

110TH CONGRESS
1ST SESSION

S. 486

To establish requirements for lenders and institutions of higher education in order to protect students and other borrowers receiving educational loans.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 1, 2007

Mr. KENNEDY (for himself, Mr. DURBIN, Mrs. CLINTON, Mr. HARKIN, Mr. ROCKEFELLER, Mr. KERRY, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To establish requirements for lenders and institutions of higher education in order to protect students and other borrowers receiving educational loans.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Student Loan Sun-
5 shine Act”.

1 **SEC. 2. INSTITUTION AND LENDER REPORTING AND DIS-**
 2 **CLOSURE REQUIREMENTS.**

3 Title I of the Higher Education Act of 1965 (20
 4 U.S.C. 1001 et seq.) is amended by adding at the end
 5 the following:

6 **“PART E—LENDER AND INSTITUTION REQUIRE-**
 7 **MENTS RELATING TO EDUCATIONAL LOANS**

8 **“SEC. 151. DEFINITIONS.**

9 “In this part:

10 “(1) COVERED INSTITUTION.—The term ‘cov-
 11 ered institution’—

12 “(A) means any educational institution
 13 that offers a postsecondary educational degree,
 14 certificate, or program of study (including any
 15 institution of higher education, as such term is
 16 defined in section 102) and receives any Fed-
 17 eral funding or assistance; and

18 “(B) includes an agent of the educational
 19 institution (including an alumni association,
 20 booster club, or other organization directly or
 21 indirectly associated with such institution) or
 22 employee of such institution.

23 “(2) EDUCATIONAL LOAN.—The term ‘edu-
 24 cational loan’ (except when used as part of the term
 25 ‘private educational loan’) means—

1 “(A) any loan made, insured, or guaran-
2 teed under title IV; or

3 “(B) a private educational loan (as defined
4 in paragraph (5)).

5 “(3) EDUCATIONAL LOAN ARRANGEMENT.—

6 “The term ‘educational loan arrangement’
7 means an arrangement or agreement between a
8 lender and a covered institution—

9 “(A) under which arrangement or agree-
10 ment a lender provides or otherwise issues edu-
11 cational loans to the students attending the cov-
12 ered institution or the parents of such students;
13 and

14 “(B) which arrangement or agreement—

15 “(i) relates to the covered institution
16 recommending, promoting, endorsing, or
17 using the loan product of the lender; and

18 “(ii) involves the payment of any fee
19 or provision of other material benefit by
20 the lender to the institution or to groups of
21 students who attend the institution.

22 “(4) LENDER.—

23 “(A) IN GENERAL.—The term ‘lender’—

24 “(i) means a creditor, except that
25 such term shall not include an issuer of

1 credit under a residential mortgage trans-
2 action; and

3 “(ii) includes an agent of a lender.

4 “(B) INCORPORATION OF TILA DEFINI-
5 TIONS.—The terms ‘creditor’ and ‘residential
6 mortgage transaction’ have the meanings given
7 such terms in section 103 of the Truth in
8 Lending Act (15 U.S.C. 1602).

9 “(5) PRIVATE EDUCATIONAL LOAN.—The term
10 ‘private educational loan’ means a private loan pro-
11 vided by a lender that—

12 “(A) is not made, insured, or guaranteed
13 under title IV; and

14 “(B) is issued by a lender for postsec-
15 ondary educational expenses to a student, or
16 the parent of the student, regardless of whether
17 the loan is provided through the educational in-
18 stitution that the student attends or directly to
19 the student or parent from the lender.

20 “(6) POSTSECONDARY EDUCATIONAL EX-
21 PENSES.—The term ‘postsecondary educational ex-
22 penses’ means any of the expenses that are included
23 as part of a student’s cost of attendance, as defined
24 under section 472.

1 **“SEC. 152. REQUIREMENTS FOR LENDERS AND INSTITU-**
2 **TIONS PARTICIPATING IN EDUCATIONAL**
3 **LOAN ARRANGEMENTS.**

4 “(a) **REPORTING FOR LENDERS.**—In addition to any
5 other disclosure required under Federal law, each lender
6 that participates in 1 or more educational loan arrange-
7 ments shall prepare and submit to the Secretary (at a time
8 to be determined by the Secretary) an annual report that
9 includes, with respect to each educational loan arrange-
10 ment, the following:

11 “(1) The date on which the arrangement was
12 entered into and the period for which the arrange-
13 ment applies.

14 “(2) A summary of the terms of the arrange-
15 ment related to the marketing, recommending, en-
16 dorsing, or use of, the loans.

17 “(3) The full details of any aspect of the ar-
18 rangement relating to the covered institution issuing
19 loans and the lender (or a financial partner of the
20 lender) servicing or purchasing such loans.

21 “(4) A summary of any direct or indirect ben-
22 efit provided or paid to any party in connection with
23 the arrangement.

24 “(b) **PROVISION OF LOAN INFORMATION.**—A lender
25 may not provide a private educational loan to a student
26 attending a covered institution with which the lender has

1 an educational loan arrangement, or the parent of such
2 student, until the covered institution has informed the stu-
3 dent or parent of their remaining options for borrowing
4 under title IV, including information on any terms and
5 conditions of available loans under such title that are more
6 favorable to the borrower.

7 “(c) USE OF INSTITUTION NAME.—

8 “(1) IN GENERAL.—A covered institution that
9 has entered into an educational loan arrangement
10 with a lender regarding private educational loans
11 shall not allow the lender to use the name, emblem,
12 mascot, or logo of the institution, or other words,
13 pictures, or symbols readily identified with the insti-
14 tution, in the marketing of private educational loans
15 to the students attending the institution in any way
16 that implies that the institution endorses the private
17 educational loans offered by the lender.

