

116TH CONGRESS  
1ST SESSION

# S. 2339

To amend the Higher Education Act of 1965 to provide for accreditation reform, to require institutions of higher education to publish information regarding student success, to provide for fiscal accountability, and to provide for school accountability for student loans.

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## IN THE SENATE OF THE UNITED STATES

JULY 30, 2019

Mr. LEE (for himself and Mrs. BLACKBURN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Higher Education Act of 1965 to provide for accreditation reform, to require institutions of higher education to publish information regarding student success, to provide for fiscal accountability, and to provide for school accountability for student loans.

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 “Higher Education Re-  
5 form and Opportunity Act of 2019”.

1           **TITLE I—ACCREDITATION**  
 2                           **REFORM**

3 **SEC. 101. ACCREDITATION REFORM.**

4           (a) DEFINITION OF INSTITUTION OF HIGHER EDU-  
 5 CATION.—Section 102(a)(1) of the Higher Education Act  
 6 of 1965 (20 U.S.C. 1002(a)(1)) is amended—

7                   (1) by redesignating subparagraphs (B) and  
 8                   (C) as subparagraphs (C) and (D), respectively; and

9                   (2) by inserting after subparagraph (A) the fol-  
 10           lowing:

11                           “(B) if accredited by an authorized accred-  
 12                           itation authority in a State that has an alter-  
 13                           native accreditation agreement with the Sec-  
 14                           retary, as described in section 498C—

15                                   “(i) an institution that provides post-  
 16                                   secondary education;

17                                   “(ii) a postsecondary apprenticeship  
 18                                   program; or

19                                   “(iii) a postsecondary education  
 20                                   course or program provided by an institu-  
 21                                   tion of postsecondary education, a non-  
 22                                   profit organization, or a for-profit organi-  
 23                                   zation or business;”.

24           (b) STATE ALTERNATIVE ACCREDITATION.—Part H  
 25 of title IV of the Higher Education Act of 1965 (20 U.S.C.

1 1099a et seq.) is amended by adding at the end the fol-  
2 lowing:

3 **“Subpart 4—State Alternative Accreditation**

4 **“SEC. 498C. STATE ALTERNATIVE ACCREDITATION.**

5 “(a) IN GENERAL.—Notwithstanding any other pro-  
6 vision of law, a State may establish an alternative accredi-  
7 tation system for the purpose of establishing institutions  
8 that provide postsecondary education and postsecondary  
9 education courses or programs as eligible for funding  
10 under title IV if the State submits a plan to the Secretary  
11 for the establishment of the alternative accreditation sys-  
12 tem. Such institutions, courses, or programs may in-  
13 clude—

14 “(1) institutions that provide postsecondary  
15 education that culminates in a certification, creden-  
16 tial, or degree;

17 “(2) postsecondary apprenticeship programs  
18 that culminate in a certification, credential, or de-  
19 gree;

20 “(3) any other postsecondary education course  
21 or program offered at an institution of postsec-  
22 ondary education, a nonprofit organization, or a for-  
23 profit organization or business, that culminates in a  
24 certification, credential, or degree; and

1           “(4) any of the entities described in paragraphs  
2           (1) through (3) that do not award a postsecondary  
3           certification, credential, or degree, provided that  
4           such entity provides credit that will be accepted to-  
5           ward a postsecondary certification, credential, or de-  
6           gree at one or more of the entities described in para-  
7           graphs (1) through (3).

8           “(b) ALTERNATIVE ACCREDITATION NOTIFICA-  
9           TION.—The alternative accreditation plan described in  
10          subsection (a) shall include the following:

11           “(1) The State’s plan for designating one or  
12          more authorized accrediting entities within the  
13          State, such as the State Department of Education,  
14          another State agency, an industry-specific accred-  
15          iting agency, or another entity, and an explanation  
16          of the process through which the State will select  
17          such authorized accrediting entities.

18           “(2) The standards or criteria that an institu-  
19          tion that provides postsecondary education and a  
20          postsecondary education course or program must  
21          meet in order to—

22                   “(A) receive an initial accreditation as part  
23                   of the alternative accreditation system; and

24                   “(B) maintain such accreditation.

