

**MINORITY VIEWS**  
**H.R. 4508, “PROMOTING REAL OPPORTUNITY, SUCCESS, AND PROSPERITY**  
**THROUGH EDUCATION REFORM ACT” (PROSPER Act)**  
**115<sup>th</sup> CONGRESS, 2<sup>nd</sup> SESSION**  
**February 7, 2018**

H.R. 4508, the Promoting Real Opportunity, Success, and Prosperity through Education Reform Act (PROSPER Act) amends the Higher Education Act of 1965 (HEA) to make quality higher education less accessible and more expensive. H.R. 4508 makes financing a college education harder for low- and middle-income students, dramatically reducing available grant aid and making student loans more expensive. The Congressional Budget Office (CBO) estimates that H.R. 4508 will reduce direct spending in the Pell Grant and Student Loan programs by \$14.6 billion over ten years. While the bill makes college less affordable, it makes Federal student aid more generous for for-profit institutions, at the expense of taxpayers and students. H.R. 4508 eliminates necessary guardrails and dilutes consumer protections that safeguard students and taxpayers. H.R. 4508 expands and creates loopholes that will allow ineligible providers access to Federal student aid without adequate oversight to ensure quality, and in some cases, even without compliance with any Federal law.

The bill seeks to fundamentally upset the nation’s system of higher education to provide the private sector with unprecedented access to taxpayer dollars while providing only low-cost training for future employees. In total, H.R. 4508 exacerbates inequity in higher education by solidifying a two-tiered system: four-year and graduate degrees for wealthy students and families, and unregulated job-training programs with little guarantee of quality or outcomes for those without means. The bill also undermines the viability of programs supporting Historically Black Colleges and Universities (HBCUs) and other minority-serving institutions (MSIs), and eliminates a key funding source for community colleges.

Aside from its sweeping and harmful overhaul of Federal student aid to make college more expensive, H.R. 4508 does little to address crucial issues in higher education. The bill fails to advance policies that address campus hazing, racial violence and intimidation, or campus sexual assault. It is silent on the plight of thousands of American Dreamer students — working or attending school now without access to Federal student aid or a path to long-term, legal stability in the only country they have ever called home. The bill does nothing to curb excessive student loan debt collection practices. H.R. 4508 fails to address the unique needs of students with disabilities or foster and homeless youth, who we know are accessing higher education at higher levels than ever before. Wherever possible, H.R. 4508 takes a myopic approach contrary to research and advocacy work focused on the needs of the nation’s most vulnerable students.

**BACKGROUND ON HEA AND THE FLAWED, PARTISAN CONSIDERATION OF**  
**H.R. 4508**

Congress, on a bipartisan basis, passed HEA "to strengthen the educational resources of our colleges and universities and to provide financial assistance for students in postsecondary and

higher education.”<sup>1</sup> When President Lyndon B. Johnson signed the HEA into law, he stated that “[This] means that a high school senior, anywhere in this great land of ours, can apply to any college or any university in any of the 50 states and not be turned away because his family is poor.”<sup>2</sup> The law was amended in numerous Congresses, historically on a bipartisan basis – until now.

Committee Democrats first learned of the contents of H.R. 4508 on November 29, 2017 when the *Wall Street Journal* published a series of online articles outlining key policies included in the bill.<sup>3</sup> Committee Republicans unilaterally drafted the 542-page bill that was shared with Committee Democrats only mere minutes before the bill was formally introduced in the House. Four legislative days after the introduction of H.R. 4508 (and 24 hours before the markup of the bill), Committee Republicans shared a 590-page Amendment in the Nature of a Substitute that made not only technical changes to the bill, but also significant policy revisions to the underlying bill.

Contrary to statistics cited by Committee Republicans during the markup of H.R. 4508, the consideration of the bill was a significant departure from the bipartisan approach of the previous comprehensive reauthorization of the HEA.<sup>4</sup> During the markup of H.R. 4508, the Chairwoman noted that the last full-scale reauthorization bill was introduced on November 9, 2007 and reported out of Committee on November 15, 2007, when Democrats held the majority. While true, the Committee had held 12 hearings (four full committee and eight subcommittee) regarding higher education in the first session of the 110<sup>th</sup> Congress.<sup>5</sup> In contrast, Committee Republicans in the 115<sup>th</sup> Congress have only held four hearings (two full committee-level and two subcommittee-level) on higher education.<sup>6</sup>

Committee Republicans claim hearings held in previous Congresses informed the development of H.R. 4508. However, many higher education issues that were considered in previous Congresses are either no longer pertinent today, or have not been examined by the Committee with the consideration of new research and evidence in the field that could inform the reauthorization process. Additionally, nearly a third of current Committee members are new to the Education and Workforce Committee as of the 115<sup>th</sup> Congress, including eight new Republican members and five new Committee Democrats who did not take part in hearings held

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<sup>1</sup> Pub. L. No. 89-329, 79 Stat. 1219 (codified as amended at 20 U.S.C. § 1001 (2012)).

<sup>2</sup> President Lyndon Johnson, Remarks on Signing the Higher Education Act of 1965, SW Tex. St. Coll. (Nov. 8, 1965), available at <http://www.txstate.edu/commonexperience/pastsitearchives/2008-2009/lbjresources/higheredact.html>

<sup>3</sup> Douglas Belkin et al., *House GOP to Propose Sweeping Changes to Higher Education*, WALL ST. J., Nov. 29, 2017 available at <https://www.wsj.com/articles/house-gop-to-propose-sweeping-changes-to-higher-education-1511956800>.

<sup>4</sup> Higher Education and Opportunity Act, Pub. L. No. 110-315, 122 Stat. 3078 (2008).

<sup>5</sup> H.R. REP. NO. 110-500, pt. 1, at 211.

<sup>6</sup> Committee Republicans claim that the Committee held six hearings on higher education issues during the first session of the 115<sup>th</sup> Congress. They come to this number by including the Higher Education and Workforce Development Subcommittee hearing, “Expanding Options for Employers and Workers Through Earn-and-Learn opportunities, held on July 26, 2017. Although the topics discussed at that hearing relate to Title II of H.R. 4508, Committee Democrats note that those issues are not in the traditional scope of HEA, and are better addressed in other bills under the jurisdiction of the committee. See *infra* Part “H.R. 4508 Abandons Teachers, While Disguising Low-Quality Job Training Programs as Apprenticeships.” Committee Republicans also include the full Committee hearing title “public-Private Solutions to Educating a Cyber Workforce” held on October 24, 2017.

during previous Congresses. Committee Democrats dispute the suggestion that a third of the Committee provided meaningful input on nearly 600 pages of legislative text over the course of limited Committee proceedings on issues of higher education during this session of Congress.

The differences in Committee process for development and consideration of a comprehensive HEA reauthorization under the Democratic majority in 2007 and the current Republican majority are reflected in the markup hearings for each bill. In 2007, Democrats in the Committee majority accepted 12 Republican amendments and rejected five on recorded votes.<sup>7</sup> The final bill was reported out by the Committee unanimously, 45-0.<sup>8</sup> In contrast, in 2017 only two amendments by Committee Democrats were adopted, and 35 were defeated by recorded vote. Without any meaningful input by Committee Democrats, H.R. 4508 was reported out of Committee without any Democratic votes. H.R. 4508's abandonment of the core purposes of HEA – to make higher education more affordable, more accessible, and to aid completion – is emblematic of a flawed and partisan process.

### **H.R. 4508 MAKES COLLEGE MORE EXPENSIVE**

A college education remains the most successful force for upward economic mobility in America.<sup>9</sup> The original HEA and subsequent reauthorizations were designed to increase access to higher education for all students, including historically marginalized populations, by Federal investments to make higher education more affordable. According to 2015 data, 61 percent of Black and 65 percent of Hispanic Recent High School Graduates are immediately enrolling in postsecondary education after high school, increases of 52 percent and 23 percent respectively from 1975.<sup>10</sup> While efforts have resulted in more low-income and students of color accessing and completing higher education since 1965, significant challenges remain.

Tuition increases coupled with State disinvestment have forced students and their families to shoulder a greater portion of the cost of college. Over the last ten years, in-State tuition and fees at public four-year institutions increased at an average rate of 3.2 percent per year beyond inflation (2.8 percent at two-year public colleges and 2.4 percent at four-year private non-profit institutions).<sup>11</sup> The average State appropriation per full-time equivalent (FTE) student fell by 26 percent during the Great Recession.<sup>12</sup> While many States are attempting to rebound from low spending levels, the connection between State funding and college costs is both cyclical and correlational; it would take multiple years of increased public investments in higher education (with such investments assuredly directed to addressing college costs) to actually lower the cost of college. Until that day comes, students are forced to make up the balance through student loans. A responsible reauthorization of HEA would recognize and address the reality that a crippling share of the burden to fund higher education has fallen on America's working families in a time of stagnant wages. Unfortunately, H.R. 4508 takes the opposite approach.

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<sup>7</sup> H.R. REP. NO. 110-500, pt. 1, at 214-18, 368-75.

<sup>8</sup> H.R. REP. NO. 110-500, pt. 1, at 375.

<sup>9</sup> Haskins, R., Education and Economic Mobility, (2016: The Brookings Institution) *available at* [https://www.brookings.edu/wp-content/uploads/2016/07/02\\_economic\\_mobility\\_sawhill\\_ch8.pdf](https://www.brookings.edu/wp-content/uploads/2016/07/02_economic_mobility_sawhill_ch8.pdf)

<sup>10</sup> Jennifer Ma, Matea Pender, and Meredith Welch, Education Pays 2016, (2016: The College Board) *available at* <https://trends.collegeboard.org/sites/default/files/education-pays-2016-full-report.pdf>.

<sup>11</sup> Jennifer Ma et al., Trends in College Pricing 2017, (2017: The College Board) 13.

<sup>12</sup> Jennifer Ma et al., Trends in College Pricing 2016, (2016: The College Board) 24.

Disguised by the catchy tagline of “One Grant, One Loan, One Work-Study,” H.R. 4508 reduces Federal investments in higher education and shifts benefits of Federal student aid vehicles away from low-income students. The bill eliminates multiple grant programs, loan subsidies, and repayment and forgiveness options. Taken in total, the bill reduces available resources that make higher education more affordable in the name of “simplicity.” The result is H.R. 4508 forces students to borrow more, pay more for those loans, and pay more to repay those loans.

### *Pell Grants*

H.R. 4508 does nothing to strengthen the Pell Grant program, the cornerstone of Federal student aid. While Democrats successfully championed historic increases in the Pell Grant through the American Reinvestment and Recovery Act of 2009 and the Student Aid and Fiscal Responsibility Act of 2010, those investments have not kept pace with rising costs.<sup>13</sup> In 1975, the maximum Pell Grant covered nearly 80 percent of the cost of attendance at a public four-year school.<sup>14</sup> The *maximum* Pell Grant award in 2016-17 (\$5,815) covers just 29 percent of average tuition, fees, room and board at an in-State, four-year public university; the *average* Pell Grant award (\$3,724) would cover just 19 percent of such costs.<sup>15</sup> Thus, Pell Grant recipients are more than twice as likely to borrow Federal dollars as their peers.<sup>16</sup> This is at a time when the Pell Grant program maintains a reserve of appropriated program funding that Committee Democrats believe should be used to increase the average and maximum awards.<sup>17</sup> HEA reauthorization is a valuable opportunity to restore the purchasing power and elevate the purpose of the Pell Grant program.

Instead, H.R. 4508 reduces available grant aid for students across the board. Under the GOP’s “One Grant, One Loan, One Work-Study” mandate, the bill eliminates all other grants, making Pell the sole source of Federal grant aid for low-income students. H.R. 4508 not only does nothing to increase the purchasing power of Pell, it also weakens the program. By expanding Pell eligibility to more low quality, short-term programs with little Federal oversight to ensure quality, H.R. 4508 increases both the demand on Pell and the chance that Pell dollars will fund programs and credentials with little value in the workplace. CBO estimates that H.R. 4508 will increase Pell direct spending by \$13.4 billion and discretionary spending by \$69.9 billion over 10 years. Despite the bill’s significant expansion of program eligibility and the elimination of other grant aid sources, H.R. 4508 makes no improvements to Pell funding; it fails to increase mandatory Pell funding, does not increase the maximum Pell Grant award, and provides no

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<sup>13</sup> In ARRA (P.L. 111-5), Congress provided an additional \$17.1 billion for the Pell program, which increased the maximum award from \$4,850 to \$5,350 in 2009. In SAFRA (part of Health Care and Education Reconciliation Act of 2010, P.L. 111-152), the maximum was increased to \$5,500 with increases indexed to inflation through 2018.

<sup>14</sup> Spiros Protosaltis and Sharon Parrott, *Pell Grants- a Key Tool for Expanding College Access and Economic Opportunity – Need Strengthening, Not Cuts*, Ctr. for Budget and Policy Priorities (July 27, 2017), available at <https://www.cbpp.org/research/federal-budget/pell-grants-a-key-tool-for-expanding-college-access-and-economic-opportunity>.

<sup>15</sup> Sandy Baum et al., *Trends in Student Aid 2016*, (2016: The College Board) 27.

<sup>16</sup> The Institute for College Access and Success, *Pell Grants Help Keep College affordable for Millions of Americans*, last updated Apr. 6, 2016, available at [http://ticas.org/sites/default/files/pub\\_files/overall\\_pell\\_one-pager.pdf](http://ticas.org/sites/default/files/pub_files/overall_pell_one-pager.pdf).

<sup>17</sup> The Pell Scoring Rule allows the Pell Grant Program to run surpluses (or deficits) from year to year and credit gains (or debit losses) against appropriations in the subsequent fiscal year. According to the June 2017 CBO baseline, the Pell Grant account has a current cumulative surplus of \$8.6 billion. <https://www.cbo.gov/sites/default/files/recurringdata/51304-2017-01-pellgrant.pdf>.

yearly inflationary adjustments for the Pell Grant award. In sum, H.R. 4508 dramatically expands the cost of the Pell Grant program but does nothing to improve the purchasing power of the grant to defray the cost of college for low-income students.

H.R. 4508 would increase financial uncertainty for the most vulnerable students by requiring Pell (along with all other Federal student aid) to be disbursed in small weekly or monthly increments. This “Aid Like a Paycheck” policy gives institutions the power not only to allocate aid on a weekly or monthly basis, but also to adjust and disburse unequal award amounts across payment periods. This program change would cause unnecessary hardship for the lowest income students who rely on Pell to support not only their institutional enrollment but also their livelihood while in college.

