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Folder Title: 11/20/2001 [H.R. 768]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

THE PRESIDENT HAS SEEN
11-20-01

November 16, 2001

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 768 - Need-Based Educational Aid Act of 2001
Sponsors - Rep. Smith (R) Texas and Rep. Frank (D) Massachusetts

Last Day for Action

November 24, 2001 - Saturday

Purpose

Extends by seven years, through September 2008, an antitrust exemption that permits certain institutions of higher education to share information that assists them in providing need-based financial aid.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Department of Education	Defers to Justice (Informally)

Discussion

Beginning in the mid-1950s, a number of private colleges and universities agreed to award institutional student aid, i.e., aid from the school's own funds, solely on the basis of financial need. These schools also agreed to use common principles to assess each student's financial need and to provide essentially the same financial aid award to students admitted to more than one of the participating institutions. Among the schools engaging in this practice was a group (called the Ivy Overlap Group) made up of the eight Ivy League schools and MIT. The practice continued undisturbed from the 1950s through the late 1980s.

In 1989, the Antitrust Division of the Department of Justice brought suit against the nine members of the Ivy Overlap Group to enjoin these practices, and, in 1991, the eight Ivy League schools agreed to end the practice. In 1992, in response to these actions, Congress included in the Higher Education Amendments of 1992 (P.L. 102-325) a temporary antitrust exemption,

through September 30, 1994, that allowed participating institutions to agree to award financial aid on the basis of need only and to use common principles of needs analysis. This temporary exemption applied only to institutions that admit students on a need-blind basis and specifically prohibited any agreement on the terms of a financial aid award to any specific student.

In 1994, Congress passed another temporary exemption, through September 30, 1997, that also allowed agreement among participating institutions on the use of a common aid application form and the exchange of the student's financial information through a third party. In 1997, Congress extended the exemption again through September 30, 2001. According to the House Committee Report on H.R. 768, the exemption has encouraged several "prestigious colleges . . . to adhere to need-blind admissions and need-based aid." The Report states that a "need-based financial aid system serves social goals that the antitrust laws do not adequately address -- namely, making financial aid available to the broadest number of students solely on the basis of demonstrated need. Without it, the schools would be required to compete, through financial aid awards, for the very top students. Those very top students would get all of the aid available which would be more than their demonstrated need. The rest would get less than their demonstrated need or none at all."

The enrolled bill would retroactively extend the expiration date of the existing temporary antitrust exemption by seven years, from September 30, 2001, to September 30, 2008. The enrolled bill would also require the General Accounting Office (GAO) to conduct a study of the effect of the antitrust exemption on institutional student aid. In determining the content of the study, GAO would be required to consult with the institutions of higher education participating under the antitrust exemption and the Antitrust Division of the Department of Justice. The study would have to examine the needs analysis methodologies used by participating institutions and identify trends in undergraduate costs of attendance and institutional undergraduate grant aid among participating institutions. The study would be required to assess the effect the antitrust exemption has had on institutional undergraduate grant aid and parental contributions to undergraduate costs of attendance. GAO would be required to submit its report to the Senate and House Judiciary Committees no later than September 30, 2006. GAO would be prohibited from identifying any individual institution of higher education in information submitted in the report unless the information on that institution is already available to the public.

The enrolled bill would require participating institutions to collect and maintain, for each academic year until the study is completed, (a) student-level data that GAO determines is sufficient to permit the analysis of expected family contributions, identified need, and undergraduate grant aid awards, and (b) information on formulas used by the institution to determine need. The participating institutions would have to submit this data and information to GAO at such time as it may reasonably require.

Conclusion and Recommendations

We join the Department of Justice in recommending approval of H.R. 768, which passed the Senate by unanimous consent and the House by a vote of 400-0.

MEDaniels

Mitchell E. Daniels, Jr.
Director

Enclosures

One Hundred Seventh Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Wednesday, the third day of January, two thousand and one

An Act

To amend the Improving America's Schools Act of 1994 to extend the favorable treatment of need-based educational aid under the antitrust laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Need-Based Educational Aid Act of 2001".

SEC. 2. AMENDMENT.

Section 568(d) of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note) is amended by striking "2001" and inserting "2008".

SEC. 3. GAO STUDY AND REPORT.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General shall conduct a study of the effect of the antitrust exemption on institutional student aid under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note).

(2) CONSULTATION.—The Comptroller General shall have final authority to determine the content of the study under paragraph (1), but in determining the content of the study, the Comptroller General shall consult with—

(A) the institutions of higher education participating under the antitrust exemption under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note) (referred to in this Act as the "participating institutions");

(B) the Antitrust Division of the Department of Justice; and

(C) other persons that the Comptroller General determines are appropriate.

(3) MATTERS STUDIED.—

(A) IN GENERAL.—The study under paragraph (1) shall—

(i) examine the needs analysis methodologies used by participating institutions;

(ii) identify trends in undergraduate costs of attendance and institutional undergraduate grant aid among participating institutions, including—

(I) the percentage of first-year students receiving institutional grant aid;

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of expected family contributions, identified need, and undergraduate grant aid awards; and

(ii) information on formulas used by the institution to determine need; and

(B) submit the data and information under paragraph (1) to the Comptroller General at such time as the Comptroller General may reasonably require.

(2) NON-PARTICIPATING INSTITUTIONS.—Nothing in this subsection shall be construed to require an institution of higher education that does not participate under the antitrust exemption under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note) to collect and maintain data under this subsection.

SEC. 4. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on September 30, 2001.

Dennis Hastert

Speaker of the House of Representatives.

Robert C. Byrd

~~*Vice President of the United States and*~~

President of the Senate Pro Tempore.