1           “(3) A description of the appeals process  
2 through which an institution that provides postsec-  
3 ondary education or a postsecondary education  
4 course or program may appeal to an authorized ac-  
5 crediting entity if such institution, course, or pro-  
6 gram is denied accreditation under the State alter-  
7 native accreditation system.

8           “(4) Any State policy regarding public accessi-  
9 bility to certain information relating to institutions  
10 that provide postsecondary education and postsec-  
11 ondary education courses and programs accredited  
12 under the State alternative accreditation system, in-  
13 cluding—

14                 “(A) the information described in sub-  
15 section (e)(1); and

16                 “(B) information about the rates of job  
17 placement for individuals that have graduated  
18 from an institution or completed a course or  
19 program that is accredited under the State al-  
20 ternative accreditation system, if available.

21           “(5) An assurance by the State that under the  
22 State alternative accreditation system, only institu-  
23 tions that provide postsecondary education and post-  
24 secondary education courses or programs that pro-  
25 vide a postsecondary certification, credential, or de-

1       gree, or credits toward a postsecondary certification,  
2       credential, or degree (as defined by the State in ac-  
3       cordance with paragraph (6)) will be accredited.

4               “(6) The State’s definition of a postsecondary  
5       certification, credential, or degree, as such term ap-  
6       plies to the requirement described in paragraph (5).

7               “(7) A description of the agreements that the  
8       State will enter into with institutions that provide  
9       postsecondary education and postsecondary edu-  
10      cation courses or programs that are accredited  
11      under the alternative accreditation system for pur-  
12      poses of accreditation regarding requirements for in-  
13      structional time, in lieu of the requirements de-  
14      scribed under section 481(a)(2).

15              “(8) A description of the agreements that the  
16      State will enter into with institutions that provide  
17      postsecondary education and postsecondary edu-  
18      cation courses or programs that are accredited  
19      under the alternative accreditation system regarding  
20      requirements for credit hours or clock hours, or  
21      other measures of student learning, in lieu of the re-  
22      quirements described under section 481(b).

23              “(c) REVIEW AND APPROVAL.—Not later than 30  
24      days after the Secretary receives a plan from a State re-  
25      garding an alternative accreditation system, the Secretary

1 shall submit to the State and Congress, and make publicly  
2 available, a response to the State’s plan. The Secretary  
3 shall approve the plan and allow the State to establish the  
4 alternative accreditation system if the plan meets the re-  
5 quirements described in subsection (b).

6 “(d) TIME LIMIT.—Each plan approved under sub-  
7 section (c) shall allow a State to carry out an alternative  
8 accreditation system in the State for a period of 5 years.

9 “(e) REPORTING REQUIREMENTS.—States that es-  
10 tablish an alternative accreditation system shall submit a  
11 report to the Secretary every 3 years following the imple-  
12 mentation of the alternative accreditation system. The re-  
13 port shall include—

14 “(1) in the case of a postsecondary education  
15 course or program that is accredited through the  
16 State alternative accreditation system—

17 “(A) the number and percentage of stu-  
18 dents who successfully complete each such post-  
19 secondary education course or program; and

20 “(B) for postsecondary education courses  
21 or programs that lead to a certification, creden-  
22 tial, or degree, the number of students in such  
23 course or program; and

1           “(2) in the case of an institution that provides  
2           postsecondary education that is accredited through  
3           the State alternative accreditation system—

4                   “(A) the number and percentage of stu-  
5                   dents who successfully obtain a postsecondary  
6                   certification, credential, or degree from such in-  
7                   stitution; and

8                   “(B) the number and percentage of stu-  
9                   dents who do not successfully obtain a postsec-  
10                  ondary certification, credential, or degree from  
11                  such institution but do obtain credit from such  
12                  institution toward a postsecondary degree, cre-  
13                  dential, or certification; and

14           “(3) a description of any requirements for  
15           third-party verification of information contained in  
16           the report.”.