The bill’s only Pell policy innovation is the “Pell bonus,” a well-intentioned but misguided proposal that lacks sufficient evidence of effectiveness and disadvantages non-traditional students. The bill authorizes a bonus award of up to \$300, only for students on track to complete 30 credit hours or the equivalency for the academic year. This “bonus” essentially creates a new maximum award for a more-than-full-time workload, leaving behind millions of low-income students who do not enroll full time. Data show that part-time students comprise nearly 40 percent of undergraduate student enrollment, and they struggle disproportionately with completion.<sup>18</sup> Unfortunately, part-time enrollment is the only option for many students juggling their education along with work, child/dependent care, and a host of other draws on their time. For these students, a yearly bonus of merely \$300 is not enough to incentivize full-time enrollment, so the Pell bonus does nothing to improve college affordability for them. To make matters worse, H.R. 4508 earmarks the few mandatory dollars remaining in the Pell program to fund the bonus. This fact, in combination with changes to program eligibility and the long documented history of fraud and abuse by for-profit institutions<sup>19</sup> are a recipe for disaster. Committee Democrats fear that H.R. 4508 will lead to a proliferation of low-quality programs that will drain a disproportionate amount of mandatory Pell funds, leaving the program in poor fiscal shape. Committee Democrats joined with three Committee Republicans to vote in favor of an amendment offered by Mr. Grothman (R-WI) to strike the Pell bonus from the bill. The amendment failed by a vote of 20-20, but exposed bipartisan opposition to the Pell bonus.

Finally, H.R. 4508 elevates the issue of “Pell fraud” by blaming students for program waste, fraud, and abuse despite evidence to the contrary. The most recent data from the U.S. Department of Education state that only 2.16 percent of undergraduate Federal financial aid applicants are flagged for unusual enrollment history – a pattern that is often considered evidence of fraud.<sup>20</sup> Despite the overall low incidence rate, there are some individual institutions where as many as 35 percent of students are flagged for unusual enrollment history.<sup>21</sup> This suggests the problem is not one of students (or institutions) generally, but instead a problem of specific

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<sup>18</sup> See e.g., The Education Trust, *Advancing by Degrees: A Framework for Increasing College Completion 2* (Apr. 2010) (“There are also patters of enrollment that make it difficult to accumulate credits, most notably part-time attendance and stopping out, both of which are consistently found to reduce the likelihood of retention and degree completion.”).

<sup>19</sup> Robert Shireman, *The For-Profit College Story: Scandal, Regulate, Forget, Repeat*, (Jan 24, 2017) available at <https://tcf.org/content/report/profit-college-story-scandal-regulate-forget-repeat/>.

<sup>20</sup> Department of Education 2016-17 Unusual Enrollment History data obtained by CRS, December 28, 2017.

<sup>21</sup> *Id.*

institutions (or specific to certain institutional structures) that are disproportionately enrolling students attempting to commit fraud. Unfortunately, H.R. 4508's only provisions to combat fraud target students and do nothing to address these outlier institutions. Simultaneously, H.R. 4508 both removes meaningful consumer and taxpayer protections designed to prevent fraud committed by predatory institutions like the now-closed ITT Tech and Corinthian Colleges and also limits the ability of ED to implement rules to assist defrauded students and recoup taxpayer funds in these situations.

Rep. Susan Davis, Ranking Member of the Subcommittee on Higher Education and Workforce Development, introduced an amendment to make comprehensive improvements to the Pell Grant program. The amendment sought to restore Pell's purchasing power by increasing the maximum Pell Grant award by \$500 and permanently indexing the award to inflation. To insulate Pell from budget battles, the amendment sought to shift program funding entirely to the mandatory side of the budget ledger. The amendment also sought to allow previously defrauded students to gain or regain access to aid. Recognizing the needs of today's students and workforce, the amendment sought to allow for the use of Pell Grant funds for quality short-term programs. Lastly, the amendment sought to require institutional reporting on Pell fraud to identify institutions that are most vulnerable to fraud. The Davis Pell Grant amendment was defeated on a party-line vote.

### *Student Loans*

In recent years, efforts to increase affordability in the student loan program have centered on reforming the Federal Direct Loan program and ensuring that students have affordable options to repay their student loans. Congressional Democrats led the charge for the move to direct lending away from private, federally guaranteed loans, the creation of income-driven repayment plans, and the establishment of the Public Service Loan Forgiveness (PSLF) program. These innovations signaled to student borrowers that, regardless of their financing needs, they had multiple options to ensure manageable student debt and a light at the end of the tunnel. Committee Democrats believe that a responsible HEA reauthorization must streamline the multiple income-driven repayment plans into one more accessible income-based repayment plan (IBR), increase protections for borrowers, and include more equitable loan terms to allow for additional refinancing or forgiveness options. H.R. 4508 took a different path.

To create a new "ONE Loan," H.R. 4508 consolidates all currently available loan products into a more expensive Federal student loan, while simultaneously weakening the student loan safety net for the lowest-income borrowers. The bill establishes less favorable loan terms by eliminating the undergraduate loan subsidy, removes the benefits of IBR for the lowest-income borrowers, caps parent and graduate loans, and eliminates the PSLF program. CBO estimates that these changes will take \$58.5 billion out of Federal student aid over the next 10 years, money that borrowers currently depend on to make college more affordable.

Currently, nearly six million eligible student borrowers with financial need receive subsidized Federal loans that do not accrue interest while the student is enrolled. While there are yearly and aggregate caps on the amount of the subsidy, it helps defray the cost of borrowing for students. H.R. 4508's "ONE Loan" is unsubsidized. This has disastrous implications for the average student, let alone one heavily reliant on loans. Analysis by the American Council on Education found that "An undergraduate student who borrows \$19,000 over four years and makes all

payments on time would see a 44 percent increase in the cost of the loan. A student who attends for five years and borrows \$23,000 would see a 56 percent increase.”<sup>22</sup>

H.R. 4508 places limits on the amount parents and graduate students can borrow to fund higher education via the PLUS loan program. While on its face this may seem like a noble attempt to rein in college costs, in reality this policy will only drive parents and graduate students to the private loan market to finance higher education. Private student loans lack the protections of Federal loans and lenders may discriminate based on income, field of study, or other student factors. Committee Democrats proudly championed the removal of private lenders from the Federal student loan market in 2010, and H.R. 4508, in the name of “cost containment” is inviting private lenders back into the mix.

Further, the “One Loan” mandate of H.R. 4508 creates a single IBR plan that preferences upper-income borrowers and is far less generous than IBR plan options under current law. The new IBR plan would create uncertainty for low-income families by increasing the percent of borrower discretionary income used to repay loans, including a statutory minimum for monthly payments, and severely limiting loan forgiveness. The bill increases the discretionary income used to calculate a borrower’s IBR payment from 10 percent to 15 percent of their income. This change creates the greatest hardship for low-income families struggling with student loan debt where a difference of 5 percent of income is most visible. While current law allows low-income borrowers to have a payment as low as \$0, H.R. 4508 imposes a \$25 minimum monthly payment. Committee Democrats fear this provision will send the most vulnerable borrowers into default.

The bill also removes any certainty of loan forgiveness (referred to as ‘cancelation’ in H.R. 4508) for borrowers enrolled in the program’s one IBR plan. Unlike current law that includes forgiveness of existing loan debt after 20-25 years of payments for income-driven repayment plans, H.R. 4508 bases eligibility for forgiveness on the amount repaid, regardless of a borrower’s length of time in repayment. This would have a disproportionate impact on the lowest income individuals. For example, under H.R. 4508, it could take a low-income borrower with just \$30,000 in student loan debt 138 years in IBR before he or she qualified for loan forgiveness.<sup>23</sup> H.R. 4508’s changes to IBR ensure that upper income borrowers reap the greatest benefit from a repayment vehicle intended to help low-income borrowers.

The bill also eliminates PSLF for new borrowers in the ONE Loan program, despite overwhelming popularity of the program. PSLF, created in 2007, rewards students who forgo employment in the private sector to take jobs in public service. Under current law if a borrower makes 10 years of payments while employed in a public service job (e.g., teacher, nurse, police officer), they are eligible to receive forgiveness on whatever portion of their loan remains after the 10 years of payments.

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<sup>22</sup> Letter from Ted Mitchell, President, American Council on Education, to Reps. Foxx and Scott (Dec. 11, 2017), available at <http://www.acenet.edu/news-room/Documents/Letter-PROSPER-Act-Markup.pdf>.

<sup>23</sup> Statement of Persis Yu, Director of Student Loan Borrower Assistance Project, National Consumer Law Center, available at <https://www.nclc.org/media-center/house-edu-bill-ends-student-protections-lifetime-debt.html>.

H.R. 4508 makes no improvement to the process of loan rehabilitation and default. Independent analysis has found that student loan rehabilitation programs are not serving students and filling the coffers of debt collectors. According to the Consumer Financial Protection Bureau (CFPB) nearly one in three borrowers who goes through the loan rehabilitation process will default again.<sup>24</sup> There is no real check to ensure that debt collectors shepherding borrowers through the rehabilitation process are working in the best interest of the borrower. Additionally, with Obama-era guidance rescinded under the Trump administration, debt collectors can again charge exorbitant fees (up to 16 percent of principal and interest) for the rehabilitation process that often leads borrowers back into default. H.R. 4508's solution is to allow these borrowers to go through a broken rehabilitation process for a second time.

Finally, H.R. 4508 includes language that would exempt companies contracted by the Department of Education to service student loans and collect on defaulted loans from enforcement under State and Local law. States have a well-established role in protecting their residents from fraudulent and abusive practices, and several States have used this authority to take legal action to protect consumers. This provision is an overreach of Federal education law, as it preempts the authority of State and Local authorities from engaging in oversight to protect their postsecondary students and consumers from fraud and abuse.

Committee Democrats introduced several amendments to improve and make more equitable the loan-related provisions of H.R. 4508. Reps. Bonamici, Takano, and Wilson introduced an amendment to strike the ONE Loan program created by H.R. 4508 and reinstate the existing Direct Loan program, making subsidized loans and PSLF available to these borrowers. Because Committee Democrats also believe HEA reauthorization must simplify Federal student aid, the amendment also sought to streamline the multitude of existing repayment plans into one fixed repayment plan and one IBR plan that better serves low-income borrowers. Further, this amendment requires new borrowers to undergo annual counseling while streamlining the loan disclosures currently mandated in HEA, and enhances entrance and exit counseling. This amendment also sought to eliminate origination fees on Federal student loans and require a borrower's prepayment amount to be applied first toward outstanding fees. Additionally, this amendment sought to strike state preemption language from the ONE Loan, strengthen consumer protections and protect student loan borrowers from the severe consequences of default. The Bonamici amendment was rejected along party lines.

Rep. Courtney offered an amendment to allow new ONE Loan borrowers to be eligible for PSLF and extend PSLF eligibility to farmers and employees of veteran service organizations. While the amendment was not adopted, it was supported by two Committee Republicans – evidence of the bipartisan opposition to the Republican proposal to eliminate this important program. Rep. Grijalva offered an amendment to stop the garnishment of Social Security benefits to pay student loans. The amendment was ruled non-germane. Rep. Courtney also offered an amendment to give current student loan borrowers an opportunity to refinance their debt at the same low rates offered to new borrowers this school year. The amendment also allowed borrowers in H.R. 4508's ONE Loan to refinance should rates decrease in future years. The amendment also allowed private student loan borrowers who are in good standing to refinance private student

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<sup>24</sup> Consumer Financial Protection Bureau, *Annual Report of the CFPB Student Loan Ombudsman 4* (2016).

loans at lower Federal student loan rates. While the amendment was not adopted, Mr. Grothman joined with Committee Democrats to vote in favor of the amendment.

### *Campus-based Aid*

Again, in the name of “simplification,” H.R. 4508 eliminates campus-based aid programs that provide students with additional sources of funding for their education. H.R. 4508 completely eliminates two campus-based aid programs: the Federal Supplemental Educational Opportunity Grant (FSEOG) and the Perkins Loan program. By eliminating FSEOG and failing to restore the Perkins Loan program, H.R. 4508 makes college more expensive for students and working families. Although H.R. 4508 nearly doubles the Federal allocation for the Federal Work-Study (FWS) program and makes equitable changes that improve the program’s allocation formula, the totality of the bill’s changes to campus-based aid programs negates those improvements.

H.R. 4508 makes additional changes to the FWS program that Committee Democrats fear would result in increased costs to students. Under H.R. 4508, graduate students are barred from participation in FWS, removing another source of Federal student aid for these students and driving them to the private market to finance their education. H.R. 4508 also requires a larger investment from participating institutions and allows less FWS money to be used to fund students directly. Currently, institutions are required to pay 25 percent of a student’s compensation but H.R. 4508 requires institutions to double their share. At the same time, H.R. 4508 removes a 25 percent cap on how much Federal money can be spent to operate FWS programs at private companies.

While Committee Democrats believe there is some benefit to off-campus employment, especially in a student’s final academic years, research shows that new students benefit from institutional connectedness derived from on-campus employment.<sup>25</sup> These changes would limit aid available for students, send more Federal money to private companies that have no track record of success, and create an incentive for for-profit institutions to participate in the program, especially if such institution is owned by a corporation that also holds non-institutional entities. Lastly, H.R. 4508 allocates additional FWS dollars to reward institutions based on success in serving low-income students. Committee Democrats do not oppose this program improvement, but do oppose H.R. 4508’s provision to divide the additional funds by sector, as to do so effectively guarantees that for-profit institutions with poorer track records of serving Pell students will receive bonus funds while non-profit institutions with better track records will not receive additional Federal dollars.

Rep. Bonamici offered an amendment to strike and replace H.R. 4508’s campus-based aid provisions with provisions to strengthen the Federal commitment to campus-based aid and to the low-income students served by these important programs. The amendment sought to restore FSEOG, reauthorize the Perkins Loan program, and make improvements to FWS by building upon program reforms made in the underlying bill and restoring eligibility for graduate students to participate in the program. The amendment was rejected on a party line vote.

### *Federal–State Partnerships*

In addition to strengthening Federal student aid, Committee Democrats firmly believe that HEA reauthorization must include a mechanism to incentivize state investment in higher education.

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<sup>25</sup> Melisa J. Beeson & Roger D. Wessel, The Impact of Working on Campus on the Academic Persistence of Freshmen, 32 J. OF STUD. FIN. AID 37 (2002) available at: <http://publications.nasfaa.org/jsfa/vol32/iss2/3>.

Sustained public investment via a Federal-State partnership would slow growth in college costs and make higher education more affordable. Committee Democrats believe such a partnership is also necessary to drastically reduce the financial burden of higher education on working families, as the majority of postsecondary students attend public two- and four-year nonprofit colleges and universities.

In 2015, President Barack Obama first proposed America's College Promise, a plan to provide up to two years of tuition- and fee-free community college in partnership with States. Modeled after America's College Promise, Ranking Member Scott offered an amendment to H.R. 4508 to use Federal funds to provide direct grant aid to States to leverage reforms, a maintenance of state investment in higher education, and to make an associate's degree free for every student. The amendment also sought to provide grant aid to low-income students who transfer from a community college to an MSI for the remainder of their degree. The amendment was not adopted by the Committee.

### **H.R. 4508 IS A CASH WINDFALL FOR-PROFIT INSTITUTIONS**

H.R. 4508 provides unprecedented financial support for for-profit institutions of higher education (IHE) and other corporate interests. Committee Democrats find this troubling, especially given the documented history of failures in the for-profit industry which includes disproportionately high levels of student loan default; grossly expensive programs that result in little to no financial benefit for students; high-pressure sales tactics designed to entice students (and their Federal aid dollars); and the receipt of hundreds of millions of dollars in Federal student aid due in part to fraud or misrepresentation.

