

116TH CONGRESS
1ST SESSION

S. 867

To protect students of institutions of higher education and the taxpayer investment in institutions of higher education by improving oversight and accountability of institutions of higher education, particularly for-profit colleges, improving protections for students and borrowers, and ensuring the integrity of postsecondary education programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 26, 2019

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

A BILL

To protect students of institutions of higher education and the taxpayer investment in institutions of higher education by improving oversight and accountability of institutions of higher education, particularly for-profit colleges, improving protections for students and borrowers, and ensuring the integrity of postsecondary education programs, and for other purposes.

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
 3 “Preventing Risky Operations from Threatening the Edu-
 4 cation and Career Trajectories of Students Act of 2019”
 5 or the “PROTECT Students Act of 2019”.

6 (b) TABLE OF CONTENTS.—The table of contents for
 7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. References.
- Sec. 3. Effective date.
- Sec. 4. Definitions.

TITLE I—FOR-PROFIT INSTITUTIONS

- Sec. 101. Closing the GI Bill loophole and restoring the 85/15 rule for for-profit institutions.
- Sec. 102. Process for for-profit institutions to convert to nonprofit or public status.
- Sec. 103. For-Profit Education Oversight Coordination Committee.

TITLE II—STUDENT AND BORROWER PROTECTIONS

- Sec. 201. Gainful employment programs.
- Sec. 202. Prohibition on institutions limiting student legal action.
- Sec. 203. Enforcement unit established in the Office of Federal Student Aid.
- Sec. 204. Establishment and maintenance of complaint resolution and tracking system.
- Sec. 205. Borrower defense to repayment.

TITLE III—ENSURING INTEGRITY AT INSTITUTIONS OF HIGHER
EDUCATION

- Sec. 301. Restrictions on sources of funds for recruiting and marketing activities.
- Sec. 302. Strengthening the incentive compensation ban.
- Sec. 303. Definition of nonprofit institution of higher education.
- Sec. 304. Definition of public institution of higher education.
- Sec. 305. Enhanced civil penalties, State enforcement, and private right of action.
- Sec. 306. Substantial misrepresentation prohibited.

8 **SEC. 2. REFERENCES.**

9 Except as otherwise expressly provided, whenever in
 10 this Act an amendment or repeal is expressed in terms
 11 of an amendment to, or repeal of, a section or other provi-

1 sion, the reference shall be considered to be made to a
2 section or other provision of the Higher Education Act of
3 1965 (20 U.S.C. 1001 et seq.).

4 **SEC. 3. EFFECTIVE DATE.**

5 Except as otherwise specified, this Act, and the
6 amendments made by this Act, shall take effect beginning
7 on July 1, 2020.

8 **SEC. 4. DEFINITIONS.**

9 (a) IN GENERAL.—Section 103 (20 U.S.C. 1003) is
10 amended—

11 (1) by redesignating paragraphs (15) through
12 (22), (23), and (24) as paragraphs (17) through
13 (24), (26), and (27);

14 (2) by inserting after paragraph (14) the fol-
15 lowing:

16 “(16) REVENUE SHARING ARRANGEMENTS.—
17 The term ‘revenue sharing arrangement’ means an
18 arrangement between an institution of higher edu-
19 cation and a third party contractor under which—

20 “(A) the third party contractor provides,
21 exclusively or nonexclusively, educational prod-
22 ucts or services to prospective students or stu-
23 dents attending the institution of higher edu-
24 cation; and

1 “(B) the third party contractor or institu-
2 tion of higher education pays a fee or provides
3 other material benefits, including revenue- or
4 profit-sharing, to the institution of higher edu-
5 cation or third party contractor in connection
6 with the educational products or services pro-
7 vided to prospective students or students at-
8 tending the institution of higher education.”;
9 and

10 (3) by inserting after paragraph (24), as redese-
11 gnated by paragraph (1), the following:

12 “(25) THIRD PARTY CONTRACTOR.—The term
13 ‘third party contractor’ means any State, person, or
14 entity that enters into a contract or agreement, in-
15 cluding a revenue sharing arrangement, with an eli-
16 gible institution of higher education to act on the in-
17 stitution’s behalf, including any entity that—

18 “(A) sells the names of prospective stu-
19 dents (also known as a ‘lead generator’); or

20 “(B) offers services including recruiting, fi-
21 nancial aid packaging, curriculum development,
22 facilities management, hiring and oversight of
23 faculty, and the provision of student services
24 representatives, job placement counselors, or

1 other employees (also known as an ‘online pro-
2 gram manager’).”.

3 (b) RENAMING PROPRIETARY INSTITUTIONS FOR-
4 PROFIT INSTITUTIONS.—

5 (1) IN GENERAL.—Section 102 (20 U.S.C.
6 1002) is amended—

7 (A) in subsection (a)(1)(A), by striking
8 “proprietary institution” and inserting “for-
9 profit institution”; and

10 (B) in subsection (b)—

11 (i) in the subsection heading, by strik-
12 ing “PROPRIETARY” and inserting “FOR-
13 PROFIT”;

14 (ii) in the matter preceding subpara-
15 graph (A) of paragraph (1), by striking
16 “proprietary” and inserting “for-profit”;
17 and

18 (iii) in paragraph (2), by striking
19 “proprietary” each place the term appears
20 and inserting “for-profit”.

21 (2) CONFORMING AMENDMENTS.—

22 (A) DEPARTMENT OF EDUCATION ORGANI-
23 ZATION ACT.—The Department of Education
24 Organization Act (20 U.S.C. 3401 et seq.) is
25 amended—

1 (i) in section 219 (20 U.S.C. 3426)—

2 (I) in the section heading, by
3 striking “**PROPRIETARY**” and insert-
4 ing “**FOR-PROFIT**”;

5 (II) by striking “Proprietary”
6 each place the term appears and in-
7 serting “For-Profit”; and

8 (III) by striking “proprietary”
9 each place the term appears and in-
10 serting “for-profit”; and

11 (ii) in section 1, by striking the item
12 relating to section 219 in the table of con-
13 tents and inserting the following:

“219. Liaison for For-Profit Institutions of Higher Education.”.

14 (B) HIGHER EDUCATION ACT OF 1965.—

15 The Act (20 U.S.C. 1001 et seq.) is amended—

16 (i) in each of sections 435 and
17 443(b)(8), by striking “proprietary” each
18 place the term appears and inserting “for-
19 profit”; and

20 (ii) in section 807(d)(1)(A)(iii), by
21 striking “proprietary” and inserting “for-
22 profit”.

23 (C) SCIENTIFIC AND ADVANCED-TECH-
24 NOLOGY ACT OF 1992.—Section 3(j)(2)(B) of
25 the Scientific and Advanced-Technology Act of

1 1992 (20 U.S.C. 1862i(j)(2)(B)) is amended by
2 striking “proprietary institution” and inserting
3 “for-profit institution”.

4 (3) REFERENCES.—

5 (A) PROPRIETARY INSTITUTION.—Any ref-
6 erence to a proprietary institution, as defined in
7 section 102(b) of the Higher Education Act of
8 1965 (20 U.S.C. 1002) on the day before the
9 date of enactment of this Act, in any law, rule,
10 regulation, certificate, directive, instruction, or
11 other official paper in force on the date of en-
12 actment of this Act shall be considered to refer
13 and apply to a for-profit institution, as defined
14 in section 102(b) of the Higher Education Act
15 of 1965 (20 U.S.C. 1002(b)), as amended by
16 this Act.

17 (B) LIAISON.—Any reference to the Liai-
18 son for Proprietary Institutions of Higher Edu-
19 cation in any law, rule, regulation, certificate,
20 directive, instruction, or other official paper in
21 force on the date of enactment of this Act shall
22 be considered to refer and apply to the Liaison
23 for For-Profit Institutions of Higher Education
24 established under section 219 of the Depart-

1 ment of Education Organization Act (20 U.S.C.
2 3401), as amended by this Act.

3 **TITLE I—FOR-PROFIT**
4 **INSTITUTIONS**

5 **SEC. 101. CLOSING THE GI BILL LOOPHOLE AND RESTOR-**
6 **ING THE 85/15 RULE FOR FOR-PROFIT INSTI-**
7 **TUTIONS.**

8 (a) IN GENERAL.—Section 102(b) (20 U.S.C. 1002),
9 as amended by section 4(b), is further amended—

10 (1) in paragraph (1)—

11 (A) in subparagraph (D), by striking
12 “and” after the semicolon; and

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

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

16 “(F) meets the requirements of paragraph
17 (2).”;

18 (2) by redesignating paragraph (2) as para-
19 graph (3); and

20 (3) by inserting after paragraph (1) the fol-
21 lowing:

22 “(2) REVENUE SOURCES.—

23 “(A) IN GENERAL.—In order to qualify as
24 a for-profit institution of higher education
25 under this subsection, an institution shall derive

1 not less than 15 percent of the institution’s rev-
2 enues from sources other than Federal edu-
3 cation assistance funds, as calculated in accord-
4 ance with subparagraphs (B) and (C).

5 “(B) FEDERAL EDUCATION ASSISTANCE
6 FUNDS.—In this paragraph, the term ‘Federal
7 education assistance funds’ means any Federal
8 financial assistance provided, under this Act or
9 any other Federal law, through a grant, con-
10 tract, subsidy, loan, guarantee, insurance, or
11 other means to an institution of higher edu-
12 cation, including Federal financial assistance
13 that is disbursed or delivered to an institution
14 or on behalf of a student or to a student to be
15 used to attend the institution, except that such
16 term shall not include any monthly housing sti-
17 pend provided under the Post-9/11 Veterans
18 Educational Assistance Program under chapter
19 33 of title 38, United States Code.

20 “(C) IMPLEMENTATION OF NON-FEDERAL
21 REVENUE REQUIREMENT.—In making calcula-
22 tions under subparagraph (A), an institution of
23 higher education shall—

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

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

3 “(I) tuition, fees, and other insti-
4 tutional charges for students enrolled
5 in programs eligible for assistance
6 under title IV;

7 “(II) activities conducted by the
8 institution that are necessary for the
9 education and training of the institu-
10 tion’s students, if such activities are—

11 “(aa) conducted on campus
12 or at a facility under the control
13 of the institution;

14 “(bb) performed under the
15 supervision of a member of the
16 institution’s faculty; and

17 “(cc) required to be per-
18 formed by all students in a spe-
19 cific educational program at the
20 institution; and

21 “(III) a contractual arrangement
22 with a Federal agency for the purpose
23 of providing job training to low-in-
24 come individuals who are in need of
25 such training;

1 “(iii) presume that any Federal edu-
2 cation assistance funds that are disbursed
3 or delivered to an institution on behalf of
4 a student or directly to a student will be
5 used to pay the student’s tuition, fees, or
6 other institutional charges, regardless of
7 whether the institution credits such funds
8 to the student’s account or pays such
9 funds directly to the student, except to the
10 extent that the student’s tuition, fees, or
11 other institutional charges are satisfied
12 by—

13 “(I) grant funds provided by an
14 outside source that—

15 “(aa) has no affiliation with
16 the institution; and

17 “(bb) shares no employees,
18 executives, or board members
19 with the institution;

20 “(II) funds provided under a con-
21 tractual arrangement with a Federal,
22 State, or local government agency for
23 the purpose of providing job training
24 to low-income individuals who are in
25 need of that training; or

1 “(III) institutional scholarships
2 described in clause (v);

3 “(iv) include no loans made by an in-
4 stitution of higher education as revenue to
5 the school, except for payments made by
6 students on such loans;

7 “(v) include a scholarship provided by
8 the institution—

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

16 “(II) only to the extent that
17 funds in that account represent des-
18 ignated funds, or income earned on
19 such funds, from an outside source
20 that—

21 “(aa) has no affiliation with
22 the institution; and

23 “(bb) shares no employees,
24 executives, or board members
25 with the institution; and

1 “(vi) exclude from revenues—

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

7 “(II) the amount of funds the in-
8 stitution received under subpart 4 of
9 part A of title IV;

10 “(III) the amount of funds pro-
11 vided by the institution as matching
12 funds for any Federal program;

13 “(IV) the amount of Federal edu-
14 cation assistance funds provided to
15 the institution to pay institutional
16 charges for a student that were re-
17 funded or returned; and

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

23 “(D) REPORT TO CONGRESS.—Not later
24 than July 1, 2020, and by July 1 of each suc-
25 ceeding year, the Secretary shall submit to the

1 authorizing committees a report that contains,
2 for each for-profit institution of higher edu-
3 cation that receives assistance under title IV
4 and as provided in the audited financial state-
5 ments submitted to the Secretary by each insti-
6 tution pursuant to the requirements of section
7 487(c)—

8 “(i) the amount and percentage of
9 such institution’s revenues received from
10 Federal education assistance funds; and

11 “(ii) the amount and percentage of
12 such institution’s revenues received from
13 other sources.”.

14 (b) REPEAL OF EXISTING REQUIREMENTS.—Section
15 487 (20 U.S.C. 1094) is amended—

16 (1) in subsection (a)—

17 (A) by striking paragraph (24);

18 (B) by redesignating paragraphs (25)
19 through (29) as paragraphs (24) through (28),
20 respectively;

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

1 (D) in paragraph (26) (as redesignated by
2 subparagraph (B)), by striking “subsection (h)”
3 and inserting “subsection (g)”;

4 (2) by striking subsection (d);

5 (3) by redesignating subsections (e) through (j)
6 as subsections (d) through (i), respectively;

7 (4) in subsection (d) (as redesignated by para-
8 graph (3)), by striking “(a)(25)” and inserting
9 “(a)(24)”;

10 (5) in subsection (f)(1) (as redesignated by
11 paragraph (3)), by striking “subsection (e)(2)” and
12 inserting “subsection (d)(2)”;

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

17 (c) CONFORMING AMENDMENTS.—The Act (20
18 U.S.C. 1001 et seq.) is amended—

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

20 (A) in subsection (a)(1)(A), by striking
21 “subsections (a)(27) and (h) of section 487”
22 and inserting “subsections (a)(26) and (g) of
23 section 487”; and

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

4 (2) in section 153(c)(3) (20 U.S.C.
 5 1019b(e)(3)), by striking “section 487(a)(25)” each
 6 place the term appears and inserting “section
 7 487(a)(24)”;

8 (3) in section 496(c)(3)(A) (20 U.S.C.
 9 1099b(e)(3)(A)), by striking “section 487(f)” and
 10 inserting “section 487(e)”; and

11 (4) in section 498(k)(1) (20 U.S.C.
 12 1099e(k)(1)), by striking “section 487(f)” and in-
 13 serting “section 487(e)”.

14 **SEC. 102. PROCESS FOR FOR-PROFIT INSTITUTIONS TO**
 15 **CONVERT TO NONPROFIT OR PUBLIC STA-**
 16 **TUS.**

17 (a) CONVERSION PROCESS.—Part B of title I (20
 18 U.S.C. 1011 et seq.) is further amended by adding at the
 19 end the following:

20 **“SEC. 124. PROCESS FOR FOR-PROFIT INSTITUTIONS TO**
 21 **CONVERT TO NONPROFIT OR PUBLIC STA-**
 22 **TUS.**

23 “(a) DETERMINATION.—

24 “(1) IN GENERAL.—In any case where the Sec-
 25 retary determines that a for-profit institution of

1 higher education, as defined in section 102(b), meets
2 the applicable requirements of subsection (b), the
3 Secretary shall approve the conversion of the institu-
4 tion of higher education to a nonprofit or public in-
5 stitution of higher education for not more than a 5-
6 year period.

7 “(2) PERIODIC REVIEW.—For each for-profit
8 institution that is converted under this section to a
9 nonprofit or public institution of higher education,
10 the Secretary shall—

11 “(A) review the determination not less
12 than once every 5 years; and

13 “(B) at the conclusion of a review de-
14 scribed in subparagraph (A)—

15 “(i) in a case where the Secretary de-
16 termines the institution continues to meet
17 the requirements of this section, approve
18 the institution’s status as a nonprofit insti-
19 tution of higher education or public insti-
20 tution of higher education for an additional
21 period not to exceed 5 years; and

22 “(ii) in a case where the Secretary de-
23 termines the institution no longer meets
24 the requirements, classify the institution as
25 a for-profit institution.

1 “(b) REQUIREMENTS.—To be eligible to convert to
2 a nonprofit or public institution of higher education, a for-
3 profit institution of higher education shall submit an ap-
4 plication to the Secretary that demonstrates that—

5 “(1) the institution, as of the date of the appli-
6 cation, meets the definition of a nonprofit or public
7 institution of higher education;

8 “(2) the institution has not acquired any other
9 institution of higher education (as defined in section
10 102), or a significant portion of the assets of such
11 other institution, for more than the value of such
12 other institution or such assets, respectively, as de-
13 termined in accordance with subsection (d); and

14 “(3) in the case of an institution that has been
15 acquired by another party, such institution is not
16 controlled by such party.

