

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To require that proprietary institutions of higher education count funds provided under military and veterans education assistance programs as Federal funds for purposes of the 85/15 rule under the Higher Education Act of 1965, and for other purposes.

**IN THE SENATE OF THE UNITED STATES—116th Cong., 2d Sess.**

**S. 4049**

To authorize appropriations for fiscal year 2021 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. DURBIN

Viz:

1       At the end of subtitle E of title V, add the following:

2   **SEC. \_\_\_\_ . 85/15 RULE.**

3       (a) IN GENERAL.—Section 102(b) of the Higher

4 Education Act of 1965 (20 U.S.C. 1002(b)) is amended—

5               (1) in paragraph (1)—

6                       (A) in subparagraph (D), by striking

7                       “and” after the semicolon;

1 (B) in subparagraph (E), by striking the  
2 period at the end and inserting “; and”; and

3 (C) by adding at the end the following:

4 “(F) meets the requirements of paragraph  
5 (2).”; and

6 (2) by redesignating paragraph (2) as para-  
7 graph (3); and

8 (3) by inserting after paragraph (1) the fol-  
9 lowing:

10 “(2) REVENUE SOURCES.—

11 “(A) IN GENERAL.—In order to qualify as  
12 a proprietary institution of higher education  
13 under this subsection, an institution shall derive  
14 not less than 15 percent of the institution’s rev-  
15 enues from sources other than Federal funds,  
16 as calculated in accordance with subparagraphs  
17 (B) and (C).

18 “(B) FEDERAL FUNDS.—In this para-  
19 graph, the term ‘Federal funds’ means any  
20 Federal financial assistance provided, under  
21 this Act or any other Federal law, through a  
22 grant, contract, subsidy, loan, guarantee, insur-  
23 ance, or other means to a proprietary institu-  
24 tion, including Federal financial assistance that  
25 is disbursed or delivered to an institution or on

1           behalf of a student or to a student to be used  
2           to attend the institution, except that such term  
3           shall not include any monthly housing stipend  
4           provided under the Post-9/11 Veterans Edu-  
5           cational Assistance Program under chapter 33  
6           of title 38, United States Code.

7           “(C) IMPLEMENTATION OF NON-FEDERAL  
8           REVENUE REQUIREMENT.—In making calcula-  
9           tions under subparagraph (A), an institution of  
10          higher education shall—

11                 “(i) use the cash basis of accounting;

12                 “(ii) consider as revenue only those  
13          funds generated by the institution from—

14                         “(I) tuition, fees, and other insti-  
15                         tutional charges for students enrolled  
16                         in programs eligible for assistance  
17                         under title IV;

18                         “(II) activities conducted by the  
19                         institution that are necessary for the  
20                         education and training of the institu-  
21                         tion’s students, if such activities are—

22                                 “(aa) conducted on campus  
23                                 or at a facility under the control  
24                                 of the institution;

1 “(bb) performed under the  
2 supervision of a member of the  
3 institution’s faculty; and

4 “(cc) required to be per-  
5 formed by all students in a spe-  
6 cific educational program at the  
7 institution; and

8 “(III) a contractual arrangement  
9 with a Federal agency for the purpose  
10 of providing job training to low-in-  
11 come individuals who are in need of  
12 such training;

13 “(iii) presume that any Federal funds  
14 that are disbursed or delivered to an insti-  
15 tution on behalf of a student or directly to  
16 a student will be used to pay the student’s  
17 tuition, fees, or other institutional charges,  
18 regardless of whether the institution cred-  
19 its such funds to the student’s account or  
20 pays such funds directly to the student, ex-  
21 cept to the extent that the student’s tui-  
22 tion, fees, or other institutional charges are  
23 satisfied by—

24 “(I) grant funds provided by an  
25 outside source that—

1 “(aa) has no affiliation with  
2 the institution; and

3 “(bb) shares no employees  
4 with the institution; and

5 “(II) institutional scholarships  
6 described in clause (v);

7 “(iv) include no loans made by an in-  
8 stitution of higher education as revenue to  
9 the school, except for payments made by  
10 students on such loans;

11 “(v) include a scholarship provided by  
12 the institution—

13 “(I) only if the scholarship is in  
14 the form of monetary aid based upon  
15 the academic achievements or finan-  
16 cial need of students, disbursed to  
17 qualified student recipients during  
18 each fiscal year from an established  
19 restricted account; and