Committee Democrats recognize that the needs of students and employers are changing and higher education and the laws that govern it must be responsive to those changes. However, H.R. 4508 changes long-standing definitions in HEA that have implications beyond higher education. The bill eliminates regulations that protect the interests of students and taxpayers, and puts the short-term needs of industry ahead of the long-term needs of students and our country. Further, the bill significantly changes how accreditors grant accreditation to IHEs making it much easier for for-profit institutions to get away with harmful practices. CBO estimates that seven different proposals in H.R. 4508 that will disproportionately benefit for-profit IHEs would cost taxpayers a total of \$9.1 billion over ten years. Finally, H.R. 4508 ties the hands of the Department of Education by prohibiting it from setting meaningful compliance standards through regulation.

#### *The Case for the Regulation of For-Profit IHEs*

Evidence of waste, fraud, and abuse of Federal funds by the for-profit sector has existed since the passage of the GI Bill in 1944. Under the Truman and Eisenhower Administrations, Congress authorized legislation in between 1948 and 1952 that tightened access to GI Bill funds by the for-profit sector. Wanting to avoid similar abuse seen with the GI Bill program, the Higher Education Act of 1965 excluded for-profit institutions from the Federal loan guarantee program it created, but these institutions were allowed to access a much smaller vocational school loan program.<sup>26</sup> However, when the two programs were merged in 1968, for-profits gained access to

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<sup>26</sup> The Century Foundation, Vietnam Vets and a New Student Loan Program Bring New College Scams, (Feb. 13, 2017) available at <https://tcf.org/content/report/vietnam-vets-new-student-loan-program-bring-new-college-scams/>.

the larger loan program in the Higher Education Act. The country then saw an exponential growth of for-profit IHEs following Congress' decision to allow these institutions to access Title IV funds in the 1972 reauthorization of HEA. Incidents of fraud and abuse highlighted systemic problems, and in 1975, the Department of Health, Education, and Welfare issued regulations to review schools where high percentages of students were taking out student loans and ensure vocational schools were making certain consumer disclosures.<sup>27</sup>

Following successful efforts to weaken Federal regulations, the sector experienced a 600 percent student enrollment increase between 1990 and 2010. There is a litany of evidence that for-profit IHEs are disproportionately a bad bet for students, even dating back to these earlier years.<sup>28</sup> For example, in 1990, when cohort default rates were at an all-time high, for-profit institutions had a default rate nearly twice as high as the overall rate (41 percent compared with 22 percent, respectively). A 1997 Government Accountability Office (GAO) investigation found a strong negative correlation between for-profit institutional reliance on Title IV funds and student completion, placement rates, and student loan defaults. Simply put: for-profit institutions deriving the most revenue from Federal student aid dollars had the worst student outcomes. GAO's investigation exposed a for-profit sector-specific failure to educate and prepare students for workforce entry, at a grave cost to taxpayers. Further, GAO and the Department of Education's Office of the Inspector General (OIG) found that for-profit institutions were disproportionately recruiting low-income students, leading Congress to impose additional oversight of the for-profit sector. Yet, systematic abuse within this sector remains today. Despite these findings, 1996, 1998, 2002 and 2006 brought deregulation of the for-profit sector resulting in four major protections that were either weakened or eliminated.<sup>29</sup>

While the precipitous closures of Corinthian Colleges, Inc. in 2015 and ITT Tech in 2016 are glaring examples of the systematic abuse within this sector,<sup>30</sup> abusive practices within the for-profit sector are not solely at the work of singular bad actors. In a January 2017 report, the Center for Investigative Reporting found that "over the past decade, there have been at least 65 State and Federal investigations against for-profit colleges. More than 25 of these investigations have ended in court settlements or judgments worth over \$1.5 billion."<sup>31</sup>

News-making scandals aside, there is a more concerning and foundational problem with the for-profit sector – the education offered at these institutions is, in too many cases, not worth the high cost to student borrowers. For example, average tuition at for-profit two-year colleges is more

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<sup>27</sup> Center on Budget and Policy Priorities, *Protecting Students and Taxpayers: Why the Trump Administration Should Heed History of Bipartisan Efforts*, available at [https://www.cbpp.org/research/federal-budget/protecting-students-and-taxpayers#\\_ftnref12](https://www.cbpp.org/research/federal-budget/protecting-students-and-taxpayers#_ftnref12).

<sup>28</sup> Congressional Research Service. *Examination of the Current 90/10 Rule and Its Legislative and Regulatory History*. January 25, 2011.

<sup>29</sup> Center on Budget and Policy Priorities. *Protecting Students and Taxpayers: Why the Trump Administration Should Heed History of Bipartisan Efforts*. [https://www.cbpp.org/research/federal-budget/protecting-students-and-taxpayers#\\_ftnref12](https://www.cbpp.org/research/federal-budget/protecting-students-and-taxpayers#_ftnref12)

<sup>30</sup> For an in-depth account by Congress of some of the worst abuses in the for-profit industry, see *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, a report produced by the Senate Committee on Health, Education, Labor and Pensions (HELP), the product of a two-year investigation by the Committee from 2010-2012. Available at [https://www.help.senate.gov/imo/media/for\\_profit\\_report/PartI.pdf](https://www.help.senate.gov/imo/media/for_profit_report/PartI.pdf).

<sup>31</sup> Sarah Alvarez, *For-profit College Industry Slips Through Cracks of Accountability*, REVEAL, Jan. 10, 2017, available at <https://www.revealnews.org/article/for-profit-college-industry-slips-through-cracks-of-accountability/>

than four times higher than at public community colleges (\$14,193 compared with \$3,370, respectively, in 2014). Students take out exorbitant debt to pay for for-profit IHE credentials that fail to produce corresponding personal value in the workforce. Research shows that for-profit IHEs contribute an unreasonably high share of student loan defaults.<sup>32</sup> The same research finds that the average student earning a two-year degree from a for-profit IHE does not experience a large enough gain in earnings to offset the costs of their education.<sup>33</sup> In short, a student earning an Associate's degree from a for-profit IHE would derive greater economic benefit from directly entering the workforce, without having earned the for-profit credential and the exorbitant debt that comes with it.

The negative long-term effects on the Federal student loan portfolio due to proliferation of for-profit IHEs are just beginning to come into focus, and the initial data are troubling. In a recent report looking at the long-term characteristics of two cohorts of student borrowers, 52 percent of borrowers at for-profit IHEs who entered school in 2003-04 have already defaulted on their loans.<sup>34</sup> This is twice the rate of borrowers at two-year public IHEs. When you compare all students, not just borrowers, the rate of default among for-profit IHE students is four times higher than those at community colleges.<sup>35</sup> The 2003-04 cohort in this study predates the rapid expansion of enrollment at for-profit IHEs that began in the late 2000s, which suggests that these trends will get far worse before they get better. Research also shows that, unlike non-profit institutions, for-profit institutions actually increase tuition and fees to capture additional Federal financial aid dollars.<sup>36</sup> Despite this overwhelming evidence of the need for Federal oversight of the sector to protect students and taxpayers, H.R. 4508 rewrites and repeals many of the provisions in current law that attempt to regulate the for-profit sector's access to Federal student aid, beginning with how these schools are defined in the law.

*Redefinitions that more favorably position for-profit institutions in Federal statute*

HEA currently contains multiple definitions of IHEs due, in part, to the merging of definitions in HEA with those in the National Vocational Loan Insurance Act of 1965. HEA originally limited Federal financial aid to students attending “public or other non-profit institutions of higher learning.” Whereas, the Vocational Act expanded eligibility for aid to students who attended private for-profit schools but only for programs of “postsecondary vocational or technical education designed to fit individuals for *useful employment* in recognized occupations.”<sup>37</sup> When Congress combined these two laws in 1968, two classes of schools were created. The schools previously covered by HEA became “institutions of higher education”; the Vocational Act schools and similar programs at public and non-profit schools became “vocational schools”, still

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<sup>32</sup>Stephanie Riegg Cellini and Lakita Chaudhary, *The Labor Market Returns to a For-Profit College Education*, NAT'L BUR. OF ECON. RES. 11 (2012) available at <http://www.nber.org/papers/w18343>.

<sup>33</sup> *Id.* at 27.

<sup>34</sup> Judith Scott Clayton, *The Looming Student Loan Default Crisis Is Worse than We Thought*, 2 BROOKINGS EVIDENCE SPEAKS REPT. #34 at 1, Jan. 10, 2018, available at <https://www.brookings.edu/wp-content/uploads/2018/01/scott-clayton-report.pdf>.

<sup>35</sup> *Id.*

<sup>36</sup> Stephanie Riegg Cellini & Claudia Goldin, *Does Federal Student Aid Raise Tuition? New Evidence on For-Profit Colleges*, NAT'L BUR. OF ECON. RES. Working Paper (2012, REV'D 2013) available at <http://www.nber.org/papers/w17827.pdf>.

<sup>37</sup> *Ass'n of Proprietary Colls. v. Duncan*, No. 1-14-cv-08838 (S.D.N.Y. May 27, 2015) at 7.

eligible for Federal aid, but subject to the same *useful employment* language from the Vocational Act.

In 1992, Congress again revised the “vocational schools” definition, distinguishing “proprietary institutions of higher education” (private for-profit schools) from “post-secondary vocational institutions” (non-degree training and vocational programs at public and non-profit schools). Both proprietary schools and the vocational programs at public and non-profit schools were required by law to “prepare students for gainful employment in a recognized occupation.” HEA currently recognizes all of these schools as “institutions of higher education” but still appropriately recognizes the distinction between public and non-profit institutions (“101(a) institutions”) and “any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation” (“101(b) institutions”).

H.R. 4508 merges two definitions in current law, allowing for-profit IHEs to compete for already limited Federal grant dollars currently reserved for non-profit degree granting IHEs. Committee Republicans did place some limitations on which Federal programs proprietary schools can receive funding from, excluding Institutional Aid (Title III) and Developing Institutions (Title V) programs. But under H.R. 4508, proprietary schools would have access to more funds authorized in HEA than they do currently.

Committee Democrats are also troubled by the implications of this change outside the scope of HEA. There are other provisions of law throughout the U.S. Code and State codes that reference the 101(a) definition of IHEs, often with the direct intent to exclude for-profit IHEs from access to Federal programs. This includes both laws directly related to education and child development (K-12 education,<sup>38</sup> Head Start,<sup>39</sup> Education Sciences<sup>40</sup>) and laws that are beyond the scope of education and child development (Immigration,<sup>41</sup> the Federal Aviation Administration,<sup>42</sup> Patent Law,<sup>43</sup> Institutional Grant and Student Scholarship programs throughout the Federal government<sup>44</sup>). There are many other laws that use a broader definition that includes both non-profit and for profit IHEs<sup>45</sup>, which shows that statutory use of the 101(a) definition in current law is evidence of lawmakers’ deliberate exclusion of for-profit institutions from certain sources of Federal funds or allowances under Federal law. By removing this distinction, Committee Republicans are attempting to alter Congress’ history of limiting the access of for-profit institutions across the Federal code.

H.R. 4508 also alters the definitions of IHE for the purpose of Title IV programs in Sec. 102 of HEA. The changes impact how IHEs outside the United States receive Title IV aid. Under

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<sup>38</sup> Elementary and Secondary Education Act of 1965, 20 U.S.C. § 7801.

<sup>39</sup> Omnibus Budget Reconciliation Act of 1981, 42 U.S.C. § 9832.

<sup>40</sup> Education Sciences Reform Act of 2002, Pub. L. No. 107-279, 116 Stat. 1940.

<sup>41</sup> *E.g.*, 8 U.S.C. § 1184 (providing exclusion from limitations on visas issued to nonimmigrant aliens who are employees of 101(a) IHEs).

<sup>42</sup> FAA Modernization Act of 2012, Pub. L. No. 112-95, 126 Stat. 139 (regarding research on developing safer airport runways).

<sup>43</sup> 35 U.S.C. § 273 (defenses to copyright infringement afforded 101(a) IHEs).

<sup>44</sup> *E.g.*, 42 U.S.C. § 1862n (Math and Science Partnership Grants from the National Science Foundation).

<sup>45</sup> *E.g.*, Workforce Investment Act of 1998 20 U.S.C. § 9202 (“The term ‘institution of higher education’ has the meaning given the term in section 101 of the Higher Education Act of 1965.”).

current law the Secretary is directed to establish the criteria for determining which, if any, foreign IHEs can receive Title IV aid. H.R. 4508 seems to incorporate those underlying regulations, while at the same time creating its own definition of foreign institution, different than the regulatory definition incorporated. Finally, in recognition of the conflict it has created, the bill suggests that the new first definition is the actual definition of “foreign institution”. This overwrought complexity does nothing but make it easier for for-profit foreign schools to find loopholes through which they can receive Title IV aid.

Finally, the bill creates new definitions of competency, competency-based education (CBE), and competency-based education program. These terms replace the current law term “distance education” in key places throughout the HEA to loosen Federal oversight over disbursement of Title IV dollars. Committee Democrats are highly concerned that this change of definition (along with the watering down of the definition of “correspondence education”) will have serious implications for the provision of quality higher education programs. As defined, CBE will give for-profit institutions the ability to disproportionately access Title IV Federal student aid without providing enough of a legal and regulatory framework to ensure the schools receiving Federal dollars for delivery of CBE, as defined in H.R. 4508, provide students with a meaningful education or valuable credential. CBO estimates that removal of the “distance education” definition and the creation of a “competency-based education” definition will together cost the Federal government \$2.9 billion over the next ten years. A disproportionate amount of these funds will likely flow to for-profit schools. Additional concerns with CBE are discussed in-depth later in these views.<sup>46</sup>

#### *Legislative Repeals, Regulatory Rollbacks, and Bans on Departmental Rulemaking*

H.R. 4508 dismantles the regulatory framework designed to prevent predatory for-profit IHEs from enriching themselves at the expense of students and taxpayers. While the set of statutory and regulatory oversight mechanisms repealed by the bill has failed to prevent all for-profit sector abuse of Federal funds, it has been instrumental in preventing for-profit schools from existing solely thanks to receipt of Federal student aid and ensuring that both for-profit and non-profit career program credentials lead to a job commensurate with their cost. H.R. 4508 will make it easier for schools to alter program hours and lengths to receive more money for less education. The bill weakens the role of States in the regulatory triad of higher education, and will make it easier for for-profit IHEs to avoid necessary oversight, accomplishing the primary policy goal of the industry on the backs of students and taxpayers.

**H.R. 4508 eliminates the 90/10 requirement for for-profit colleges.** Current law requires that for-profit IHEs receive no more than 90 percent (previously 85 percent) of their total revenue from Federal Title IV aid. This market-value provision was created by Congress during the 1992 reauthorization to ensure that for-profit entities were not deriving all of their revenue from the federal government. The idea of monitoring an institution’s dependence on Federal funds was already being applied in veterans’ assistance programs due to the abuse that had taken place with veteran benefits decades earlier and evaluations of these programs had found that the policy had

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<sup>46</sup> See *infra* Part: “H.R. 4508 Doubles Down on Unproven Programs in Higher Education, at the Expense of Students”.

helped to curb abuse.<sup>47</sup> Because many for-profit schools recruit veteran students and only financial aid authorized through the HEA is accounted for in the calculation, there is mounting evidence that the 90/10 requirement does not do enough to stop abuse in the for-profit sector. While some leaders in the for-profit sector such as DeVry University have decided to take all Federal funds into account in their 90/10 calculations, this is self-imposed action. In the most recent reporting period for which we have data, of the 1,872 for-profit IHEs, only four reported failing the 90/10 rule.<sup>48</sup> Committee Republicans still claim the 90/10 rule is a burden on schools and repeal the requirement. CBO estimates that repeal of the 90/10 rule will cost taxpayers \$3.3 billion over ten years.