17 “(c) TRANSITION PERIOD.—A for-profit institution
18 of higher education approved for conversion under sub-
19 section (a) shall be subject to any rules and regulations
20 that apply to for-profit institutions of higher education,
21 as defined in section 102(b), for a minimum 5-year period
22 after conversion, which may be extended by the Secretary
23 if the Secretary identifies a reason for concern relating
24 to the institution’s converted status.

1 “(d) 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 between the acquiring institution
6 and the acquired institution) between affiliates, as
7 defined in section 180.905 of title 2, Code of Fed-
8 eral Regulations, as in effect on the date of enact-
9 ment of the PROTECT Students Act of 2019; and

10 “(2) may be demonstrated through—

11 “(A) third-party valuation;

12 “(B) independent financing of the acquisi-
13 tion based upon the assets acquired; or

14 “(C) full and open competition in the ac-
15 quisition, as such term is defined in section
16 2.101(b) of title 48, Code of Federal Regula-
17 tions, as in effect on the date of the enactment
18 of the PROTECT Students Act of 2019, of
19 services or assets.

20 “(e) PUBLICATION.—

21 “(1) APPLICATION.—Before the Secretary may
22 approve the conversion of an institution of higher
23 education under subsection (a), the Secretary shall
24 publish the application of the institution in the Fed-

1 eral Register with a notice and comment period of
2 not less than 60 days.

3 “(2) DETERMINATION.—The Secretary shall
4 publish each determination on an application for
5 conversion under this section, and the reasons for
6 such determination, in the Federal Register.

7 “(f) TAX EXEMPT STATUS.—In carrying out this sec-
8 tion, the Secretary may consider the nonprofit corporation
9 status under State law or the tax exempt status of an in-
10 stitution of higher education under section 501(c)(3) of
11 the Internal Revenue Code of 1986, but shall not use such
12 statutes as the sole determining factor for approval under
13 subsection (a).

14 “(g) PUBLIC REPRESENTATION AND MARKETING OF
15 NONPROFIT STATUS.—A for-profit institution of higher
16 education that receives assistance under title IV that is
17 seeking to convert under this section shall not promote
18 or market itself, in any manner, as a nonprofit institution
19 of higher education until—

20 “(1) the Secretary has approved the conversion
21 of the institution to a nonprofit institution under
22 this section;

23 “(2) the Commissioner of Internal Revenue has
24 approved the institution as tax exempt for purposes
25 of the Internal Revenue Code of 1986 and the insti-

1 tution is an organization described in clause (ii) or
2 (vi) of section 170(b)(1)(A) of such Code; and

3 “(3) a nationally recognized accrediting agency
4 or association recognized by the Secretary pursuant
5 to section 496 has approved the nonprofit status of
6 the institution.”.

7 (b) REVIEW AND ENFORCEMENT PROCESS.—

8 (1) IN GENERAL.—Section 487(c)(1) of the Act
9 (20 U.S.C. 1094(c)(1)) is amended—

10 (A) by redesignating subparagraphs (B)
11 through (I) as subparagraphs (C) through (J),
12 respectively; and

13 (B) by inserting after subparagraph (A)
14 the following:

15 “(B)(i) a requirement that an institution
16 of higher education shall use the same qualified,
17 independent organization or person, in accord-
18 ance with standards established by the Comp-
19 troller General for the audit of governmental
20 organizations, programs, and functions, and as
21 prescribed in regulations of the Secretary, for
22 both the financial and compliance audits re-
23 quired for a given year under subparagraph
24 (A);

1 “(ii) a requirement that the qualified, inde-
2 pendent organization or person chosen to con-
3 duct the annual financial and compliance audits
4 under subparagraph (A) shall document, in the
5 audit, any transactions or relationships that
6 may conflict with an institution’s status as a
7 nonprofit institution of higher education or pub-
8 lic institution of higher education; and

9 “(iii) in accordance with section 489A, in
10 any case where the Secretary determines, after
11 providing an institution with reasonable notice
12 and an opportunity for a hearing, that the insti-
13 tution is classified as a public institution of
14 higher education or a nonprofit institution for
15 purposes of this Act but is in violation of, or
16 has failed to carry out, any requirements relat-
17 ing to such nonprofit or public status in accord-
18 ance with paragraphs (13) and (15) of section
19 103 or section 124, a process through which the
20 Secretary may—

21 “(I) limit, suspend, or terminate the
22 institution’s participation in any program
23 under this title under section 489A(b)(1);

24 “(II) impose a civil penalty under sec-
25 tion 489A(c); or

1 “(III) take an emergency action under
2 section 498A(d) against an institution.”;

3 (2) CONFORMING AMENDMENTS.—Section
4 487(i) (20 U.S.C. 1094(i)), as redesignated by sec-
5 tion 101(b)(3), is further amended—

6 (A) by striking “subsection (c)(1)(D),”;

7 and

8 (B) by inserting “or subsection (b)(1) or
9 (c) of section 489A” after “of this section”.

10 **SEC. 103. FOR-PROFIT EDUCATION OVERSIGHT COORDINA-**
11 **TION COMMITTEE.**

12 Part B of title I (20 U.S.C. 1011 et seq.), as amend-
13 ed by section 102, is further amended by adding at the
14 end the following:

15 **“SEC. 125. FOR-PROFIT EDUCATION OVERSIGHT COORDINA-**
16 **TION COMMITTEE.**

17 “(a) DEFINITIONS.—In this section:

18 “(1) EXECUTIVE OFFICER.—The term ‘execu-
19 tive officer’, with respect to a for-profit institution
20 that is a publicly traded corporation, means—

21 “(A) the president of such corporation;

22 “(B) a vice president of such corporation
23 who is in charge of a principal business unit, di-
24 vision, or function of such corporation, such as
25 sales, administration, or finance; or

1 “(C) any other officer or person who per-
2 forms a policy-making function for such cor-
3 poration.

4 “(2) FEDERAL EDUCATION ASSISTANCE
5 FUNDS.—The term ‘Federal education assistance
6 funds’ has the meaning given the term in section
7 102(b)(2)(B).

8 “(3) FOR-PROFIT INSTITUTION.—The term
9 ‘for-profit institution’—

10 “(A) means a for-profit institution of high-
11 er education as defined in section 102(b)(2);
12 and

13 “(B) includes a former for-profit institu-
14 tion of higher education that has been approved
15 for conversion under section 124 but is still in
16 the transition period required under section
17 124(c).

18 “(4) PRIVATE EDUCATION LOAN.—The term
19 ‘private education loan’—

20 “(A) means a loan provided by a private
21 educational lender (as defined in section 140(a)
22 of the Truth in Lending Act (15 U.S.C.
23 1650(a))) that—

24 “(i) is not made, insured, or guaran-
25 teed under title IV;

1 “(ii) is issued expressly for postsec-
2 ondary educational expenses to a borrower,
3 regardless of whether the loan is provided
4 through the educational institution that
5 the subject student attends or directly to
6 the borrower from the private educational
7 lender; and

8 “(iii) is not made, insured, or guaran-
9 teed under title VII or title VIII of the
10 Public Health Service Act (42 U.S.C. 292
11 et seq. and 296 et seq.); and

12 “(B) does not include an extension of cred-
13 it under an open end consumer credit plan, a
14 reverse mortgage transaction, a residential
15 mortgage transaction, or any other loan that is
16 secured by real property or a dwelling.

17 “(5) RECRUITING AND MARKETING ACTIVI-
18 TIES.—The term ‘recruiting and marketing activi-
19 ties’ means the recruiting and marketing activities
20 described in section 126(d)(2).

21 “(6) STATE APPROVAL AGENCY.—The term
22 ‘State approval agency’ means any State agency that
23 determines whether an institution of higher edu-
24 cation is legally authorized within such State to pro-

1 vide a program of education beyond secondary edu-
2 cation.

3 “(7) VETERANS SERVICE ORGANIZATION.—The
4 term ‘veterans service organization’ means an orga-
5 nization recognized by the Secretary of Veterans Af-
6 fairs for the representation of veterans under section
7 5902 of title 38, United States Code.

8 “(b) ESTABLISHMENT OF COMMITTEE.—

9 “(1) ESTABLISHMENT.—There is established in
10 the executive branch a committee to be known as the
11 ‘For-Profit Education Oversight Coordination Com-
12 mittee’ (referred to in this section as the ‘Com-
13 mittee’) and to be composed of the head (or the des-
14 ignee of such head) of each of the following Federal
15 entities:

16 “(A) The Department of Education.

17 “(B) The Bureau of Consumer Financial
18 Protection.

19 “(C) The Department of Justice.

20 “(D) The Securities and Exchange Com-
21 mission.

22 “(E) The Department of Defense.

23 “(F) The Department of Veterans Affairs.

24 “(G) The Federal Trade Commission.

25 “(H) The Department of Labor.

1 “(I) The Internal Revenue Service.

2 “(J) The enforcement unit of the Perform-
3 ance-Based Organization established under sec-
4 tion 141(g).

5 “(K) At the discretion of the Chairperson
6 of the Committee, any other relevant Federal
7 agency or department.

8 “(2) PURPOSES.—The Committee shall have
9 the following purposes:

10 “(A) Coordinate Federal oversight of for-
11 profit institutions to—

12 “(i) improve enforcement of applicable
13 Federal laws and regulations;

14 “(ii) increase accountability of for-
15 profit institutions to students and tax-
16 payers; and

17 “(iii) ensure the promotion of quality
18 education programs.

19 “(B) Coordinate Federal activities to pro-
20 tect students from unfair, deceptive, abusive,
21 unethical, fraudulent, or predatory practices,
22 policies, or procedures of for-profit institutions.

23 “(C) Encourage information sharing
24 among agencies related to Federal investiga-
25 tions, audits, program reviews, inquiries, com-

1 plaints, financial statements, and other infor-
2 mation relevant to the oversight of for-profit in-
3 stitutions.

4 “(D) Develop binding memoranda of un-
5 derstanding that the Federal entities rep-
6 resented on the committee will use regarding
7 the sharing of information to exercise the over-
8 sight described in this section.

9 “(E) Increase coordination and cooperation
10 between Federal and State agencies, including
11 State Attorneys General and State approval
12 agencies, with respect to improving oversight
13 and accountability of for-profit institutions.

14 “(F) Develop best practices and consist-
15 ency among Federal and State agencies in the
16 dissemination of consumer information regard-
17 ing for-profit institutions to ensure that stu-
18 dents, parents, and other stakeholders have
19 easy access to such information.

20 “(3) MEMBERSHIP.—

21 “(A) DESIGNEES.—For any designee de-
22 scribed in paragraph (1), the head of the mem-
23 ber entity shall appoint a high-level official who
24 exercises significant decision-making authority
25 for the oversight or investigatory activities and

1 responsibilities related to for-profit institutions
2 of the respective member entity.

3 “(B) CHAIRPERSON.—The Secretary of
4 Education or the designee of such Secretary
5 shall serve as the Chairperson of the Com-
6 mittee.

7 “(C) COMMITTEE SUPPORT.—The head of
8 each entity described in paragraph (1) shall en-
9 sure appropriate staff and officials of such enti-
10 ty are available to support the Committee-re-
11 lated work of such entity.

12 “(c) MEETINGS.—

13 “(1) COMMITTEE MEETINGS.—The members of
14 the Committee shall meet regularly, but not less
15 than once during each quarter of each fiscal year, to
16 carry out the purposes described in subsection
17 (b)(2).

18 “(2) MEETINGS WITH STATE AGENCIES AND
19 STAKEHOLDERS.—The Committee shall meet not
20 less than once each fiscal year, and shall otherwise
21 interact regularly, with State Attorneys General,
22 State approval agencies, veterans service organiza-
23 tions, and consumer advocates to carry out the pur-
24 poses described in subsection (b)(2).

1 “(d) DIRECTOR.—The Chairperson shall appoint a
2 full-time executive director to support the Committee and
3 may appoint and fix the pay of additional staff as the
4 Chairperson considers appropriate.

5 “(e) REPORT.—

6 “(1) IN GENERAL.—The Committee shall sub-
7 mit a report each year to the authorizing committees
8 and any other committee of Congress that the Com-
9 mittee determines appropriate.

10 “(2) PUBLIC ACCESS.—The report described in
11 paragraph (1) shall be made available to the public
12 in a manner that is easily accessible to parents, stu-
13 dents, and other stakeholders, in accordance with
14 the best practices developed under subsection
15 (b)(2)(F).

16 “(3) CONTENTS.—

17 “(A) IN GENERAL.—The report shall in-
18 clude—

19 “(i) an accounting of any action (as
20 defined in subparagraph (C)) taken by the
21 Federal Government, any member entity of
22 the Committee, or a State—

23 “(I) to enforce Federal or State
24 laws and regulations applicable to for-
25 profit institutions;

1 “(II) to hold for-profit institu-
2 tions accountable to students and tax-
3 payers; and

4 “(III) to promote quality edu-
5 cation programs;

6 “(ii) a summary of complaints against
7 each for-profit institution received by any
8 member entity of the Committee;

9 “(iii) the data described in subpara-
10 graph (B) and any other data relevant to
11 for-profit institutions that the Committee
12 determines appropriate; and

13 “(iv) recommendations of the Com-
14 mittee for such legislative and administra-
15 tive actions as the Committee determines
16 are necessary to—

17 “(I) improve enforcement of ap-
18 plicable Federal laws;

19 “(II) increase accountability of
20 for-profit institutions to students and
21 taxpayers; and

22 “(III) ensure the promotion of
23 quality education programs.

24 “(B) DATA.—

1 “(i) INDUSTRY-WIDE AND INSTITU-
2 TION-LEVEL DATA.—The report shall in-
3 clude data on all for-profit institutions, in-
4 cluding the following:

5 “(I) The following data, in the
6 aggregate for all for-profit institutions
7 and disaggregated for each individual
8 for-profit institution:

9 “(aa) The total amount of
10 Federal education assistance
11 funds that for-profit institutions
12 received for the previous aca-
13 demic year, and the percentage
14 of the total amount of Federal
15 education assistance funds pro-
16 vided to institutions of higher
17 education (as defined in section
18 102) for such previous academic
19 year that reflects such total
20 amount of Federal education as-
21 sistance funds provided to for-
22 profit institutions for such pre-
23 vious academic year.

24 “(bb) The total amount of
25 Federal education assistance

1 funds that for-profit institutions
2 received for the previous aca-
3 demic year, disaggregated by
4 whether the funds were pro-
5 vided—

6 “(AA) in the form of a
7 loan under title IV;

8 “(BB) in the form of a
9 grant under such title;

10 “(CC) under chapter 33
11 of title 38, United States
12 Code;

13 “(DD) for tuition and
14 expenses under section 2007
15 of title 10, United States
16 Code;

17 “(EE) under section
18 1784a of title 10, United
19 States Code; and

20 “(FF) in a manner not
21 described in subitems (AA)
22 through (EE).

23 “(cc) The percentage of the
24 total amount of Federal edu-
25 cation assistance funds provided

1 to institutions of higher edu-
2 cation (as defined in section 102)
3 for such previous academic year
4 for each of the programs de-
5 scribed in subitems (AA) through
6 (EE) of item (bb) that reflects
7 such total amount of Federal
8 education assistance funds pro-
9 vided to for-profit institutions for
10 such previous academic year for
11 each of such programs.

12 “(dd) Expenses by classifica-
13 tion, including separate classi-
14 fications for—

15 “(AA) pre-enrollment
16 recruiting and marketing ac-
17 tivities;

18 “(BB) student instruc-
19 tion; and

20 “(CC) student support
21 services.

22 “(ee) Net income and other
23 changes in equity.

1 “(ff) Executive compensa-
2 tion for the 10 highest-paid for-
3 profit institution executives.

4 “(gg) The average retention
5 and graduation rates for students
6 pursuing a certificate or a degree
7 at for-profit institutions.

8 “(hh) The average cohort
9 default rate (as defined in section
10 435(m)).

11 “(ii) With respect to all ca-
12 reers requiring the passage of a
13 licensing examination, and
14 disaggregated by each such ca-
15 reer—

16 “(AA) the average pas-
17 sage rate of individuals who
18 attended a for-profit institu-
19 tion taking such examina-
20 tion to pursue such a career;

21 “(BB) the average pas-
22 sage rate of all individuals
23 taking such exam to pursue
24 such a career; and

1 “(CC) the percentage of
2 all individuals taking such
3 exam who attended a for-
4 profit institution.

5 “(jj) Information regarding
6 the use of private education loans
7 at for-profit institutions that in-
8 cludes—

9 “(AA) an estimate of
10 the total number of such
11 loans; and

12 “(BB) information on
13 the average debt, default
14 rate, and interest rate of
15 such loans.

16 “(II) The financial composite
17 scores, in accordance with section
18 498, for each for-profit institution,
19 the name and dollar amount of any
20 letters of credit required under sub-
21 part L of part 668 of title 34, Code
22 of Federal Regulations (or any suc-
23 cessor regulation), and the name of
24 each institution placed under the
25 heightened cash monitoring payment

1 method, as established under section
2 668.162(d) of title 34, Code of Fed-
3 eral Regulations (or any successor
4 regulation).