APPROVED

NOV 20 2001

George Bush

11/20

SS/ RM NO. 499748

WHITE HOUSE STAFFING MEMORANDUM

Date: 11-16-01 ACTION / CONCURRENCE / COMMENT DUE BY: 11-19-01 10:00 AM

Subject: ENROLLED BILL H.R. 768 -- NEED-BASED EDUCATIONAL AID ACT OF 2001
SPONSORS -- REP. SMITH (R) TEXAS AND REP. FRANK (D) MASSACHUSETTS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☑	☐
CARD	☑	☐	HUGHES	☑	☐
BLAKEMAN	☐	☐	IRASTORZA	☐	☐
BOLTEN	☑	☐	JOHNSON	☐	☐
CALIO	☑	☐	LINDSEY	☑	☐
CONNAUGHTON	☐	☐	MIERS	☐	☑
DANIELS	☐	☑	RICE	☑	☐
FLEISCHER	☐	☑	RIDGE	☑	☐
GERSON	☐	☐	ROVE	☑	☐
GONZALES	☑	☐	SPELLINGS	☑	☐
HAGIN	☐	☐	CLERK	☐	☑
HAWKINS	☑	☐	________	☐	☐

'01 NOV 19 AM11:35

REMARKS:
PLEASE SEND COMMENTS TO THE STAFF SECRETARY, X62702, NO LATER 10:00 A.M., MONDAY, NOVEMBER 19, 2001. THANK YOU.

RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

November 16, 2001

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Sponsors - Rep. Smith (R) Texas and Rep. Frank (D) Massachusetts

Last Day for Action

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Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Department of Education	Defers to Justice (Informally)

Discussion

Beginning in the mid-1950s, a number of private colleges and universities agreed to award institutional student aid, i.e., aid from the school's own funds, solely on the basis of financial need. These schools also agreed to use common principles to assess each student's financial need and to provide essentially the same financial aid award to students admitted to more than one of the participating institutions. Among the schools engaging in this practice was a group (called the Ivy Overlap Group) made up of the eight Ivy League schools and MIT. The practice continued undisturbed from the 1950s through the late 1980s.

In 1989, the Antitrust Division of the Department of Justice brought suit against the nine members of the Ivy Overlap Group to enjoin these practices, and, in 1991, the eight Ivy League schools agreed to end the practice. In 1992, in response to these actions, Congress included in the Higher Education Amendments of 1992 (P.L. 102-325) a temporary antitrust exemption,

through September 30, 1994, that allowed participating institutions to agree to award financial aid on the basis of need only and to use common principles of needs analysis. This temporary exemption applied only to institutions that admit students on a need-blind basis and specifically prohibited any agreement on the terms of a financial aid award to any specific student.

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Conclusion and Recommendations

We join the Department of Justice in recommending approval of H.R. 768, which passed the Senate by unanimous consent and the House by a vote of 400-0.

Mitchell E. Daniels, Jr.
Director

Enclosures

11/20

SS/ RM NO. 499748

WHITE HOUSE STAFFING MEMORANDUM

Date: 11-16-01 ACTION / CONCURRENCE / COMMENT DUE BY: 11-19-01 10:00 AM

Subject: ENROLLED BILL H.R. 768 -- NEED-BASED EDUCATIONAL AID ACT OF 2001
SPONSORS -- REP. SMITH (R) TEXAS AND REP. FRANK (D) MASSACHUSETTS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT N/C	☑	☐	HUBBARD concur	☑	☐
CARD OK	☑	☐	HUGHES Jill checking	☑	☐
BLAKEMAN	☐	☐	IRASTORZA	☐	☐
BOLTEN NC	☑	☐	JOHNSON	☐	☐
CALIO Michael w/call back OK	☑	☐	LINDSEY ok (cell phone)	☑	☐
CONNAUGHTON	☐	☐	MIERS	☐	☑
DANIELS	☐	☑	RICE N/C	☑	☐
FLEISCHER	☐	☑	RIDGE	☑	☐
GERSON	☐	☐	ROVE N/C (telephone)	☑	☐
GONZALES N/C	☑	☐	SPELLINGS ok	☑	☐
HAGIN	☐	☐	CLERK	☐	☑
HAWKINS left msg N/C	☑	☐	________	☐	☐

REMARKS:
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RESPONSE:

Harriet E. Miers
Assistant to the President
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Ext. 62702

SS/ RM NO. 499748

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'01 NOV 19 PM 6:22

Date: 11-16-01 ACTION / CONCURRENCE / COMMENT DUE BY: 11-19-01 10:00 AM

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	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	✓		HUBBARD	✓	
CARD	✓		HUGHES	✓	
BLAKEMAN			IRASTORZA		
BOLTEN	✓		JOHNSON		
CALIO	✓		LINDSEY	✓	
CONNAUGHTON			MIERS		✓
DANIELS		✓	RICE	✓	
FLEISCHER		✓	RIDGE	✓	
GERSON			ROVE	✓	
GONZALES	✓		SPELLINGS		
HAGIN			CLERK		✓
HAWKINS	✓		______		

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No comments

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Last Day for Action

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Office of Management and Budget	Approval
Department of Justice	Approval
Department of Education	Defers to Justice (Informally)

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11/16/01 FRI 22:55 FAX 001

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*** TX REPORT ***
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TRANSMISSION OK

TX/RX NO	0914
CONNECTION TEL	66212
CONNECTION ID	
ST. TIME	11/16 22:54
USAGE T	01'44
PGS. SENT	4
RESULT	OK

SS/ RM NO. 499748

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BOLTEN	☑	☐	JOHNSON	☐	☐
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CONNAUGHTON	☐	☐	MIERS	☐	☑
DANIELS	☐	☑	RICE	☑	☐
FLEISCHER	☐	☑	RIDGE	☑	☐
GERSON	☐	☐	ROVE	☑	☐
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HAGIN	☐	☐	CLERK	☐	☑
HAWKINS	☑	☐	________	☐	☐

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The enrolled bill would retroactively extend the expiration date of the existing temporary antitrust exemption by seven years, from September 30, 2001, to September 30, 2008. The enrolled bill would also require the General Accounting Office (GAO) to conduct a study of the effect of the antitrust exemption on institutional student aid. In determining the content of the study, GAO would be required to consult with the institutions of higher education participating under the antitrust exemption and the Antitrust Division of the Department of Justice. The study would have to examine the needs analysis methodologies used by participating institutions and identify trends in undergraduate costs of attendance and institutional undergraduate grant aid among participating institutions. The study would be required to assess the effect the antitrust exemption has had on institutional undergraduate grant aid and parental contributions to undergraduate costs of attendance. GAO would be required to submit its report to the Senate and House Judiciary Committees no later than September 30, 2006. GAO would be prohibited from identifying any individual institution of higher education in information submitted in the report unless the information on that institution is already available to the public.

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Conclusion and Recommendations

We join the Department of Justice in recommending approval of H.R. 768, which passed the Senate by unanimous consent and the House by a vote of 400-0.