17           (c) TITLE IV ELIGIBILITY REQUIREMENTS.—Part G  
18           of title IV of the Higher Education Act of 1965 (20 U.S.C.  
19           1088 et seq.) is amended by adding at the end the fol-  
20           lowing:

21           **“SEC. 493E. STATE ACCREDITED INSTITUTIONS, PRO-**  
22   **GRAMS, OR COURSES.**

23           “Notwithstanding any other provision of law, an in-  
24           stitution, program, or course that is eligible for funds

1 under this title in accordance with section 102(a)(1)(B)  
 2 and meets the requirements of section 498C—

3 “(1) shall not be required to meet the require-  
 4 ments of section 496; and

5 “(2) shall not be required to meet the require-  
 6 ments described in subsections (a)(2) and (b) of sec-  
 7 tion 481.”.

## 8 **TITLE II—TRANSPARENCY IN** 9 **HIGHER EDUCATION**

### 10 **SEC. 201. TIME FOR TRANSPARENCY IN HIGHER EDU-** 11 **CATION.**

12 (a) IN GENERAL.—Title IV of the Higher Education  
 13 Act of 1965 (20 U.S.C. 1070 et seq.) is amended—

14 (1) in section 487(a), by adding at the end the  
 15 following:

16 “(30) The institution will publish information  
 17 in compliance with section 493E.”; and

18 (2) in part G, by adding at the end the fol-  
 19 lowing:

### 20 **“SEC. 493E. INSTITUTIONAL PUBLICATION OF INFORMA-** 21 **TION.**

22 “(a) PUBLICATION OF INFORMATION.—

23 “(1) IN GENERAL.—Each institution of higher  
 24 education participating in a program under this title  
 25 shall publish on the institution’s website and in an

1 alternative format, on an annual basis, the informa-  
2 tion described in paragraphs (2) and (3). To the ex-  
3 tent that such data is available, an institution may  
4 use data that the institution is already collecting in  
5 accordance with other Federal requirements.

6 “(2) INFORMATION.—Each institution of higher  
7 education described in paragraph (1) shall publish,  
8 with respect to the institution as a whole and with  
9 respect to each program of study offered by the in-  
10 stitution, the following information for the most re-  
11 cent fiscal year for which the information is avail-  
12 able:

13 “(A) For each of the following, the per-  
14 centage and number of students enrolled at the  
15 institution or in the program of study, as appli-  
16 cable, who receive the following:

17 “(i) Federal grant aid, including Fed-  
18 eral Pell Grants under subpart 1 of part  
19 A, Federal Supplemental Educational Op-  
20 portunity Grants under subpart 3 of part  
21 A, or any other Federal postsecondary edu-  
22 cation grant aid or subsidy.

23 “(ii) Federal student loans, including  
24 Federal loans under part D.

25 “(iii) State grant aid.

1 “(iv) Institutional grants.

2 “(v) A student loan from a State.

3 “(B) Student body enrollment status, in-  
4 cluding as a—

5 “(i) first-time, full-time student;

6 “(ii) first-time, part-time student;

7 “(iii) non-first-time, full-time student;

8 and

9 “(iv) non-first-time, part-time student.

10 “(C) Information about students that in-  
11 cludes the following:

12 “(i) The percentage of students who  
13 do not complete the program of study the  
14 student initially started upon enrollment.

15 “(ii) The percentage of students who  
16 transfer.

17 “(iii) The percentage of students who  
18 complete the program of study the student  
19 initially started upon enrollment.

20 “(iv) The average length of time for a  
21 student to complete the program of study.

22 “(v) The percentage of students who  
23 continue on to higher levels of education.

24 “(vi) The percentage of former stu-  
25 dents who received financial aid who are

1 employed at 2, 4, and 6 years after grad-  
2 uating, disaggregated by program of study.

3 “(vii) The median earnings of former  
4 students who earned a degree or credential  
5 and received financial aid on the date that  
6 is 10 years after the date the students first  
7 enrolled in a program of study at the insti-  
8 tution, disaggregated by program of study.

9 “(viii) The median earnings of former  
10 students who received financial aid on the  
11 date that is 10 years after the date the  
12 students first enrolled in a program of  
13 study at the institution, disaggregated by  
14 program of study.