**H.R. 4508 eliminates the existing borrowers defense to repayment rule.** Issued in 2016, the “borrowers defense” rule established a Federal standard and process to determine whether a student loan borrower has a defense to repayment of their loan based on an act or omission of their school. Additionally, it prohibited schools that participate in Federal student aid from forcing students into pre-dispute arbitration or class action waivers. The rule also clarified policies around when loans can be discharged collectively for groups of borrowers (e.g., when a school closes). The Obama administration used the combination of borrowers’ defense and closed school discharges to provide more than \$558 million in loan relief to tens of thousands of student borrowers.<sup>49</sup> As of January 2017, there were more than 60,000 claims pending at the Department of Education.<sup>50</sup> H.R. 4508 repeals the 2016 regulations, and creates a statutory framework for borrowers defense. That framework permits borrowers only three years to file a claim and obtain relief, limits the Department’s mandate to automatically provide closed school discharges to affected students, and sets an exceedingly high bar for borrowers to prove their claims, to the benefit of IHEs.

**H.R. 4508 eliminates the statutory term “Gainful Employment” (GE) and the corresponding Rule.** Finalized in October of 2014, the GE rule set a meaningful and necessary standard for the Department of Education enforcement of compliance with the statutory requirement that non-degree training and vocational programs (career programs) at public and non-profit schools prepare their students for gainful employment in exchange for access to Title IV aid. The rule set this standard by establishing ratios between income and student loan debt to determine if career program graduates earn enough money to pay back their loans. It required both programs that failed outright and programs in the zone between passage and failure to proactively disclose this status to prospective students. Under the rule, a program “in the zone” or failing for multiple years would lose access to Federal student aid. In the first round of GE data that was released January of 2017, 98 percent of the 800+ career programs that failed the rule were offered by for-profit colleges.<sup>51</sup> Along with repealing the GE rule, H.R. 4508’s re-definition of IHE strikes “gainful employment,” eliminating the ability of the Department of

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<sup>47</sup> Congressional Research Service. Examination of the Current 90/10 Rule and Its Legislative and Regulatory History. January 25, 2011.

<sup>48</sup> Letter from Kathleen Smith, Acting Assistant Secretary, Department of Education, to Rep. Foxx (Oct. 20, 2017), available at <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/AY15-16-Transmittal-Letter.pdf>.

<sup>49</sup> Press Release, U.S. Dep’t of Educ., American Career Institute Borrowers to Receive Automatic Group Relief for Federal Student Loans (Jan.13, 2017) available at <https://www.ed.gov/news/press-releases/american-career-institute-borrowers-receive-automatic-group-relief-federal-student-loans>

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

Education to regulate on the concept in the future. CBO estimates removing the rule will cost taxpayers \$940 million over ten years.

**H.R. 4508 revokes the credit hour rule.** HEA defines an academic year for an undergraduate program as requiring a minimum of 24 semester or trimester credit hours or 36 quarter credit hours in a course of study. The amount of student financial assistance that can be awarded is based on the number of credit hours earned, but the term “credit hour” is not defined in the HEA. Further, many institutions are moving to a credit-hour fee structure, charging students per-credit, rather than per-semester. In recognition of the importance of the “credit hour” unit as an accounting measure for student financial assistance and in response to findings by the Department of Education OIG that accreditors (as required by HEA) did not have sufficient policies to ensure proper assignment of credit hours to educational programs or to justify program length, the Department defined a “credit hour” in final regulations issued October 29, 2010. This Federal definition is consistent with commonly accepted institutional and accrediting practices, and allows for a broad application to a variety of course structures (such as competency based coursework, laboratory work, and internships). The definition applies to institutions for the purposes of awarding Federal financial aid; it does not preclude an institution from creating a separate definition for institutional purposes. The credit hour rule created a more standardized, yet flexible, definition of the basis for awarding all Federal aid. In one of the few hearings the Committee held on higher education this year, witness Ben Miller from the Center for American Progress justified the need for the rule as thus:

*“I think one thing that is important to realize here is part of the reason why we needed this rule was we had colleges out there that were inflating credit hours to get more financial aid, so we had schools claiming they were offering courses worth nine credits that did not have the amount of learning behind that. When you do that, students pull down more financial aid than they should, so they’re going to exhaust their lifetime eligibility sooner, and we’re going to pay money out to schools faster than we should.... we want to make sure that schools aren’t essentially taking in more money than they should, making it harder for students to get enough money to finish their whole program.”<sup>52</sup>*

In repealing the rule, H.R. 4508 would permit schools to inflate their credit hours, siphoning more taxpayer dollars through Federal aid and forcing students to spend down their aid eligibility more quickly without receiving commensurate educational benefit. Not content to strike the existing rule, the bill also prevents the Department of Education from promulgating or enforcing a new credit hour rule in the future. Committee Democrats recognize that there have been discrete difficulties applying the current rule to all forms of higher education, but maintain the firm belief that the rule should be amended to ensure there is a meaningful compliance standard that appropriately comports with innovative delivery methods proven to benefit students. Committee Democrats believe that H.R. 4508’s limitation on the ability of the Secretary to bring any rule to prevent waste, fraud, and abuse ignores evidence of past behaviors by scrupulous actors and invites fraudulent behavior.

**H.R. 4508 repeals State authorization regulations.** In order for students at an institution to be eligible for Title IV funds, an institution must be legally authorized by a State to provide a

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<sup>52</sup> Testimony of Ben Miller, Center for American Progress, at Hearing of the Committee on Education and the Workforce, “Strengthening Accreditation to Better Protect Students and Taxpayers”, Apr. 27, 2017.

program of postsecondary education. The Department of Education’s state authorization rules for brick-and-mortar and distance education institutions establish baseline requirements for the approvals that colleges receive from States to protect students across the country. The bill repeals those baseline protections, and like the credit hour rule, prohibits any future regulation by the Department of Education on state authorization.

**H.R. 4508 shortens the program length requirement for Title IV programs.** Under current law, programs that receive Title IV aid must have substantial timeframes to qualify for aid. The rationale is that funds appropriated for higher education should fund traditional programs that offer a complete postsecondary education program. Shorter-length programs can receive eligibility, provided they have strong completion and job-placement numbers – indicators of a quality program. H.R. 4508 would shorten the minimum timeframe for a program of study by a third, to just 10 weeks, and eliminate existing job placement requirements and completion rate standards for short term programs. This would permit students to access Pell Grants and loans to attend short-term programs without any assurance that the program’s credential has meaningful value in the labor market. CBO estimates this provision will cost taxpayers \$305 million over 10 years.

**H.R. 4508 opens the door to for-profit abusive recruitment practices.** While HEA bans certain forms of incentive compensation, there are regulatory loopholes that allow for limited use of incentive-based compensation, specifically the use of third-party recruiters. It is likely that for-profit schools used these loopholes to further abusive and fraudulent recruiting tactics during the explosion of enrollment at low-quality schools from 2009-2014. H.R. 4508 makes it harder to protect students from aggressive marketing and recruiting by codifying current regulatory loopholes used by the likes of ITT Tech and Corinthian to entice large numbers of low-income and low-information students to enroll in for-profit schools, often without the support necessary to even complete their degree, leading them down a path of debt and default.

**H.R. 4508 allows unaccountable (and currently ineligible) education program providers to access taxpayer dollars.** The bill would create an unaccountable, highly risky field of educational providers with full access to Federal financial aid, in the name of innovation. The bill permits non-institutional education providers—those that haven’t met even the basic requirements colleges must meet in terms of accreditor, State, and Department of Education approval—to offer entire programs of study at an IHE, granting them access to Federal aid with no checks and balances. An ineligible program could provide up to 25 percent of an educational program with no oversight whatsoever, and anywhere from 26-100 percent of a program with the approval of the eligible program’s accreditor. While Committee Democrats recognize that there are certain cases where a partnership between an ineligible program and an eligible program makes sense and can be a good deal for students (e.g., fine arts students splitting program time between a classroom and a working theater), this provision in H.R. 4508 is overly broad and would invite bad actors, especially those with a strong profit motive.

#### *Weakening Accreditation to Benefit For-Profit Institutions*

For-profit IHEs have been adept at creating an alternative narrative, mainly through billions spent on advertising and aggressive recruitment techniques. Although comprehensive numbers are not widely available, it is estimated that the for-profit IHE sector routinely spent at least 20

percent of its annual revenue on marketing and advertising over the last decade.<sup>53</sup> Coupled with the advertising were recruitment practices targeting low-information and low-income consumers. Targeting such consumers enabled the sector to dramatically increase student enrollment while maximizing access to billions of dollars in Federal student aid.<sup>54</sup>

Ignoring these facts, H.R. 4508 specifically eliminates the provision requiring an accreditor to assess recruiting and admission practices, record of student complaints, and record of compliance. Removing this requirement weakens yet another check on the for-profit sector. The bill also eliminates the need for accreditors to assess curricula, faculty, facilities, fiscal capacity, and measure of program length. Under H.R. 4508, accreditors are only required to evaluate success with respect to student learning and educational outcomes. The legislative language is clear that accreditors can include different standards for different institutions and programs. Further, these standards may be established by the accreditor or by the institution/program if the institution/program defines and measures the expected goals and outcomes. Allowing institutions to self-regulate, combined with the other provisions in H.R. 4508 leaves the door open for further abuse of students.

Under H.R. 4508, for-profit colleges and corporate interests are the clear winners. The bill gives for-profit colleges unfettered access to Title IV funds without remotely adequate safeguards to protect students and taxpayers. Rather than work to increase access and affordability to quality degrees and credentials for all students, the bill opens the door to more waste, fraud, and abuse in higher education, with students and taxpayers left holding the bag.

In response to the flawed proposals that preference for-profit institutions in H.R. 4508, Rep. Takano introduced an amendment to restore the separate definition of for-profit institution, retain the Department of Education's ability to regulate on student protections from abuse by for-profit institutions, and reinstate the 90/10 rule. Further, to stop the aggressive recruitment of veterans, the amendment included a provision to count veteran benefits as Federal dollars, an attempt to close the "90/10 loophole". The amendment restored State authorization requirements for distance education and current-law prohibitions on incentive payments for recruiters. Further, it specified strict conditions under which a non-eligible institution or organization in partnership with an eligible institution of higher education can access Title IV funds. The amendment failed on a party-line vote.

### **H.R. 4508 ABANDONS TEACHERS WHILE DISGUIISING LOW-QUALITY JOB TRAINING PROGRAMS AS APPRENTICESHIPS**

Since its inception, HEA has included supports for the training and recruitment of teachers. H.R. 4508 eliminates all Federal funding for teacher preparation programs. In its place, Committee

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<sup>53</sup> See Senate HELP Report, *supra* note 30, at Part II, page 382 ("On average, among the 15 publicly traded education companies, 86 percent of revenue came from Federal taxpayers in fiscal year 2009.1535 During the same period those companies spent 23 percent of revenue on marketing and recruiting (\$3.7 billion) and dedicated 19.7 percent to profit (\$3.2 billion)").

<sup>54</sup> Annie Waldman, *How a For-Profit College Targeted the Homeless and Kids With Low Self-Esteem*, PROPUBLICA, March 18, 2016, available at <https://www.propublica.org/article/how-a-for-profit-college-targeted-homeless-and-kids-with-low-self-esteem>.

Republicans offer a misnamed grant program that purports to provide “apprenticeships.” Committee Democrats strongly dispute the claim that “apprenticeships” are offered under this new Title II. Instead, this re-write provides Federal grants for a low-quality ‘earn and learn’ experience that has little relation to the registered apprenticeship program proven to result in quality credentials that have value in the workforce.

Although public education is experiencing a national teacher shortage,<sup>55</sup> H.R. 4508 eliminates all Federal funding for teacher preparation programs. By eliminating Teacher Quality Partnership Grants and all other HEA authorized grant programs to enhance teacher education, H.R. 4508 would shrink the pipeline of effective teachers and school leaders, hurting students across the country. Committee Democrats strongly believe HEA programs that improve pre-service teacher preparation and support new teachers should be strengthened not eliminated.

Instead of strengthening the teacher pipeline, H.R. 4508 creates a new grant program in which corporations, collaborating with institutions of higher education (including for-profit institutions), are eligible to receive Federal funds for programs branded as “apprenticeships.” These programs have few if any of the quality controls generally associated with high quality apprenticeship programs. Although the bill labels this program as an “apprenticeship” program, in reality this is an *earn-and-learn* grant program that fails to meet widely accepted minimum standards for apprenticeship programs. Grants awarded to providers under H.R. 4508 could be used to fund something more akin to a subsidized internship, than an actual apprenticeship.

Although there is broad bipartisan support for expanding access to quality apprenticeship programs, Committee Democrats believe the registration process provides necessary quality control and program accountability that has been key to the programs’ success. Registered Apprenticeship (RA) is a proven model of job preparation that combines paid on-the-job training with related classroom instruction to progressively increase workers’ skill levels and wages. For workers, RA means a real job that leads to a credential that is valued in the labor market. Apprentices are paid for their time spent on the job, accumulate little to no student debt, and are generally retained once they have successfully completed their programs. Many RA programs also have the added benefit of eligibility for certain Federal financial aid programs.<sup>56</sup>

Graduates of RA programs receive nationally-recognized, portable credentials, and their training may be applied toward further post-secondary education. RA programs require the submission of detailed standards documentation on the apprenticeship for a specific occupation to the U.S. Department of Labor’s (DOL) Office of Apprenticeship or the State apprenticeship agency for review and approval. These standards demonstrate that an apprenticeship meets the five core components required for a registered apprenticeship: direct business involvement, on-the-job training, related (classroom) instruction, rewards for skill gains (wage scale), and a national occupational credential. These standards requirements allow every graduate of an RA program

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<sup>55</sup> Sophie Quinton, *Teacher Shortages Linger in Many States*, PEW CHARITABLE TRUSTS STATELINE, Dec. 28, 2017, available at [http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/12/28/teacher-shortages-linger-in-many-states?utm\\_campaign=2018-01-02+SW&utm\\_medium=email&utm\\_source=Pew](http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/12/28/teacher-shortages-linger-in-many-states?utm_campaign=2018-01-02+SW&utm_medium=email&utm_source=Pew).

<sup>56</sup> Employment and Training Administration, U.S. Dept. of Labor, *The Federal Resources Playbook for Registered Apprenticeship*, 2, available at <https://www.doleta.gov/oa/federalresources/playbook.pdf> (outlining how Pell and Work-Study funds are available to support students in registered apprenticeships).

to receive a nationally-recognized portable credential, the Certificate of Completion, which signifies that the apprentice is fully qualified to successfully perform an occupation.<sup>57</sup> None of this is required for H.R. 4508’s “apprenticeship” program. Additionally, the new program authorized by H.R. 4508 would be administered by ED, not DOL, and wholly duplicative of the \$1.3 billion program authorized by the Carl D. Perkins Career and Technical Education Act (Perkins CTE) already administered by ED. The Perkins CTE program sends Federal funds to support quality CTE developed by community colleges in partnership with industry.