5 “(ii) DATA ON CORPORATIONS.—

6 “(I) IN GENERAL.—The report
7 shall include data on for-profit institu-
8 tions that are publicly traded corpora-
9 tions, consisting of information on—

10 “(aa) any pre-tax profit of
11 such for-profit institutions—

12 “(AA) reported as a
13 total amount and as the av-
14 erage percentage of revenue
15 for all such for-profit insti-
16 tutions; and

17 “(BB) reported as a
18 total amount and as the av-
19 erage percentage of revenue
20 for each such for-profit in-
21 stitution;

22 “(bb) spending on pre-en-
23 rollment recruiting and mar-
24 keting activities, student instruc-
25 tion, and student support serv-

1 ices, and for each of the 3 cat-
2 egories separately reported—

3 “(AA) as a total
4 amount and the average per-
5 centage of revenue for all
6 such for-profit institutions;
7 and

8 “(BB) for each such
9 for-profit institution;

10 “(cc) total compensation
11 packages of the executive officers
12 of each such for-profit institu-
13 tion;

14 “(dd) a list of institutional
15 loan programs offered by each
16 such for-profit institution that in-
17 cludes information on the default
18 and interest rates of such pro-
19 grams; and

20 “(ee) the data described in
21 subclauses (II) and (III).

22 “(II) DISAGGREGATED BY OWN-
23 ERSHIP.—The report shall include
24 data on for-profit institutions that are
25 corporations, disaggregated by cor-

1 porate or parent entity, brand name,
2 and campus, consisting of—

3 “(aa) the total cost of at-
4 tendance for each program at
5 each such for-profit institution;

6 “(bb) total enrollment,
7 disaggregated by—

8 “(AA) individuals en-
9 rolled in programs taken ex-
10 clusively online;

11 “(BB) individuals en-
12 rolled in programs that are
13 exclusively in person; and

14 “(CC) individuals en-
15 rolled in programs that are
16 a mix of online and in per-
17 son;

18 “(cc) the retention and
19 graduation rates for students
20 pursuing a degree at such for-
21 profit institutions, including the
22 number of students who enroll
23 each year and withdraw in less
24 than one year;

1 “(dd) the percentage of stu-
2 dents enrolled in such for-profit
3 institutions who complete a pro-
4 gram of such an institution with-
5 in—

6 “(AA) the standard pe-
7 riod of completion for such
8 program; and

9 “(BB) a period that is
10 150 percent of such stand-
11 ard period of completion;

12 “(ee) the average cohort de-
13 fault rate, as defined in section
14 435(m), for such for-profit insti-
15 tutions, and an annual list of co-
16 hort default rates (as so defined)
17 for all for-profit institutions;

18 “(ff) the median educational
19 debt incurred by students who
20 complete a program at such a
21 for-profit institution of higher
22 education;

23 “(gg) the median edu-
24 cational debt incurred by stu-
25 dents who start but do not com-

1 complete a program at such a for-
2 profit institution of higher edu-
3 cation;

4 “(hh) the job placement rate
5 for students who complete a pro-
6 gram at such a for-profit institu-
7 tion of higher education and the
8 type of employment obtained by
9 such students;

10 “(ii) for careers requiring
11 the passage of a licensing exam-
12 ination, the rate of individuals
13 who attended such a for-profit in-
14 stitution and passed such an ex-
15 amination; and

16 “(jj) the number of com-
17 plaints from students enrolled in
18 such for-profit institutions that
19 have been submitted to any mem-
20 ber entity of the Committee.

21 “(III) DEPARTMENT OF DE-
22 FENSE AND VETERANS AFFAIRS AS-
23 SISTANCE.—

24 “(aa) IN GENERAL.—To the
25 extent practicable, the report

1 shall provide information on the
2 data described in subclause (II)
3 for individuals who pay for the
4 costs of attending a for-profit in-
5 stitution of higher education that
6 is a corporation by using Federal
7 education assistance provided
8 under—

9 “(AA) chapter 33 of
10 title 38, United States Code;

11 “(BB) section 2007 of
12 title 10, United States Code;

13 and

14 “(CC) section 1784a of
15 title 10, United States Code.

16 “(bb) REVENUE.—The re-
17 port shall provide information on
18 the revenue of such for-profit in-
19 stitutions that is derived from
20 the Federal education assistance
21 described in item (aa).

22 “(iii) COMPARISON DATA.—The report
23 shall provide information comparing, in the
24 aggregate and disaggregated by State,
25 each of the data elements described in

1 clause (ii) for for-profit institutions that
2 are publicly traded corporations, for-profit
3 institutions that are not owned or operated
4 by a publicly traded company, nonprofit in-
5 stitutions, and public institutions.

6 “(iv) INFORMATION REGARDING OWN-
7 ERSHIP INTERESTS.—The report shall, for
8 each for-profit institution of higher edu-
9 cation that is not a publicly traded cor-
10 poration, report the name of any indi-
11 vidual, partnership, or corporation that
12 holds an ownership interest of 5 percent or
13 greater of the for-profit institution of high-
14 er education.

15 “(C) ACCOUNTING OF ANY ACTION.—For
16 the purposes of subparagraph (A)(i), the term
17 ‘any action’ shall include—

18 “(i) a complaint filed by a Federal or
19 State agency in a local, State, Federal, or
20 Tribal court;

21 “(ii) an administrative proceeding by
22 a Federal or State agency involving non-
23 compliance of any applicable law or regula-
24 tion;

1 “(iii) any other review, audit, or ad-
 2 ministrative process by any Federal or
 3 State agency that results in a penalty, sus-
 4 pension, or termination from any Federal
 5 or State program; or

6 “(iv) a negative or adverse action
 7 taken by an accrediting agency or associa-
 8 tion recognized by the Secretary pursuant
 9 to section 496 with respect to an approved
 10 institution or program.

11 “(f) FOR-PROFIT COLLEGE WARNING LIST FOR
 12 PARENTS AND STUDENTS.—

13 “(1) IN GENERAL.—Each academic year, the
 14 Committee shall publish a list to be known as the
 15 ‘For-Profit College Warning List for Parents and
 16 Students’ to be comprised of for-profit institutions—

17 “(A) that have engaged in illegal activity
 18 during the previous academic year as deter-
 19 mined by a Federal or State court;

20 “(B) that have entered into a settlement
 21 with a Federal or State entity resulting in a
 22 monetary payment;

23 “(C) that have had any higher education
 24 program limited, withdrawn, or suspended by
 25 an external entity (such as a Federal or State

1 entity or an accrediting agency or association
2 recognized by the Secretary pursuant to section
3 496); and

4 “(D) for which the Committee has suffi-
5 cient evidence of widespread or systemic unfair,
6 deceptive, abusive, unethical, fraudulent, or
7 predatory practices, policies, or procedures that
8 pose a threat to the academic success, financial
9 security, or general best interest of students.

10 “(2) DETERMINATIONS.—In making a deter-
11 mination pursuant to paragraph (1)(D), the Com-
12 mittee may consider evidence that includes the fol-
13 lowing:

14 “(A) Any consumer complaint collected by
15 any member entity of the Committee.

16 “(B) Any complaint filed by a Federal or
17 State entity in a Federal, State, local, or Tribal
18 court.

19 “(C) Any administrative proceeding by a
20 Federal or State entity involving noncompliance
21 of any applicable law or regulation.

22 “(D) Any other review, audit, or adminis-
23 trative process by any Federal or State entity
24 that results in a penalty, suspension, or termi-
25 nation from any Federal or State program.

1 “(E) Data or information submitted by a
2 for-profit institution to any accrediting agency
3 or association recognized by the Secretary pur-
4 suant to section 496 or the findings or adverse
5 actions of any such accrediting agency or asso-
6 ciation.

7 “(F) Information submitted by a for-profit
8 institution to any member entity of the Com-
9 mittee.

10 “(G) Any other evidence that the Com-
11 mittee determines relevant in making such de-
12 termination.

13 “(3) PUBLICATION.—Not later than July 1 of
14 each fiscal year, the Committee shall publish the list
15 under paragraph (1) prominently and in a manner
16 that is easily accessible to parents, students, and
17 other stakeholders, in accordance with any best
18 practices developed under subsection (b)(2)(F).”.

19 **TITLE II—STUDENT AND** 20 **BORROWER PROTECTIONS**

21 **SEC. 201. GAINFUL EMPLOYMENT PROGRAMS.**

22 (a) IN GENERAL.—Section 102 (20 U.S.C. 1002), as
23 amended by sections 4(b) and 101, is further amended—

24 (1) in subsection (b)(1)(A)—

25 (A) by striking clause (ii);

1 (B) by striking “(i) provides” and insert-
 2 ing “provides”; and

3 (C) by striking “recognized occupation; or”
 4 and inserting “recognized occupation, as de-
 5 scribed in subsection (e);”;

6 (2) in subsection (c)(1)(A), by inserting “, as
 7 described in subsection (e)” after “recognized occu-
 8 pation”; and

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

10 “(e) GAINFUL EMPLOYMENT IN A RECOGNIZED OC-
 11 CUPATION.—

12 “(1) DEFINITIONS.—In this subsection:

13 “(A) DEBT-TO-EARNINGS RATES.—The
 14 term ‘debt-to-earnings rates’ means the discre-
 15 tionary income rate and the annual earnings
 16 rate, as determined under the gainful employ-
 17 ment rules.

18 “(B) ELIGIBLE TRAINING PROGRAM.—The
 19 term ‘eligible training program’ means a pro-
 20 gram of training that—

21 “(i) in order to qualify for assistance
 22 under title IV, is required under subsection
 23 (b)(1)(A)(i) or (c)(1)(A), or section
 24 101(b)(1), to satisfy the gainful employ-
 25 ment requirements of this subsection; and

1 “(ii) is offered by an institution eligi-
2 ble to receive assistance under such title.

3 “(C) GAINFUL EMPLOYMENT RULES.—The
4 term ‘gainful employment rules’ means the
5 rules issued under subpart Q of title 34, Code
6 of Federal Regulations, as published on October
7 31, 2014, relating to gainful employment in a
8 recognized occupation.

9 “(2) IN GENERAL.—An eligible training pro-
10 gram prepares students for gainful employment in a
11 recognized occupation if the eligible training pro-
12 gram complies with all requirements of the gainful
13 employment rules (including any modifications made
14 by this subsection), including—

15 “(A) the provisions relating to the calcula-
16 tion of debt-to-earnings rates for the eligible
17 training program, using actual annual earnings
18 data of students who completed the eligible
19 training program;

20 “(B) the provisions relating to the deter-
21 mination of outcomes for an eligible training
22 program based on the debt-to-earnings rates,
23 including whether an eligible training program
24 is a ‘passing’, ‘failing’, or ‘zone’ program;

1 “(C) the provisions relating to the associ-
2 ated consequences for an eligible training pro-
3 gram that is not passing the debt-to-earnings
4 rates, including a student warning and ultimate
5 loss of eligibility for assistance under title IV;

6 “(D) the requirements relating to disclo-
7 sure, reporting, and certification; and

8 “(E) the calculation of completion rates,
9 withdrawal rates, repayment rates, program co-
10 hort default rates, and median loan debt for the
11 eligible training program.

12 “(3) ANNUAL CALCULATIONS AND
13 VERIFICATIONS.—The Secretary shall carry out all
14 of the following:

15 “(A) On an annual calendar year basis
16 (notwithstanding section 668.403(c)(5) of the
17 gainful employment rules) and for each eligible
18 training program, calculate for each award year
19 both of the debt-to-earnings rates for the eligi-
20 ble training program, issue a notice of deter-
21 mination, and enforce restrictions based on
22 those determinations. In order to carry out the
23 preceding sentence, the Secretary shall—

24 “(i) create a list of students who com-
25 pleted the eligible training program during

1 the cohort period identified by the Sec-
2 retary;

3 “(ii) provide the list to the institution
4 offering the eligible training program and
5 allow the institution a 45-day period begin-
6 ning the day after the date that the Sec-
7 retary provides the list to the institution,
8 to submit any corrections to the list;

9 “(iii) after resolving any corrections,
10 provide the institution with the final list
11 and submit the final list of students who
12 completed the eligible training program to
13 the Social Security Administration, the In-
14 ternal Revenue Service, or any other Fed-
15 eral agency that administers a database
16 that contains earnings information that
17 can be matched to the individuals named
18 in the final list, and retrieve the mean and
19 median annual earnings of students on the
20 lists, in aggregate and not in individual
21 form, within 10 business days after sub-
22 mission;

23 “(iv) calculate and send the debt-to-
24 earnings rates to the institution offering
25 the eligible training program and allow the

1 institution a 45-day period, beginning after
2 the date the Secretary notifies an institu-
3 tion of the debt-to-earnings rates, to chal-
4 lenge the accuracy of information used to
5 calculate the eligible training program’s
6 median loan debt;

7 “(v) subject to the resolution of any
8 challenge, issue a notice of determination
9 informing the institution—

10 “(I) of the final debt-to-earnings
11 rates of each eligible training program
12 to the institution offering the pro-
13 gram;

14 “(II) of the final determination
15 regarding whether the program is a
16 passing, failing, or zone program, or
17 is ineligible, and the consequences of
18 that determination;

19 “(III) whether the program could
20 become ineligible based on its final
21 debt-to-earnings rates for the next
22 award year;

23 “(IV) whether the institution is
24 required to provide warnings to en-

1 rolled students and prospective stu-
2 dents; and

3 “(V) if the program is deter-
4 mined to be a failing or zone program
5 due to the final debt-to-earnings rates,
6 how the program may make an alter-
7 nate earnings appeal, in accordance
8 with paragraph (4);

9 “(vi) with respect to an institution
10 that receives a notification from the Sec-
11 retary under clause (v)(III) and that does
12 not submit an intent to appeal in accord-
13 ance with paragraph (4) or for which the
14 appeal is denied, require the institution,
15 not later than 30 days after receiving the
16 notification of the determination or denial,
17 to—

18 “(I) issue warnings to enrolled
19 students and prospective students;
20 and

21 “(II) update the disclosure tem-
22 plate, as required by the gainful em-
23 ployment rules, as modified by para-
24 graph (5); and

25 “(vii) enforce restrictions whereby—

1 “(I) an institution may not dis-
2 burse program funds under title IV to
3 students enrolled in an ineligible pro-
4 gram; and

5 “(II) an institution may not seek
6 to reestablish the eligibility of a fail-
7 ing or zone program that it discon-
8 tinued voluntarily, reestablish the eli-
9 gibility of a program that is ineligible
10 under the debt-to-earnings rates, or
11 establish the eligibility of a program
12 that is substantially similar to the dis-
13 continued or ineligible program, until
14 3 years following the date specified in
15 the notice of determination informing
16 the institution of the program’s ineli-
17 gibility or the date the institution dis-
18 continued the failing or zone program;
19 and

20 “(B) develop processes to verify, on an an-
21 nual calendar year basis, that—

22 “(i) required warnings under the gain-
23 ful employment rules are delivered to en-
24 rolled students and prospective students
25 and are published on the eligible training

1 program’s disclosure template, in accord-
2 ance with subparagraph (A)(vii); and

3 “(ii) each eligible training program is
4 publishing the disclosure template on the
5 website of the eligible training program, as
6 required by the gainful employment rules,
7 as modified by paragraph (5).

8 “(4) ALTERNATE EARNINGS APPEALS PROC-
9 ESS.—The Secretary shall establish and enforce an
10 appeals process for any institution of higher edu-
11 cation that wish to file an alternate earnings appeal
12 for an eligible training program that is a failing or
13 zone program under the debt-to-earnings rates. The
14 appeals process shall be carried out in accordance
15 with the gainful employment rules, except that the
16 appeals process shall also—

17 “(A) allow an institution to file an alter-
18 nate earnings appeal, in accordance with the
19 gainful employment rules, to request the recal-
20 culation of a gainful employment program’s
21 most recent final debt-to-earnings rates issued
22 by the Secretary, except that—

23 “(i) any institution that elects to sub-
24 mit alternate earnings from an institu-
25 tional survey shall, in addition to the other

1 requirements in the gainful employment
2 rules—

3 “(I) include a test for non-re-
4 sponse bias;

5 “(II) allow for an exception to
6 issues of bias due to sample sizes
7 below 10; and

8 “(III) subject the institutional
9 survey instrument and survey re-
10 sponses to an audit by the Inspector
11 General of the Department; and

12 “(ii) the Inspector General of the De-
13 partment shall—

14 “(I) audit the institutional survey
15 instrument, and the survey responses,
16 submitted by an institution under
17 clause (i); and

18 “(II) furnish data showing the
19 Inspector General verified the accu-
20 racy of student survey responses; and

21 “(B) require the Secretary to accept the
22 alternate earnings estimate from an institu-
23 tional survey if the test for non-response bias
24 includes a response rate that guarantees that
25 the lower bound of the 95 percent confidence

1 interval of the alternate earnings estimate is at
2 or above the earnings level retrieved from the
3 Social Security Administration, the Internal
4 Revenue Service, or any other Federal agency
5 with a database containing individual-level earn-
6 ings data.