15 “(3) PUBLICATION OF DEFAULT AND NON-RE-  
16 PAYMENT RATES.—In addition to the information  
17 described in paragraph (2), each institution of high-  
18 er education described in paragraph (1) shall pub-  
19 lish, with respect to the institution as a whole and  
20 with respect to each program of study offered by the  
21 institution, the following information for the most  
22 recent fiscal year for which the information is avail-  
23 able:

24 “(A) The average amount of total Federal  
25 student loan debt accrued upon graduation.

1           “(B) The average amount of total Federal  
2 student loan debt accrued by students who  
3 leave the institution without having graduated.

4           “(C) Federal student loan default rate.

5           “(D) Federal student loan non-repayment  
6 rate.

7           “(E) Default and non-repayment rate, in-  
8 cluding as a—

9                   “(i) first-time, full-time student;

10                   “(ii) first-time, part-time student;

11                   “(iii) non-first-time, full-time student;

12           and

13                   “(iv) non-first-time, part-time student.

14           “(F) Default and non-repayment rate, of—

15                   “(i) students who complete a program  
16 of study;

17                   “(ii) students who transfer; and

18                   “(iii) students who do not complete a  
19 program of study.

20           “(b) PRIVACY.—

21                   “(1) COMPLIANCE WITH FERPA.—In carrying  
22 out this section, an institution of higher education  
23 and any personnel of the institution shall not share  
24 any personally identifiable information and shall act  
25 in accordance with section 444 of the General Edu-

1 cation Provisions Act (20 U.S.C. 1232g, commonly  
2 known as the ‘Family Educational Rights and Pri-  
3 vacy Act of 1974’).

4 “(2) PROHIBITION ON USE OF INFORMATION.—  
5 Information published pursuant to this section shall  
6 not be used by a Federal employee, agency, or offi-  
7 cer, or an institution of higher education to take ac-  
8 tion against an individual.

9 “(3) PENALTIES.—The Secretary shall establish  
10 penalties for a violation of paragraph (1) or (2) that  
11 includes both a monetary fine and up to 5 years in  
12 prison.

13 “(c) RULE OF CONSTRUCTION.—Nothing in this sec-  
14 tion shall be construed to authorize or permit the Sec-  
15 retary or any employee or contractor of the Department  
16 to mandate, direct, or control the selection of practices or  
17 curriculum by an institution of higher education.”.

18 (b) GAO REPORT.—

19 (1) STUDY.—The Comptroller General of the  
20 United States shall conduct a study that compiles all  
21 the institutional publication of information pursuant  
22 to section 493E of the Higher Education Act of  
23 1965, as added by subsection (a) of this Act.

24 (2) REPORT.—Not later than October 1 of the  
25 fourth fiscal year after the date of enactment of this

1 Act, the Comptroller General of the United States  
2 shall submit a report containing the results of the  
3 study under paragraph (1) to the appropriate com-  
4 mittees of Congress.

5 **TITLE III—FISCAL**  
6 **ACCOUNTABILITY**

7 **SEC. 301. SIMPLIFICATION OF FEDERAL STUDENT LOANS.**

8 (a) TERMINATION.—Section 451 of the Higher Edu-  
9 cation Act of 1965 (20 U.S.C. 1087a) is amended—

10 (1) in subsection (a), by adding at the end the  
11 following: “No sums may be expended after Sep-  
12 tember 30, 2026, with respect to loans under this  
13 part for which the first disbursement is after such  
14 date, except Federal Direct simplification loans  
15 under section 460A.”; and

16 (2) by adding at the end, the following:

17 “(c) TERMINATION OF AUTHORITY TO MAKE NEW  
18 LOANS.—Notwithstanding subsection (a) or any other  
19 provision of law—

20 “(1) no new loans may be made under this part  
21 after September 30, 2026, except Federal Direct  
22 simplification loans under section 460A; and

23 “(2) no funds are authorized to be appro-  
24 priated, or may be expended, under this Act, or any  
25 other Act to make loans under this part for which

1 the first disbursement is after September 30, 2026,  
2 except Federal Direct simplification loans under sec-  
3 tion 460A, or as expressly authorized by an Act of  
4 Congress enacted after the date of enactment of  
5 Higher Education Reform and Opportunity Act of  
6 2019.