According to the Center for American Progress, 87.4 percent of apprentices who finished high-quality training were employed shortly after completion of the apprenticeship.<sup>58</sup> Apprenticeship completers also make middle-class wages. The Department of Labor estimates that the average wage for an individual who has completed an apprenticeship is \$50,000. Over a lifetime, this can add up to approximately \$300,000 more in wages and benefits.<sup>59</sup> The RA program has an established track record of providing high-quality job training. By creating a lesser “apprentice” model, H.R. 4508 uses the buzzword of “apprenticeship” to provide direct aid to industry while offering an inferior education and training program for students.

Rep. Wilson introduced an amendment to strike the repeal of the Teacher Quality Partnership Grant program, TEACH Grant program, and other supports for college students wanting to pursue the teaching profession. Rep. Davis introduced an amendment that would require the Department of Education to consult with the Department of Labor in creating and administering the grant program established by H.R. 4508 to ensure program quality. The amendment also sought to change the name of the new grant program to clarify that the program authorized is an “earn and learn” program, not an apprenticeship program. Both amendments failed on a party line vote.

### **H.R. 4508 DISINVESTS IN INSTITUTIONS THAT SERVE LOW-INCOME, MINORITY, AND RURAL STUDENTS**

While H.R. 4508 includes multiple provisions that will benefit for-profit schools to the detriment of students, there are two other under-resourced institutional sectors that serve as engines of economic mobility but do not receive such favorable treatment: community colleges and Minority Serving Institutions (MSIs). This is disappointing because not only do such schools disproportionately enroll low-income, minority, and first-generations students, but they also produce better student outcomes than for-profit schools. Community colleges and MSIs provide a better education for many students at a cheaper price than for-profit schools, and there are several policies in H.R. 4508 that will negatively impact their capacity to serve students. Committee Democrats believe a reauthorized HEA must build the capacity for community

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<sup>57</sup> Employment and Training Administration, U.S. Dept. of Labor, *Training and Employment Guidance Letter WIOA NO. 13-16, Operating Guidance for the Workforce Innovation and Opportunity Act*, Jan. 12, 2017, available at [https://wdr.doleta.gov/directives/attach/TEGL/TEGL\\_13-16\\_acc.pdf](https://wdr.doleta.gov/directives/attach/TEGL/TEGL_13-16_acc.pdf).

<sup>58</sup> Ben Olinsky and Sarah Ayres, *Training for Success, A Policy to Expand Apprenticeships in the United States* 10, CTR. FOR AM. PROG. Nov. 2013, available at [https://www.americanprogress.org/wp-content/uploads/2013/11/apprenticeship\\_report2.pdf](https://www.americanprogress.org/wp-content/uploads/2013/11/apprenticeship_report2.pdf)

<sup>59</sup> Angela Hanks. *Now is the Time to Invest in Apprenticeships*. Center for American Progress. November 18, 2016. <https://www.americanprogress.org/issues/economy/reports/2016/11/18/292558/now-is-the-time-to-invest-in-apprenticeships/>

colleges and MSIs to deliver quality programming not hinder the work of these schools. To that end, Committee Democrats offered a number of amendments to ensure adequate Federal resources for community colleges and MSIs.

*“Risk-Sharing” Proposal Poses Significant Risk to Institutions that Serve Vulnerable Students*

H.R. 4508 restructures the existing Return to Title IV (R2T4) process that requires institutions to return funds to the Federal government when a student withdraws before the end of a semester. The bill increases the proportion that institutions must return, disproportionately impacting institutions that enroll higher proportions of students who are at-risk of withdrawing prior to completion. This provides institutions perverse incentive to enroll higher-income students who are already more likely to repay. Democrats support “risk-sharing” that will incentivize institutions to effectively serve and ensure degree completion of high-need students, not deny such students access.

*Minority Serving Institution Funding and Requirements Attached to Such Funding*

To correct for historical inequities in funding and to improve the quality of higher education for minority-students, Congress established minority-serving institution (MSI) designations for public and private non-profit institutions. Starting with Historically Black Colleges and Universities (HBCUs) in 1986, Congress eventually recognized seven different undergraduate designations of MSI, all with their own requirements for recognition, institutional characteristics, and challenges. Collectively, in the 2013-14 academic year, MSIs served 40 percent of underrepresented students, totaling approximately 3.8 million students or 26 percent of all college students.<sup>60</sup> MSIs do this work despite being under-resourced compared to Predominantly White Institutions.<sup>61</sup>

In an effort to address this resource gap, Congress provides institutional aid to MSIs via formula funding and competitive grants in Titles III and V of HEA. These programs are funded by both discretionary spending and direct spending (first secured in FY 2011 as part of the Student Aid and Fiscal Responsibility Act (SAFRA)). These institutional aid funds can be used by institutions in a variety of ways including supporting the academic mission of the institution, making capital improvements, and building endowment funds. The mandatory portion of these funds expires in FY 2019, and MSIs and their member organizations have prioritized securing this mandatory funding in any HEA reauthorization.

H.R. 4508 does not extend this mandatory funding, leaving the fate of these institutional aid programs in the hands of appropriators and threatening long-term funding stability. Additionally H.R. 4508 places a 25 percent graduation/transfer requirement on certain MSI grants. Instead of penalizing already underserved institutions, Committee Democrats believe that the Federal government should help these institutions build capacity to improve student outcomes.

Rep. Adams introduced an amendment to repeal the 25 percent graduation and/or transfer rate requirement created for some but not all MSI programs in H.R. 4508. The amendment also

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<sup>60</sup> 2016-17 National Campaign on the Return on Investment of Minority Serving Institutions, Univ. of Penn. Center for MSIs, available at [https://cmsi.gse.upenn.edu/sites/default/files/ROI\\_Report.pdf](https://cmsi.gse.upenn.edu/sites/default/files/ROI_Report.pdf).

<sup>61</sup> *Id.* at 5 (“Total revenue per full-time equivalent student is roughly \$16,648 at four-year Minority Serving Institutions (MSIs) compared to \$29,833 at non-MSIs.”).

extended mandatory funding for MSI programs and revised allowable uses of funds, in response to the needs of each specific MSI sector. The Adams amendment established new grant programs to further support MSIs and the students they serve, including an \$850 million MSI Innovation Fund to provide sustained funding on MSI campuses to drive innovative approaches to improving college completion for minority students, bolster STEM degree attainment, and improve the connection between MSIs and the private sector. The spending on this amendment would amount to a fraction of the cost of the proposed changes contained in H.R. 4508 intended to disproportionately benefit the for-profit IHE sector. The amendment failed on a party line vote.

### *Community College Institutional Funding*

In recognition of the fact that open-access Community colleges enroll a diverse student body and more than 40 percent of all undergraduates, Committee Democrats offered amendments to improve community college capacity. Community colleges enroll the majority of all Native American and Latino undergraduate students (56 and 52 percent, respectively), and enroll two in five Black and Asian/Pacific Islander undergraduate students (43 percent and 40 percent, respectively).<sup>62</sup> These institutions provide an affordable education and training close to home for students who attend part-time, work full-time, are from low-income families, or may be responsible for families of their own. Additionally, community colleges are often positioned as the only non-profit IHE in many rural communities throughout the country.

Despite the pivotal role of community colleges in our country, these institutions are often underfunded and underappreciated. Students at community colleges receive less public support than students at four-year research institutions. In 2011, per-pupil public funding at community colleges was \$7,420, while students attending four-year institutions received amounts more than twice as high.<sup>63</sup> HEA currently provides institutional aid to community colleges through the Strengthening Institutions Program (SIP) authorized in Title III, Part A. This program provides competitive grants to campuses that often use the funds to provide the wraparound services that community college students often need to persist through to graduation or transfer to a four-year school. SIP grants are highly competitive with need outpacing the available grants considerably. Shockingly, H.R 4508's response to the documented need of the community college sector was to eliminate the SIP program.

To ensure that community colleges have sufficient resources to serve their students, Rep. Norcross introduced an amendment to provide funding to support the expansion of effective community college completion programs through the delivery of comprehensive student support services, including academic advising, academic and career support, and financial support. The core components of the services are modeled after rigorously evaluated programs that have, through these services, removed barriers to full-time study and increased three-year associate's degree completion and transfer rates.<sup>64</sup> In addition to these core supports, institutions receiving

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<sup>62</sup> Fast Facts 2017, American Association of Community Colleges, available at <https://www.aacc.nche.edu/wp-content/uploads/2017/09/AACCFactSheet2017.pdf>

<sup>63</sup>Richard D. Kahlenberg, *How Higher Education Funding Shortchanges Community Colleges*, 4, The Century Foundation, May 28, 2015, available at [https://tcf.org/assets/downloads/Kahlenberg\\_FundingShortchanges.pdf](https://tcf.org/assets/downloads/Kahlenberg_FundingShortchanges.pdf)

<sup>64</sup> Strumbos, D., Kolenovic, & Z., Tavares, A. (2016). CUNY Accelerated Study in Associate Programs (ASAP): Evidence from Six Cohorts and Lessons for Expansion. In S. Whalen (Ed.), *Proceedings of the 12th National*

grants would have the flexibility to tailor their program to their unique needs. To ensure accountability to taxpayers and policy makers, the amendment requires all grantees to monitor and track student participation and measure academic progress toward clearly articulated program goals. Committee Republicans voted to reject the Norcross amendment.

### **H.R. 4508 REPEALS VALUABLE REGULATIONS WHILE INTRODUCING NEW REGULATION TO PROMOTE IDEOLOGICAL VIEWS**

Throughout the markup, Committee Republicans characterized oversight and accountability over IHEs as “burdensome overregulation.” In contrast, Committee Democrats offered amendments and discussed the need to adhere to the original intent of the HEA – to improve access to higher education for capable students, regardless of income level.

#### *Relaxing Institutional Drug Prevention Requirements during a National Opioid Crisis*

H.R. 4508 sought to remove the current-law Program Participation Agreement (PPA) provision that requires IHEs receiving Federal funds to implement drug and alcohol abuse prevention programming found in Title IV, while maintaining a corresponding requirement in Title I that carries no Federal enforcement. The bill also repeals current-law authorization of grant funds to assist IHEs in developing and implementing effective prevention programs. This action ignores the data: approximately 64,000 Americans died from drug overdose last year, and the non-medical use of prescription drugs was highest among college-aged individuals.<sup>65</sup>

Approximately 150 institutions are already responding by offering collegiate recovery programs and a growing number are offering substance-free or recovery-centered housing and other health interventions and support services to students struggling with or affected by addiction.<sup>66</sup> Rep. Shea-Porter offered an amendment to keep the PPA requirement for drug and alcohol abuse prevention programming as a condition of Federal funding – a provision that has been in the HEA for the last 30 years – and strengthened the requirement to ensure that programs offered by the IHE are evidence-based and have a focus on opioid misuse to help combat the opioid epidemic. After some debate, this amendment was adopted by voice vote.

#### *Removing Campus Voter Registration Requirements While Republicans Work to limit Ballot Access*

H.R. 4508 weakens a current-law provision that requires colleges receiving Title IV funds to distribute voter registration information to students by moving the provision out of the PPA section and into a different title; thus, removing institutional accountability for failure to distribute voter registration information to students. Committee Democrats recognize that institutions of higher education, having long-served as places of civic engagement, play an integral role in supporting students to pursue civic engagement and participate in the democratic

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Symposium on Student Retention, Norfolk, Virginia. (pp. 130-142). Norman, OK: The University of Oklahoma. Retrieved [http://www1.cuny.edu/sites/asap/wp-content/uploads/sites/8/2016/11/CUNY-ASAP-NSSR-Proceedings\\_web\\_20161109.pdf](http://www1.cuny.edu/sites/asap/wp-content/uploads/sites/8/2016/11/CUNY-ASAP-NSSR-Proceedings_web_20161109.pdf)

<sup>65</sup> Catherine Morris, *Experts: Colleges Have Role in Battling Opioid Epidemic*, DIVERSE! (Oct. 24, 2017) available at <http://diverseeducation.com/article/103785/>.

<sup>66</sup> Mariah, Bohannon, *The Opioid Crisis Comes to College*, INSIGHT INTO DIVERSITY (Oct. 17, 2017) available at <http://www.insightintodiversity.com/the-opioid-crisis-comes-to-college/>.

process. Rep. Krishnamoorthi introduced an amendment to strike H.R. 4508's harmful changes that dilute the current-law requirement that institutions distribute voter registration information. Unfortunately, the amendment was not adopted as it was opposed by Committee Republicans.

#### *Regulations limiting the use of postsecondary data pass Committee Republican muster*

The Federal post-secondary data infrastructure is a complex, duplicative maze of Federal reporting requirements that often leaves students and families without access to complete information. H.R. 4508 increases institutional burden by requiring institutions to report new program-level debt and earnings metrics. Although this is a step toward better data, H.R. 4508 does not overturn the outdated ban on a Federal student-level data network, which would reduce institutional burden by eliminating the duplicative, inefficient, and incomplete data infrastructure currently in place. Additionally, H.R. 4508's new reporting requirement fails to address a current-law impediment to data quality by maintaining the limitation that data only be collected and reported for students receiving Federal financial aid, omitting 30 percent of all students, and painting an incomplete picture of the nation's higher education system.

Committee Democrats believe that too many students remain missing from key college outcome metrics today. For example, even with recent updates to data on college completion, the updated measure does not disaggregate by race/ethnicity, nor does it measure completion after transfer.

Because Committee Democrats support a student-level data network that would allow for more complete reporting while reducing institutional burden, Rep. Polis introduced an amendment to strike the student unit record ban from HEA. Despite the cosponsorship of six committee Republicans on stand-alone legislation to strike the student unit record ban, Committee republicans collectively rejected the Polis amendment.

#### *Unnecessary Speech Code Provisions*

H.R. 4508 requires the disclosure of any policy related to protected speech on campus, including policies limiting where speech can occur for IHEs in receipt of Title IV funds. During markup, Committee Republicans passed, on a party line vote, an amendment expanding this provision, creating an office at the Department of Education tasked with responding to student complaints regarding IHE compliance with free speech policies. Committee Democrats objected to this amendment as we believe the purported "free speech crisis" underway on college campuses is more political rhetoric driven by conservative ideologues rather than reality.<sup>67</sup> The amendment passed on a party-line vote.

### **H.R. 4508 CREATES TROUBLING EXEMPTIONS TO FEDERAL LAW FOR RELIGIOUS INSTITUTIONS**

H.R. 4508 prohibits any Federal, State, or Local government entity from taking any adverse action (including withholding of funds) against an IHE in receipt of Title IV funds for failure to comply with HEA requirements, so long as the IHE's justification for noncompliance rests with the institution's religious mission or affiliation. This overly broad provision effectively exempts institutions, including for-profit institutions, from Federal oversight in the name of religion.