7 “(5) GAINFUL EMPLOYMENT DISCLOSURE RE-
8 QUIREMENTS.—Notwithstanding section 668.412(a)
9 of the gainful employment rules, the Secretary shall
10 include in the disclosure template all the information
11 listed in paragraphs (1) through (16) of section
12 668.412(a) of the gainful employment rules, unless
13 the Secretary—

14 “(A) determines that consumer testing
15 supports the noninclusion of the information
16 listed in any such paragraph; and

17 “(B) publishes the Secretary’s determina-
18 tion, and the consumer testing supporting the
19 determination, on the public website of the De-
20 partment.

21 “(6) ROLE OF SOCIAL SECURITY ADMINISTRA-
22 TION, THE INTERNAL REVENUE SERVICE, AND
23 OTHER FEDERAL AGENCIES.—The Commissioner of
24 Social Security, the Commissioner of Internal Rev-
25 enue, and the head of any other Federal agency that

1 administers the database of individual-level earnings
2 data shall, in coordination with the Secretary, timely
3 provide the Secretary with the earnings information
4 as required in accordance with paragraph (3)(A)(iii)
5 and the gainful employment rules.”.

6 (b) CONFORMING AMENDMENT.—Section 101(b)(1)
7 (20 U.S.C. 1001(b)(1)) is amended by inserting “, as de-
8 scribed in section 102(e),” after “recognized occupation”.

9 (c) EFFECTIVE DATE.—Notwithstanding section 3,
10 this section shall take effect on the date of enactment of
11 this Act.

12 **SEC. 202. PROHIBITION ON INSTITUTIONS LIMITING STU-**
13 **DENT LEGAL ACTION.**

14 (a) ENFORCEMENT OF ARBITRATION AGREE-
15 MENTS.—

16 (1) IN GENERAL.—Chapter 1 of title 9, United
17 States Code, (relating to the enforcement of arbitra-
18 tion agreements) shall not apply to an enrollment
19 agreement made between a student and an institu-
20 tion of higher education.

21 (2) DEFINITION.—In this section, the term “in-
22 stitution of higher education” has the meaning given
23 such term in section 102 of the Higher Education
24 Act of 1965 (20 U.S.C. 1002), as amended by sec-
25 tion 101 of this Act.

1 (b) PROHIBITION ON LIMITATIONS ON ABILITY OF
 2 STUDENTS TO PURSUE CLAIMS AGAINST CERTAIN INSTI-
 3 TUTIONS OF HIGHER EDUCATION.—Section 487(a) (20
 4 U.S.C. 1094(a)), as amended by section 101, is further
 5 amended by adding at the end the following:

6 “(29) The institution will not require any stu-
 7 dent to agree to, and will not enforce, any limitation
 8 or restriction (including a limitation or restriction on
 9 any available choice of applicable law, a jury trial,
 10 or venue) on the ability of a student to pursue a
 11 claim, individually or with others, against an institu-
 12 tion in court.”.

13 (c) EFFECTIVE DATE.—Notwithstanding section 3,
 14 this section shall take effect on the date of enactment of
 15 this Act.

16 **SEC. 203. ENFORCEMENT UNIT ESTABLISHED IN THE OF-**
 17 **FICE OF FEDERAL STUDENT AID.**

18 Section 141 (20 U.S.C. 1018) is amended—

19 (1) by redesignating subsections (g) through (i)
 20 as subsections (h) through (j), respectively; and

21 (2) by inserting after subsection (f) the fol-
 22 lowing:

23 “(g) ENFORCEMENT UNIT.—

24 “(1) IN GENERAL.—The Chief Operating Offi-
 25 cer, in consultation with the Secretary, shall estab-

1 lish an enforcement unit within the PBO (referred
2 to in this section as the ‘enforcement unit’).

3 “(2) APPOINTMENT.—

4 “(A) CHIEF ENFORCEMENT OFFICER.—

5 The Chief Operating Officer, in consultation
6 with the Secretary, shall appoint a Chief En-
7 forcement Officer as a senior manager, in ac-
8 cordance with subsection (e), to perform the
9 functions described in this subsection. The
10 Chief Enforcement Officer shall report solely
11 and directly to the Chief Operating Officer.

12 “(B) BONUS.—Notwithstanding subsection

13 (e), the Chief Enforcement Officer may receive
14 a bonus, separately determined from the meth-
15 odology which applies to the calculation of bo-
16 nuses for other senior managers, based upon
17 the Chief Operating Officer’s evaluation of the
18 Chief Enforcement Officer’s performance in re-
19 lation to the goals set forth in a performance
20 agreement related to the specific duties of the
21 enforcement unit.

22 “(3) DUTIES.—The enforcement unit shall—

23 “(A) receive, process, and analyze allega-

24 tions and complaints regarding the potential
25 violation of Federal or State law (including civil

1 and criminal law) or other unfair, deceptive, or
2 abusive acts or practices, by institutions of
3 higher education, third party servicers that con-
4 tract with such institutions, and third party
5 contractors;

6 “(B) investigate and coordinate investiga-
7 tions of potential or actual misconduct of insti-
8 tutions of higher education, third party
9 servicers that contract with such institutions,
10 and third party contractors; and

11 “(C) enforce compliance with laws gov-
12 erning Federal student financial assistance pro-
13 grams under title IV, including through the use
14 of an emergency action in accordance to section
15 489A, the limitation, suspension, or termination
16 of the participation of an eligible institution in
17 a program under title IV, or the imposition of
18 a civil penalty in accordance with section 489A.

19 “(4) COORDINATION AND STAFFING.—The en-
20 forcement unit shall—

21 “(A) coordinate with relevant Federal and
22 State agencies and oversight bodies, including
23 the For-Profit Education Oversight Coordina-
24 tion Committee established under section 125;
25 and

1 “(B) hire staff, (including by appointing
2 not more than 10 individuals in positions of ex-
3 cepted service, as described in subsection
4 (h)(3)) with such expertise as is necessary to
5 conduct investigations, respond to allegations
6 and complaints, and enforce compliance with
7 laws governing Federal student financial assist-
8 ance programs under title IV.

9 “(5) DIVISIONS.—

10 “(A) IN GENERAL.—The enforcement unit
11 shall have separate divisions with the following
12 focus areas:

13 “(i) An investigations division to in-
14 vestigate potential or actual misconduct at
15 institutions of higher education, third
16 party servicers that contract with such in-
17 stitutions, and third party contractors.

18 “(ii) A division focused on evaluating
19 the claims of borrowers who assert a de-
20 fense to repayment of Federal student
21 loans, or groups of borrowers who qualify
22 to assert such a defense to repayment,
23 under section 455(h).

24 “(iii) A division focused on oversight
25 of the Jeanne Clery Disclosure of Campus

1 Security Policy and Campus Crime Statis-
2 tics Act, the reporting of crime and fire
3 statistics by institutions of higher edu-
4 cation, and the oversight and enforcement
5 of section 120 (relating to drug and alco-
6 hol abuse prevention).

7 “(iv) A division to administer the Sec-
8 retary’s authority to fine, limit, suspend,
9 terminate, or take action against institu-
10 tions of higher education, third party
11 servicers that contract with such institu-
12 tions, and third party contractors, partici-
13 pating in the Federal student financial as-
14 sistance programs under title IV.

15 “(v) A division that administers a pro-
16 gram of compliance monitoring and over-
17 sight of institutions of higher education,
18 third party servicers that contract with
19 such institutions, and third party contrac-
20 tors, including systems and procedures to
21 support the eligibility, certification, and
22 oversight of program participants, for all
23 institutions of higher education partici-
24 pating in the Federal student financial as-
25 sistance programs under title IV.

1 “(vi) Any other division that the Chief
2 Enforcement Officer, in coordination with
3 the Chief Operating Officer and the Sec-
4 retary, determines is necessary.

5 “(B) REPORTING.—The staff of each divi-
6 sion described in subparagraph (A) shall report
7 to the Chief Enforcement Officer.

8 “(6) ACTIONS RECOMMENDED.—The Chief En-
9 forcement Officer may recommend, as appropriate to
10 the particular circumstance, that the Chief Oper-
11 ating Officer—

12 “(A) terminate, suspend, or limit an insti-
13 tution of higher education, a third party
14 servicer that contracts with such institution, or
15 a third party contractor, from participation in
16 one or more programs under title IV (in accord-
17 ance with section 489A), or provisionally certify
18 such participation (in accordance to section
19 498(h));

20 “(B) impose a civil penalty in accordance
21 with section 489A;

22 “(C) make a recommendation to the Sec-
23 retary about whether to approve or deny the
24 claims of borrowers, including groups of bor-

1 rowers, who assert a defense to repayment in
2 accordance with section 455(h); or

3 “(D) carry out any other enforcement ac-
4 tivity applicable to the Department under sec-
5 tion 489A.

6 “(7) DEFINITIONS.—In this subsection—

7 “(A) the term ‘institution of higher edu-
8 cation’ has the meaning given that term in sec-
9 tion 102; and

10 “(B) the term ‘third party servicer’ has the
11 meaning given that term in section 481(e).”.

12 **SEC. 204. ESTABLISHMENT AND MAINTENANCE OF COM-**
13 **PLAINT RESOLUTION AND TRACKING SYS-**
14 **TEM.**

15 Title I (20 U.S.C. 1001 et seq.) is amended by adding
16 at the end the following new part:

17 **“PART F—COMPLAINT TRACKING SYSTEM**

18 **“SEC. 161. COMPLAINT TRACKING SYSTEM.**

19 “(a) IN GENERAL.—

20 “(1) IN GENERAL.—The Secretary shall main-
21 tain a complaint tracking system that includes a sin-
22 gle, toll-free telephone number and a website to fa-
23 cilitate the centralized collection of, monitoring of,
24 and response to complaints and reports (including
25 evidence, as available) of suspicious activity (such as

1 unfair, deceptive, or abusive acts or practices) re-
2 garding—

3 “(A) Federal student financial aid and the
4 servicing of postsecondary education loans by
5 loan servicers;

6 “(B) educational practices and services of
7 institutions of higher education; and

8 “(C) the recruiting and marketing prac-
9 tices of institutions of higher education.

10 “(2) DEFINITIONS.—In this section—

11 “(A) the term ‘institution of higher edu-
12 cation’ has the meaning given that term in sec-
13 tion 102; and

14 “(B) the term ‘recruiting and marketing
15 activities’ means activities described in section
16 126(d)(2) (as added by section 301 of the Pre-
17 venting Risky Operations from Threatening the
18 Education and Career Trajectories of Students
19 Act of 2019).

20 “(b) COMPLAINTS.—Complaints and reports of sus-
21 picious activity submitted to the tracking system by stu-
22 dents, borrowers of student loans, staff, or the general
23 public—

24 “(1) may remain anonymous, if the complain-
25 ant so chooses; and

1 “(2) may describe problems that are systematic
2 in nature and not associated with a particular stu-
3 dent.

4 “(c) ESTABLISHMENT OF COMPLAINT TRACKING OF-
5 FICE.—The Secretary shall establish within the Depart-
6 ment an office whose functions shall include establishing
7 and administering the complaint tracking system, and
8 widely disseminating information about the complaint
9 tracking system, established under this subsection. The
10 Secretary shall—

11 “(1) to the extent necessary, combine and con-
12 solidate the other offices and functions of the De-
13 partment to ensure that the office established under
14 this subsection is the single point of contact for stu-
15 dents and borrowers with complaints or reports of
16 suspicious activity regarding Federal student finan-
17 cial aid, student loan servicers, educational practices
18 and services of institutions of higher education, and
19 recruiting and marketing activities of institutions of
20 higher education; and

21 “(2) to the extent practicable, ensure that the
22 office established under this subsection will work
23 with the Student Loan Ombudsman appointed in ac-
24 cordance with section 141(f) and the Student Loan
25 Ombudsman of the Bureau of Consumer Financial

1 Protection to assist borrowers of Federal student
2 loans that submit complaints or reports of suspicious
3 activity to the complaint tracking system.

4 “(d) HANDLING OF COMPLAINTS.—

5 “(1) TIMELY RESPONSE TO COMPLAINTS.—The
6 Secretary shall establish, in consultation with the
7 heads of appropriate agencies (including the Direc-
8 tor of the Bureau of Consumer Financial Protec-
9 tion), reasonable procedures to provide a response to
10 complainants not more than 90 days after receiving
11 a complaint in the complaint tracking system, in
12 writing where appropriate. Each response shall in-
13 clude a description of—

14 “(A) the steps that have been taken by the
15 Secretary in response to the complaint or report
16 of suspicious activity;

17 “(B) any responses received by the Sec-
18 retary from the institution of higher education
19 or from a servicer; and

20 “(C) any additional actions that the Sec-
21 retary has taken, or plans to take, in response
22 to the complaint or report of suspicious activity.

23 “(2) TIMELY RESPONSE TO SECRETARY BY IN-
24 STITUTION OF HIGHER EDUCATION OR LOAN
25 SERVICER.—If the Secretary determines that it is

1 necessary, the Secretary shall notify an institution of
2 higher education or loan servicer that is the subject
3 of a complaint or report of suspicious activity
4 through the complaint tracking system under this
5 subsection regarding the complaint or report and di-
6 rectly address and resolve the complaint or report in
7 the system. Not later than 60 days after receiving
8 such notice, such institution or loan servicer shall
9 provide a response to the Secretary concerning the
10 complaint or report, including—

11 “(A) the steps that have been taken by the
12 institution or loan servicer to respond to the
13 complaint or report;

14 “(B) all responses received by the institu-
15 tion or loan servicer from the complainant; and

16 “(C) any additional actions that the insti-
17 tution or loan servicer has taken, or plans to
18 take, in response to the complaint or report.

19 “(3) FURTHER INVESTIGATION.—The Secretary
20 may, in the event that the complaint is not ade-
21 quately resolved or addressed by the responses of the
22 institution of higher education or loan servicer under
23 paragraph (2), ask additional questions of such in-
24 stitution or loan servicer or seek additional informa-

1 tion from or action by the institution or loan
2 servicer.

3 “(4) PROVISION OF INFORMATION.—

4 “(A) IN GENERAL.—An institution of high-
5 er education or loan servicer shall, in a timely
6 manner, comply with a request by the Secretary
7 for information in the control or possession of
8 such institution or loan servicer concerning a
9 complaint or report of suspicious activity re-
10 ceived by the Secretary under this subsection,
11 including supporting written documentation,
12 subject to subparagraph (B).

13 “(B) EXCEPTIONS.—An institution of
14 higher education or loan servicer shall not be
15 required to make available under this sub-
16 section—

17 “(i) any nonpublic or confidential in-
18 formation, including any confidential com-
19 mercial information;

20 “(ii) any information collected by the
21 institution for the purpose of preventing
22 fraud or detecting or making any report
23 regarding other unlawful or potentially un-
24 lawful conduct; or

1 “(iii) any information required to be
2 kept confidential by any other provision of
3 law.

4 “(5) COMPLIANCE.—An institution of higher
5 education or loan servicer shall comply with the re-
6 quirements to provide responses and information, in
7 accordance with this subsection, as a condition of re-
8 ceiving funds under title IV or as a condition of the
9 contract with the Department, as applicable.

10 “(e) TRANSPARENCY.—

11 “(1) COLLECTING AND SHARING INFORMATION
12 WITH FEDERAL, STATE, AND NATIONALLY RECOG-
13 NIZED ACCREDITING AGENCIES.—In accordance with
14 section 444 of the General Education Provisions Act
15 (20 U.S.C. 1232g) (commonly referred to as the
16 ‘Family Educational Rights and Privacy Act of
17 1974’) and other laws, the Secretary shall coordinate
18 with the heads of relevant Federal or State agencies
19 or entities, and nationally recognized accrediting
20 agencies or associations recognized by the Secretary
21 pursuant to section 496 to—

22 “(A) collect any complaints and reports of
23 suspicious activity described in subsection
24 (a)(1) from such agencies, entities, or associa-
25 tions; and

1 “(B) route complaints and reports received
2 by the complaint tracking system under this
3 section and complaints and reports collected in
4 accordance with subparagraph (A) to the De-
5 partment, the Department of Justice, the De-
6 partment of Defense, the Department of Vet-
7 erans Affairs, the Federal Trade Commission
8 Consumer Sentinel Network, the Bureau of
9 Consumer Financial Protection, any equivalent
10 State agency, or the relevant nationally recog-
11 nized accrediting agency or association.

12 “(2) INTERACTION WITH EXISTING COMPLAINT
13 SYSTEMS.—To the extent practicable, all procedures
14 established under this section, and all coordination
15 carried out under paragraph (1), shall be established
16 and carried out in accordance with the complaint
17 tracking systems established under Executive Order
18 13607 (77 Fed. Reg. 25861; relating to establishing
19 principles of excellence for educational institutions
20 serving servicemembers, veterans, spouses, and other
21 family members).

