

116TH CONGRESS
1ST SESSION

S. 2640

To amend the Higher Education Act of 1965 to make for-profit institutions ineligible for Federal student aid and to protect the integrity of nonprofit institutions of higher education.

IN THE SENATE OF THE UNITED STATES

OCTOBER 17, 2019

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

A BILL

To amend the Higher Education Act of 1965 to make for-profit institutions ineligible for Federal student aid and to protect the integrity of nonprofit institutions 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 “Students Not Profits
5 Act of 2019”.

1 **SEC. 2. DEFINITION OF INSTITUTION OF HIGHER EDU-**
2 **CATION.**

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

5 (1) in section 101—

6 (A) in subsection (a), in the matter pre-
7 ceeding paragraph (1), by striking “other than
8 title IV,”;

9 (B) in subsection (b)—

10 (i) in the matter preceding paragraph
11 (1), by striking “other than title IV,”;

12 (ii) in paragraph (1), by striking
13 “and” after the semicolon;

14 (iii) in paragraph (2)(B), by striking
15 the period at the end and inserting a semi-
16 colon; and

17 (iv) by adding at the end the fol-
18 lowing:

19 “(3) a public, nonprofit postsecondary voca-
20 tional institution; and

21 “(4) only for the purposes of part D of title IV,
22 an institution outside the United States that is com-
23 parable to an institution of higher education, as de-
24 fined in subsection (a), and that has been approved
25 by the Secretary for the purpose of part D of title

1 IV, consistent with the requirements of section
2 452(d).”;

3 (C) in subsection (c), by striking “and sec-
4 tion 102”; and

5 (D) by adding at the end the following:

6 “(d) REQUIREMENTS OF COURSES OF STUDY AND
7 ENROLLMENT.—An institution shall be considered to meet
8 the definition of an institution of higher education in sub-
9 section (a) or (b) only if such institution—

10 “(1) limits enrollment of students in distance
11 education courses offered by the institution to not
12 more than 50 percent of all students enrolled in the
13 institution, unless the institution is a public or non-
14 profit technical institution or career and technical
15 education school, as described in section 3(3)(C) of
16 the Carl D. Perkins Career and Technical Education
17 Act of 2006;

18 “(2) limits enrollment of students who are in-
19 carcerated to not more than 25 percent of all stu-
20 dents enrolled in the institution;

21 “(3) limits enrollment of students who do not
22 have a secondary school diploma or its recognized
23 equivalent to not more than 50 percent of all stu-
24 dents enrolled in the institution; and

1 “(4) if the institution offers an education or
2 training program that leads to a certificate, or other
3 nondegree recognized credential and funds available
4 under title IV for students are used for enrollment
5 in such education or program, ensures that such
6 education or program prepares students for gainful
7 employment in a recognized occupation.

8 “(e) LIMITATIONS BASED ON MANAGEMENT.—An in-
9 stitution shall not be considered to meet the definition of
10 an institution of higher education in subsection (a) or (b)
11 if such institution—

12 “(1) the institution, or an affiliate of the insti-
13 tution that has the power, by contract or ownership
14 interest, to direct or cause the direction of the man-
15 agement or policies of the institution, has filed for
16 bankruptcy; or

17 “(2) the institution, the institution’s owner, the
18 institution’s chief executive officer, or any other ex-
19 ecutive officer of the institution—

20 “(A) has been convicted of, or has pled
21 nolo contendere or guilty to, a crime involving
22 the acquisition, use, or expenditure of funds
23 under title IV;

24 “(B) has been determined to have com-
25 mitted fraud, substantial misrepresentation, or

1 false certification involving funds under title IV;

2 or

3 “(C) has been previously employed at an
4 institution receiving funds under title IV that
5 closed.

6 “(f) CERTIFICATION.—The Secretary shall certify an
7 institution’s qualification as an institution of higher edu-
8 cation in accordance with the requirements of subpart 3
9 of part H of title IV.

10 “(g) LOSS OF ELIGIBILITY.—An institution of higher
11 education shall not be considered to meet the definition
12 of an institution of higher education in subsection (a) or
13 (b) if such institution is removed from eligibility for funds
14 under title IV as a result of an action pursuant to part
15 H of title IV.

16 “(h) POSTSECONDARY VOCATIONAL INSTITUTION.—

17 “(1) PRINCIPAL CRITERIA.—For the purpose of
18 this section, the term ‘postsecondary vocational insti-
19 tution’ means a school that—

20 “(A) provides an eligible program of train-
21 ing to prepare students for gainful employment
22 in a recognized occupation;

23 “(B) meets the requirements of paragraphs
24 (1), (2), (4), and (5) of subsection (a); and

1 “(C) has been in existence for at least 2
2 years.