7 “(d) STUDENT ELIGIBILITY BEGINNING WITH  
8 AWARD YEAR 2022.—

9 “(1) NEW BORROWERS.—No loan may be made  
10 under this part to a new borrower for which the first  
11 disbursement is after June 30, 2022, except Federal  
12 Direct simplification loans under section 460A.

13 “(2) BORROWERS WITH OUTSTANDING BAL-  
14 ANCES.—Subject to paragraph (3), with respect to a  
15 borrower who, as of July 1, 2022, has an out-  
16 standing balance of principal or interest owing on a  
17 loan made under this part that is not a Federal Di-  
18 rect simplification loan under section 460A, such  
19 borrower may—

20 “(A) in the case of such a loan made to  
21 the borrower for enrollment in a program of un-  
22 dergraduate education, borrow loans made  
23 under this part that are not Federal Direct  
24 simplification loans under section 460A for any

1 program of undergraduate education through  
2 the close of September 30, 2026;

3 “(B) in the case of such a loan made to  
4 the borrower for enrollment in a program of  
5 graduate or professional education, borrow  
6 loans made under this part that are not Federal  
7 Direct simplification loans under section 460A  
8 for any program of graduate or professional  
9 education through the close of September 30,  
10 2026; and

11 “(C) in the case of such a loan made to  
12 the borrower on behalf of a dependent student  
13 for the student’s enrollment in a program of  
14 undergraduate education, borrow loans made  
15 under this part that are not Federal Direct  
16 simplification loans under section 460A on be-  
17 half of such student through the close of Sep-  
18 tember 30, 2026.

19 “(3) LOSS OF ELIGIBILITY.—A borrower de-  
20 scribed in paragraph (2) who borrows a Federal Di-  
21 rect simplification loan made under section 460A for  
22 which the first disbursement is made before Sep-  
23 tember 30, 2026, shall lose the borrower’s eligibility  
24 to borrow a loan under this part that is not a Fed-

1       eral Direct simplification loan under section 460A in  
2       accordance with paragraph (2).”.

3       (b) FEDERAL DIRECT SIMPLIFICATION LOANS.—  
4 Part D of title IV of the Higher Education Act of 1965  
5 (20 U.S.C. 1087a et seq.) is amended by adding at the  
6 end the following:

7       **“SEC. 460A. FEDERAL DIRECT SIMPLIFICATION LOANS.**

8       “(a) IN GENERAL.—Beginning on July 1, 2022, ex-  
9 cept as provided in section 451(d), the Secretary shall  
10 make loans to borrowers under this section. Loans made  
11 under this section shall be known as Federal Direct sim-  
12 plification loans.

13       “(b) FEDERAL DIRECT SIMPLIFICATION LOANS.—  
14 The provisions of this part shall apply with respect to Fed-  
15 eral Direct simplification loans, except that Federal Direct  
16 simplification loans shall be made in accordance with the  
17 following:

18               “(1) The applicable rate of interest on a loan  
19 made under this section shall, for loans disbursed  
20 during any 12-month period beginning on July 1  
21 and ending on June 30, be determined on the pre-  
22 ceding June 1 and be equal to—

23                       “(A) a rate equal to the high yield of the  
24                       10-year Treasury note auctioned at the final  
25                       auction held prior to such June 1; plus

1           “(B) 3.6 percent.

2           “(2) Interest on a loan made under this section  
3 shall begin to accrue on the date the loan is dis-  
4 bursed.

5           “(3) The maximum—

6           “(A) annual amount of loans under this  
7 section an undergraduate student may borrow  
8 in any academic year (as defined in section  
9 481(a)(2)) or its equivalent shall be equal to  
10 \$7,500; and

11           “(B) aggregate amount of loans under this  
12 section an undergraduate student may borrow  
13 shall be equal to \$30,000.