22 “(3) PUBLIC INFORMATION.—

23 “(A) IN GENERAL.—The Secretary shall,
24 on an annual basis, publish on the website of
25 the Department information on the complaints

1 and reports of suspicious activity received for
2 each institution of higher education or loan
3 servicer under this subsection, including—

4 “(i) the number of complaints and re-
5 ports received;

6 “(ii) the types of complaints and re-
7 ports received; and

8 “(iii) where applicable, information
9 about the resolution of the complaints and
10 reports.

11 “(B) DATA PRIVACY.—In carrying out sub-
12 paragraph (A), the Secretary shall—

13 “(i) comply with applicable data pri-
14 vacy laws and regulations; and

15 “(ii) ensure that personally identifi-
16 able information is not shared.

17 “(4) REPORTS.—Each year, the Secretary shall
18 prepare and submit to Congress a report describ-
19 ing—

20 “(A) the types and nature of complaints or
21 reports the Secretary has received under this
22 section;

23 “(B) the extent to which complainants are
24 receiving adequate resolution pursuant to this
25 section;

1 “(C) whether particular types of com-
2 plaints or reports are more common in a given
3 sector of institutions of higher education or
4 with particular loan servicers;

5 “(D) any legislative recommendations that
6 the Secretary determines are necessary to bet-
7 ter assist students and families regarding the
8 activities described in subsection (a)(1); and

9 “(E) the institutions of higher education
10 and loan servicers with the highest volume of
11 complaints and reports, as determined by the
12 Secretary.”.

13 **SEC. 205. BORROWER DEFENSE TO REPAYMENT.**

14 Section 455(h) (20 U.S.C. 1087e) is amended to read
15 as follows:

16 “(h) BORROWER DEFENSES.—

17 “(1) APPLICATION.—

18 “(A) IN GENERAL.—A borrower of a loan
19 under this part or part B may submit an appli-
20 cation to the Secretary claiming a defense to re-
21 payment of the loan (as described in paragraph
22 (7)) (referred to in this subsection as a ‘bor-
23 rower defense’), at any time and regardless of
24 the current payment status of the loan. The ap-
25 plication shall—

1 “(i) certify that the borrower received
2 the proceeds of a loan or loans issued
3 under this part or part B to attend an eli-
4 gible institution of higher education;

5 “(ii) provide evidence that supports
6 the borrower defense;

7 “(iii) indicate whether the borrower
8 has made a claim with respect to the infor-
9 mation underlying the borrower defense
10 with any third party, such as the holder of
11 a performance bond or a tuition recovery
12 program, and, if so, the amount of any
13 payment received by the borrower or cred-
14 ited to the borrower’s loan obligation; and

15 “(iv) provide any other information or
16 supporting documentation reasonably re-
17 quested by the Secretary.

18 “(B) BORROWER DEFENSE FOR A
19 GROUP.—

20 “(i) IN GENERAL.—

21 “(I) GROUP DEFENSE.—The Sec-
22 retary may initiate and carry out a
23 process to determine whether a group
24 of borrowers, identified by the Sec-
25 retary, has a borrower defense.

1 “(II) IDENTIFICATION OF
2 GROUP.—The Secretary may—

3 “(aa) identify members of
4 such a group from individually
5 filed applications submitted
6 under subparagraph (A); or

7 “(bb) if the Secretary deter-
8 mines that there are common
9 facts and claims that apply to
10 borrowers who have not filed an
11 application under subparagraph
12 (A), identify such members based
13 on information in the possession
14 of the Secretary.

15 “(III) REPRESENTATIVE.—In the
16 case of a group identified by the Sec-
17 retary under this clause, the Secretary
18 shall designate a Department official
19 to present the group’s claim in the
20 process described under paragraph
21 (2).

22 “(ii) APPLICATION FOR A GROUP.—A
23 State attorney general or nonprofit legal
24 assistance organization that represents
25 borrowers may submit an application de-

1 scribed in subparagraph (A) on behalf of a
2 group of borrowers whose claims are simi-
3 lar or identical, without requiring an appli-
4 cation from each individual borrower in
5 that group or class.

6 “(iii) NOTIFICATION.—

7 “(I) Upon initiation of the proc-
8 ess under clause (i) or receipt of an
9 application under clause (ii), the Sec-
10 retary shall provide the borrowers who
11 may be members of a group borrower
12 defense claim with a written notice of
13 such initiation or receipt, as the case
14 may be, and an option to opt out of
15 the proceeding under this subsection
16 for that group.

17 “(II) Upon receipt of an applica-
18 tion on behalf of a group of borrowers
19 under clause (ii), the Secretary shall
20 provide the entity submitting that ap-
21 plication with a written determination,
22 not later than 120 days after receipt
23 of the application, stating—

24 “(aa) whether the Secretary
25 will forgo the review of claims for

1 individual borrowers and instead
2 will review the claims for the
3 group described in that applica-
4 tion (or for a subset of borrowers
5 in that group, if applicable);

6 “(bb) if the Secretary deter-
7 mines not to evaluate the applica-
8 tion for that group (or not to
9 evaluate the application for all
10 the requested members of that
11 group), the reasons for the deter-
12 mination; and

13 “(cc) that the Secretary may
14 reconsider the determination in
15 item (bb) if presented with new
16 evidence that would allow for the
17 consideration of claims for the
18 group described in the applica-
19 tion.

20 “(iv) RELIEF.—If the Secretary ap-
21 proves a group application for relief under
22 this subsection, all borrowers in the group
23 who have not affirmatively opted out are
24 entitled to relief, regardless of whether an
25 individual borrower filed an application.

1 “(2) PROCESS.—

2 “(A) IN GENERAL.—Upon receipt of an
3 application from an individual borrower or upon
4 receipt of an application from a group of bor-
5 rowers or initiation of a claim on behalf of a
6 group of borrowers, as described in paragraph
7 (1)(B), the Secretary shall carry out the fol-
8 lowing activities:

9 “(i) With regard to the borrower’s
10 payment status (including each borrower
11 in such group who does not opt out under
12 paragraph (1)(B)(iii)(I)), the Secretary
13 shall—

14 “(I) grant an administrative for-
15 bearance without requiring docu-
16 mentation from the borrower, includ-
17 ing a forbearance for any period nec-
18 essary for the Secretary to determine
19 the borrower’s eligibility for discharge;

20 “(II) notify the borrower of the
21 option to decline that forbearance and
22 continue making payments on the
23 loan;

1 “(III) provide the borrower with
2 information about the availability of
3 an income-based repayment plan; and

4 “(IV) if the borrower’s loan is in
5 default—

6 “(aa) suspend collection ac-
7 tivity on the loan, including any
8 garnishments or offsets, until a
9 decision on the borrower’s claim
10 is issued;

11 “(bb) notify the borrower of
12 the suspension of collection activ-
13 ity;

14 “(cc) notify the borrower
15 that if the Secretary determines
16 the borrower does not qualify for
17 a discharge of the loan, collection
18 activity will resume unless the
19 borrower chooses to make pay-
20 ments under any repayment plan,
21 including income-based repay-
22 ment described under section
23 493C; and

24 “(dd) notify the borrower
25 that if the Secretary determines

1 the borrower does not qualify for
2 a discharge of the loan, and if
3 the borrower makes payments
4 under any repayment plan, in-
5 cluding an income-based repay-
6 ment, as described in item (cc),
7 the Secretary shall submit a re-
8 port to the consumer reporting
9 agencies to which the Secretary
10 previously made adverse credit
11 reports with regard to the bor-
12 rower's loan under this part or
13 part B to remove the borrower's
14 record of default and the Sec-
15 retary shall refund any collection
16 costs paid by the borrower subse-
17 quent to the borrower submitting
18 an application under paragraph
19 (1), but prior to the suspension
20 of the collection activity, as de-
21 scribed in item (aa).

22 “(ii) With regard to the fact-finding
23 process, the Secretary shall designate a
24 Department official (which shall not be an
25 official designated under paragraph

1 (1)(B)(i)(III) and shall be a staff member
2 in the enforcement unit, in accordance
3 with section 141(g) to—

4 “(I) notify the institution of
5 higher education of the borrower de-
6 fense application or the initiation of
7 the borrower defense claim;

8 “(II) determine whether the bor-
9 rower has established a borrower de-
10 fense, which shall include—

11 “(aa) consideration of evi-
12 dence or argument presented by
13 the borrower; and

14 “(bb) consideration of addi-
15 tional information, including—

16 “(AA) Department
17 records;

18 “(BB) any response or
19 submission from the institu-
20 tion; and

21 “(CC) any additional
22 information; and

23 “(III) upon the borrower’s rea-
24 sonable request, identify and provide
25 to the borrower any records the Sec-

1 retary is considering as part of the
2 borrower's claim.

3 “(iii) Not later than 18 months after
4 the date of receipt of an application under
5 paragraph (1)(A) or (1)(B)(ii), or the initi-
6 ation of a claim under paragraph (1)(B)(i),
7 as the case may be, the Secretary shall de-
8 termine if a borrower or group of bor-
9 rowers has a successful borrower defense
10 claim. If the Secretary fails to issue a de-
11 termination by the date that is 18 months
12 after the date of receipt of such application
13 or initiation, the loan underlying the bor-
14 rower defense claim shall be automatically
15 discharged.

16 “(B) INSTITUTION’S RESPONSE.—An insti-
17 tution shall provide information to the Sec-
18 retary, not later than 30 days after the date of
19 a request by the Secretary, and as directed by
20 the Secretary, regarding any response or sub-
21 mission that is requested from the Secretary re-
22 lating to a borrower defense claim.

23 “(3) STANDARD OF EVIDENCE.—A borrower de-
24 fense claim shall be approved under this subsection,
25 if the Secretary finds that a preponderance of the

1 evidence shows that the borrower has established a
2 borrower defense that meets the requirements of this
3 subsection.

4 “(4) SUCCESSFUL BORROWER DEFENSE
5 CLAIM.—

6 “(A) BORROWER RELIEF.—If a borrower
7 is determined to have a borrower defense in ac-
8 cordance with this subsection, the Secretary
9 shall—

10 “(i) discharge the borrower of the bor-
11 rower’s obligation to repay the loan (in-
12 cluding associated interest, costs, and fees
13 that the borrower would otherwise be obli-
14 gated to pay) in regards to which there is
15 a borrower defense;

16 “(ii) notify the borrower of the dis-
17 charge described in clause (i) and the other
18 information described in subparagraph (C);

19 “(iii) retroactively waive any interest
20 that accrued after the borrower submitted
21 an application under this subsection;

22 “(iv) provide the borrower such fur-
23 ther relief as the Secretary determines is
24 appropriate under the circumstances,
25 which shall include—

1 “(I) reimbursing the borrower for
2 amounts paid toward the loan volun-
3 tarily or through enforced collection;
4 and

5 “(II) determining that the bor-
6 rower is not in default on the loan
7 and is eligible to receive assistance
8 under title IV; and

9 “(v) not later than 30 days after the
10 date of such determination, submit new re-
11 ports to consumer reporting agencies to
12 which the Secretary previously made ad-
13 verse credit reports with regard to the bor-
14 rower’s loan under this part or part B.

15 “(B) AMOUNT OF LOAN DISCHARGE.—

16 “(i) IN GENERAL.—There shall be a
17 presumption that on the finding of a suc-
18 cessful borrower defense claim, the full
19 amount of the borrower’s loan shall be dis-
20 charged as described in subparagraph (A).
21 If the Secretary determines that discharge
22 of the full amount of the loan is not appro-
23 priate in a particular case, the Secretary
24 shall provide the borrower with—

1 “(I) a written explanation as to
2 why partial relief is appropriate; and

3 “(II) if the borrower defense is a
4 defense based on State law and de-
5 scribed in paragraph (7)(B)(i) or is a
6 defense described in paragraph
7 (7)(B)(ii) or (7)(B)(iii), include an as-
8 surance that the amount of relief is
9 not less than the amount of relief that
10 would be afforded under State law.

11 “(ii) SUBSTANTIAL MISREPRESENTA-
12 TION.—Notwithstanding clause (i), in the
13 case of a determination that a borrower
14 defense based on paragraph (7)(B)(iv) has
15 been established, the full amount of the
16 borrower’s loan shall be discharged.

17 “(iii) LIMITATION.—The total amount
18 of relief granted with respect to a borrower
19 defense regarding a loan under this part or
20 part B shall not exceed the amount of the
21 loan under this part or part B, as the case
22 may be, and any associated interest, costs,
23 and fees. Such amount will be reduced by
24 the amount of any refund, reimbursement,
25 indemnification, restitution, compensatory

1 damages, settlement, debt forgiveness, dis-
2 charge, cancellation, compromise, or any
3 other financial benefit received by, or on
4 behalf of, the borrower that was related to
5 the borrower defense and that reduced the
6 borrower's debt for the loan under this
7 part or part B.

8 “(iv) RELIEF FOR A NON-FEDERAL
9 LOAN OR OUT-OF-POCKET EXPENSES.—
10 Any relief provided to a borrower, such as
11 relief for an education loan that is not a
12 Federal loan or refunds from a State tui-
13 tion recovery fund for out-of-pocket ex-
14 penses, shall not decrease the amount of
15 relief that the borrower shall be entitled to
16 for a loan under this part or part B based
17 on a borrower defense.

18 “(v) MINIMUM AMOUNT OF RELIEF.—
19 A borrower that has a borrower defense
20 based on State law and described in para-
21 graph (7)(B)(i) or a defense described in
22 paragraph (7)(B)(ii) or (7)(B)(iii) shall
23 not receive an amount of relief that is less
24 than the relief the borrower would receive
25 under the applicable State law.

1 “(C) NOTIFICATION.—If a borrower de-
2 fense is successful the Secretary shall notify the
3 borrower (or the entity that submitted the ap-
4 plication, in the case of an application described
5 in paragraph (1)(B)(ii)) in writing—

6 “(i) of the reasons for the approval
7 and the evidence that was relied upon;

8 “(ii) that the borrower is relieved of
9 the obligation to repay the loan (or a por-
10 tion of the loan, as described in subpara-
11 graph (B)) and associated costs and fees
12 that the borrower would otherwise be obli-
13 gated to pay;

14 “(iii) in the event the Secretary does
15 not grant a discharge of the full amount of
16 the loan, an explanation of the reason why
17 partial relief is granted, and (if applicable)
18 an assurance described in subparagraph
19 (B)(i)(II);

20 “(iv) that the borrower will be reim-
21 bursed for some or all of the amounts paid
22 toward the loan voluntarily or through en-
23 forced collection, if applicable;

1 “(v) of the amount of any portion of
2 the loan that is due and payable to the
3 Secretary;

4 “(vi) that if any balance remains on
5 the loan, the loan will return to the status
6 prior to the borrower’s submission of the
7 application, except that in the case of a
8 loan that was in default prior to such ap-
9 plication, the borrower shall first be re-
10 moved from default status and given the
11 opportunity to enter repayment, including
12 income-based repayment described under
13 section 493C, before the loan will be sent
14 to collections;

15 “(vii) that if the borrower chooses to
16 make payments, including payments under
17 income-based repayment as described in
18 clause (vi), the Secretary shall—

19 “(I) submit a report to the con-
20 sumer reporting agencies to which the
21 Secretary previously made adverse
22 credit reports with regard to the bor-
23 rower’s loan under this part or part B
24 to remove the record of default; and

1 “(II) refund any collection costs
2 paid with regard to that loan by the
3 borrower subsequent to the borrower
4 submitting an application under para-
5 graph (1);

6 “(viii) that if only some of the loan
7 will be discharged, the borrower will have
8 the opportunity for reconsideration of the
9 borrower’s claim as described in paragraph
10 (6);

11 “(ix) that the borrower is eligible to
12 receive assistance under title IV, if applica-
13 ble; and

14 “(x) that reports to consumer report-
15 ing agencies to which the Secretary pre-
16 viously made adverse credit reports with
17 regard to the borrower’s loan shall be up-
18 dated not later than 30 days from the date
19 the determination under this paragraph
20 was made.

21 “(5) DENIAL OF BORROWER DEFENSE
22 CLAIM.—If the Secretary denies a borrower defense,
23 the Secretary shall retroactively waive a portion of
24 interest that accrued during the forbearance period

1 (as described in subparagraph (B)) and notify the
2 borrower—

3 “(A) of the reasons for the denial and the
4 evidence that was relied upon;

5 “(B) that the interest accruing on the rel-
6 evant loan after the first 12-month period of
7 forbearance that occurred from the time the
8 borrower’s application was submitted under this
9 subsection will be retroactively waived;

10 “(C) of the amount of any portion of the
11 loan that is due and payable to the Secretary;

12 “(D) whether the Secretary will reimburse
13 any amounts previously collected prior to the
14 suspension of the collection activity, as de-
15 scribed in paragraph (2)(A)(i)(IV)(aa);

16 “(E) that if any balance remains on the
17 loan, the loan will return to the status prior to
18 the borrower’s submission of the application,
19 except that in the case of a loan that was in de-
20 fault prior to such application, the borrower
21 shall first be removed from default status and
22 given the opportunity to enter repayment, in-
23 cluding income-based repayment described
24 under section 493C, before the loan will be sent
25 to collections; and

1 “(F) that the borrower shall have the op-
2 portunity for reconsideration of the borrower’s
3 claim as described in paragraph (6).