MEDaniels

Mitchell E. Daniels, Jr.
Director

Enclosures

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*** TX REPORT ***
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TRANSMISSION OK

TX/RX NO	0913
CONNECTION TEL	51005
CONNECTION ID	
ST. TIME	11/16 22:51
USAGE T	01'43
PGS. SENT	4
RESULT	OK

SS/ RM NO. 499748

WHITE HOUSE STAFFING MEMORANDUM

Date: 11-16-01 ACTION / CONCURRENCE / COMMENT DUE BY: 11-19-01 10:00 AM

Subject: ENROLLED BILL H.R. 768 -- NEED-BASED EDUCATIONAL AID ACT OF 2001
SPONSORS -- REP. SMITH (R) TEXAS AND REP. FRANK (D) MASSACHUSETTS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☑	☐
CARD	☑	☐	HUGHES	☑	☐
BLAKEMAN	☐	☐	IRASTORZA	☐	☐
BOLTEN	☑	☐	JOHNSON	☐	☐
CALIO	☑	☐	LINDSEY	☑	☐
CONNAUGHTON	☐	☐	MIERS	☐	☑
DANIELS	☐	☑	RICE	☑	☐
FLEISCHER	☐	☑	RIDGE	☑	☐
GERSON	☐	☐	ROVE	☑	☐
GONZALES	☑	☐	SPELLINGS	☐	☐
HAGIN	☐	☐	CLERK	☐	☑
HAWKINS	☑	☐	____________	☐	☐

REMARKS:
PLEASE SEND COMMENTS TO THE STAFF SECRETARY, X62702, NO LATER 10:00 A.M., MONDAY, NOVEMBER 19, 2001. THANK YOU.

SS/ RM NO. 499748

WHITE HOUSE STAFFING MEMORANDUM

Date: 11-16-01 ACTION / CONCURRENCE / COMMENT DUE BY: 11-19-01 10:00 AM

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	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☑	☐
CARD	☑	☐	HUGHES	☑	☐
BLAKEMAN	☐	☐	IRASTORZA	☐	☐
BOLTEN	☑	☐	JOHNSON	☐	☐
CALIO	☑	☐	LINDSEY	☑	☐
CONNAUGHTON	☐	☐	MIERS	☐	☑
DANIELS	☐	☑	RICE	☑	☐
FLEISCHER	☐	☑	RIDGE	☑	☐
GERSON	☐	☐	ROVE	☑	☐
GONZALES	☑	☐	SPELLINGS	☐	☐
HAGIN	☐	☐	CLERK	☐	☑
HAWKINS	☑	☐	______	☐	☐

REMARKS:
PLEASE SEND COMMENTS TO THE STAFF SECRETARY, X62702, NO LATER 10:00 A.M., MONDAY, NOVEMBER 19, 2001. THANK YOU.

RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

November 16, 2001

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 768 - Need-Based Educational Aid Act of 2001
Sponsors - Rep. Smith (R) Texas and Rep. Frank (D) Massachusetts

Last Day for Action

November 24, 2001 - Saturday

Purpose

Extends by seven years, through September 2008, an antitrust exemption that permits certain institutions of higher education to share information that assists them in providing need-based financial aid.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Department of Education	Defers to Justice (Informally)

Discussion

Beginning in the mid-1950s, a number of private colleges and universities agreed to award institutional student aid, i.e., aid from the school's own funds, solely on the basis of financial need. These schools also agreed to use common principles to assess each student's financial need and to provide essentially the same financial aid award to students admitted to more than one of the participating institutions. Among the schools engaging in this practice was a group (called the Ivy Overlap Group) made up of the eight Ivy League schools and MIT. The practice continued undisturbed from the 1950s through the late 1980s.

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Conclusion and Recommendations

We join the Department of Justice in recommending approval of H.R. 768, which passed the Senate by unanimous consent and the House by a vote of 400-0.

Mitchell E. Daniels, Jr.
Director

Enclosures

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*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	0912
CONNECTION TEL	56958
CONNECTION ID	
ST. TIME	11/16 22:49
USAGE T	01'44
PGS. SENT	4
RESULT	OK

SS/ RM NO. 499748

WHITE HOUSE STAFFING MEMORANDUM

Date: 11-16-01 ACTION / CONCURRENCE / COMMENT DUE BY: 11-19-01 10:00 AM

Subject: ENROLLED BILL H.R. 768 -- NEED-BASED EDUCATIONAL AID ACT OF 2001
SPONSORS -- REP. SMITH (R) TEXAS AND REP. FRANK (D) MASSACHUSETTS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☑	☐
CARD	☑	☐	HUGHES	☑	☐
BLAKEMAN	☐	☐	IRASTORZA	☐	☐
BOLTEN	☑	☐	JOHNSON	☐	☐
CALIO	☑	☐	LINDSEY	☑	☐
CONNAUGHTON	☐	☐	MIERS	☐	☑
DANIELS	☐	☑	RICE	☑	☐
FLEISCHER	☐	☑	RIDGE	☑	☐
GERSON	☐	☐	ROVE	☑	☐
GONZALES	☑	☐	SPELLINGS	☐	☐
HAGIN	☐	☐	CLERK	☐	☑
HAWKINS	☑	☐	______	☐	☐

REMARKS:
PLEASE SEND COMMENTS TO THE STAFF SECRETARY, X62702, NO LATER 10:00 A.M., MONDAY, NOVEMBER 19, 2001. THANK YOU.

SS/ RM NO. 499748

WHITE HOUSE STAFFING MEMORANDUM

Date: 11-16-01 ACTION / CONCURRENCE / COMMENT DUE BY: 11-19-01 10:00 AM

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	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☑	☐
CARD	☑	☐	HUGHES	☑	☐
BLAKEMAN	☐	☐	IRASTORZA	☐	☐
BOLTEN	☑	☐	JOHNSON	☐	☐
CALIO	☑	☐	LINDSEY	☑	☐
CONNAUGHTON	☐	☐	MIERS	☐	☑
DANIELS	☐	☑	RICE	☑	☐
FLEISCHER	☐	☑	RIDGE	☑	☐
GERSON	☐	☐	ROVE	☑	☐
GONZALES	☑	☐	SPELLINGS	☐	☐
HAGIN	☐	☐	CLERK	☐	☑
HAWKINS	☑	☐	________	☐	☐

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RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

November 16, 2001

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 768 - Need-Based Educational Aid Act of 2001
Sponsors - Rep. Smith (R) Texas and Rep. Frank (D) Massachusetts

Last Day for Action

November 24, 2001 - Saturday

Purpose

Extends by seven years, through September 2008, an antitrust exemption that permits certain institutions of higher education to share information that assists them in providing need-based financial aid.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Department of Education	Defers to Justice (Informally)

Discussion

Beginning in the mid-1950s, a number of private colleges and universities agreed to award institutional student aid, i.e., aid from the school's own funds, solely on the basis of financial need. These schools also agreed to use common principles to assess each student's financial need and to provide essentially the same financial aid award to students admitted to more than one of the participating institutions. Among the schools engaging in this practice was a group (called the Ivy Overlap Group) made up of the eight Ivy League schools and MIT. The practice continued undisturbed from the 1950s through the late 1980s.

