity, and Tufts).

From the 1950s through the late 1980s, the 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 these practices. In 1991, the eight Ivy League schools (i.e. all of the Ivy Overlap Group except for MIT) agreed to a consent decree that for all practical purposes ended the practices of the Overlap Group. *See United States* v. *Brown University,* 1991 U.S. Dist. Lexis 21168, 1993–2 Trade Cases ¶ 70,391 (E.D. Pa. 1991).

In 1992, Congress passed a temporary antitrust exemption to allow the schools to agree to award financial aid on a need-blind basis and to use common principles of professional judgment for determining need. Higher Education Amendments of 1992, § 1544, Pub. L. No. 102–325, 106 Stat. 448, 837 (1992). 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 mean time, 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. *United States* v. *Brown University,* 805 F.Supp. 288, 307 (E.D. Pa. 1992). On appeal, MIT won a reversal of the district court's decision. *United States* v. *Brown University,* 5 F.3d 658 (3d Cir. 1993). 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. Improving America's Schools Act of 1994, § 568, Pub. L. No. 103–382, 108 Stat. 3518, 4060 (1994). 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 needs analysis. It also prohibited agreements on awards to specific students. However, unlike the 1992 exemption, it also allows agreement on the use of a common aid application form and the exchange of the student's financial information through a third party. Section 568 in most respects mirrors the settlement reached in 1993. It provided for this exemption to expire on September 30, 1997.

Under the exemption passed in 1994, the affected schools have recently adopted a set of general principles to determine eligibility for institutional aid. These principles address issues like expected contributions from non-custodial parents, treatment of depreciation expenses which may reduce apparent income, valuation of rental properties, and unusually high medical expenses. The Committee is not aware of any complaints about how the system has been working under § 568. H.R. 1866 would make the exemption passed in 1994 permanent. It would not make any change to the substance of the exemption.

The need-based financial aid system serves social goals that the antitrust laws do not adequately address—namely, making financial aid available to the broadest number of students solely on the basis of demonstrated need. Without it, the schools would be required to compete, through financial aid awards, for the very top students. Those very top students would get all of the aid available which would be more than they need. The rest 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.

In addition, the use of common principles for determining need increases the sophistication of the analysis and helps the schools to determine need more accurately in cases of unusual financial profiles. That, too, leads to a fairer distribution of need-based aid. No student who is otherwise qualified ought to be 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. 1866 will help protect need-based aid and need-blind admissions and preserve that opportunity.

HEARINGS

Because H.R. 1866 involves only the extension of an already existing provision of law, the Committee held no hearings on this bill.

COMMITTEE CONSIDERATION

On June 18, 1997, the full Committee met in open session and ordered reported favorably without amendment the bill H.R. 1866, by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

During its consideration of H.R. 1866, the Committee took no roll call votes.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings

and recommendations of the Committee, based on oversight activities under clause 2(b)(l) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI does not apply because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1866, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 19, 1997.

Hon. HENRY J. HYDE,
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. 1866, the Need-Based Educational Aid Antitrust Protection Act of 1997.

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

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 1866—Need-Based Educational Aid Antitrust Protection Act of 1997

The Improving America's Schools Act of 1994 (Public Law 103–382) provided an exemption from antitrust laws for certain institutions of higher education. The exemption relates to the awarding of financial aid to students from each affected school's own funds and expires September 30, 1997. H.R. 1866 would extend this exemption indefinitely.

CBO estimates that enacting this legislation would have no significant impact on the federal budget. H.R. 1866 would not affect direct spending or receipts; therefore, pay-as-you-go procedures do not apply. This bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of

1995 and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by James R. Homey for Paul N. Van de Water, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(l)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, clause 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS

Sec. 1.—Short Title

Section 1 of H.R. 1866 provides that it may be cited as the Need-Based Educational Aid Antitrust Protection Act of 1997.

Sec. 2.—Continuation of Favorable Treatment for Need-Based Educational Aid Under the Antitrust Laws

Subsection 2(a) of H.R. 1866 strikes the provision of § 568 of the Improving America's Schools Act of 1994 that would cause the antitrust exemption to expire on September 30, 1997 and also strikes the word temporary from a section heading. Subsection 2(b) provides that the changes made by H.R. 1866 take effect immediately before September 30, 1997 so that there will be no gap in coverage if H.R. 1866 does not become law until after that date. In other words, the Committee intends that the exemption should remain in place continuously irrespective of whether H.R. 1866 becomes law before or after September 30, 1997.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 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 italics, 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) [TEMPORARY] EXEMPTION.—It shall not be unlawful under the antitrust laws for 2 or more institutions of higher education at which all students admitted are admitted on a need-blind basis, to agree or attempt to agree—

(1) * * *

* * * * * * *

[(d) EXPIRATION.—Subsection (a) shall expire on September 30, 1997.]

[(e)] *(d)* RELATED AMENDMENTS.—The Higher Education Amendments of 1992 (Public Law 102–325) is amended—

(1) in the table of contents by striking the matter relating to section 1544, and part F of title XV, of such Act; and

(2) by striking part F of title XV of such Act.