3 “(2) ADDITIONAL INSTITUTIONS.—The term
4 ‘postsecondary vocational institution’ also includes
5 an educational institution in any State that, in lieu
6 of the requirement in subsection (a)(1), admits as
7 regular students individuals—

8 “(A) who are beyond the age of compul-
9 sory school attendance in the State in which the
10 institution is located; or

11 “(B) who will be dually or concurrently en-
12 rolled in the institution and a secondary school.

13 “(i) INSTITUTION OUTSIDE THE UNITED STATES.—

14 “(1) IN GENERAL.—For the purpose of quali-
15 fying as an institution under subsection (b)(4), the
16 Secretary shall establish criteria by regulation for
17 the approval of institutions outside the United
18 States and for the determination that such institu-
19 tions are comparable to an institution of higher edu-
20 cation, as defined in subsection 101(a) (except that
21 a graduate medical school, nursing school, or a vet-
22 erinary school, located outside the United States
23 shall not be required to meet the requirements of
24 subsection (a)(4)). Such criteria shall include a re-
25 quirement that a student attending such school out-

1 side the United States is ineligible for loans made
2 under part D of title IV unless—

3 “(A) in the case of a graduate medical
4 school located outside the United States—

5 “(i) at least 60 percent of those en-
6 rolled in, and at least 60 percent of the
7 graduates of, the graduate medical school
8 outside the United States were not persons
9 described in section 484(a)(5) in the year
10 preceding the year for which a student is
11 seeking a loan under part D of title IV;
12 and

13 “(ii) at least 75 percent of the individ-
14 uals who were students or graduates of the
15 graduate medical school outside the United
16 States or Canada (both nationals of the
17 United States and others) taking the ex-
18 aminations administered by the Edu-
19 cational Commission for Foreign Medical
20 Graduates received a passing score in the
21 year preceding the year for which a stu-
22 dent is seeking a loan under part D of title
23 IV;

24 “(B) in the case of a veterinary school lo-
25 cated outside the United States that does not

1 meet the requirements of subsection (a)(4), the
2 institution's students complete their clinical
3 training at an approved veterinary school lo-
4 cated in the United States; or

5 “(C) in the case of a nursing school lo-
6 cated outside of the United States—

7 “(i) the nursing school has an agree-
8 ment with a hospital, or accredited school
9 of nursing (as such terms are defined in
10 section 801 of the Public Health Service
11 Act (42 U.S.C. 296)), located in the
12 United States that requires the students of
13 the nursing school to complete the stu-
14 dents' clinical training at such hospital or
15 accredited school of nursing;

16 “(ii) the nursing school has an agree-
17 ment with an accredited school of nursing
18 located in the United States providing that
19 the students graduating from the nursing
20 school located outside of the United States
21 also receive a degree from the accredited
22 school of nursing located in the United
23 States;

24 “(iii) the nursing school certifies only
25 Federal Direct Stafford Loans under sec-

1 tion 455(a)(2)(A), Federal Direct Unsub-
2 sidized Stafford Loans under section
3 455(a)(2)(D), or Federal Direct PLUS
4 Loans under section 455(a)(2)(B) for stu-
5 dents attending the institution;

6 “(iv) the nursing school reimburses
7 the Secretary for the cost of any loan de-
8 faults for current and former students in-
9 cluded in the calculation of the institu-
10 tion’s cohort default rate during the pre-
11 vious fiscal year; and

12 “(v) not less than 75 percent of the
13 individuals who were students or graduates
14 of the nursing school, and who took the
15 National Council Licensure Examination
16 for Registered Nurses in the year pre-
17 ceding the year for which the institution is
18 certifying a Federal Direct Stafford Loan
19 under section 455(a)(2)(A), a Federal Di-
20 rect Unsubsidized Stafford Loan under
21 section 455(a)(2)(D), or a Federal Direct
22 PLUS Loan under section 455(a)(2)(B),
23 received a passing score on such examina-
24 tion.

1 “(2) FAILURE TO RELEASE INFORMATION.—
2 The failure of an institution outside the United
3 States to provide, release, or authorize release to the
4 Secretary of such information as may be required by
5 paragraph (1) shall render such institution ineligible
6 for the purpose of part D of title IV.

7 “(3) SPECIAL RULE.—If, pursuant to this sub-
8 section, an institution loses eligibility to participate
9 in the programs under title IV, then a student en-
10 rolled in such institution may, notwithstanding such
11 loss of eligibility, continue to be eligible to receive a
12 loan under part D of title IV while attending such
13 institution for the academic year succeeding the aca-
14 demic year in which such loss of eligibility oc-
15 curred.”;

16 (2) by striking section 102; and

17 (3) by redesignating section 103 as section 102.