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Conclusion and Recommendations

We join the Department of Justice in recommending approval of H.R. 768, which passed the Senate by unanimous consent and the House by a vote of 400-0.

MEDaniels Jr

Mitchell E. Daniels, Jr.
Director

Enclosures

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*** TX REPORT ***
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TRANSMISSION OK

TX/RX NO	0911
CONNECTION TEL	912544860295
CONNECTION ID	
ST. TIME	11/16 22:46
USAGE T	02'17
PGS. SENT	4
RESULT	OK

SS/ RM NO. 499748

WHITE HOUSE STAFFING MEMORANDUM

Date: 11-16-01 ACTION / CONCURRENCE / COMMENT DUE BY: 11-19-01 10:00 AM

Subject: ENROLLED BILL H.R. 768 -- NEED-BASED EDUCATIONAL AID ACT OF 2001
SPONSORS -- REP. SMITH (R) TEXAS AND REP. FRANK (D) MASSACHUSETTS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☑	☐
CARD	☑	☐	HUGHES	☑	☐
BLAKEMAN	☐	☐	IRASTORZA	☐	☐
BOLTEN	☑	☐	JOHNSON	☐	☐
CALIO	☑	☐	LINDSEY	☑	☐
CONNAUGHTON	☐	☐	MIERS	☐	☑
DANIELS	☐	☑	RICE	☑	☐
FLEISCHER	☐	☑	RIDGE	☑	☐
GERSON	☐	☐	ROVE	☑	☐
GONZALES	☑	☐	SPELLINGS	☐	☐
HAGIN	☐	☐	CLERK	☐	☑
HAWKINS	☑	☐	______	☐	☐

REMARKS:
PLEASE SEND COMMENTS TO THE STAFF SECRETARY, X62702, NO LATER 10:00 A.M., MONDAY, NOVEMBER 19, 2001. THANK YOU.

SS/ RM NO. 499748

WHITE HOUSE STAFFING MEMORANDUM

Date: 11-16-01 ACTION / CONCURRENCE / COMMENT DUE BY: 11-19-01 10:00 AM

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SPONSORS -- REP. SMITH (R) TEXAS AND REP. FRANK (D) MASSACHUSETTS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☑	☐
CARD	☑	☐	HUGHES	☑	☐
BLAKEMAN	☐	☐	IRASTORZA	☐	☐
BOLTEN	☑	☐	JOHNSON	☐	☐
CALIO	☑	☐	LINDSEY	☑	☐
CONNAUGHTON	☐	☐	MIERS	☐	☑
DANIELS	☐	☑	RICE	☑	☐
FLEISCHER	☐	☑	RIDGE	☑	☐
GERSON	☐	☐	ROVE	☑	☐
GONZALES	☑	☐	SPELLINGS	☐	☐
HAGIN	☐	☐	CLERK	☐	☑
HAWKINS	☑	☐	____________	☐	☐

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RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

November 16, 2001

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 768 - Need-Based Educational Aid Act of 2001
Sponsors - Rep. Smith (R) Texas and Rep. Frank (D) Massachusetts

Last Day for Action

November 24, 2001 - Saturday

Purpose

Extends by seven years, through September 2008, an antitrust exemption that permits certain institutions of higher education to share information that assists them in providing need-based financial aid.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Department of Education	Defers to Justice (Informally)

Discussion

Beginning in the mid-1950s, a number of private colleges and universities agreed to award institutional student aid, i.e., aid from the school's own funds, solely on the basis of financial need. These schools also agreed to use common principles to assess each student's financial need and to provide essentially the same financial aid award to students admitted to more than one of the participating institutions. Among the schools engaging in this practice was a group (called the Ivy Overlap Group) made up of the eight Ivy League schools and MIT. The practice continued undisturbed from the 1950s through the late 1980s.

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Conclusion and Recommendations

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MEDaniels

Mitchell E. Daniels, Jr.
Director

Enclosures

SS/ RM NO. 499748

WHITE HOUSE STAFFING MEMORANDUM

Date: 11-16-01 ACTION / CONCURRENCE / COMMENT DUE BY: 11-19-01 10:00 AM

Subject: ENROLLED BILL H.R. 768 -- NEED-BASED EDUCATIONAL AID ACT OF 2001
SPONSORS -- REP. SMITH (R) TEXAS AND REP. FRANK (D) MASSACHUSETTS

01 NOV 17 PM 5:12

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☑	☐
CARD	☑	☐	HUGHES	☑	☐
BLAKEMAN	☐	☐	IRASTORZA	☐	☐
BOLTEN	☑	☐	JOHNSON	☐	☐
CALIO	☑	☐	LINDSEY	☑	☐
CONNAUGHTON	☐	☐	MIERS	☐	☑
DANIELS	☐	☑	RICE	☑	☐
FLEISCHER	☐	☑	RIDGE	☑	☐
GERSON	☐	☐	ROVE	☑	☐
GONZALES	☑	☐	SPELLINGS	☐	☐
HAGIN	☐	☐	CLERK	☐	☑
HAWKINS	☑	☐	____________	☐	☐

REMARKS:
PLEASE SEND COMMENTS TO THE STAFF SECRETARY, X62702, NO LATER 10:00 A.M., MONDAY, NOVEMBER 19, 2001. THANK YOU.