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<sup>67</sup> See e.g., Chris Ladd, *There is No Free speech Crisis on Campus*, Forbes, Sept. 23, 2017, available at <https://www.forbes.com/sites/chrisladd/2017/09/23/there-is-no-free-speech-crisis-on-campus>.

Committee Democrats believe that religious institutions play a vital role in the U.S. system of higher education. Data from the ED Integrated Postsecondary Education Data System (IPEDS) show that during the 2015-2016 Academic Year, there were 7,180 main campuses of Institutions of Higher Education that participated in HEA, Title IV. Of those, 901 main campuses, or 12.5 percent, were religiously affiliated. These institutions are able to execute the responsibilities and requirements of the law while successfully maintaining their religious identities and missions, suggesting that the religious provisions of H.R. 4508 are a solution in search of a problem. H.R. 4508 creates an unnecessary carve out for religious institutions that want access to Federal funding without abiding by Federal civil rights laws or the Federal oversight and accountability that accompanies acceptance of taxpayer funds.

This exemption is just one of many provisions addressing religion in H.R. 4508. The bill also exempts religious student organizations at public institutions from adhering to nondiscrimination protections for all students. It codifies a loophole in current regulations that exempts religious institutions from State licensing and authorization procedures and fraud oversight if State law allows the exemption, thereby encouraging additional States to adopt such an exemption. The bill expands the deference that must be given to religious institutions by accreditors by broadly defining what is included under the pretext of religious mission and expressly permitting institutions to self-define their missions. It establishes a complaint procedure for religious institutions against accreditors that is heavily and unfairly weighted to the benefit of such institutions. And although it does not carry the weight of law, H.R. 4508 expresses the sense of Congress that individuals should be free to profess and maintain their own opinions in matters of religion without curtailing their civil liberties or rights on IHE campuses. Additionally it expresses the sense of Congress that no public IHE receiving Federal funds under HEA should limit religious expression, free expression, or any other First Amendment rights, without noting a Title IV-receiving institution's obligations to comply with Federal civil rights laws.

Taken in total, the religious provisions in H.R. 4508 go far beyond the jurisdictional scope of HEA. As written, the bill permits an institution's religious mission to supersede several Federal civil rights statutes, such as: Title VI of the Civil Rights Act of 1965; Title VII laws against discrimination in employment based on sex, race, color, national origin, or religion; ADA employment laws to protect the disabled; Title IX laws against gender discrimination in a program or activity receiving Federal financial aid; and the Fair Housing Act of 1968. Section 117 of H.R. 4508 essentially creates a limitless exemption for religious institutions to act in any way affecting any issue under the pretext of religion. In this sense, the provision has more in common with the First Amendment Defense Act (FADA)<sup>68</sup> or Religious Freedom Restoration Act (RFRA)<sup>69</sup> than higher education policy, as this broad exemption attempts to position freedom of religion as the pre-eminent first amendment right.

Aside from being broad in scope, the language of the religious provisions in H.R. 4508 is overly vague, and, as such, is open to dangerous interpretation. The bill broadly defines "religious mission" to include "religious tenets, beliefs, or teachings, and any policies or decisions related to such tenets, beliefs, or teachings (including any policies or decisions concerning housing,

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<sup>68</sup> <https://www.congress.gov/114/bills/hr2802/BILLS-114hr2802ih.pdf>

<sup>69</sup> Pub. L. No. 103-141

employment, curriculum, self-governance, or student admission, continuing enrollment, or graduation).” This broad language ensures that any action or failure to act on the part of an institution fits under the umbrella of “religious mission”. It similarly defines “adverse action” equally broadly. In a final confounding turn, it appears that any attempt to enforce this provision would violate the provision on its face, by requiring the Department of Education to become involved in assessing a school’s religious mission.

Almost 1,000 religious institutions currently receive funding under HEA while successfully complying with the law’s present requirements. Moreover, several of the civil rights laws mentioned already contain their own limited religious exemptions. Title VII of the Civil Rights Act of 1965 permits religious employers to consider religion in employment decisions although they may not consider other protected classes. Title IX of the Education Amendments of 1972 allows religious institutions to request an exemption to consider religion in admission and certain other contexts within education, but it requires a determination that the institution is in fact controlled by a religious organization. The Americans with Disabilities Act includes an exemption for religious organizations.

Religious institutions can either follow Federal education and civil rights laws and access Federal funds, or they can choose not to follow such laws and forego access to Federal funding. That is the prerogative of each institution. HEA as it currently stands is not an impediment to religious institutions receiving Federal funds, nor does it require them to abandon or disregard their religious missions. Committee Democrats believe religious IHEs must continue to follow the same civil rights laws and be subject to the same oversight provisions as other institutions, which they successfully do now.<sup>70</sup>

Ranking Member Scott offered an amendment repealing H.R. 4508’s provisions that exempt religious institutions from civil rights laws and appropriate Federal oversight. The amendment also repealed the other provisions of H.R. 4508 that attempt to place the religious rights of institutions or individuals on campus above other civil rights and legal requirements. This amendment failed due to a party line vote.

### **H.R. 4508 FAILS TO ADDRESS SERIOUS CONCERNS OVER CAMPUS SAFETY**

College campuses should be havens for students to focus on education free from concerns for their safety. We know this is not the case, as incidents of campus sexual assault, racial violence, and hazing have all garnered national attention recently. The recent investigation into Title IX violations in the wake of the Larry Nassar scandal at Michigan State University are an example of what can happen when schools put their image above their student’s safety and well-being. Similarly, the nation watched in horror when a mob of torch-wielding white nationalists descended on the University of Virginia (UVA) and marched through university grounds chanting racial epithets and intimidating students and faculty, in complete disregard of the Title VI and Equal Protection right to a safe learning environment.<sup>71</sup> On each of these issues, H.R. 4508 offers policies that fail to adequately address, and in some cases would exacerbate the underlying problems. H.R. 4508 undermines protections for survivors of campus sexual assault,

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<sup>70</sup> Standing with Committee Democrats are 50 civil rights, faith, religious freedom, LGBTQ, and reproductive rights organizations strongly opposed to provisions of H.R. 4508 that permit discrimination based on religion.

<sup>71</sup> “White Nationalists March on the University of Virginia.” *The New York Times*, August 11, 2017. Available at: <https://www.nytimes.com/2017/08/11/us/white-nationalists-rally-charlottesville-virginia.html?mcubz=0>

which could undermine the ability of IHEs to combat this pervasive issue. At markup, in an attempt to preempt a vote to express a sense of Congress condemning racial violence on campus, Committee Republicans adopted a hollow amendment offered by Rep. Garrett to support ‘diversity and inclusion’ that fails to speak to the growth of incidents of racial violence. And, despite adoption of the Thompson Amendment, the reported bill fails to treat the issue of campus hazing as a true threat to public safety.

#### *H.R. 4508’s Inadequate Approach to Campus Sexual Assault*

**H.R. 4508 contradicts the intent of the Clery Act.** The Clery Act is designed to ensure IHEs report crimes on campus to give policymakers and the public a complete picture of student safety and security. As part of guidance to schools on campus sexual assault issued to IHEs in 2014, the Department of Education clarified which individuals on a campus had a duty to report an allegation of sexual violence for purposes of Clery reporting. This would not trigger an investigation automatically, but would require the IHE to report the incident. The definition of responsible employee included, any employee who “has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee, or *whom a student could reasonably believe has this authority or duty.*”<sup>72</sup>

Under H.R. 4508, IHEs must hire at least one sexual assault survivors’ counselor for victims of sexual assault. Counselors must be trained specifically in sexual assault, and each IHE must make a good faith effort to advertise the availability of sexual assault counselors. Most students would reasonably believe that a counselor mandated by their school to help them deal with the aftermath of a sexual assault would have the authority or duty to report the assault. Instead, H.R. 4508 prohibits counselors who provide services to victims of sexual assault from reporting the incident(s) and bars the consideration of such information as part of the Clery Act. This frustrates the Clery Act’s purpose, which requires the collection and reporting of such incidents. Mandating counselors but not requiring them to report incidents of sexual assault for inclusion in campus crime statistics, will compound the problem of underreporting of sexual assault, allowing schools to misrepresent the nature of sexual violence on campus. With regard to provisions contained in H.R. 4508 that could amend or change the intent of Clery, at markup Chairwoman Foxx made a commitment to Rep. Davis to “before the bill is brought to the floor make absolutely certain, there is no misunderstanding of what we are trying to accomplish here.”

**H.R. 4508 would allow schools to assess sexual assault claims using varying standards of evidence.** Prior to 2014, IHEs used varying standards of evidence in sexual assault proceedings. While some schools used the *preponderance of the evidence standard* (the standard used in most civil cases), some schools used the more stringent *clear and convincing evidence standard*. As part of the Department of Education guidance in 2014 to standardize compliance expectations, schools are to use the preponderance of the evidence standard in resolving Title IX complaints.<sup>73</sup> Under H.R. 4508, each IHE would be allowed to set its own standard of review, so long as it is consistently applied throughout the institution. The result will be that the same actions on different campuses, possibly even between campuses in the same city, could be judged differently. Committee Democrats are concerned that allowing for varying standards will result

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<sup>72</sup> Catherine E. Lhamon, Questions and Answers on Title IX and Sexual Violence, U.S. Department of Education, April 29, 2014, available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (Emphasis added).

<sup>73</sup> *Id.* at 13.

in inequitable results on many campuses and note that enactment of this provision would result in Title IX violations held to a different standard than other violations on campus.

**H.R. 4508 encourages IHEs to delay sexual assault investigations.** Section 488 (f)(18) of H.R. 4508 allows IHEs to delay their own investigation into an allegation of campus sexual assault if the matter is also being investigated by law enforcement. This contradicts Title IX and related guidance, which finds that once a school “knows or reasonably should know of possible sexual violence, it must take immediate and appropriate action to investigate or otherwise determine what occurred.”<sup>74</sup> Schools are obligated to promptly address the alleged incidents, regardless of the whether the allegation is addressed through the criminal justice system. In the words of the American Association of University Women,

*“Under the provisions of H.R. 4508, schools would have an excuse not to investigate sexual assaults on campus at the request of law enforcement, possibly undermining students’ ability to seek justice and accommodation at their schools. In addition, this bill would give schools a pass on accurately disclosing annual crime data. The last thing students need is for schools to return to the days of sweeping sexual violence under the rug.”*

Committee Democrats believe this provision will frustrate survivors’ attempts at resolution and could result in fewer victims coming forward to report to the institution due to inaction by the school to adequately address instances of campus sexual assault and impose institutional penalties to ensure student safety.

**H.R. 4508 requires confusing campus climate surveys and prohibits data from being used to address Campus Sexual Assault.** Section 162 of H.R. 4508 would require IHEs to conduct climate surveys and to use such surveys to improve the school’s response to sexual harassment and assault. However, the bill fails to require institutions to share survey findings with the students. Further, H.R. 4508 prohibits the Secretary of Education from creating uniform survey standards, using survey findings as a tool for comparisons among IHEs, and issuing regulations or technical assistance as a means to address the problem of campus sexual assault. According to a leading advocacy group for survivors of campus sexual assault, “The data [from proposed climate surveys], therefore, does not educate the public regarding the climate at any particular school, nor does it incentivize accountability.”<sup>75</sup>

To address the regression made by H.R. 4508 on campus sexual assault, Reps. Davis and Bonamici offered an amendment to strike this language in the underlying bill. This amendment was defeated on a party line vote.

#### *Campus Racial Harassment and Violence*

As introduced, H.R. 4508 was silent on the issue of racial and homophobic harassment and violence on college campuses. At markup two amendments were considered on this issue: one offered by Mr. Garrett (R-VA), and one by Ms. Wilson; The Garrett Amendment passed on a voice vote, the Wilson amendment failed on a recorded party-line vote. Committee Republicans intended the Garrett amendment to preempt a presumably uncomfortable vote on the Wilson

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<sup>74</sup> *Id.* at 2.

<sup>75</sup> Letter to Reps. Foxx & Scott from Gaylynn Burroughs, Director of Policy and Research, Feminist Majority Foundation, Dec. 11, 2017.

amendment, as evidenced by the fact that the two amendments were similar, but with three distinct and substantive differences that render the language of the Garrett amendment, and H.R. 4508 as reported out of Committee, hollow. The adopted language fails to recognize the documented increase of racial and anti-LGBTQ violence and harassment, the rise of extremist organizations deliberately targeting college campuses to spread hostile hate speech that may violate an institution's obligations under Title VI of the Civil Rights Act, and the lack of legal protection for issues of sexual orientation and gender identity. Committee Democrats note that the Garrett amendment (and the Thompson amendment referenced below concerning campus hazing) was drafted by the majority less than 15 minutes prior to the start of markup, a breach of the Committee's good-faith practice of bipartisan exchange of amendments 24 hours prior to the start of Committee proceedings.

Committee Democrats recognize that all harassment and violence targeted at students should be condemned. But it is equally important to recognize both that specific types of incidents are increasing, and that there are specific organizations actively inciting harassment and violence targeted at specific student groups on college campuses. The Anti-Defamation League has documented the rise of incidents of propaganda targeting "minority groups, including Jews, Blacks, Muslims, non-white immigrants, and the LGBT community."<sup>76</sup> While Rep. Wilson's amendment mentioned only 5 campus incidents, the ADL has recorded 346 incidents of white supremacist propaganda appearing on 216 different campuses since September of 2016.<sup>77</sup> 290 of those 346 incidents occurred in 2017 and 18 have already occurred in 2018.<sup>78</sup> This documented increase in on-campus violence and harassment of minority student groups is not addressed in the amendment adopted by the Committee. There is a credible documented rise both in incidents of harassment and violence and in organized white supremacist outreach on campus and H.R. 4508 is silent on these emerging and troubling trends.

While the adopted text of the Garrett Amendment to H.R. 4508 fails to clarify what "sex" means in the context of section 703 of the Civil Rights Act of 1964, based on discussions with Committee Republicans, Committee Democrats believe it is the position of the Committee that "sex" includes an individual's sex, gender, and sexual orientation, and the right to be free from harassment and violence extends to individuals targeted for being, or being perceived as gay, lesbian, bisexual, transgender, or non-gender binary.

#### *Failure to Meaningfully Address Campus Hazing*

Given that 55 percent of students experience some form of hazing and yet 95 percent of those incidents are never reported to faculty or staff, Committee Democrats believe reauthorization of HEA should do more to help students fight the persistent problem of campus hazing.<sup>79</sup> Although institutions of higher education already submit some data on campus safety to the Department of Education, policymakers and the public lack information about hazing. Schools are required to report incidents of assault, however incidents of hazing in and around IHEs remain a factor in

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<sup>76</sup> Anti-Defamation League, White Supremacist Propaganda Surges on Campus, last updated January 29, 2018, available at <https://www.adl.org/education/resources/reports/white-supremacist-propaganda-surges-on-campus>.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Allan, E. J. & Madden, M. (2008). Hazing in view: College students at risk. Initial findings from the National Study of Student Hazing. Retrieved from [https://www.stophazing.org/wp-content/uploads/2014/06/hazing\\_in\\_view\\_web1.pdf](https://www.stophazing.org/wp-content/uploads/2014/06/hazing_in_view_web1.pdf)

some student activities. To better understand hazing on college campuses, Rep. Fudge offered a common sense amendment to require colleges and universities participating in Federal financial aid programs to disclose incidents of hazing in their Annual Security Report and to report statistics of referrals for discipline and arrests specific to hazing. Additionally, to curb these incidents from happening, the amendment requires institutions to implement a hazing education program for students. Similar to the tactic employed by Majority members of the Committee to avoid an uncomfortable vote that would condemn racial and anti-LGBTQ violence, Rep. Thompson first offered an amendment that expressed a sense of Congress in opposition to campus hazing, but failed to include any meaningful reporting or training requirements. Rep. Fudge spoke against the disingenuous nature of the Thompson amendment before withdrawing her amendment.