4 “(6) RECONSIDERATION.—

5 “(A) IN GENERAL.—The decision of the
6 Secretary and any relief that may be granted
7 on the claim shall be considered the final agen-
8 cy action that shall be subject to appeal in dis-
9 trict court, except that—

10 “(i) if the borrower defense is denied
11 in full or in part, the borrower may re-
12 quest that the Secretary reconsider the
13 borrower defense upon the identification of
14 new evidence in support of the borrower’s
15 claim; and

16 “(ii) the Secretary may reopen a bor-
17 rower defense application at any time to
18 consider evidence that was not considered
19 in making the previous decision on that ap-
20 plication.

21 “(B) PROHIBITION ON RESCINDING RE-
22 LIEF.—The Secretary shall not reduce the
23 amount of any relief that was previously grant-
24 ed to a borrower under this section, or reinstate

1 any amounts owed on a previously discharged
2 loan.

3 “(7) BORROWER DEFENSE CLAIMS AND ESTAB-
4 LISHING A BORROWER DEFENSE.—

5 “(A) CLAIMS.—

6 “(i) IN GENERAL.—Notwithstanding
7 any other provision of State or Federal
8 law, a borrower may claim as a defense to
9 repayment of a loan made under this part
10 or part B any borrower defense established
11 under subparagraph (B). Such a borrower
12 defense claim may include—

13 “(I) a defense to repayment of
14 amounts owed to the Secretary on a
15 loan under this part or part B, in
16 whole or in part; and

17 “(II) a right to recover amounts
18 previously collected by the Secretary
19 on such loan, in whole or in part.

20 “(ii) CONSOLIDATION LOAN.—In the
21 case of a Direct Consolidation Loan—

22 “(I) the Secretary shall consider
23 a borrower defense claim to such loan
24 by determining whether a borrower
25 defense described in subparagraph (B)

1 has been established with regard to a
2 loan made under this part or part B
3 that was paid off by the Direct Con-
4 solidation Loan;

5 “(II) the Secretary shall dis-
6 charge the appropriate portion of the
7 Direct Consolidation Loan if the bor-
8 rower is determined to have a bor-
9 rower defense with respect to a loan
10 made under this part or part B that
11 was paid off by the Direct Consolida-
12 tion Loan; and

13 “(III) the Secretary shall return
14 to the borrower any payments made
15 by the borrower or otherwise recov-
16 ered on the Direct Consolidation Loan
17 or the loans that were paid off by the
18 Direct Consolidation Loan that exceed
19 the amount owed on that portion of
20 the Direct Consolidation Loan that
21 was not discharged, if—

22 “(aa) the borrower is deter-
23 mined to have a borrower defense
24 with respect to a loan made
25 under this part or part B that

1 was paid off by the Direct Con-
2 solidation Loan; and

3 “(bb) the payment was
4 made directly to the Secretary on
5 the loan.

6 “(iii) PLUS LOAN.—In the case of a
7 Direct PLUS Loan made on behalf of a
8 student, the Secretary shall consider a bor-
9 rower defense claim related to the student
10 on whose behalf the Direct PLUS Loan
11 was borrowed. Any amounts discharged
12 will be applied to the parent or borrower of
13 the Direct PLUS Loan.

14 “(B) ESTABLISHING A BORROWER DE-
15 FENSE.—A borrower has established a borrower
16 defense if—

17 “(i) the borrower (whether as an indi-
18 vidual or as a member of a group or class)
19 or a government agency, has obtained
20 against the institution of higher education
21 a judgment relating to the borrower’s
22 claim based on State or Federal law in a
23 court or administrative tribunal of com-
24 petent jurisdiction;

1 “(ii) the institution of higher edu-
2 cation that the borrower attended using a
3 loan under this part failed to perform the
4 institution’s obligations under the terms of
5 a contract with the borrower;

6 “(iii) the borrower was subject to any
7 act or omission of the institution related to
8 the making of the loan for enrollment at
9 the institution or the provision of edu-
10 cational services for which the loan was
11 provided that would give rise to a cause of
12 action against the institution under appli-
13 cable State law;

14 “(iv) the institution of higher edu-
15 cation, a third servicer that contracts with
16 such institution, or third party contractor
17 made a substantial misrepresentation; or

18 “(v) the institution has made any
19 other act or omission that the Secretary,
20 through regulations, or any Federal law,
21 has established is an act or omission that
22 constitutes a borrower defense under this
23 subsection.

24 “(C) LIMITATION.—A violation by an insti-
25 tution of a requirement in this Act (including

1 implementing regulations) is not a basis for a
2 borrower defense under this subsection unless
3 the violation would otherwise constitute a basis
4 for a borrower defense, as described in this
5 paragraph.

6 “(8) FINDING OF SUBSTANTIAL MISREPRESENTATION.—An eligible institution is deemed to have
7 engaged in a substantial misrepresentation for purposes of this subsection when an eligible institution,
8 third party servicer that contracts with such institution, or third party contractor, commits a substan-
9 tial misrepresentation, as defined in section 489A. A sworn statement or attestation from the borrower
10 shall be considered as evidence, and, in the Secretary’s discretion, may be sufficient evidence for the
11 Secretary to find that a substantial misrepresentation was made to a borrower. If the Secretary deter-
12 mines that an eligible institution, third party servicer that contracts with such institution, or third
13 party contractor, has engaged in a substantial misrepresentation, the Secretary shall, in addition to
14 finding a borrower defense under this section, take enforcement action against the institution, third
15 party servicer that contracts with such institution,
16 third party contractor, or third party servicer that contracts with such institution,
17 third party contractor, or third party servicer that contracts with such institution,
18 third party contractor, or third party servicer that contracts with such institution,
19 third party contractor, or third party servicer that contracts with such institution,
20 third party contractor, or third party servicer that contracts with such institution,
21 third party contractor, or third party servicer that contracts with such institution,
22 third party contractor, or third party servicer that contracts with such institution,
23 third party contractor, or third party servicer that contracts with such institution,
24 third party contractor, or third party servicer that contracts with such institution,

1 or third party contractor, in accordance with section
2 489A.

3 “(9) ACTION AGAINST THE INSTITUTION.—If a
4 borrower is determined to have established a bor-
5 rower defense in accordance with this subsection, the
6 Secretary shall initiate an appropriate proceeding to
7 require the institution whose act or omission re-
8 sulted in the borrower defense to repay to the Sec-
9 retary the amount discharged under paragraph
10 (7)(A) whether by offset, claim on a letter of credit,
11 or other protection provided by the institution.

12 “(10) REPORTING.—Not less than once every 3
13 months, the Secretary shall publish on a website,
14 and report to Congress, data—

15 “(A) for each institution, on—

16 “(i) the number of claims considered
17 under this subsection;

18 “(ii) the number of those claims pend-
19 ing and the date of receipt of the applica-
20 tion, or the date of the initiation of the
21 claim by the Secretary, of those claims;
22 and

23 “(iii) the number of claims under this
24 subsection for which a determination has

1 been made and the results of each such de-
2 termination; and

3 “(B) in the aggregate, and disaggregated
4 by State, on—

5 “(i) the total number of claims pend-
6 ing under this subsection;

7 “(ii) the number of those claims that
8 are approved borrower defense claims and
9 total dollar amount of relief;

10 “(iii) the percentage of those total ap-
11 proved claims receiving partial relief and
12 the median student loan debt remaining
13 for borrowers receiving partial relief; and

14 “(iv) the number of those claims that
15 are denied borrower defense claims.”.

16 **TITLE III—ENSURING INTEG-**
17 **RITY AT INSTITUTIONS OF**
18 **HIGHER EDUCATION**

19 **SEC. 301. RESTRICTIONS ON SOURCES OF FUNDS FOR RE-**
20 **CRUITING AND MARKETING ACTIVITIES.**

21 (a) REPEAL.—Section 119 of the Higher Education
22 Opportunity Act (20 U.S.C. 1011m) is repealed.

23 (b) AMENDMENT TO THE HIGHER EDUCATION ACT
24 OF 1965.—Part B of title I of the Act (20 U.S.C. 1011

1 et seq.), as amended by title I, is further amended by add-
2 ing at the end the following:

3 **“SEC. 126. USE OF FEDERAL FUNDS; RESTRICTIONS ON**
4 **SOURCES OF FUNDS FOR RECRUITING AND**
5 **MARKETING ACTIVITIES.**

6 “(a) PROHIBITION.—

7 “(1) IN GENERAL.—No Federal student aid
8 funding under this Act received by an institution of
9 higher education may be used to pay any person for
10 influencing or attempting to influence an officer or
11 employee of any agency, a Member of Congress, an
12 officer or employee of Congress, or an employee of
13 a Member of Congress in connection with any Fed-
14 eral action described in paragraph (2).

15 “(2) APPLICABILITY.—The prohibition in para-
16 graph (1) applies with respect to the following Fed-
17 eral actions:

18 “(A) The awarding of any Federal con-
19 tract.

20 “(B) The making of any Federal grant.

21 “(C) The making of any Federal loan.

22 “(D) The entering into of any Federal co-
23 operative agreement.

1 “(E) The extension, continuation, renewal,
2 amendment, or modification of any Federal con-
3 tract, grant, loan, or cooperative agreement.

4 “(b) LOBBYING AND EARMARKS.—No Federal stu-
5 dent aid funding under this Act may be used to hire a
6 registered lobbyist or pay any person or entity for securing
7 an earmark.

8 “(c) RESTRICTIONS ON SOURCES OF FUNDS FOR RE-
9 CRUITING AND MARKETING ACTIVITIES.—

10 “(1) IN GENERAL.—An institution of higher
11 education may not use revenues derived from Fed-
12 eral education assistance funds for recruiting or
13 marketing activities described in paragraph (2).

14 “(2) COVERED ACTIVITIES.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), the recruiting and marketing
17 activities subject to paragraph (1) shall include
18 the following:

19 “(i) Advertising and promotion activi-
20 ties, including paid announcements in
21 newspapers, magazines, radio, television,
22 billboards, electronic media, naming rights,
23 or any other public medium of communica-
24 tion, including paying for displays or pro-

1 motions at job fairs, military installations,
2 or college recruiting events.

3 “(ii) Efforts to identify and attract
4 prospective students, either directly or
5 through a third party contractor, including
6 contact concerning a prospective student’s
7 potential enrollment or application for
8 grant, loan, or work assistance under title
9 IV or participation in preadmission or ad-
10 vising activities, including—

11 “(I) paying employees responsible
12 for overseeing enrollment and for con-
13 tacting potential students in-person,
14 by phone, by email, or by other Inter-
15 net communications regarding enroll-
16 ment; and

17 “(II) soliciting an individual to
18 provide contact information to an in-
19 stitution of higher education, includ-
20 ing websites established for such pur-
21 pose and funds paid to third parties
22 for such purpose.

23 “(iii) Such other activities as the Sec-
24 retary may prescribe, including paying for

1 promotion or sponsorship of education or
2 military-related associations.

3 “(B) EXCEPTIONS.—Any activity that is
4 required as a condition of receipt of funds by
5 an institution under title IV, is specifically au-
6 thorized under such title, or is otherwise speci-
7 fied by the Secretary, shall not be considered to
8 be a covered activity under this paragraph.

9 “(3) RULE OF CONSTRUCTION.—Nothing in
10 this subsection shall be construed as a limitation on
11 the use by an institution of revenues derived from
12 sources other than Federal education assistance
13 funds.

14 “(4) REPORTS.—Each institution of higher
15 education, that derives 65 percent or more of reve-
16 nues from Federal education assistance funds shall
17 report annually to the Secretary and to Congress
18 and shall include in such report—

19 “(A) the institution’s expenditures on ad-
20 vertising, marketing, and recruiting;

21 “(B) a verification from an independent
22 auditor that the institution is in compliance
23 with the requirements of this subsection; and

1 “(C) a certification from the institution
2 that the institution is in compliance with the re-
3 quirements of this subsection.

4 “(5) FEDERAL EDUCATION ASSISTANCE
5 FUNDS.—In this subsection, the term ‘Federal edu-
6 cation assistance funds’ has the meaning given that
7 term in section 102(b)(2)(B) (as added by section
8 101 of the Preventing Risky Operations from
9 Threatening the Education and Career Trajectories
10 of Students Act of 2019).

11 “(d) CERTIFICATION.—Each institution of higher
12 education receiving Federal funding under this Act, as a
13 condition for receiving such funding, shall annually certify
14 to the Secretary that the requirements of this section have
15 been met.

16 “(e) ACTIONS TO IMPLEMENT AND ENFORCE.—The
17 Secretary shall take such actions as are necessary to en-
18 sure that the provisions of this section are implemented
19 and enforced.”.

20 **SEC. 302. STRENGTHENING THE INCENTIVE COMPENSA-**
21 **TION BAN.**

22 (a) SENSE OF CONGRESS REGARDING INCENTIVE
23 COMPENSATION.—It is the sense of Congress that—

24 (1) the use of commission-paid sales practices,
25 also known as incentive compensation, leads to over-

1 ly aggressive, manipulative, and often misleading
2 tactics in advertising, recruiting, and counseling stu-
3 dents;

4 (2) such practices are inappropriate at any in-
5 stitution benefitting from Federal funding and an
6 implied Federal endorsement through participation
7 in programs under title IV of the Higher Education
8 Act of 1965 (20 U.S.C. 1070 et seq.);

9 (3) previous investigations by the Federal
10 Trade Commission, as well as by Congress, including
11 the Permanent Subcommittee on Investigations of
12 the Senate (referred to as the “Nunn Commission”) in
13 1991 and the Committee on Health, Education,
14 Labor, and Pensions of the Senate in 2012, found
15 that incentive compensation schemes frequently con-
16 tribute to high-pressure sales and other predatory
17 abuses at federally supported schools;

18 (4) the ban on incentive compensation under
19 section 487(a)(20) of the Higher Education Act of
20 1965 (20 U.S.C. 1094(a)(20)), as amended by sub-
21 section (b), is intended to preclude the use of such
22 abusive practices at any point in the process of re-
23 cruiting or enrolling students, or assisting students
24 in securing employment; and

1 (5) an institution that receives assistance under
2 title IV of such Act remains responsible for the ac-
3 tions of any entity that performs functions and tasks
4 on the institution’s behalf, and these responsibilities
5 include ensuring that employees, third party
6 servicers that contract with such institutions, and
7 third party contractors are not paid for services that
8 would convert these payments into prohibited incen-
9 tive compensation because of the activities in which
10 the employees, third party servicers that contract
11 with such institutions, or third party contractors en-
12 gage.

13 (b) AMENDMENTS.—Section 487 (20 U.S.C. 1094) is
14 amended—

15 (1) in subsection (a), by striking paragraph
16 (20) and inserting the following:

17 “(20) The institution, any third party servicer
18 that contracts with such institution, and any third
19 party contractor will comply with the ban on prohib-
20 ited incentive compensation ban under subsection
21 (j).”; and

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

23 “(j) INCENTIVE COMPENSATION BAN.—

24 “(1) DEFINITIONS.—In this subsection:

25 “(A) COVERED ACTIVITY.—

1 “(i) IN GENERAL.—The term ‘covered
2 activity’ means any of the following activi-
3 ties:

4 “(I) Securing enrollment of stu-
5 dents into the institution of higher
6 education, which includes—

7 “(aa) activities that an indi-
8 vidual or entity engages in at any
9 point in time during an edu-
10 cational program for the purpose
11 of the admission or matriculation
12 of students for any period of
13 time, including contact in any
14 form with a prospective student,
15 such as contact through
16 preadmission or advising activi-
17 ties, scheduling an appointment
18 to visit the enrollment office or
19 any other office of the institu-
20 tion, attendance at such an ap-
21 pointment, or involvement in a
22 prospective student’s signing of
23 an enrollment agreement or fi-
24 nancial aid application; and

1 “(bb) other recruitment and
2 marketing activities.

3 “(II) Securing or awarding finan-
4 cial aid to students for attendance at
5 the institution, including—

6 “(aa) any involvement in a
7 prospective student’s signing of a
8 financial aid application; and

9 “(bb) completing financial
10 aid applications on behalf of a
11 prospective applicant (including
12 activities authorized by the De-
13 partment, such as the FAA Ac-
14 cess tool, which can be used to
15 enter, correct, verify, or analyze
16 financial aid application data).

17 “(III) Improving job placement
18 activities for students attending, or
19 who have attended, the institution.

20 “(IV) Reducing the number of
21 students who default on their student
22 loans.

