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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R. _____

To amend the Higher Education Act of 1965 to describe the process of converting a proprietary institution of higher education to a nonprofit institution of higher education.

IN THE HOUSE OF REPRESENTATIVES

Mrs. MCBATH introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Higher Education Act of 1965 to describe the process of converting a proprietary institution of higher education to a nonprofit institution of higher education.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “For-Profit College
5 Conversion Accountability Act”.

1 **SEC. 2. INTEGRITY OF NONPROFIT INSTITUTIONS OF HIGH-**
2 **ER EDUCATION.**

3 Part B of title I of the Higher Education Act of 1965
4 (20 U.S.C. 1011 et seq.) is amended by adding at the end
5 the following:

6 **“SEC. 124. INTEGRITY OF NONPROFIT INSTITUTIONS OF**
7 **HIGHER EDUCATION.**

8 “(a) DETERMINATION.—The Secretary may approve
9 the conversion of an institution of higher education to a
10 nonprofit institution of higher education only if the Sec-
11 retary determines that such institution of higher education
12 meets the requirements under subsection (b).

13 “(b) APPLICATION.—To be eligible to convert and
14 participate as a nonprofit institution of higher education
15 under this Act, an institution of higher education shall
16 submit an application to the Secretary that demonstrates
17 each of the following:

18 “(1) That the institution of higher education
19 that submits such application is controlled, owned,
20 and operated by one or more nonprofit corporations
21 or associations, no part of the net earnings of which
22 inures, or may lawfully inure, to the benefit of any
23 private shareholder or individual.

24 “(2) That any assets or services acquired by the
25 institution of higher education that submits such ap-
26 plication from former owners of such institution of

1 higher education were not acquired for more than
2 the value of such assets or services.

3 “(3) That no member of the governing board of
4 the institution of higher education that submits such
5 application (other than ex officio members serving at
6 the pleasure of the remainder of the governing board
7 and receiving a fixed salary), or any person with the
8 power to appoint or remove members of such gov-
9 erning board or any immediate family member of
10 such a member of the board or such a person with
11 power of appointment, receives any substantial di-
12 rect or indirect economic benefit (including a lease,
13 promissory note, or other contract) from such insti-
14 tution of higher education.

15 “(4) That the institution of higher education
16 that submits such application is an organization de-
17 scribed in section 501(c)(3) of the Internal Revenue
18 Code of 1986 and is exempt from taxation under
19 section 501(a) of such Code.

20 “(5) Subject to subsection (c), that none of the
21 core functions of the institution of higher education
22 that submits such application are under the control
23 of, or subject to significant direction from, an entity
24 that is not a public institution of higher education
25 or other nonprofit entity.

1 “(c) PRESUMPTION OF SIGNIFICANT DIRECTION.—
2 For purposes of paragraph (5) of subsection (b), in the
3 case of an institution of higher education that submits an
4 application under such subsection, there shall be a conclu-
5 sive presumption that an entity (other than such institu-
6 tion of higher education) exercises significant direction
7 over such institution if one or more of the employees or
8 owners of the entity serves as an officer, member of the
9 board, or person holding similar authority for such institu-
10 tion.

11 “(d) TRANSITION PERIOD.—

12 “(1) IN GENERAL.—In the case of a proprietary
13 institution of higher education approved for conver-
14 sion under subsection (a), for a period of at least 5
15 years that begins on the date such institution is ap-
16 proved for such conversion, the institution shall be—

17 “(A) subject to any provision of this Act
18 and any regulation that apply to proprietary in-
19 stitutions of higher education; and

20 “(B) considered a proprietary institution of
21 higher education for purposes of this Act.

22 “(2) DEFINITION.—The term ‘proprietary insti-
23 tution of higher education’ has the meaning given
24 the term in section 102(b).

1 “(e) VALUE.—The term ‘value’, with respect to an
2 acquisition under subsection (b)(2)—

3 “(1) includes the value of any ongoing relation-
4 ship (including any contract, agreement, lease or
5 other arrangement);

6 “(2) subject to paragraph (3), may be dem-
7 onstrated through—

8 “(A) a third-party appraisal based on com-
9 parable assets acquired by, or goods or services
10 procured by, nonprofit corporations in similar
11 market conditions;

12 “(B) an independent financing of the ac-
13 quisition based upon the assets acquired; or

14 “(C) a full and open competition in the ac-
15 quisition of services or assets, as such term is
16 defined in section 2.101(b) of title 48, Code of
17 Federal Regulations, as in effect on the date of
18 enactment of the For-Profit College Conversion
19 Accountability Act; and

20 “(3) shall be subject to such other demonstra-
21 tion process determined appropriate by the Secretary
22 in a case in which the Secretary does not accept a
23 demonstration process described in paragraph (2).

24 “(f) PUBLICATION.—

1 “(1) APPLICATION.—Before the Secretary may
2 approve the conversion of an institution of higher
3 education under subsection (a), the application of
4 such institution submitted to the Secretary under
5 subsection (b) shall be published in the Federal Reg-
6 ister with an appropriate notice and comment pe-
7 riod.

8 “(2) DETERMINATION.—The Secretary shall
9 publish each determination under this section, and
10 the reasons for such determination, under the Fed-
11 eral Register.

12 “(g) PUBLIC REPRESENTATION AND MARKETING OF
13 NONPROFIT STATUS.—An institution of higher education
14 shall not promote or market itself, in any manner, as a
15 nonprofit institution of higher education unless—

16 “(1) in the case of an institution of higher edu-
17 cation that seeks to convert to a nonprofit institu-
18 tion of higher education under this section—

19 “(A) the Secretary has given final approval
20 of the conversion of the institution to a non-
21 profit institution of higher education under this
22 section;

23 “(B) an accrediting agency or association
24 recognized by the Secretary pursuant to section

1 496 has approved the nonprofit status of the
2 institution; and

3 “(C) the State has given final approval to
4 the institution as a nonprofit institution of
5 higher education, as applicable; and

6 “(2) the Commissioner of Internal Revenue has
7 approved the institution as tax exempt for purposes
8 of the Internal Revenue Code of 1986.

9 “(h) OFFICE TO MONITOR NONPROFIT INTEGRITY.—
10 Not later than 1 year after the date of enactment of the
11 For-Profit College Conversion Accountability Act, the Sec-
12 retary shall establish an office within the Department with
13 the expertise necessary to carry out this section.

14 **“SEC. 125. REVIEW OF GOVERNANCE.**

15 “The Secretary shall review the governance of an in-
16 stitution of higher education when such institution has en-
17 gaged in transactions or arrangements determined by the
18 Secretary as potential indicators of private inurement, in
19 order to promote the highest standards of nonprofit integ-
20 rity.”.