RESPONSE:

Jn AHC 11/17 6:30pm

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

November 16, 2001

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 768 - Need-Based Educational Aid Act of 2001
Sponsors - Rep. Smith (R) Texas and Rep. Frank (D) Massachusetts

Last Day for Action

November 24, 2001 - Saturday

Purpose

Extends by seven years, through September 2008, an antitrust exemption that permits certain institutions of higher education to share information that assists them in providing need-based financial aid.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Department of Education	Defers to Justice (Informally)

Discussion

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The enrolled bill would retroactively extend the expiration date of the existing temporary antitrust exemption by seven years, from September 30, 2001, to September 30, 2008. The enrolled bill would also require the General Accounting Office (GAO) to conduct a study of the effect of the antitrust exemption on institutional student aid. In determining the content of the study, GAO would be required to consult with the institutions of higher education participating under the antitrust exemption and the Antitrust Division of the Department of Justice. The study would have to examine the needs analysis methodologies used by participating institutions and identify trends in undergraduate costs of attendance and institutional undergraduate grant aid among participating institutions. The study would be required to assess the effect the antitrust exemption has had on institutional undergraduate grant aid and parental contributions to undergraduate costs of attendance. GAO would be required to submit its report to the Senate and House Judiciary Committees no later than September 30, 2006. GAO would be prohibited from identifying any individual institution of higher education in information submitted in the report unless the information on that institution is already available to the public.

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Conclusion and Recommendations

We join the Department of Justice in recommending approval of H.R. 768, which passed the Senate by unanimous consent and the House by a vote of 400-0.

MEDaniels

Mitchell E. Daniels, Jr.
Director

Enclosures

SS/ RM NO. 499748

WHITE HOUSE STAFFING MEMORANDUM

Date: 11-16-01 ACTION / CONCURRENCE / COMMENT DUE BY: 11-19-01 10:00 AM

Subject: ENROLLED BILL H.R. 768 -- NEED-BASED EDUCATIONAL AID ACT OF 2001
SPONSORS -- REP. SMITH (R) TEXAS AND REP. FRANK (D) MASSACHUSETTS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	✓	☐	HUBBARD	✓	☐
CARD	✓	☐	HUGHES	✓	☐
BLAKEMAN	☐	☐	IRASTORZA	☐	☐
BOLTEN	✓	☐	JOHNSON	☐	☐
CALIO	✓	☐	LINDSEY	✓	☐
CONNAUGHTON	☐	☐	MIERS	☐	✓
DANIELS	☐	✓	RICE	✓	☐
FLEISCHER	☐	✓	RIDGE	✓	☐
GERSON	☐	☐	ROVE	✓	☐
GONZALES	✓	☐	SPELLINGS	☐	☐
HAGIN	☐	☐	CLERK	☐	✓
HAWKINS	✓	☐	____________	☐	☐

'01 NOV 17 [illegible] 2:51

REMARKS:
PLEASE SEND COMMENTS TO THE STAFF SECRETARY, X62702, NO LATER 10:00 A.M., MONDAY, NOVEMBER 19, 2001. THANK YOU.

November 17, 2001

RESPONSE: The NSC has no comment.

Condoleezza Rice
Assistant to the President
for National Security Affairs

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

November 16, 2001

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 768 - Need-Based Educational Aid Act of 2001
Sponsors - Rep. Smith (R) Texas and Rep. Frank (D) Massachusetts

Last Day for Action

November 24, 2001 - Saturday

Purpose

Extends by seven years, through September 2008, an antitrust exemption that permits certain institutions of higher education to share information that assists them in providing need-based financial aid.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Department of Education	Defers to Justice (Informally)

Discussion

Beginning in the mid-1950s, a number of private colleges and universities agreed to award institutional student aid, i.e., aid from the school's own funds, solely on the basis of financial need. These schools also agreed to use common principles to assess each student's financial need and to provide essentially the same financial aid award to students admitted to more than one of the participating institutions. Among the schools engaging in this practice was a group (called the Ivy Overlap Group) made up of the eight Ivy League schools and MIT. The practice continued undisturbed from the 1950s through the late 1980s.

In 1989, the Antitrust Division of the Department of Justice brought suit against the nine members of the Ivy Overlap Group to enjoin these practices, and, in 1991, the eight Ivy League schools agreed to end the practice. In 1992, in response to these actions, Congress included in the Higher Education Amendments of 1992 (P.L. 102-325) a temporary antitrust exemption,

through September 30, 1994, that allowed participating institutions to agree to award financial aid on the basis of need only and to use common principles of needs analysis. This temporary exemption applied only to institutions that admit students on a need-blind basis and specifically prohibited any agreement on the terms of a financial aid award to any specific student.

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Conclusion and Recommendations

We join the Department of Justice in recommending approval of H.R. 768, which passed the Senate by unanimous consent and the House by a vote of 400-0.

MEDaniels

Mitchell E. Daniels, Jr.
Director

Enclosures

SS/ RM NO. 499748

WHITE HOUSE STAFFING MEMORANDUM

Date: 11-16-01 ACTION / CONCURRENCE / COMMENT DUE BY: 11-19-01 10:00 AM

Subject: ENROLLED BILL H.R. 768 -- NEED-BASED EDUCATIONAL AID ACT OF 2001
SPONSORS -- REP. SMITH (R) TEXAS AND REP. FRANK (D) MASSACHUSETTS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☑	☐
CARD	☑	☐	HUGHES	☑	☐
BLAKEMAN	☐	☐	IRASTORZA	☐	☐
BOLTEN	☑	☐	JOHNSON	☐	☐
CALIO	☑	☐	LINDSEY	☑	☐
CONNAUGHTON	☐	☐	MIERS	☐	☑
DANIELS	☐	☑	RICE	☑	☐
FLEISCHER	☐	☑	RIDGE	☑	☐
GERSON	☐	☐	ROVE	☑	☐
GONZALES	☑	☐	SPELLINGS	☐	☐
HAGIN	☐	☐	CLERK	☐	☑
HAWKINS	☑	☐	______	☐	☐

REMARKS:
PLEASE SEND COMMENTS TO THE STAFF SECRETARY, X62702, NO LATER 10:00 A.M., MONDAY, NOVEMBER 19, 2001. THANK YOU.

11/18

RESPONSE:

Concur

[illegible]

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

OFFICE OF THE VICE PRESIDENT
WASHINGTON

'01 NOV 19 AM10:24

November 19, 2001

MEMORANDUM FOR HARRIET MIERS
STAFF SECRETARY

FROM: **JONATHAN BURKS**
DEPUTY STAFF SECRETARY TO THE VICE PRESIDENT

SUBJECT: **Enrolled Bill H.R. 768 Need-Based Educational Aid Act of 2001**

The Office of the Vice President has reviewed the above-referenced draft and has no comments.