20 “(II) only to the extent that  
21 funds in that account represent des-  
22 ignated funds, or income earned on  
23 such funds, from an outside source  
24 that—

1 “(aa) has no affiliation with  
2 the institution; and

3 “(bb) shares no employees  
4 with the institution; and

5 “(vi) exclude from revenues—

6 “(I) the amount of funds the in-  
7 stitution received under part C of title  
8 IV, unless the institution used those  
9 funds to pay a student’s institutional  
10 charges;

11 “(II) the amount of funds the in-  
12 stitution received under subpart 4 of  
13 part A of title IV;

14 “(III) the amount of funds pro-  
15 vided by the institution as matching  
16 funds for any Federal program;

17 “(IV) the amount of Federal  
18 funds provided to the institution to  
19 pay institutional charges for a student  
20 that were refunded or returned; and

21 “(V) the amount charged for  
22 books, supplies, and equipment, unless  
23 the institution includes that amount  
24 as tuition, fees, or other institutional  
25 charges.

1           “(D) REPORT TO CONGRESS.—Not later  
2           than July 1, 2021, and by July 1 of each suc-  
3           ceeding year, the Secretary shall submit to the  
4           authorizing committees a report that contains,  
5           for each proprietary institution of higher edu-  
6           cation that receives assistance under title IV  
7           and as provided in the audited financial state-  
8           ments submitted to the Secretary by each insti-  
9           tution pursuant to the requirements of section  
10          487(c)—

11                   “(i) the amount and percentage of  
12                   such institution’s revenues received from  
13                   Federal funds; and

14                   “(ii) the amount and percentage of  
15                   such institution’s revenues received from  
16                   other sources.”.

17          (b) REPEAL OF EXISTING REQUIREMENTS.—Section  
18          487 of the Higher Education Act of 1965 (20 U.S.C.  
19          1094) is amended—

20                  (1) in subsection (a)—

21                          (A) by striking paragraph (24);

22                          (B) by redesignating paragraphs (25)  
23                          through (29) as paragraphs (24) through (28),  
24                          respectively;

1 (C) in paragraph (24)(A)(ii) (as redesignig-  
2 nated by subparagraph (B)), by striking “sub-  
3 section (e)” and inserting “subsection (d)”; and

4 (D) in paragraph (26) (as redesignated by  
5 subparagraph (B)), by striking “subsection (h)”  
6 and inserting “subsection (g)”;

7 (2) by striking subsection (d);

8 (3) by redesignating subsections (e) through (j)  
9 as subsections (d) through (i), respectively;

10 (4) in the matter preceding paragraph (1) of  
11 subsection (d) (as redesignated by paragraph (3)),  
12 by striking “(a)(25)” and inserting “(a)(24)”;

13 (5) in subsection (f)(1) (as redesignated by  
14 paragraph (3)), by striking “subsection (e)(2)” and  
15 inserting “subsection (d)(2)”; and

16 (6) in subsection (g)(1) (as redesignated by  
17 paragraph (3)), by striking “subsection (a)(27)” in  
18 the matter preceding subparagraph (A) and insert-  
19 ing “subsection (a)(26)”.

20 (c) CONFORMING AMENDMENTS.—The Higher Edu-  
21 cation Act of 1965 (20 U.S.C. 1001 et seq.) is amended—

22 (1) in section 152 (20 U.S.C. 1019a)—

23 (A) in subsection (a)(1)(A), by striking  
24 “subsections (a)(27) and (h) of section 487”



1           and inserting “subsections (a)(26) and (g) of  
2           section 487”; and

3                   (B) in subsection (b)(1)(B)(i)(I), by strik-  
4           ing “section 487(e)” and inserting “section  
5           487(d)”;

6           (2) in section 153(c)(3) (20 U.S.C.  
7           1019b(c)(3)), by striking “section 487(a)(25)” each  
8           place the term appears and inserting “section  
9           487(a)(24)”;

10           (3) in section 496(c)(3)(A) (20 U.S.C.  
11           1099b(c)(3)(A)), by striking “section 487(f)” and  
12           inserting “section 487(e)”;

13           (4) in section 498(k)(1) (20 U.S.C.  
14           1099c(k)(1)), by striking “section 487(f)” and in-  
15           serting “section 487(e)”.