23 “(ii) EXCLUSION.—The term ‘covered
24 activity’ does not include—

1 “(I) the provision of student con-
2 tact information for prospective stu-
3 dents, if any payment for such service
4 is not based on—

5 “(aa) any additional conduct
6 or action by the third party
7 servicer that contracts with such
8 institutions or third party con-
9 tractor or the prospective stu-
10 dent, such as participation in
11 preadmission or advising activi-
12 ties, scheduling an appointment
13 to visit the enrollment office or
14 any other office of the institution
15 or attendance at such an ap-
16 pointment, or the signing, or
17 being involved in the signing, of a
18 prospective student’s enrollment
19 agreement or financial aid appli-
20 cation; or

21 “(bb) the number of stu-
22 dents (calculated at any point in
23 time of an educational program)
24 who apply for enrollment, are
25 awarded financial aid, or are en-

1 rolled for any period of time, in-
2 cluding through completion of an
3 educational program; or

4 “(II) student support services not
5 included in the covered activities
6 under clause (i).

7 “(B) PROHIBITED INCENTIVE COMPENSA-
8 TION.—

9 “(i) IN GENERAL.—The term ‘prohib-
10 ited incentive compensation’ includes—

11 “(I) any commission, bonus, or
12 other incentive payment, of a sum of
13 money or other item of value, paid to
14 or given to a person or an entity that
15 is not a fixed salary or wages and that
16 is paid or given for meeting a certain
17 quota or numerical target, or avoiding
18 penalties for a benchmark set in Fed-
19 eral law, relating to covered activities;

20 “(II) other direct or indirect
21 forms of payment for meeting a cer-
22 tain quota or numerical target, or
23 avoiding penalties for a benchmark set
24 in Federal law, relating to covered ac-
25 tivities, including—

1 “(aa) tuition sharing as a
2 measure of compensation when
3 based on a formula that relates
4 the amount payable to the entity
5 to meeting a certain quota or nu-
6 merical target, or avoiding pen-
7 alties for a benchmark set in
8 Federal law, as a result of the
9 covered activity of the entity;

10 “(bb) profit-sharing plans
11 from which distributions are
12 made to individuals based on
13 meeting a certain quota or nu-
14 merical target, or avoiding pen-
15 alties for a benchmark set in
16 Federal law, as a result of cov-
17 ered activities by the recipient;

18 “(cc) salary adjustments
19 that take the form of incentive
20 payments based directly or indi-
21 rectly on meeting a quota or nu-
22 merical target. or avoiding pen-
23 alties for a benchmark set in
24 Federal law, with respect to a
25 covered activity;

1 “(dd) payments based on
2 meeting a certain quota or nu-
3 merical target, or avoiding pen-
4 alties for a benchmark set in
5 Federal law, relating to covered
6 activities; and

7 “(ee) bonuses or other pay-
8 ments based on meeting a certain
9 quota or numerical target, or
10 avoiding penalties for a bench-
11 mark set in Federal law, relating
12 to covered activities;

13 “(III) a decrease or removal of a
14 payment or benefit described in sub-
15 clause (I) or (II) (and not excluded
16 under clause (ii)), if that decrease or
17 removal is based directly or indirectly
18 on meeting a certain quota or numer-
19 ical target, or avoiding penalties for a
20 benchmark set in Federal law, relat-
21 ing to covered activities; and

22 “(IV) a change in employment
23 status, such as a promotion, demo-
24 tion, or termination if based on meet-
25 ing a certain quota or numerical tar-

1 get, or avoiding penalties for a bench-
2 mark set in Federal law, relating to
3 covered activities.

4 “(ii) EXCLUSIONS.—The following
5 payments or benefits shall not be consid-
6 ered prohibited incentive compensation, if
7 the payment or benefit is determined in a
8 way that is not related to the role the re-
9 cipient plays in any covered activity:

10 “(I) A profit sharing plan, in-
11 cluding a qualified cash or deferred
12 arrangement (as defined in section
13 401(k)(2) of the Internal Revenue
14 Code of 1986) offered to all employees
15 on a basis that is neutral with respect
16 to the role the recipient plays in any
17 covered activity.

18 “(II) An employee benefits plan
19 offered to all employees on a basis
20 that is neutral with respect to the role
21 the recipient plays in any covered ac-
22 tivity.

23 “(III) A cost of living adjust-
24 ment.

1 “(IV) A payment to a senior ex-
2 ecutive with responsibility for the de-
3 velopment of policies that affect mar-
4 keting and recruitment, enrollment, fi-
5 nancial aid, or student support serv-
6 ices, including job placement services.

7 “(C) RECRUITMENT AND MARKETING AC-
8 TIVITY.—The term ‘recruitment and marketing
9 activity’ means—

10 “(i) broad information dissemination
11 and disseminating targeted information to
12 individuals;

13 “(ii) soliciting individuals regarding
14 an institution;

15 “(iii) advertising a program that dis-
16 seminates information to potential stu-
17 dents;

18 “(iv) collecting contact information;

19 “(v) contacting potential applicants
20 for the admission or matriculation of a
21 student into an institution;

22 “(vi) screening pre-enrollment infor-
23 mation to determine whether a prospective
24 student meets the requirements that an in-

1 stitution has established for enrollment in
2 an academic program;

3 “(vii) aiding individuals in filling out
4 any information relating to an application
5 for admission or matriculation into an in-
6 stitution;

7 “(viii) determining whether an enroll-
8 ment application is materially complete, as
9 long as the enrollment decision remains
10 with the institution; or

11 “(ix) any other activity described in
12 section 126(d)(2).

13 “(D) STUDENT SUPPORT SERVICES.—The
14 term ‘student support services’ means any of
15 the following services:

16 “(i) Counseling or other nonacademic
17 support activities provided to students that
18 is not a covered activity.

19 “(ii) Institutional services provided to
20 students, such as information technology
21 assistance, food service, or housing, that is
22 not a covered activity.

23 “(iii) Other services involved in the
24 administration of support for students that
25 is not a covered activity.

1 “(2) INCENTIVE COMPENSATION BAN.—

2 “(A) IN GENERAL.—The institution, any
3 third party servicer that contracts with such in-
4 stitution, and any third party contractor shall
5 not provide any prohibited incentive compensa-
6 tion to any person or entity.

7 “(B) APPLICABILITY.—The ban on prohib-
8 ited incentive compensation under this sub-
9 section applies to any entity or individual en-
10 gaged in any covered activity, including—

11 “(i) with respect to an entity engaged
12 in any student recruitment or admission
13 activity or in making decisions about the
14 award of financial aid, any institution or
15 entity that undertakes the recruiting or the
16 admitting of students or that makes deci-
17 sions about and awards program funds
18 under this title; and

19 “(ii) with respect to an individual en-
20 gaged in any student recruitment or ad-
21 mission activity or in making decisions
22 about the award of financial aid—

23 “(I) any employee who under-
24 takes recruiting or admitting of stu-
25 dents or who makes decisions about

1 and awards program funds under this
2 title; and

3 “(II) any higher-level employee
4 with responsibility for recruitment or
5 admission of students, or making deci-
6 sions about awarding program funds
7 under this title.

8 “(C) EXCLUSION OF CERTAIN EMPLOY-
9 EES.—The ban on prohibited incentive com-
10 pensation under this subsection shall not apply
11 to any senior manager or executive level em-
12 ployee who—

13 “(i) is involved only in the develop-
14 ment of policy related to the manner in
15 which marketing and recruitment, enroll-
16 ment, financial aid, or student support
17 services will be pursued or provided; and

18 “(ii) does not engage in individual
19 student contact or other covered activities.

20 “(D) INDIVIDUAL WITH MULTIPLE AD-
21 JUSTMENTS TO COMPENSATION.—An employee
22 of an institution, a third party servicer that
23 contracts with such institution, or a third party
24 contractor, who receives multiple adjustments
25 to compensation in a calendar year and is en-

1 gaged in a covered activity shall be considered
2 to be engaged in prohibited incentive compensa-
3 tion if the adjustments create compensation
4 that is based in any part, directly or indirectly,
5 upon meeting certain quotas or numerical tar-
6 gets, or avoiding penalties for a benchmark set
7 in Federal law, regarding those covered activi-
8 ties.

9 “(3) NOTICE OF INCENTIVE COMPENSATION
10 BAN.—

11 “(A) NOTICE TO SERVICER AND CON-
12 TRACTOR.—The institution shall provide notice
13 of the ban on prohibited incentive compensation
14 under this subsection at least once a year to
15 each third party servicer and third party con-
16 tractor that contracts with the institution.

17 “(B) NOTICE TO EMPLOYEES.—The insti-
18 tution, and any third party contractor or third
19 party servicer that contracts with such institu-
20 tion, shall—

21 “(i) provide notice of the ban on pro-
22 hibited incentive compensation under this
23 subsection at least once a year to employ-
24 ees; and

1 “(ii) publish a clear statement in all
2 internal recruitment materials, including
3 guides or manuals, acknowledging the ban
4 on prohibited incentive compensation under
5 this subsection.

6 “(4) CONSEQUENCES FOR INCENTIVE COM-
7 PENSATION VIOLATION.—

8 “(A) IN GENERAL.—The Secretary, in co-
9 ordination with the Office of the Inspector Gen-
10 eral of the Department of Education, shall de-
11 velop a written policy for the enforcement of the
12 ban on prohibited incentive compensation under
13 this subsection, and shall update that policy as
14 needed.

15 “(B) CONTENTS OF POLICY.—The policy
16 developed under subparagraph (A)—

17 “(i) shall require that compliance re-
18 view occur on an annual basis;

19 “(ii) may include automatic triggers
20 for inquiries by the Department or regular
21 ‘secret shopper’ or audit-based investiga-
22 tions to ensure that institutions of higher
23 education remain in compliance with the
24 ban; and

1 “(iii) shall explain the range of sanc-
2 tions, as described in section 489A, that
3 the Secretary may carry out to enforce this
4 subsection.

5 “(C) REPORT.—The Department shall
6 publish an annual report, and shall submit that
7 report to the authorizing committees and the
8 For-Profit Education Oversight Coordination
9 Committee established under section 125, which
10 shall include—

11 “(i) a description of the status of any
12 investigations conducted under this sub-
13 section;

14 “(ii) the names of institutions found
15 to be not in compliance with this sub-
16 section;

17 “(iii) the sanctions the non-compliant
18 institution of higher education faced; and

19 “(iv) in the case of an institution sub-
20 ject to liability for funds under this title
21 pursuant to subparagraph (B)(iii), the
22 amount of such liability.”.

1 **SEC. 303. DEFINITION OF NONPROFIT INSTITUTION OF**
2 **HIGHER EDUCATION.**

3 Section 103 (20 U.S.C. 1003) is amended by striking
4 paragraph (13) and inserting the following:

5 “(13) NONPROFIT.—

6 “(A) IN GENERAL.—The term ‘non-
7 profit’—

8 “(i) as applied to a school, agency, or-
9 ganization, or institution, means a school,
10 agency, organization, or institution con-
11 trolled, owned, and operated by one or
12 more nonprofit corporations or associa-
13 tions, no part of the net earnings of which
14 inures, or may lawfully inure, to the ben-
15 efit of any private shareholder or indi-
16 vidual; and

17 “(ii) as applied to an institution of
18 higher education, means an institution—

19 “(I) that meets the requirements
20 of subparagraph (A);

21 “(II) that is an organization de-
22 scribed in section 170(b)(1)(A)(ii) or
23 (vi) of the Internal Revenue Code of
24 1986; and

25 “(III) with respect to which—

1 “(aa) no member of the gov-
2 erning board of the institution
3 (other than any ex officio mem-
4 ber serving at the pleasure of the
5 remainder of the governing board
6 and receiving a fixed salary) re-
7 ceives any substantial direct or
8 indirect economic benefit (includ-
9 ing a lease, promissory note, or
10 other contract) from the institu-
11 tion; and

12 “(bb) no person with the
13 power to appoint or remove mem-
14 bers of the governing board re-
15 ceives any such substantial direct
16 or indirect economic benefit (in-
17 cluding a lease, promissory note,
18 or other contract) from the insti-
19 tution.

20 “(B) EXCLUSIONS.—

21 “(i) IN GENERAL.—An institution of
22 higher education shall not be considered a
23 nonprofit institution of higher education,
24 as defined in this paragraph, if—

1 “(I) one or more core functions
2 are under the control of, or subject to
3 significant direction from an entity
4 that is not a public institution of
5 higher education or is not formed as
6 a nonprofit corporation; or

7 “(II) a substantial share of the
8 assets of the institution are committed
9 to a joint venture with a person or en-
10 tity that is not a public institution of
11 higher education and is not a non-
12 profit corporation, and the core func-
13 tions of the venture are conducted by,
14 under the control of, or subject to sig-
15 nificant direction from that person or
16 entity.

17 “(ii) PRESUMPTION OF SIGNIFICANT
18 DIRECTION.—There shall be a conclusive
19 presumption that an entity exercises sig-
20 nificant direction if one or more of the en-
21 tity’s employees or owners serves as an of-
22 ficer, member of the board, or person hold-
23 ing similar authority for the institution of
24 higher education.”.

1 **SEC. 304. DEFINITION OF PUBLIC INSTITUTION OF HIGHER**
2 **EDUCATION.**

3 Section 103 (20 U.S.C. 1003), as amended by section
4 4, is further amended—

5 (1) by inserting after paragraph (14) the fol-
6 lowing:

7 “(15) PUBLIC INSTITUTION OF HIGHER EDU-
8 CATION.—

9 “(A) IN GENERAL.—The term ‘public’,
10 when used with respect to an institution of
11 higher education, means an institution of higher
12 education—

13 “(i)(I) operated by—

14 “(aa) the Federal Government;

15 “(bb) a State, as defined in sec-
16 tion 3306(j)(1) of the Internal Rev-
17 enue Code of 1986;

18 “(cc) a local government, as de-
19 fined in section 1393(a)(5) of such
20 Code; or

21 “(dd) an Indian tribal govern-
22 ment, as defined in section
23 7701(a)(40) of such Code;

24 “(II) for which all obligations of the
25 institution are valid and binding obliga-

1 tions of the State, local government, or In-
2 dian tribal government; and

3 “(III) for which the full faith and
4 credit of such State, local government, or
5 Indian tribal government is pledged for the
6 timely payment of such obligations; or

7 “(ii) that is an instrumentality of a
8 State or local government (as such terms
9 are defined in subparagraph (A)).

10 “(B) INSTRUMENTALITY OF A STATE OR
11 LOCAL GOVERNMENT.—An institution shall be
12 considered an instrumentality of a State or
13 local government for purposes of this paragraph
14 if the institution meets all of the following re-
15 quirements:

16 “(i) The employees of the institution
17 are employees of the State or local govern-
18 ment.

19 “(ii) Any liability of the institution is
20 payable to the same degree as if the liabil-
21 ity was a liability of the State or local gov-
22 ernment, in the State or local government
23 jurisdiction where the institution is formed.

24 “(iii) The institution is subject to the
25 same financial oversight and open public

1 records laws as the State or local govern-
 2 ment, in the State or local government ju-
 3 risdiction where the institution is formed.”.

4 **SEC. 305. ENHANCED CIVIL PENALTIES, STATE ENFORCE-**
 5 **MENT, AND PRIVATE RIGHT OF ACTION.**

6 (a) IN GENERAL.—Part G of title IV (20 U.S.C.
 7 1088 et seq.) is amended by inserting after section 489
 8 the following:

9 **“SEC. 489A. ENHANCED CIVIL PENALTIES, STATE ENFORCE-**
 10 **MENT, AND PRIVATE RIGHT OF ACTION.**

11 “(a) DEFINITIONS.—In this section:

12 “(1) MISREPRESENTATION.—The term ‘mis-
 13 representation’ means any false, erroneous, or mis-
 14 leading statement an eligible institution of higher
 15 education, a third party servicer that contracts with
 16 such institution, or a third party contractor makes
 17 directly or indirectly to a student, prospective stu-
 18 dent, or any member of the public, or to an accred-
 19 iting agency or association, State approval agency,
 20 or the Secretary. A misrepresentation includes—

21 “(A) the making of a statement that has
 22 the likelihood or tendency to deceive; or

23 “(B) the omission of any material facts
 24 necessary in order to make any statements
 25 made, in light of the circumstances under which

1 they were made, not false, deceptive, unfair, er-
2 roneous, or misleading.

3 “(2) OFFICER OF AN INSTITUTION OF HIGHER
4 EDUCATION.—The term ‘officer of an institution of
5 higher education’ including at any nonprofit, for-
6 profit, or public institution of higher education, in-
7 cludes the president, chief executive officer, and
8 chief financial officer of an institution of higher edu-
9 cation as well as all officers charged with overseeing
10 a principal business unit, division, or function, such
11 as sales, administration, or finance.

12 “(3) PROSPECTIVE STUDENT.—The term ‘pro-
13 spective student’ means any individual who has con-
14 tacted an institution of higher education for the pur-
15 pose of requesting information about enrolling at the
16 institution of higher education or who has been con-
17 tacted directly or indirectly by the institution of
18 higher education or a third party contractor through
19 advertising about enrolling at the institution.