18 **SEC. 3. REPEAL OF EXISTING REFERENCES TO PROPRI-**
19 **ETARY INSTITUTIONS.**

20 Section 487 of the Higher Education Act of 1965 (20
21 U.S.C. 1094) is amended—

22 (1) in subsection (a)—

23 (A) by striking paragraph (24);

1 (B) by redesignating paragraphs (25)
2 through (29) as paragraphs (24) through (28),
3 respectively;

4 (C) in paragraph (24)(A)(ii) (as redesign-
5 ated by subparagraph (B)), by striking “sub-
6 section (e)” and inserting “subsection (d)”;

7 (D) in paragraph (26) (as redesignated by
8 subparagraph (B)), by striking “subsection (h)”
9 and inserting “subsection (g)”;

10 (2) by striking subsection (d);

11 (3) by redesignating subsections (e) through (j)
12 as subsections (d) through (i), respectively;

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

16 (5) 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 **SEC. 4. CONFORMING AMENDMENTS.**

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

23 (1) in section 102, as redesignated by sub-
24 section (a)(3), in paragraph (5)(B), by striking “(as
25 such term is defined in section 102)”;

1 (2) in section 114—

2 (A) in subsection (a), by striking “(as de-
3 fined in section 102)”;

4 (B) in subsection (b)(2)(B), by striking
5 “(as defined in section 102)”;

6 (3) in section 133(b)—

7 (A) by striking paragraph (5); and

8 (B) by redesignating paragraphs (6)
9 through (9) as paragraphs (5) through (8), re-
10 spectively;

11 (4) in section 151(2), by striking “, as such
12 term in defined in section 102,”;

13 (5) in section 152—

14 (A) in subsection (a)(1)(A), by striking
15 “subsections (a)(27) and (h) of section 487”
16 and inserting “subsections (a)(26) and (g) of
17 section 487”; and

18 (B) in subsection (b)(1)(B)(i)(I), by strik-
19 ing “section 487(e)” and inserting “section
20 487(d)”;

21 (6) in section 153(c)(3), by striking “section
22 487(a)(25)” each place the term appears and insert-
23 ing “section 487(a)(24)”;

24 (7) in section 420L(1), by striking “, as defined
25 in section 102,”;

1 (8) in section 435(a)(1), by striking “, as de-
2 fined in section 102,”;

3 (9) section 486(b)—

4 (A) in paragraph (2), by striking “sections
5 102(a)(3)(A), 102(a)(3)(B)”;

6 (B) in paragraph (3)(B), by striking “sec-
7 tion 102(a)(1)(C)” and inserting “section
8 101(b)(4)”;

9 (C) in paragraph (3)(C), by striking “an
10 institution of higher education that meets the
11 requirements of subsection (a) of section 102,
12 other than the requirement of paragraph (3)(A)
13 or (3)(B) of such subsection,” and inserting
14 “an institution of higher education that meets
15 the requirements of section 101, other than the
16 requirement of section 101(e)(1)(A),”;

17 (10) in section 487—

18 (A) in subsection (c)(1)(A)(iii), by striking
19 “section 102(a)(1)(C)” and inserting “section
20 101(b)(4)”;

21 (B) in subsection (i)—

22 (i) by striking paragraph (4); and

23 (ii) by redesignating paragraphs (5)
24 and (6) as paragraphs (4) and (5), respec-
25 tively;

1 (11) in section 491(l)(2)(A), by striking “sec-
2 tion 102(a)(1)(C)” and inserting “section
3 101(b)(4)”;

4 (12) in section 496—

5 (A) in subsection (c)(3)(A), by striking
6 “section 487(f)” and inserting “section
7 487(e)”;

8 (B) in subsection (j), by striking “section
9 102” and inserting “section 101”; and

10 (C) in subsection (k), by striking “section
11 102” and inserting “section 101”;

12 (13) in section 498—

13 (A) in subsection (g)(3), by striking “sec-
14 tion 102(a)(1)(C)” and inserting “section
15 101(b)(4)”;

16 (B) in subsection (i), by striking “section
17 102” and inserting “section 101”;

18 (C) in subsection (j), by striking “sections
19 102(b)(1)(E) and 102(c)(1)(C)” and inserting
20 “section 101(i)(1)(C)”;

21 (D) in subsection (k)—

22 (i) in paragraph (1), by striking “sec-
23 tion 487(f)” and inserting “section
24 487(e)”;

1 (ii) in paragraph (2)(A), by striking
2 “sections 102(b)(1)(E) and 102(c)(1)(C)”
3 and inserting “section 101(i)(1)(C)”;

4 (14) in section 498B(b), by striking “section
5 102(a)(1)(C)” and inserting “section 101(b)(4)”;

6 (15) in section 741(f)(2), by striking “section
7 102” and inserting “section 101”; and

8 (16) in section 807(d)(1), by striking subpara-
9 graph (A) and inserting the following:

10 “(A) intend to pursue a career in instruc-
11 tion at an institution of higher education in the
12 United States; and”.