14           “(4) The maximum—

15           “(A) annual amount of loans under this  
16 section a graduate or professional student may  
17 borrow in any academic year (as defined in sec-  
18 tion 481(a)(2)) or its equivalent shall be equal  
19 to \$12,500; and

20           “(B) aggregate amount of loans under this  
21 section a graduate or professional student may  
22 borrow shall be equal to \$50,000.

23           “(5) The only length of repayment—

24           “(A) for a loan borrowed by an under-  
25 graduate student shall be 15 years; and

1           “(B) for a loan borrowed by a graduate or  
2 professional student shall be 25 years.

3           “(6) Repayment on a loan made under this sec-  
4 tion shall begin—

5           “(A) after 125 percent of the normal time  
6 for completion of the program of study for  
7 which the borrower receives the loan under this  
8 section; or

9           “(B) if the borrower withdraws from the  
10 program of study before the borrower completes  
11 the program, 6 months after the date the bor-  
12 rower withdraws.

13           “(7) The Secretary shall not repay or cancel  
14 any outstanding balance of principal or interest due  
15 on a Federal Direct simplification loan as part of a  
16 student loan forgiveness program, including such a  
17 program under section 455(m) and section 493C.

18           “(c) AUTHORIZATION TO LIMIT LOAN AMOUNTS.—  
19 An institution of higher education that is required under  
20 State law to enroll all eligible applicants for an academic  
21 year may limit the amount of loans under this section that  
22 a student may borrow for such academic year to not more  
23 than the tuition and fees at such institution for such aca-  
24 demic year.

1       “(d) LOAN FEE.—The Secretary shall not charge the  
2 borrower of a loan made under this part an origination  
3 fee.

4       “(e) REPAYMENT.—A borrower of a loan made under  
5 this section may accelerate without penalty repayment of  
6 the whole or any part of the loan.”.

7 **SEC. 302. PHASING OUT LOAN FORGIVENESS.**

8       The Higher Education Act of 1965 (20 U.S.C. 1001  
9 et seq.) is amended—

10           (1) in section 455—

11                   (A) in subsection (d)(1), in the matter pre-  
12 ceding subparagraph (A), by inserting “(except  
13 a Federal Direct simplification loan)” after  
14 “borrower of a loan made under this part”;

15                   (B) in subsection (e), by adding at the end  
16 the following:

17                   “(8) FEDERAL DIRECT SIMPLIFICATION  
18 LOANS.—Income contingent repayment shall not be  
19 available for a Federal Direct simplification loan.”;  
20 and

21                   (C) in subsection (m), by adding at the  
22 end the following:

23                   “(5) ELIMINATION OF LOAN FORGIVENESS.—

24                           “(A) IN GENERAL.—Notwithstanding any  
25 other provision of this Act and subject to sub-

1 paragraph (B), with respect to any loan made  
2 on or after July 1, 2022, the Secretary may not  
3 cancel any outstanding balance of principal and  
4 interest due on the loan for the borrower of the  
5 loan pursuant to this subsection.

6 “(B) LOANS FOR CONTINUING PROGRAM  
7 OF STUDY.—In the case of a borrower whose  
8 first loan for a program of study is made prior  
9 to July 1, 2022, the Secretary may repay or  
10 cancel any outstanding balance of principal and  
11 interest due on the subsequent loans for that  
12 borrower for the same program of study pursu-  
13 ant to this subsection for—

14 “(i) loans made during the time it  
15 takes to complete that program of study;  
16 or

17 “(ii) loans made before July 1, 2026;  
18 whichever occurs earlier.”; and

19 (2) in section 493C, by adding at the end the  
20 following:

21 “(f) ELIMINATION OF LOAN FORGIVENESS.—

22 “(1) IN GENERAL.—Notwithstanding any other  
23 provision of this Act and subject to paragraph (2),  
24 with respect to any loan made on or after July 1,  
25 2022, the Secretary may not repay or cancel any

1 outstanding balance of principal and interest due on  
 2 the loan for the borrower of the loan pursuant to  
 3 this section.