11/19/2001 MON 08:07 FAX ☑001
11/17/01 SAT 11:21 FAX ☑001

SS/ RM NO. 499748

WHITE HOUSE STAFFING MEMORANDUM

Noel

Date: 11-16-01 ACTION / CONCERNENCE / COMMENT DUE BY: 11-19-01 10:00 AM

Subject: ENROLLED BILL H.R. 768 -- NEED-BASED EDUCATIONAL AID ACT OF 2001
SPONSORS -- REP. SMITH (R) TEXAS AND REP. FRANK (D) MASSACHUSETTS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☑	☐
CARD	☑	☐	HUGHES	☑	☐
BLAKEMAN	☐	☐	IRASTORZA	☐	☐
BOLTEN	☑	☐	JOHNSON	☐	☐
CALIO	☑	☐	LINDSEY	☑	☐
CONNAUGHTON	☐	☐	MIERS	☐	☑
DANIELS	☐	☑	RICE	☑	☐
FLEISCHER	☐	☑	RIDGE	☑	☐
GERSON	☐	☐	ROVE	☑	☐
GONZALES	☑	☐	SPELLINGS	☐	☐
HAGIN	☐	☐	CLERK	☐	☑
HAWKINS	☑	☐	________	☐	☐

01 NOV 18 AM 10:24

REMARKS:
PLEASE SEND COMMENTS TO THE STAFF SECRETARY, X62702, NO LATER 10:00 A.M., MONDAY, NOVEMBER 19, 2001. THANK YOU.

Counsel's Office has no comments. N/F

RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

SS/ RM NO. 499748

WHITE HOUSE STAFFING MEMORANDUM

Date: 11-16-01 ACTION / CONCURRENCE / COMMENT DUE BY: 11-19-01 10:00 AM

Subject: ENROLLED BILL H.R. 768 -- NEED-BASED EDUCATIONAL AID ACT OF 2001
SPONSORS -- REP. SMITH (R) TEXAS AND REP. FRANK (D) MASSACHUSETTS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☑	☐
CARD	☑	☐	HUGHES	☑	☐
BLAKEMAN	☐	☐	IRASTORZA	☐	☐
BOLTEN	☑	☐	JOHNSON	☐	☐
CALIO	☑	☐	LINDSEY	☑	☐
CONNAUGHTON	☐	☐	MIERS	☐	☑
DANIELS	☐	☑	RICE	☑	☐
FLEISCHER	☐	☑	RIDGE	☑	☐
GERSON	☐	☐	ROVE	☑	☐
GONZALES	☑	☐	SPELLINGS	☐	☐
HAGIN	☐	☐	CLERK	☐	☑
HAWKINS	☑	☐	______	☐	☐

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REMARKS:
PLEASE SEND COMMENTS TO THE STAFF SECRETARY, X62702, NO LATER 10:00 A.M., MONDAY, NOVEMBER 19, 2001. THANK YOU.

OK - NEC

RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

November 16, 2001

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 768 - Need-Based Educational Aid Act of 2001
Sponsors - Rep. Smith (R) Texas and Rep. Frank (D) Massachusetts

Last Day for Action

November 24, 2001 - Saturday

Purpose

Extends by seven years, through September 2008, an antitrust exemption that permits certain institutions of higher education to share information that assists them in providing need-based financial aid.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Department of Education	Defers to Justice (Informally)

Discussion

Beginning in the mid-1950s, a number of private colleges and universities agreed to award institutional student aid, i.e., aid from the school's own funds, solely on the basis of financial need. These schools also agreed to use common principles to assess each student's financial need and to provide essentially the same financial aid award to students admitted to more than one of the participating institutions. Among the schools engaging in this practice was a group (called the Ivy Overlap Group) made up of the eight Ivy League schools and MIT. The practice continued undisturbed from the 1950s through the late 1980s.

In 1989, the Antitrust Division of the Department of Justice brought suit against the nine members of the Ivy Overlap Group to enjoin these practices, and, in 1991, the eight Ivy League schools agreed to end the practice. In 1992, in response to these actions, Congress included in the Higher Education Amendments of 1992 (P.L. 102-325) a temporary antitrust exemption,

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Conclusion and Recommendations

We join the Department of Justice in recommending approval of H.R. 768, which passed the Senate by unanimous consent and the House by a vote of 400-0.

MEDaniels Jr

Mitchell E. Daniels, Jr.
Director

Enclosures

SS/ RM NO. 499748

WHITE HOUSE STAFFING MEMORANDUM

Date: 11-16-01 ACTION / CONCURRENCE / COMMENT DUE BY: 11-19-01 10:00 AM

Subject: ENROLLED BILL H.R. 768 -- NEED-BASED EDUCATIONAL AID ACT OF 2001
SPONSORS -- REP. SMITH (R) TEXAS AND REP. FRANK (D) MASSACHUSETTS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☑	☐
CARD	☑	☐	HUGHES	☑	☐
BLAKEMAN	☐	☐	IRASTORZA	☐	☐
BOLTEN	☑	☐	JOHNSON	☐	☐
CALIO	☑	☐	LINDSEY	☑	☐
CONNAUGHTON	☐	☐	MIERS	☐	☑
DANIELS	☐	☑	RICE	☑	☐
FLEISCHER	☐	☑	RIDGE	☑	☐
GERSON	☐	☐	ROVE	☑	☐
GONZALES	☑	☐	SPELLINGS	☐	☐
HAGIN	☐	☐	CLERK	☐	☑
HAWKINS	☑	☐	______	☐	☐

REMARKS:
PLEASE SEND COMMENTS TO THE STAFF SECRETARY, X62702, NO LATER 10:00 A.M., MONDAY, NOVEMBER 19, 2001. THANK YOU.