20 “(4) STATE APPROVAL AGENCY.—The term
21 ‘State approval agency’ means any State agency that
22 determines whether an institution of higher edu-
23 cation is legally authorized within such State to pro-
24 vide a program of education beyond secondary edu-
25 cation.

1 “(5) SUBSTANTIAL MISREPRESENTATION.—The
2 term ‘substantial misrepresentation’ means any mis-
3 representation on which the person to whom it was
4 made could reasonably be expected to rely, or has
5 reasonably relied, to that person’s detriment.

6 “(b) LIMITATION, SUSPENSION, OR TERMINATION OF
7 ELIGIBILITY STATUS.—

8 “(1) IN GENERAL.—Upon determination, after
9 reasonable notice and opportunity for a hearing, that
10 an eligible institution, a third party servicer that
11 contracts with such institution, or a third party con-
12 tractor has violated or failed to carry out any provi-
13 sion of this title, any regulation prescribed under
14 this title, or any applicable special arrangement,
15 agreement, or limitation, the Secretary may limit,
16 suspend, or terminate the participation of that insti-
17 tution in any program under this title, or the eligi-
18 bility of that third party contractor or third party
19 servicer to contract with any institution, subject to
20 the requirements of paragraph (2).

21 “(2) SUSPENSION PROCEDURES.—No period of
22 suspension under this section shall exceed 60 days
23 unless the institution and the Secretary agree to an
24 extension or unless limitation or termination pro-

1 proceedings are initiated by the Secretary within that
2 period of time.

3 “(3) SUBSTANTIAL MISREPRESENTATION.—

4 Upon determination, after reasonable notice and op-
5 portunity for a hearing, that an eligible institution,
6 a third party servicer that contracts with such insti-
7 tution, or a third party contractor has engaged in
8 substantial misrepresentation, including a misrepre-
9 sentation relating to the nature of an educational
10 program, financial charges, the space availability in
11 a program of the institution for which a student is
12 considering enrollment, admission requirements, the
13 transferability of credits, whether one of that institu-
14 tion’s programs meets necessary State standards to
15 obtain certification or sit for licensing examinations,
16 the passage rates of students in obtaining certifi-
17 cations or sitting for licensing examinations, or the
18 employability or earnings of graduates, the Secretary
19 may suspend, limit, or terminate the eligibility sta-
20 tus for any or all programs under this title of any
21 otherwise eligible institution, or of any third party
22 contractor or third party servicer to contract with
23 any institution, in accordance with procedures speci-
24 fied in paragraph (1), until the Secretary finds that
25 such practices have been corrected.

1 “(c) CIVIL PENALTIES.—

2 “(1) IN GENERAL.—The Secretary shall impose
3 a civil penalty upon an eligible institution, a third
4 party servicer that contracts with such institution,
5 or a third party contractor, upon making a deter-
6 mination, after reasonable notice and opportunity
7 for a hearing, that an eligible institution, a third
8 party servicer that contracts with such institution,
9 or a third party contractor has—

10 “(A) violated or failed to carry out any
11 provision of this title or any regulation pre-
12 scribed under this title; or

13 “(B) engaged in a substantial misrepresen-
14 tation, including a substantial misrepresenta-
15 tion described in subsection (b)(3).

16 “(2) AMOUNT OF CIVIL PENALTIES.—

17 “(A) A civil penalty imposed for a violation
18 or failure described under paragraph (1)(A)
19 shall not exceed \$100,000 (subject to such ad-
20 justments for inflation as may be prescribed in
21 regulation) for each such violation.

22 “(B) A civil penalty imposed for a violation
23 described under paragraph (1)(B) shall be in an
24 amount not to exceed the greater of—

1 “(i) \$100,000 (subject to such adjust-
2 ments for inflation as may be prescribed in
3 regulation) for each such violation; or

4 “(ii)(I) in the case of an institution,
5 1.0 percent of the amount of funds the in-
6 stitution received through this title in the
7 most recent award year prior to the deter-
8 mination for each such violation; and

9 “(II) in the case of a third party
10 servicer that contracts with such institu-
11 tion or a third party contractor, the
12 amount of the contract with the institu-
13 tion.

14 “(3) TREATMENT OF MULTIPLE INSTITU-
15 TIONS.—For the purpose of determining the amount
16 of civil penalties under this subsection, any violation
17 by a particular institution will accrue against all
18 identification codes used by the Office of Postsec-
19 ondary Education to designate campuses and insti-
20 tutions affiliated with the institution, and within the
21 period of participation for the institution as defined
22 in section 668.13(b) of title 34, Code of Federal
23 Regulations, or any successor regulation.

24 “(d) EMERGENCY ACTION.—The Secretary may take
25 an emergency action against an institution, a third party

1 servicer that contracts with such institution, or a third
2 party contractor, under which the Secretary shall, effective
3 on the date on which a notice and statement of the basis
4 of the action is mailed to the institution, third party
5 servicer that contracts with such institution, or third party
6 contractor (by registered mail, return receipt requested),
7 withhold funds from the institution or its students, or
8 from the third party servicer that contracts with such in-
9 stitution or third party contractor, and withdraw the insti-
10 tution's authority to obligate funds under this title, or the
11 authority of the third party servicer that contracts with
12 such institution or third party contractor to act on behalf
13 of an institution under any program under this title, if
14 the Secretary—

15 “(1) receives information, determined by the
16 Secretary to be reliable, that the institution, or third
17 party servicer that contracts with such institution,
18 or third party contractor is violating any provision
19 of this title, any regulation prescribed under this
20 title, or any applicable special arrangement, agree-
21 ment, or limitation;

22 “(2) determines that immediate action is nec-
23 essary to prevent misuse of Federal funds; and

24 “(3) determines that the likelihood of loss out-
25 weighs the importance of the procedures prescribed

1 in subsection (b) for limitation, suspension, or termi-
2 nation,
3 except that an emergency action shall not exceed 30 days
4 unless the limitation, suspension, or termination pro-
5 ceedings are initiated by the Secretary against the indi-
6 vidual or organization within that period of time, and ex-
7 cept that the Secretary shall provide the individual or or-
8 ganization an opportunity to show cause, if it so requests,
9 that the emergency action is unwarranted.

10 “(e) INDIVIDUAL OR ORGANIZATION WITH SUBSTAN-
11 TIAL CONTROL.—If an individual who, or entity that, ex-
12 ercises substantial control, as determined by the Secretary
13 in accordance with the definition of substantial control in
14 subpart 3 of part H, over one or more institutions partici-
15 pating in any program under this title, or, for purposes
16 of this section over one or more organizations that con-
17 tract with an institution to administer any aspect of the
18 institution’s student assistance program under this title,
19 is determined to have committed one or more violations
20 of the requirements of any program under this title, or
21 has been suspended or debarred in accordance with the
22 regulations of the Secretary, the Secretary may use such
23 determination, suspension, or debarment as the basis for
24 imposing an emergency action on, or limiting, suspending,
25 or terminating, in a single proceeding, the participation

1 of any or all institutions under the substantial control of
2 that individual or entity.

3 “(f) DISPOSITION OF AMOUNTS RECOVERED.—

4 “(1) USE FOR STUDENT RELIEF FUND.—For
5 each fiscal year, an amount equal to 100 percent of
6 the amounts recovered or collected under this section
7 shall be deposited into the Student Relief Fund es-
8 tablished under subsection (g).

9 “(2) REPORT.—The Secretary shall regularly
10 publish, on the website of the Department, a de-
11 tailed accounting of the funds in the Student Relief
12 Fund, including the amount of funds that were col-
13 lected and deposited into the Student Relief Fund
14 under paragraph (1), and how those funds were
15 used, pursuant to subsection (g)(1).

16 “(g) STUDENT RELIEF FUND.—

17 “(1) ESTABLISHMENT.—The Secretary shall es-
18 tablish a Student Relief Fund (referred to in this
19 subsection as the ‘Fund’) that shall be used, subject
20 to the availability of funds, to provide financial relief
21 to any student that is enrolled in an institution of
22 higher education that—

23 “(A) has failed to comply with an eligi-
24 bility requirement under section 101 or 102 or
25 an obligation incurred under the terms of the

1 program participation agreement under section
2 487; or

3 “(B) has been sanctioned under subsection
4 (b) or (c).

5 “(2) TREATMENT AND AVAILABILITY OF
6 FUNDS.—

7 “(A) FUNDS THAT ARE NOT GOVERNMENT
8 FUNDS.—Funds obtained by or transferred to
9 the Fund shall not be construed to be Govern-
10 ment funds, appropriated monies, or Federal
11 education assistance funds, as defined in sec-
12 tion 102(b)(2)(B) (as added by section 101 of
13 the Preventing Risky Operations from Threat-
14 ening the Education and Career Trajectories of
15 Students Act of 2019).

16 “(B) AMOUNTS NOT SUBJECT TO APPOR-
17 TIONMENT.—Notwithstanding any other provi-
18 sion of law, amounts in the Fund shall not be
19 subject to apportionment for purposes of chap-
20 ter 15 of title 31, United States Code, or under
21 any other authority.

22 “(C) NO FISCAL YEAR LIMITATION.—Sums
23 deposited in the Fund shall remain in the Fund
24 and be available for expenditure under this sub-
25 section without fiscal year limitation.

1 “(h) STATE ENFORCEMENT.—

2 “(1) IN GENERAL.—

3 “(A) STATE CAUSE OF ACTION.—A viola-
4 tion described in subparagraph (B) shall be a
5 cause of action enforceable by a State, through
6 the attorney general (or the equivalent thereof)
7 of such State, in any district court of the
8 United States in that State or in a State court
9 that is located in that State and that has juris-
10 diction over the defendant. The State may seek
11 any relief provided under paragraph (3) for
12 such violation, including a civil penalty under
13 subsection (c), or any remedies otherwise avail-
14 able under law.

15 “(B) VIOLATIONS.—A violation described
16 in this subparagraph is:

17 “(i) A substantial misrepresentation.

18 “(ii) A violation of section 487(a)(20).

19 “(iii) A violation of the default manip-
20 ulation regulations promulgated by the
21 Secretary under section 435(m)(3).

22 “(iv) A violation of the program integ-
23 rity regulations promulgated by the Sec-
24 retary under this Act, including regulations

1 promulgated in section 102, section 455,
2 and part H.

3 “(v) In accordance with section
4 455(h), any act or omission of the institu-
5 tion, third party servicer that contracts
6 with such institution, or third party con-
7 tractor, related to the making of the loan
8 for enrollment at the institution or the pro-
9 vision of educational services for which the
10 loan was provided that would give rise to
11 a cause of action against the institution
12 under applicable State law.

13 “(2) NOTICE REQUIRED.—

14 “(A) IN GENERAL.—Except as provided in
15 subparagraph (B), before initiating any action
16 in a court or other administrative or regulatory
17 proceeding against any institution of higher
18 education, third party servicer that contracts
19 with such institution, or third party contractor,
20 as authorized by paragraph (1), a State attor-
21 ney general or the equivalent thereof shall time-
22 ly provide to the Secretary a copy of the com-
23 plete complaint to be filed and written notice
24 describing such action or proceeding.

1 “(B) WAIVER OF PRIOR NOTICE.—If prior
2 notice is not practicable under subparagraph
3 (A), the State attorney general or equivalent
4 thereof shall provide to the Secretary a copy of
5 the complete complaint and the notice described
6 in subparagraph (A) immediately upon insti-
7 tuting the action or proceeding.

8 “(C) CONTENTS OF NOTICE.—The notifi-
9 cation required under this paragraph shall, at a
10 minimum, describe—

11 “(i) the identity of the parties;

12 “(ii) the alleged facts underlying the
13 proceeding; and

14 “(iii) whether there may be a need to
15 coordinate the prosecution of the pro-
16 ceeding so as not to interfere with any ac-
17 tion, including any rulemaking, undertaken
18 by the Secretary or another Federal agen-
19 cy.

20 “(3) PRESERVATION OF STATE AUTHORITY.—

21 “(A) STATE CLAIMS.—Nothing in this sub-
22 section shall be construed as altering, limiting,
23 or affecting the authority of a State attorney
24 general or any other regulatory or enforcement
25 agency or authority to bring an action or other

1 regulatory proceeding arising solely under the
2 law in effect in that State.

3 “(B) RELIEF.—

4 “(i) IN GENERAL.—Except as pro-
5 vided in clause (ii), relief under this sub-
6 section may include, without limitation—

7 “(I) rescission or reformation of
8 contracts;

9 “(II) refund of moneys or return
10 of real property;

11 “(III) restitution;

12 “(IV) disgorgement or compensa-
13 tion for unjust enrichment;

14 “(V) payment of damages or
15 other monetary relief;

16 “(VI) public notification regard-
17 ing the violation, including the costs
18 of notification; or

19 “(VII) limits on the activities or
20 functions of involved persons, institu-
21 tions, third party servicers that con-
22 tract with institutions, or third party
23 contractors.

24 “(ii) EXCLUSION.—Relief under this
25 subsection shall not include the ability to

1 suspend or terminate the eligibility status
2 of an institution of higher education for
3 programs under this title or withdrawal of
4 the authority of the third party servicer or
5 third party contractor to act on behalf of
6 an institution or contract with an institu-
7 tion.

8 “(i) PRIVATE RIGHT OF ACTION.—

9 “(1) IN GENERAL.—

10 “(A) PRIVATE RIGHT OF ACTION.—A viola-
11 tion described in subparagraph (B) shall be
12 subject to a private right of action enforceable
13 by a student or former student of an institution
14 of higher education, on behalf of such individual
15 or such individual and a class, in an appro-
16 priate district court of the United States or any
17 other court of competent jurisdiction that also
18 has jurisdiction over the defendant. The student
19 or former student may seek any relief provided
20 under subsection (h)(3)(B) for such violation,
21 or any remedies otherwise available to the indi-
22 vidual under law and equity.

23 “(B) VIOLATIONS.—A violation described
24 in this subparagraph is:

25 “(i) A substantial misrepresentation.

1 “(ii) A violation of section 487(a)(20).

2 “(iii) A violation of the default manip-
3 ulation regulations promulgated by the
4 Secretary under section 435(m)(3).

5 “(iv) A violation of the program integ-
6 rity regulations promulgated by the Sec-
7 retary under this Act, including regulations
8 promulgated in section 102, section 455,
9 and part H.

10 “(2) AMOUNT OF DAMAGES.—

11 “(A) IN GENERAL.—Any institution of
12 higher education, third party servicer that con-
13 tracts with such institution, or third party con-
14 tractor, that commits a substantial misrepre-
15 sentation may be held liable to a student or
16 former student of that institution in an amount
17 equal to the sum of—

18 “(i) any actual damage sustained by
19 such individual as a result of each substan-
20 tial misrepresentation;

21 “(ii) any additional damages as the
22 court may allow; and

23 “(iii) in the case of any successful ac-
24 tion to enforce the foregoing liability, the
25 costs of the action, together with a reason-

1 able attorney’s fee as determined by the
2 court.

3 “(B) ABILITY TO ASSESS PUNITIVE DAM-
4 AGES.—

5 “(i) IN GENERAL.—On a finding by
6 the court that the institution of higher
7 education, third party servicer that con-
8 tracts with such institution, or third party
9 contractor, has committed a violation de-
10 scribed in paragraph (1)(B) with actual or
11 constructive knowledge or reckless dis-
12 regard for such violation, the court may
13 assess punitive damages not to exceed
14 threefold the sum of actual damages sus-
15 tained by the plaintiff or class, including
16 court costs and a reasonable attorney’s fee.

17 “(ii) FACTORS CONSIDERED BY
18 COURT.—In determining the amount of li-
19 ability in any action under clause (i), the
20 court shall consider, among other relevant
21 factors—

22 “(I) in any individual action
23 under this subsection, the frequency
24 and persistence of noncompliance by
25 the institution of higher education,

1 third party servicer that contracts
2 with such institution, or third party
3 contractor and the nature of such
4 noncompliance; or

5 “(II) in any class action under
6 this subsection, in addition to the fac-
7 tors listed in clause (i), the financial
8 resources of the institution of higher
9 education, third party servicer that
10 contracts with such institution, or
11 third party contractor and the number
12 of persons adversely affected.

13 “(3) JURISDICTION.—An action to enforce any
14 liability created by this subsection may be brought
15 in any appropriate United States district court with-
16 out regard to the amount in controversy, or in any
17 other court of competent jurisdiction.”.

18 (b) CONFORMING AMENDMENTS.—Section 487(c), as
19 amended by section 102(b), is further amended—

20 (1) in paragraph (1), by striking subparagraphs
21 (G) through (J);

22 (2) by striking paragraphs (2) and (3); and

23 (3) by redesignating paragraphs (4) through
24 (7), as paragraphs (2) through (5), respectively.

1 **SEC. 306. SUBSTANTIAL MISREPRESENTATION PROHIB-**
2 **ITED.**

3 Section 487(a) (20 U.S.C. 1094(a)), as amended by
4 section 202(b), is further amended by adding at the end
5 the following:

6 “(30) The institution will not make a substan-
7 tial misrepresentation, as defined in section 489A.”.

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