4 “(2) LOANS FOR CONTINUING PROGRAM OF  
 5 STUDY.—In the case of a borrower whose first loan  
 6 for a program of study is made prior to July 1,  
 7 2022, the Secretary may repay or cancel any out-  
 8 standing balance of principal and interest due on the  
 9 subsequent loans for that borrower for the same pro-  
 10 gram of study pursuant to this section for—

11 “(A) loans made during the time it takes  
 12 to complete that program of study; or

13 “(B) loans made before July 1, 2026;  
 14 whichever occurs earlier.”.

15 **TITLE IV—SCHOOL ACCOUNT-**  
 16 **ABILITY FOR STUDENT**  
 17 **LOANS**

18 **SEC. 401. SCHOOL ACCOUNTABILITY FOR STUDENT LOANS.**

19 (a) **DEFAULT RATE FINE.**—Section 487 of the High-  
 20 er Education Act of 1965 (20 U.S.C. 1094), as amended  
 21 by section 201, is further amended—

22 (1) in subsection (a), by adding at the end the  
 23 following:

1           “(31) The institution will pay a default rate  
2           fine that is determined pursuant to subsection (k).”;  
3           and

4           (2) by adding at the end the following:

5           “(k) DEFAULT RATE FINE.—

6           “(1) IN GENERAL.—Each institution described  
7           in paragraph (2) shall pay to the Secretary an an-  
8           nual default rate fine in accordance with this sub-  
9           section.

10          “(2) APPLICABLE INSTITUTIONS.—An institu-  
11          tion shall pay a default rate fine under this sub-  
12          section for a fiscal year based on the cohort default  
13          rate (as defined in section 435(m)) on loans made  
14          under this title for such fiscal year.

15          “(3) FINE.—

16          “(A) IN GENERAL.—Each institution de-  
17          scribed in paragraph (2) shall pay a default  
18          rate fine for a fiscal year that is equal to 10  
19          percent of the applicable amount determined  
20          under subparagraph (B)(i) for such fiscal year.

21          “(B) APPLICABLE AMOUNT.—

22          “(i) IN GENERAL.—The applicable  
23          amount for a fiscal year with respect to an  
24          institution shall be an amount equal to the  
25          product of the amount of loans made

1 under this title for such fiscal year, and  
2 the applicable rate determined in clause  
3 (ii). If the applicable rate is equal to or  
4 less than zero percent then the applicable  
5 amount shall be equal to zero.

6 “(ii) APPLICABLE RATE.—The appli-  
7 cable rate for a fiscal year with respect to  
8 an institution shall be the rate that is  
9 equal to the difference between the cohort  
10 default rate on loans made under this title  
11 (as defined in section 435(m)) for such fis-  
12 cal year and the average rate of total un-  
13 employment in the United States for the 3-  
14 year period covered by that cohort default  
15 rate (as defined in section 435(m)), as de-  
16 termined by the Secretary of Labor.

17 “(4) CREDIT FOR CERTAIN INSTITUTIONS.—

18 Each institution that is described in paragraph (2)  
19 shall receive a \$400 credit for the fiscal year for  
20 each graduate of the institution during such fiscal  
21 year who received a Federal Pell Grant while en-  
22 rolled at the institution.

23 “(5) FLEXIBILITY IN COUNSEL AND ADVICE.—

24 Notwithstanding any other provision of the Act, the  
25 Secretary shall grant institutions of higher education

1 flexibility under this Act to counsel and advise stu-  
2 dents on Federal financial aid, including granting  
3 flexibility for institutions to award less than the  
4 maximum amount of Federal student aid for which  
5 an individual is eligible if the cost of tuition, room,  
6 and board at the institution is less than such max-  
7 imum amount.”.

8 (b) FLEXIBILITY IN COUNSELING AND ADVICE.—  
9 Section 485(l) of the Higher Education Act of 1965 (20  
10 U.S.C. 1092(l)) is amended by adding at the end the fol-  
11 lowing:

12 “(3) FLEXIBILITY IN COUNSELING AND AD-  
13 VICE.—In addition to the entrance counseling under  
14 paragraph (1), an eligible institution may require  
15 any borrower, at or prior to the time of a disburse-  
16 ment to the borrower of a loan made under part D,  
17 to receive the information described in paragraph  
18 (2) with respect to such loan, or any other financial  
19 counseling, including financial literacy counseling.”.

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