### **H.R. 4508 DOUBLES DOWN ON UNPROVEN PROGRAMS IN HIGHER EDUCATION, AT THE EXPENSE OF STUDENTS**

Rather than investing in effective programs, H.R. 4508 gives unfettered access to financial aid, to any institution for competency-based education (CBE), defined loosely in the bill. While quality CBE is a new, innovative, and flexible model that makes higher education more accessible for today's student, Committee Democrats fear that an expansion of CBE without strong accountability provisions to accompany such an expansion could result in poor outcomes for students and higher risk for waste, fraud, and abuse to taxpayers. While advocating for a full-bore expansion of CBE, H.R. 4508 does not similarly increase access to other programs with a proven track record of increasing access to higher education.

While many traditional higher education programs are based on time, CBE allows students to advance through their degree requirements upon demonstration of competency mastery. CBE is still in the early stages of its development, and while there are high-quality programs that are working, the best practices for what constitutes an effective program at scale and how certain requirements and regulations affect these programs are still unknown. This lack of information underscores the need to closely monitor, oversee, and evaluate limited expansion of CBE programs that are accountable to taxpayers before unchecked expansion of this untested model.

H.R. 4508 loosely defines CBE and makes all programs that meet the definition eligible to receive financial aid, while removing consumer and student protections to ensure program quality. For example, decisions about what constitutes a competency unit and amount of time required for an academic year are left entirely up to the school and the accreditor, making meaningful evaluation at-scale impossible. This irresponsible expansion of CBE carries huge potential for abuse that is likely to hurt students and working families.

Committee Democrats believe HEA should support innovation, but not at the expense of students. Congress needs to have data and evidence before creating a broad and unaccountable expansion of an untested model of delivery. For this reason, Rep. Polis offered an amendment to strike the bill's changes and, instead, provides demonstration authority for up to 100 CBE programs to access Federal student aid dollars. Unlike the GOP bill, this amendment would require an annual evaluation of each CBE program in the demonstration project to determine program quality, the progress of participating students toward degree completion, and a students'

ability to repay their loans and find employment upon graduation. The amendment would provide necessary information about the students served in these CBE programs, how their success compares to similarly situated students in traditional programs, and the types of waivers needed to implement quality CBE programs with fidelity. Despite the amendment's genesis in bipartisan standalone legislation supported by the Majority and passed by the full House of Representatives in the 114<sup>th</sup> Congress. The Polis amendment was not adopted.

### *Higher Education Programs Proven-Effective and Deserving of Expansion*

While the percentage of individuals enrolling in college is higher than ever before, traditionally underserved students continue to enroll in college at lower rates than their peers. According to the What Works Clearinghouse, dual enrollment programs have a positive effect on college enrollment, credit accumulation, and degree attainment.<sup>80</sup> Early college high school programs also have a positive impact – almost all students participating in early college high school programs earn free college credit before the end of senior year, including 30 percent who graduate high school with a college degree or credential.<sup>81</sup> Given that at least two out of three early college high school students are students of color, nearly three out of five are low-income, and almost half are the first in their families to enroll in college, expanding these programs can help close gaps in college enrollment.<sup>82</sup> Democrats believe dual enrollment and early college high school programs are part of the solution to increasing access to higher education, tackling college costs, and improving graduation rates – particularly for the students who need the most help.

Although H.R. 4508 includes a 10 percent carve out from TRIO programs for a new grant program called “innovative measures promoting postsecondary access and completion (IMPACT)” that may be used for dual enrollment and early college high schools, the available funding is woefully insufficient.

Rep. Espaillat (D-NY) offered an amendment that would create a competitive grant program funded at \$250 million per year for colleges and universities that partner with Local educational agencies to expand dual enrollment and early college high school programs that primarily serve low-income students. Funding would also be provided to States for the development and implementation of a statewide strategy for increasing access to dual enrollment programs. This amendment would invest in strategies and programs that are proven to significantly increase high school graduation rates, college readiness, access to college, and college completion. Given the important role dual enrollment can have on college access, Rep. Polis also offered an amendment that would encourage IHEs to create and expand opportunities for dual and concurrent enrollment. The proposed grant would help cover the cost of tuition, books, fees, or transportation. However, both amendments failed on a party-line vote.

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<sup>80</sup> What Works Clearinghouse, *Dual Enrollment Programs*, INST. FOR EDUC. STATS., available at <https://ies.ed.gov/ncee/wwc/InterventionReport/671>

<sup>81</sup> Reinventing High Schools for Postsecondary Success, JOBS FOR THE FUTURE, available at <http://www.jff.org/initiatives/early-college-designs>

<sup>82</sup> [http://www.jff.org/sites/default/files/publications/Unconventional\\_Wisdom\\_PDF\\_033011.pdf](http://www.jff.org/sites/default/files/publications/Unconventional_Wisdom_PDF_033011.pdf)

H.R. 4508 also fails to significantly invest in international and foreign language programming. According to the National Research Council, a pervasive lack of knowledge about foreign cultures and languages in the United States threatens the security of our country and our ability to compete in the global economy.<sup>83</sup> Additionally, defense, intelligence, and diplomatic agencies have an established and growing need for Americans with international knowledge, advanced foreign language skills, and cultural awareness.<sup>84</sup> The lack of qualified individuals for these in-demand positions also leads to a lack of instructional leaders and teachers who can adequately provide a robust international education experience for undergraduate and post-baccalaureate students. In an attempt to address these issues, the United States invests in several domestic and international language-, cultural-, and business-focused programs authorized under Title VI of the HEA. H.R. 4508 ignores the demonstrated need for investment in these programs, and cuts funding to Title VI. It eliminates programs that help provide students with quality foreign language and area studies, and programs that provide teachers with resources and training to deliver quality instruction.

Rep. Davis (D-CA) offered an amendment to strike the changes to Title VI made by H.R. 4508 and instead, increase the authorization for funding to \$125 million, indexed to inflation for each successive fiscal year. The amendment sought to extend authorization of six currently funded programs and align five existing programs into two consolidated programs to better address the 21<sup>st</sup> century needs for educational opportunities that promote language, cultural, and professional competencies for students, teachers, and employers. Even though this amendment continues our nation's investment in language, cultural, and regional education and expertise so that we can compete economically and maintain robust defense, intelligence, and diplomatic communities, the majority voted against the amendment.

#### **H.R. 4508 POSES SIGNIFICANT RISK TO VULNERABLE STUDENT POPULATIONS**

Committee Democrats believe H.R. 4508 will negatively affect military recruitment and veterans. According to the Consumer Financial Protection Bureau (CFPB), more than 200,000 members of the military owe more than \$2.9 billion in student loan debt. The CFPB also indicates that military members are worried about paying off their student loan debt and losing Public Service Loan Forgiveness (PSLF). By creating one less generous income-driven repayment plan and eliminating PSLF, we worry that H.R. 4508 has the potential to curb military interest and harm veterans paying off their student loans.

For decades, for-profit colleges have targeted veterans for recruitment. By giving for-profit colleges increased access to taxpayer funding, repealing the gainful employment rule, the 90/10 rule, the borrower defense rule, State authorization, and weakening oversight mechanisms of for-profit colleges, including accreditors' ability to assess recruiting and admission practices, H.R. 4508 only makes it easier for for-profits to abuse our service members. This is why Rep. Bonamici introduced an amendment that would delay implementation of H.R. 4508 until the Office of the Inspector General (OIG) of the U.S. Department of Education, in consultation with the OIG of the U.S. Department of Veterans Affairs, certifies that implementation of the legislation does not lead to fraud and abuse of veterans.

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<sup>83</sup> <https://www.nap.edu/read/11841/chapter/2>

<sup>84</sup> <https://languagepolicy.org/wp-content/uploads/2015/04/Gail-McGinn-Paper-govt-language-shortages.pdf>

H.R. 4508 also places low-income students at risk. The GOP bill eliminates grant programs for needy students, ends subsidized loans for low-income individuals, and creates uncertainty during loan repayment. By eliminating these programs, H.R. 4508 raises the price of college for millions of students. To ensure low-income students are not hurt, Rep. Bonamici introduced an amendment that would stop H.R. 4508 from taking effect until the Government Accountability Office (GAO) certifies that such implementation does not result in decreased availability of Federal grant aid and increased student loan debt for low-income students.

H.R. 4508 caps borrowing and drives more borrowers to private student loans, which Congressional Democrats fear will lead to an increase in private student loan debt for borrowers and cosigners. In an effort to determine if this is in fact the case, Rep. Bonamici also offered a separate amendment that would require GAO to certify that H.R. 4508 does not increase total student loan debt.

Committee Republicans asserts that H.R. 4508 will meet the needs of today's students and improve college access, affordability, and completion. Yet, despite these unfounded claims, Committee Republicans rejected all four amendments offered by Rep. Bonamici to require good government watchdog agencies to study and confirm that the policies of the underlying bill do no harm to vulnerable student populations prior to enactment. If Republicans believed in the policies of H.R. 4508, there should be no hesitation to prove the legislation's positive impact prior to subjecting students and families to the bill's untested proposals.

### **H.R. 4508 IS SILENT ON BARRIERS TO EQUITY IN HIGHER EDUCATION FACING VULNERABLE STUDENTS**

While H.R. 4508 is a comprehensive rewrite of HEA, there are many barriers to equity in higher education that the bill fails to address. Committee Democrats believe that many of these issues deserve consideration in a comprehensive rewrite of HEA.

#### *Status of DREAMers*

In 2012, the Federal government asked undocumented immigrants who were brought here at a young age to turn themselves in to the Federal government in exchange for work authorization and temporary relief from deportation. Since then, nearly 800,000 undocumented young people received temporary permission to live and work in this country through the Deferred Action for Childhood Arrivals (DACA) program. According to the Center for American Progress, DACA recipients stand poised to contribute more than \$460 billion to the U.S. gross domestic product over the next decade.<sup>85</sup> However, in 2017, President Trump announced the arbitrary end of DACA and exposed these hard-working individuals to fear of deportation and uncertainty about their future.

Using data from the Migration Policy Institute on DACA-eligible individuals to estimate educational attainment among DACA individuals, we calculate that there are approximately

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<sup>85</sup> Nicole Prchal Svajlenka, Tom Jawetz, and Angie Bautista Chavez, A New Threat to DACA Could Cost States Billions of Dollars, Ctr. for Am. Prog., Jul. 21, 2017, available at <https://www.americanprogress.org/issues/immigration/news/2017/07/21/436419/new-threat-daca-cost-states-billions-dollars/>.

160,000 DACA students enrolled in college. Further, the analysis leads us to believe that roughly 88,000 DACA individuals have completed some college and an additional 40,000 have at least a bachelor's degree.<sup>86</sup> DACA recipients are current and future social workers, teachers, engineers, lawyers, doctors, small-business owners and more. They are integral to our communities and economies.

Committee Democrats believe Congress must pass a permanent solution so that these individuals no longer have to live under the threat of deportation. Multiple stakeholders in the higher education community, including several hundred colleges and universities, have expressed their support for such a solution. Rep. Grijalva offered the Dream Act – a bipartisan and widely supported bill that would create a path to citizenship for undocumented individuals who moved to the United States as children – as an amendment. This amendment sought to ensure that these individuals could reach their full potential as legal citizens and allow them to more fully contribute to their communities and our economy. Unfortunately, Republican Committee members ruled the amendment non-germane.

Rep. Espaillat introduced an amendment to allow undocumented individuals who meet certain requirements akin to DACA to become eligible for Federal student aid. While this amendment would stop short of the full DREAM Act, it highlights the value of these individuals to our higher education system and national fabric. The government already invests in their K-12 education and allowing them to enroll and complete college so that they can continue to contribute with higher earnings is not only sound economic policy, but also it is the human and moral thing to do. However, this amendment failed on a party line vote.

#### *Improving the financial aid process for low-income students*

Data show that students who complete the FAFSA are more likely to attend and complete college than students who do not complete the form.<sup>87</sup> Unfortunately, only three out of five high school graduates (61 percent) from the Class of 2017 completed the FAFSA – leaving approximately \$2.3 billion in unused Pell Grants.<sup>88</sup> Although H.R. 4508 takes positive steps to increase access to the FAFSA by directing the Department of Education to make the FAFSA available using a mobile “app,” the Department already has the authority to create such a tool. In fact, the Department of Education announced its plan for this app in November 2017.<sup>89</sup>

Rep. Blunt Rochester offered an amendment that reduces the complexity and length of the Free Application for Federal Student Aid (FAFSA) and increases support for vulnerable populations. The amendment would restructure the FAFSA to better fit each student's financial situation and create a three-pathway model that asks fewer questions to students with less complex financial situations. The amendment also prohibits the Secretary of Education from burdening the lowest-

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<sup>86</sup> Analysis by House Education and the Workforce Committee Staff using Migration Policy Institute data available at <https://www.migrationpolicy.org/research/education-and-work-profiles-daca-population>.

<sup>87</sup> FAFSA Completion Challenge, National College Access Network, available at <http://www.collegeaccess.org/FAFSACHallenge>.

<sup>88</sup> National FAFSA Completion Rate for High School Seniors, National College Access Network, available at <http://www.collegeaccess.org/FAFSACompletionRate>.

<sup>89</sup> Joelle Fredman, *FSA COO Unveils Mobile FAFSA App*, NAT'L ASSN. OF STUD. FIN. AID ADMIN. (Nov. 30, 2017) available at [https://www.nasfaa.org/news-item/13799/FSA\\_Unveils\\_Mobile\\_FAFSA\\_App](https://www.nasfaa.org/news-item/13799/FSA_Unveils_Mobile_FAFSA_App).

income students with difficult financial questions that lead to confusion and produce unnecessary barriers to FAFSA completion. To verify the information, the Secretary of Education is directed to enter a Memorandum of Understanding with the Secretary of Health and Human Services, the Secretary of Agriculture, and the Secretary of the Treasury to allow for the exchange of information needed to verify receipt of eligible Federal benefits.

For FAFSA applicants who did not receive one of the means-tested Federal benefits outlined in the amendment but who have simple tax returns, this amendment would reverse cuts to the income threshold at which a student receives a zero-dollar estimated family contribution (EFC) back to \$34,000 and pegs it to inflation. It also removes the requirement that independent students have dependents to be eligible for an automatic zero EFC. Unlike the expansion of the Simplified Needs Test created in H.R. 4508 that only helps middle-income families qualify for aid, the provisions in Rep. Blunt Rochester's amendment would allow low-income students to benefit from a maximum Pell Grant award.