RESPONSE:
Legislative Affairs (Howard) ok

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

November 16, 2001

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 768 - Need-Based Educational Aid Act of 2001
Sponsors - Rep. Smith (R) Texas and Rep. Frank (D) Massachusetts

Last Day for Action

November 24, 2001 - Saturday

Purpose

Extends by seven years, through September 2008, an antitrust exemption that permits certain institutions of higher education to share information that assists them in providing need-based financial aid.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Department of Education	Defers to Justice (Informally)

Discussion

Beginning in the mid-1950s, a number of private colleges and universities agreed to award institutional student aid, i.e., aid from the school's own funds, solely on the basis of financial need. These schools also agreed to use common principles to assess each student's financial need and to provide essentially the same financial aid award to students admitted to more than one of the participating institutions. Among the schools engaging in this practice was a group (called the Ivy Overlap Group) made up of the eight Ivy League schools and MIT. The practice continued undisturbed from the 1950s through the late 1980s.

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Conclusion and Recommendations

We join the Department of Justice in recommending approval of H.R. 768, which passed the Senate by unanimous consent and the House by a vote of 400-0.

MEDaniels

Mitchell E. Daniels, Jr.
Director

Enclosures

SS/ RM NO. 499748 11/20

WHITE HOUSE STAFFING MEMORANDUM

Date: 11-16-01 ACTION / CONCURRENCE / COMMENT DUE BY: 11-19-01 10:00 AM

Subject: ENROLLED BILL H.R. 768 -- NEED-BASED EDUCATIONAL AID ACT OF 2001 SPONSORS -- REP. SMITH (R) TEXAS AND REP. FRANK (D) MASSACHUSETTS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	HUBBARD	☑	☐
CARD	☑	☐	HUGHES	☑	☐
BLAKEMAN	☐	☐	IRASTORZA	☐	☐
BOLTEN	☑	☐	JOHNSON	☐	☐
CALIO	☑	☐	LINDSEY	☑	☐
CONNAUGHTON	☐	☐	MIERS	☐	☑
DANIELS	☐	☑	RICE	☑	☐
FLEISCHER	☐	☑	RIDGE	☑	☐
GERSON	☐	☐	ROVE	☑	☐
GONZALES	☑	☐	SPELLINGS	☐	☐
HAGIN	☐	☐	CLERK	☐	☑
HAWKINS	☑	☐	______	☐	☐

REMARKS:
PLEASE SEND COMMENTS TO THE STAFF SECRETARY, X62702, NO LATER 10:00 A.M., MONDAY, NOVEMBER 19, 2001. THANK YOU.

RESPONSE:

Harriet E. Miers
Assistant to the President
and Staff Secretary
Ext. 62702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

November 16, 2001

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 768 - Need-Based Educational Aid Act of 2001
Sponsors - Rep. Smith (R) Texas and Rep. Frank (D) Massachusetts

Last Day for Action

November 24, 2001 - Saturday

Purpose

Extends by seven years, through September 2008, an antitrust exemption that permits certain institutions of higher education to share information that assists them in providing need-based financial aid.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Department of Education	Defers to Justice (Informally)

Discussion

Beginning in the mid-1950s, a number of private colleges and universities agreed to award institutional student aid, i.e., aid from the school's own funds, solely on the basis of financial need. These schools also agreed to use common principles to assess each student's financial need and to provide essentially the same financial aid award to students admitted to more than one of the participating institutions. Among the schools engaging in this practice was a group (called the Ivy Overlap Group) made up of the eight Ivy League schools and MIT. The practice continued undisturbed from the 1950s through the late 1980s.

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Conclusion and Recommendations

We join the Department of Justice in recommending approval of H.R. 768, which passed the Senate by unanimous consent and the House by a vote of 400-0.

MEDaniels

Mitchell E. Daniels, Jr.
Director

Enclosures

U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

November 13, 2001

The Honorable Mitchell Daniels
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Daniels:

This responds to your request for the views and recommendation of the Justice Department on the enrolled bill H.R. 768, the "Need-Based Educational Aid Act of 2001." The Justice Department recommends that the President sign the bill.

H.R. 768 would extend for seven years an antitrust exemption for colleges and universities to develop jointly guidelines for assessing student financial aid needs. The exemption was enacted originally in 1992 to supersede a Justice Department antitrust enforcement action against several elite Northeastern colleges and universities. The Department charged that joint procedures participating colleges and universities were using to calculate student financial need were designed for, and had the effect of, eliminating price competition among them as to financial aid awards, thus enabling these institutions to reduce the size of those awards and their overall financial aid budgets. Originally intended as a two-year temporary exemption to enable the universities to revise their financial aid programs consistent with the antitrust laws, the exemption was extended in 1994 and again in 1997.

The original version of H.R. 768 would have made the exemption permanent. However, the Department is pleased that, once again, the final version of the legislation would not make the exemption permanent, although the seven-year extension is considerably longer than the length of the previous three exemptions. We believe that the concerns we have expressed helped persuade Congress not to make the exemption permanent. We are also encouraged that, for the first time, the legislation requires that the General Accounting Office, in consultation with the Justice Department, conduct a thorough examination of the exemption's effects. We hope that this examination will provide Congress with a well-informed perspective from which to evaluate any proposal to extend the exemption further. We note that the Senate passed the final version of H.R. 768 by unanimous consent and the House of Representatives passed it under suspension of the rules.

For the foregoing reasons and in light of the widespread support in Congress for this extension, the Department recommends that the President sign the bill. We appreciate the opportunity to present our views. Please feel free to call upon us if we may be of additional assistance.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

Old Bill backup

Memo to the Record

Date: 06/27/2016

Collection: Executive Clerk, Office of the Saunders, G. Timothy (Tim)

Series: Bill Flies

Folder Title: 11/20/2001 [H. R.768]

RE: Need-Based Educational Aid Act of 2001

A copy of the report entitled "Need-Based Educational Aid Act of 2001" is included at this location in this folder. It was not scanned. It can be viewed at https://www.congress.gov/107/crpt/hrpt32/CRPT-107hrpt32.pdf If this link is broken, please contact the George W. Bush Presidential Library archives.

One Hundred Seventh Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Wednesday, the third day of January, two thousand and one

An Act

To amend the Improving America's Schools Act of 1994 to extend the favorable treatment of need-based educational aid under the antitrust laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Need-Based Educational Aid Act of 2001".

SEC. 2. AMENDMENT.

Section 568(d) of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note) is amended by striking "2001" and inserting "2008".

SEC. 3. GAO STUDY AND REPORT.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General shall conduct a study of the effect of the antitrust exemption on institutional student aid under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note).