13 **SEC. 5. INTEGRITY OF NONPROFIT INSTITUTIONS OF HIGH-**
14 **ER EDUCATION.**

15 Part B of title I of the Higher Education Act of 1965
16 (20 U.S.C. 1011 et seq.) is amended by adding at the end
17 the following:

18 **“SEC. 124. INTEGRITY OF NONPROFIT INSTITUTIONS OF**
19 **HIGHER EDUCATION.**

20 “(a) DETERMINATION.—On determining that an in-
21 stitution of higher education meets the requirements
22 under subsection (b), the Secretary shall approve the con-
23 version of an institution of higher education to a nonprofit
24 institution of higher education.

1 “(b) APPLICATION.—To be eligible to convert under
2 this section and participate as a nonprofit institution of
3 higher education under this Act, an institution of higher
4 education shall submit an application to the Secretary that
5 demonstrates each of the following:

6 “(1) That such institution of higher education
7 is a nonprofit institution of higher education.

8 “(2) That the assets or services acquired from
9 former owners of such institution of higher edu-
10 cation were not acquired for more than the value of
11 such assets or services.

12 “(3) That no member of the governing board of
13 such institution of higher education (other than ex
14 officio members serving at the pleasure of the re-
15 mainder of the governing board and receiving a fixed
16 salary), or any person with the power to appoint or
17 remove members of such governing board or any im-
18 mediate family member of such a member of the
19 board or such a person with power of appointment,
20 receives any substantial direct or indirect economic
21 benefit (including a lease, promissory note, or other
22 contract) from such institution of higher education.

23 “(4) That such institution of higher education
24 is an organization described in section 501(c)(3) of

1 the Internal Revenue Code of 1986 and is exempt
2 from taxation under section 501(a) of such Code.

3 “(5) Subject to subsection (c), that none of the
4 core functions of the institution of higher education
5 are under the control of, or subject to significant di-
6 rection from, an entity that is not a public institu-
7 tion of higher education or other nonprofit entity.

8 “(c) PRESUMPTION OF SIGNIFICANT DIRECTION.—
9 For purposes of subsection (b)(5), in the case of an insti-
10 tution, there shall be a conclusive presumption that an en-
11 tity (other than such institution) exercises significant di-
12 rection over such institution if one or more of the employ-
13 ees or owners of the entity serves as an officer, member
14 of the board, or person holding similar authority for such
15 institution.

16 “(d) TRANSITION PERIOD.—In the case of an institu-
17 tion of higher education approved for conversion under
18 subsection (a), such institution shall be subject to any
19 rules and regulations that apply to proprietary institutions
20 of higher education, as defined in section 102(b), for a
21 minimum of 5 years.

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

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

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

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

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

12 “(C) a full and open competition in the ac-
13 quisition of services or assets, as such term is
14 defined in section 2.101(b) of title 48, Code of
15 Federal Regulations, as in effect on the date of
16 the enactment of this section; and

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

21 “(f) PUBLICATION.—

22 “(1) APPLICATION.—Before the Secretary may
23 approve the conversion of an institution of higher
24 education under subsection (a), the application of
25 such institution submitted to the Secretary under

1 subsection (b) shall be published in the Federal Reg-
2 ister with an appropriate notice and comment pe-
3 riod.

4 “(2) DETERMINATION.—The Secretary shall
5 publish each determination under this section, and
6 the reasons for such determination, under the Fed-
7 eral Register.

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

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

15 “(A) the Secretary has given final approval
16 of the conversion of the institution to a non-
17 profit institution of higher education under this
18 section;

19 “(B) an accrediting agency or association
20 recognized by the Secretary pursuant to section
21 496 has approved the nonprofit status of the
22 institution; and

23 “(C) the State has given final approval to
24 the institution as a nonprofit institution of
25 higher education, as applicable; and

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

4 “(h) OFFICE TO MONITOR NONPROFIT INTEG-
5 RITY.—Not later than 1 year after the date of enactment
6 of the Students Not Profits Act of 2019, the Secretary
7 shall establish an office within the Department with the
8 expertise necessary to carry out this section.

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

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

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