Additionally, because one in 10 Pell students who do complete the FAFSA and persist past their first year of college fail to re-file despite the overwhelming likelihood of maintaining eligibility for Federal student aid, this amendment asks high school seniors who qualify for Pell to only fill out the FAFSA once, as opposed to filing annually. The amendment also sought to codify the use of prior-prior year (PPY) income data and increase support for working students by shielding more income (35 percent increase) from any offset to financial aid. Further, the amendment sought to require the FAFSA to be available in multiple languages, allows DREAMers to afford college, reinstates Pell Grant eligibility for students with drug-related offenses, and creates a standardized financial aid award letter. Committee Republicans voted against the Blunt Rochester amendment.

#### *College Access for American Citizens of the Outlying Areas*

Graduates from high schools in the Commonwealth of the Northern Mariana Islands and American Samoa have no accredited four-year IHEs to attend in their Territories. This leaves students with no affordable option, forcing them to move from home and suffer significant personal cost in order to pursue a college degree beyond two years. To address this problem, Rep. Sablan introduced an amendment modeled after the District of Columbia Tuition Assistance Grant Program (DC TAG) that sought to authorize \$5 million dollars to cover the difference between the cost of in-State and out-of-State tuition for these students. The amendment failed along a party-line vote.

#### *Remedial Education Reform*

Our nation's current system of remediation in higher education is failing working families by increasing the cost of college and, all too often, leaving students without a meaningful degree. In 2010, fifty-one percent of students entering public two-year colleges and more than one in four students (29 percent) entering public four-year universities were required to take remedial coursework during their college experience. Unfortunately, only 50 percent of students in

remedial education will ever complete a credit-bearing course, with even a lower percentage of students achieving a degree.<sup>90</sup>

Rep. Norcross offered an amendment to provide competitive grants to a geographically diverse set of colleges and universities of various sizes to develop or improve remedial education based on five models that have shown success during small-scale implementation. Aside from implementing evidence-based models to improve remediation, students in programs funded under this grant may also use Federal student aid dollars to support up to two years of remediation, removing another barrier to on-time completion for remedial students. The amendment requires evaluation of program effectiveness in order to determine the best systems of support that lead to college degree completion. The amendment was not adopted and failed by party-line vote.

#### *Improving Access for Students with Disabilities*

Rep. DeSaulnier (D-CA) offered an amendment to improve services for students with disabilities. Committee Democrats believe that reauthorization of HEA must recognize the fact that we are graduating more students with disabilities from high school than ever before. Yet, very few students with disabilities enter higher education and even fewer make it to completion. Rep. DeSaulnier's amendment would strike H.R. 4508's repeal of a program to train faculty to deliver accessible instruction; establish an Office of Accessibility in every IHE; provide a grant for university-wide implementation of universal design for learning; and expand higher education options for students with intellectual disabilities. The DeSaulnier amendment also strikes H.R. 4508's repeal of Title VIII, restoring a program that trains individuals to provide closed captioning services. The amendment was rejected with all Committee Republicans voting "no."

#### *Foster and Homeless Youth*

A report produced by the National Working Group on Foster Care and Education indicates that although 84 percent of 17-18 year olds in foster care want to go to college, less than 20 percent of those who graduate high school attend college. Furthermore, less than 10 percent of those that attempt college will eventually complete a postsecondary credential by the age of 25. This is why increasing access to and completion from college for these youth is important. To increase access, these youth need assistance when applying to and enrolling in college and targeted support while in college.

Rep. Krishnamoorthi offered an amendment that sought to improve college access, retention, and completion rates for foster and homeless youth by substantially improving State capacity to support these students as they transition to and attend college. In addition to these State formula grants, the amendment would help develop "Institutions of Excellence" committed to serving foster and homeless youth through robust support services, in collaboration with organizations skilled at helping these student populations, and substantial financial assistance. However, the amendment was voted down by Republican Committee Members.

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<sup>90</sup> Laura Jimenez, Scott Sargrad, Jessica Morales, and Maggie Thompson, *The Cost of Catching Up*, CTR. FOR AM. PROG. (Sept. 2016) available at <https://cdn.americanprogress.org/wp-content/uploads/2016/09/12082503/CostOfCatchingUp-report.pdf>.

### *Increased Funding Authorization for On-Campus Child Care*

Committee Democrats believe that it is important to provide the necessary tailored supports to help students from all walks of life succeed in college. Since 2000, the number of student parents enrolled in higher education programs has increased by 50 percent. Today, more than one in four undergraduate students have children.<sup>91</sup> In order to attend class, these students need childcare during the day. However, childcare can be cost prohibitive. According to the Economic Policy Institute, infant care is more expensive than the average in-State college tuition at public 4-year universities.<sup>92</sup>

In 1998, Congress authorized the Child Care Access Means Parents in School (CCAMPIS) program to help institutions provide campus-based childcare services for low-income student parents. Although there has been an increase in college enrollment by student parents throughout the years, the appropriation amounts for CCAMPIS has decreased. Currently, CCAMPIS is appropriated at just over \$15 million, which is a steep cut from its original appropriated level of \$25 million. In H.R. 4508, Committee Republicans propose flat funding this vital program's authorization level.

Rep. Norcross introduced an amendment to increase the CCAMPIS authorization to \$67 million, which is equal to the original authorization level of \$45 million in FY 1999 adjusted for inflation. The amendment also adjusts the authorization level in future years by inflation. More student parents are going to college, and childcare costs are increasing. Committee Democrats believe Congress should be helping parents earn their degree, not penalizing them because they have children. Committee Republicans opposed the Norcross amendment.

### *Additional Supports for Vulnerable Student Populations*

Committee Democrats also offered amendments to authorize grants to ensure institutions have the resources necessary to support students who are veterans through degree completion (Rep. Grijalva) and provide tuition assistance for Native American Students (Rep. Polis). The Grijalva amendment was defeated along a party-line vote. The Polis amendment was defeated and only received one Republican vote.

## **DEMOCRATIC AMENDMENTS OFFERED DURING MARKUP OF H.R. 4508**

Committee Democrats put forward 40 amendments to improve the bill. These amendments would have expanded the purchasing power of the Pell Grant, reformed the Federal student loan and campus based aid programs to serve students and institutions better, and provided Dreamers with both permanent status in the country and access to Federal student aid. Additional Democratic amendments sought to ensure fiscal and programmatic accountability for for-profit institutions, allow for student-level data to improve higher education outcomes and policies, and restore the Public Service Loan Forgiveness (PSLF) Program. Democrats also offered proposals to simplify and improve the FAFSA, improve competency-based education programs, restore funding for teacher preparation programs and prospective teachers, and invest in community

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<sup>91</sup> <https://iwpr.org/issue/special-websites/student-parent-success-initiative/>

<sup>92</sup> <http://www.epi.org/files/2015/child-care-is-out-of-reach.pdf>

colleges, MSIs, foster students, homeless students, and students with disabilities. Committee Republicans rejected thirty-seven of the thirty-nine Democratic amendments that were considered.

<b>Amdt.</b>	<b>Offered By</b>	<b>Description</b>	<b>Action Taken</b>
#2	<b>Ms. Davis</b>	Strikes H.R. 4508 provisions to make improvements to the Pell Grant Program	Defeated
#4	<b>Mr. Grijalva</b>	Attaches the DREAM Act to the underlying bill	Ruled non-germane
#6	<b>Mr. Espaillet</b>	Makes DREAMers eligible for Federal Student Aid	Defeated
#8	<b>Ms. Fudge</b> Ms. Wilson	Prevents and addresses campus hazing through improved reporting requirements	Withdrawn
#10	<b>Ms. Shea-Porter</b>	Clarifies H.R. 4508 requirements that institutions of higher education provide programming to prevent opioid and other drug abuse	Adopted
#12	<b>Mr. Takano</b> Mr. Krishnamoorthi	Restores For-Profit institutional accountability reflective of the risk to taxpayers posed by the sector	Defeated
#14	<b>Mr. Courtney</b>	Makes ONE Loan borrowers eligible to participate in Public Service Loan Forgiveness (PSLF)	Defeated
#16	<b>Ms. Bonamici</b> Mr. Takano Ms. Wilson	Strikes H.R. 4508's ONE Loan, retain the Direct Loan Program, and makes other changes to ensure maximum benefit to low-income borrowers	Defeated
#18	<b>Mr. Polis</b>	Improves postsecondary data quality by striking the Federal ban on the student unit record	Defeated
#20	<b>Ms. Blunt Rochester</b> Mr. Sablan	Simplifies the Free Application for Federal Student Aid (FAFSA) process to ensure increased completion by and maximum benefit to low-income students and families (Simple FAFSA Act)	Defeated
#22	<b>Mr. Courtney</b>	Allows students to refinance student loans	Defeated
#24	<b>Ms. Wilson</b> Mr. Polis	Restores support for teachers in HEA by striking H.R. 4508 program repeals and increasing authorized funding levels	Defeated
#26	<b>Mr. Sablan</b>	Authorizes grants that provide tuition assistance for community college graduates in	Defeated

		the Commonwealth of the Northern Mariana Islands and American Samoa to pursue four year degrees	
#28	<b>Ms. Bonamici</b>	Strikes H.R. 4508's repeal of Federal Supplemental Educational Opportunity Grant (FSEOG), reauthorizes the Perkins Loan Program, and makes improvements to Federal Work-Study	Defeated
#30	<b>Ms. Adams</b>	Strikes H.R. 4508 changes to Titles III, V, and other titles and replace with program improvements to support Minority Serving Institutions (MSI), including the restoration of mandatory appropriations and authorization of an MSI innovation fund	Defeated
#31	<b>Mr. Scott</b>	Authorizes a Federal-state partnership to provide students with access to affordable degrees	Defeated
#32	<b>Ms. Davis</b>	Renames the program authorized under H.R. 4508 Title II as 'earn and learn' and ensures quality of apprenticeship programs receiving Federal funds	Defeated
#34	<b>Mr. Norcross</b>	Authorizes grants to community colleges to improve degree completion	Defeated
#36	<b>Mr. Espaillet</b> Ms. Fudge	Authorizes grants to improve access to quality Dual Enrollment programs for low-income students	Defeated
#37	<b>Mr. Norcross</b>	Authorizes grants to support improvements to remedial education	Defeated
#38	<b>Mr. DeSaulnier</b>	Improves access to higher education for students with disabilities	Defeated
#39	<b>Mr. Norcross</b>	Authorizes increase in Federal funding for campus-based child care	Defeated
#41	<b>Mr. Scott</b>	Restores accountability for religious institutions by striking H.R. 4508 provisions allowing the religious or moral beliefs of such institutions to preempt Federal law	Defeated
#42	<b>Ms. Davis</b> Ms. Bonamici	Strikes H.R. 4508 provisions that will negatively impact efforts to address campus sexual assault	Defeated
#43	<b>Ms. Davis</b>	Restores and makes improvements to Title VI programs for foreign and international	Defeated

		education	
#45	<b>Ms. Wilson</b>	Expresses the Sense of Congress that college campuses should be free from racial harassment and hostility	Defeated
#47	<b>Mr. Krishnamoorthi</b>	Supports postsecondary access and completion for foster youth and students who are homeless	Defeated
#49	<b>Mr. Krishnamoorthi</b>	Strikes H.R. 4508 language limiting the distribution of voter registration information	Defeated
#51	<b>Ms. Bonamici</b>	Ensures that H.R. 4508 shall not take effect until GAO certifies that implementation will not negatively impact military recruitment and retention	Defeated
#53	<b>Mr. Grijalva</b>	Stops the garnishment of social security benefits to pay for student debt	Ruled non-germane
#54	<b>Mr. Grijalva</b>	Authorizes grants to establish, maintain, and improve veteran student centers	Defeated
#55	<b>Ms. Bonamici</b>	Ensures that H.R. 4508 shall not take effect until GAO certifies that implementation will not result in decreased availability of Federal grant aid and increased student loan debt for low-income students	Defeated
#56	<b>Ms. Bonamici</b>	Ensures that H.R. 4508 shall not take effect until the U.S. Department of Education Office of Inspector General, in consultation with U.S. Department of Veterans Affairs Office of Inspector General, certifies that such implementation shall not result in fraud and abuse of students who are veterans	Defeated
#57	<b>Ms. Bonamici</b>	Ensures that H.R. 4508 shall not take effect until GAO certifies that implementation will not increase total student loan debt	Defeated
#58	<b>Mr. Polis</b>	Ensures Congress has the data on effectiveness and best practices necessary to expand quality Competency-Based Education (CBE)	Defeated
#59	<b>Mr. Polis</b>	Authorizes a grant program to support dual enrollment	Defeated
#60	<b>Mr. Polis</b>	Amends FERPA to allow for reverse transfer of student data	Adopted
#61	<b>Mr. Polis</b>	Authorizes grants to support the expansion of open textbooks	Defeated

#62	<b>Mr. Polis</b>	Makes clear that it is the Sense of Congress that online educational material should not be blocked or otherwise censored by internet providers	Defeated
#63	<b>Mr. Polis</b>	Provides Federal funding for the Native American Tuition Waiver program	Defeated

## CONCLUSION

The Committee, as recently as last Congress (114<sup>th</sup>) worked on a bipartisan basis to develop, introduce, and pass bills addressing discrete issues in higher education such as FAFSA simplification, enhanced student financial counseling, data transparency, and MSI program reform. Committee Democrats feel there are other policy areas in higher education of consensus that are ripe for bipartisan agreement, including loan servicing and accreditation reform. As evidenced by the policy proposals comprising H.R. 4508, Committee Republicans prioritize the delivery of financial aid to for-profit institutions and simplification of Federal student aid that would make college more expensive for students and working families. Committee Democrats, as evidenced by the amendments offered during markup, prioritize increased investment in students and under-resourced institutions through the availability of more generous Federal student aid products and institutional grants. While stark differences in policy approach to reforming and reauthorizing the HEA remain, Committee Democrats remain firm in their belief that there exists a bipartisan path forward to comprehensive HEA reauthorization that improves services and supports to ensure increased access to an affordable degree that leads to a good-paying job. Committee Democrats encourage the majority to abandon the hyper-partisan policies of H.R. 4508 and engage in bipartisan negotiations.

For the reasons stated above, Committee democrats unanimously opposed H.R. 4508 when the Committee on Education and the Workforce Committee considered it on December 12, 2017. We urged the House of Representatives to do the same unless there is a drastic revision of H.R. 4508.



ROBERT C. “BOBBY” SCOTT  
Ranking Member



SUSAN A. DAVIS



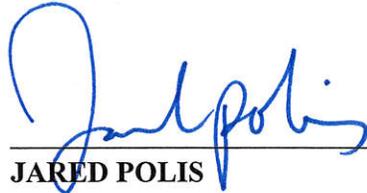
RAÚL M. GRIJALVA



JOE COURTNEY



MARCIA L. FUDGE



JARED POLIS



GREGORIO KILILI CĂMACHO SABLĂN



FREDERICA S. WILSON



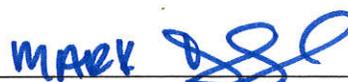
SUZANNE BONAMICI



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MARK DeSAULNIER



DONALD NORCROSS



LISA BLUNT ROCHESTER



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