(2) CONSULTATION.—The Comptroller General shall have final authority to determine the content of the study under paragraph (1), but in determining the content of the study, the Comptroller General shall consult with—

(A) the institutions of higher education participating under the antitrust exemption under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note) (referred to in this Act as the "participating institutions");

(B) the Antitrust Division of the Department of Justice; and

(C) other persons that the Comptroller General determines are appropriate.

(3) MATTERS STUDIED.—

(A) IN GENERAL.—The study under paragraph (1) shall—

(i) examine the needs analysis methodologies used by participating institutions;

(ii) identify trends in undergraduate costs of attendance and institutional undergraduate grant aid among participating institutions, including—

(I) the percentage of first-year students receiving institutional grant aid;

(II) the mean and median grant eligibility and institutional grant aid to first-year students; and

(III) the mean and median parental and student contributions to undergraduate costs of attendance for first year students receiving institutional grant aid;

(iii) to the extent useful in determining the effect of the antitrust exemption under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note), examine—

(I) comparison data, identified in clauses (i) and (ii), from institutions of higher education that do not participate under the antitrust exemption under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note); and

(II) other baseline trend data from national benchmarks; and

(iv) examine any other issues that the Comptroller General determines are appropriate, including other types of aid affected by section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note).

(B) ASSESSMENT.—

(i) IN GENERAL.—The study under paragraph (1) shall assess what effect the antitrust exemption on institutional student aid has had on institutional undergraduate grant aid and parental contribution to undergraduate costs of attendance.

(ii) CHANGES OVER TIME.—The assessment under clause (i) shall consider any changes in institutional undergraduate grant aid and parental contribution to undergraduate costs of attendance over time for institutions of higher education, including consideration of—

(I) the time period prior to adoption of the consensus methodologies at participating institutions; and

(II) the data examined pursuant to subparagraph (A)(iii).

(b) REPORT.—

(1) IN GENERAL.—Not later than September 30, 2006, the Comptroller General shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that contains the findings and conclusions of the Comptroller General regarding the matters studied under subsection (a).

(2) IDENTIFYING INDIVIDUAL INSTITUTIONS.—The Comptroller General shall not identify an individual institution of higher education in information submitted in the report under paragraph (1) unless the information on the institution is available to the public.

(c) RECORDKEEPING REQUIREMENT.—

(1) IN GENERAL.—For the purpose of completing the study under subsection (a)(1), a participating institution shall—

(A) collect and maintain for each academic year until the study under subsection (a)(1) is completed—

(i) student-level data that is sufficient, in the judgment of the Comptroller General, to permit the analysis of expected family contributions, identified need, and undergraduate grant aid awards; and

(ii) information on formulas used by the institution to determine need; and

(B) submit the data and information under paragraph (1) to the Comptroller General at such time as the Comptroller General may reasonably require.

(2) NON-PARTICIPATING INSTITUTIONS.—Nothing in this subsection shall be construed to require an institution of higher education that does not participate under the antitrust exemption under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note) to collect and maintain data under this subsection.

SEC. 4. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on September 30, 2001.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

November 16, 2001

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Enrolled Bill H.R. 768 - Need-Based Educational Aid Act of 2001
Sponsors - Rep. Smith (R) Texas and Rep. Frank (D) Massachusetts

Last Day for Action

November 24, 2001 - Saturday

Purpose

Extends by seven years, through September 2008, an antitrust exemption that permits certain institutions of higher education to share information that assists them in providing need-based financial aid.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Department of Education	Defers to Justice (Informally)

Discussion

Beginning in the mid-1950s, a number of private colleges and universities agreed to award institutional student aid, i.e., aid from the school's own funds, solely on the basis of financial need. These schools also agreed to use common principles to assess each student's financial need and to provide essentially the same financial aid award to students admitted to more than one of the participating institutions. Among the schools engaging in this practice was a group (called the Ivy Overlap Group) made up of the eight Ivy League schools and MIT. The practice continued undisturbed from the 1950s through the late 1980s.

In 1989, the Antitrust Division of the Department of Justice brought suit against the nine members of the Ivy Overlap Group to enjoin these practices, and, in 1991, the eight Ivy League schools agreed to end the practice. In 1992, in response to these actions, Congress included in the Higher Education Amendments of 1992 (P.L. 102-325) a temporary antitrust exemption,

through September 30, 1994, that allowed participating institutions to agree to award financial aid on the basis of need only and to use common principles of needs analysis. This temporary exemption applied only to institutions that admit students on a need-blind basis and specifically prohibited any agreement on the terms of a financial aid award to any specific student.

In 1994, Congress passed another temporary exemption, through September 30, 1997, that also allowed agreement among participating institutions on the use of a common aid application form and the exchange of the student's financial information through a third party. In 1997, Congress extended the exemption again through September 30, 2001. According to the House Committee Report on H.R. 768, the exemption has encouraged several "prestigious colleges . . . to adhere to need-blind admissions and need-based aid." The Report states that a "need-based financial aid system serves social goals that the antitrust laws do not adequately address -- namely, making financial aid available to the broadest number of students solely on the basis of demonstrated need. Without it, the schools would be required to compete, through financial aid awards, for the very top students. Those very top students would get all of the aid available which would be more than their demonstrated need. The rest would get less than their demonstrated need or none at all."

The enrolled bill would retroactively extend the expiration date of the existing temporary antitrust exemption by seven years, from September 30, 2001, to September 30, 2008. The enrolled bill would also require the General Accounting Office (GAO) to conduct a study of the effect of the antitrust exemption on institutional student aid. In determining the content of the study, GAO would be required to consult with the institutions of higher education participating under the antitrust exemption and the Antitrust Division of the Department of Justice. The study would have to examine the needs analysis methodologies used by participating institutions and identify trends in undergraduate costs of attendance and institutional undergraduate grant aid among participating institutions. The study would be required to assess the effect the antitrust exemption has had on institutional undergraduate grant aid and parental contributions to undergraduate costs of attendance. GAO would be required to submit its report to the Senate and House Judiciary Committees no later than September 30, 2006. GAO would be prohibited from identifying any individual institution of higher education in information submitted in the report unless the information on that institution is already available to the public.

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Conclusion and Recommendations

We join the Department of Justice in recommending approval of H.R. 768, which passed the Senate by unanimous consent and the House by a vote of 400-0.

MEDaniels

Mitchell E. Daniels, Jr.
Director

Enclosures

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
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