18 “(2) APPLICABILITY.—Paragraph (1) shall
19 apply to any educational loan arrangement, or exten-
20 sion of such arrangement, entered into or renewed
21 after the date of enactment of the Student Loan
22 Sunshine Act.

1 **“SEC. 153. INTEREST RATE REPORT FOR INSTITUTIONS**
2 **AND LENDERS PARTICIPATING IN EDU-**
3 **CATIONAL LOAN ARRANGEMENTS.**

4 “(a) SECRETARY DUTIES.—

5 “(1) REPORT AND MODEL FORMAT.—Not later
6 than 180 days after the date of enactment of the
7 Student Loan Sunshine Act, the Secretary shall—

8 “(A) prepare a report on the adequacy of
9 the information provided to students and the
10 parents of such students about educational
11 loans (including loans made, insured, or guar-
12 anteed under title IV and private educational
13 loans), after consulting with students, rep-
14 resentatives of covered institutions (including fi-
15 nancial aid administrators, registrars, and busi-
16 ness officers), lenders (including lenders of pri-
17 vate educational loans), loan servicers, and
18 guaranty agencies;

19 “(B) include in the report a model format,
20 based on the report’s findings, to be used by
21 lenders and covered institutions in carrying out
22 subsections (b) and (c)—

23 “(i) that provides information on the
24 applicable interest rates and other terms
25 and conditions of the educational loans
26 provided by a lender to students attending

1 the institution, or the parents of such stu-
2 dents, disaggregated by each type of edu-
3 cational loans provided to such students or
4 parents by the lender, including—

5 “(I) the interest rate and terms
6 and conditions of the loans offered by
7 the lender for the upcoming academic
8 year;

9 “(II) with respect to such loans,
10 any benefits that are contingent on
11 the repayment behavior of the bor-
12 rower;

13 “(III) the annual percentage rate
14 for such loans, based on the actual
15 disbursed amount of the loan;

16 “(IV) the average amount bor-
17 rowed from the lender by students en-
18 rolled in the institution who obtain
19 loans of such type from the lender for
20 the preceding academic year; and

21 “(V) the average interest rate on
22 such loans provided to such students
23 for the preceding academic year; and

1 “(ii) which format shall be easily usa-
2 ble by lenders, institutions, guaranty agen-
3 cies, and loan servicers; and

4 “(C)(i) submit the report and model for-
5 mat to the Committee on Health, Education,
6 Labor, and Pensions of the Senate and the
7 Committee on Education and Labor of the
8 House of Representatives; and

9 “(ii) make the report and model format
10 available to covered institutions, lenders, and
11 the public.

12 “(2) FORMAT UPDATE.—Not later than 1 year
13 after the submission of the report and model format
14 described in paragraph (1), the Secretary shall—

15 “(A) assess the adequacy of the model for-
16 mat included in the report;

17 “(B) after consulting with students, rep-
18 resentatives of covered institutions (including fi-
19 nancial aid administrators, registrars, and busi-
20 ness officers), lenders (including lenders of pri-
21 vate educational loans), loan servicers, and
22 guaranty agencies—

23 “(i) prepare a list of any improve-
24 ments to the model format that have been
25 identified as beneficial to borrowers; and

1 “(ii) update the model format after
2 taking such improvements into consider-
3 ation; and

4 “(C)(i) submit the list of improvements
5 and updated model format to the Committee on
6 Health, Education, Labor, and Pensions of the
7 Senate and the Committee on Education and
8 Labor of the House of Representatives; and

9 “(ii) make the list of improvements and
10 updated model format available to covered insti-
11 tutions, lenders, and the public.

12 “(3) USE OF FORM.—The Secretary shall take
13 such steps as necessary to make the model format,
14 and any updated model format, available to covered
15 institutions and to encourage—

16 “(A) lenders subject to subsection (b) to
17 use the model format or updated model format
18 (if available) in providing the information re-
19 quired under subsection (b); and

20 “(B) covered institutions to use such for-
21 mat in preparing the information report under
22 subsection (c).

23 “(b) LENDER DUTIES.—Each lender that has an
24 educational loan arrangement with a covered institution
25 shall annually, by a date determined by the Secretary, pro-

1 vide to the covered institution and to the Secretary the
2 information included on the model format or an updated
3 model format (if available) for each type of educational
4 loan provided by the lender to students attending the cov-
5 ered institution, or the parents of such students, for the
6 preceding academic year.

7 “(c) COVERED INSTITUTION DUTIES.—Each covered
8 institution shall—

9 “(1) prepare and submit to the Secretary an
10 annual report, by a date determined by the Sec-
11 retary, that includes, for each lender that has an
12 educational loan arrangement with the covered insti-
13 tution and that has submitted to the institution the
14 information required under subsection (b)—

15 “(A) the information included on the
16 model format or updated model format (if avail-
17 able) for each type of educational loan provided
18 by the lender to students attending the covered
19 institution, or the parents of such students; and

20 “(B) a detailed explanation of why the cov-
21 ered institution believes the terms and condi-
22 tions of each type of educational loan provided
23 pursuant to the agreement are beneficial for
24 students attending the covered institution, or
25 the parents of such students; and

1 “(2) ensure that the report required under
2 paragraph (1) is made available to the public and
3 provided to students attending or planning to attend
4 the covered institution, and the parents of such stu-
5 dents, in time for the student or parent to take such
6 information into account before applying for or se-
7 lecting an educational loan.

8 **“SEC. 154. PRIVATE EDUCATIONAL LOAN DISCLOSURE RE-**
9 **QUIREMENTS FOR COVERED INSTITUTIONS.**

10 “A covered institution that provides information to
11 any student, or the parent of such student, regarding a
12 private educational loan from a lender shall, prior to or
13 concurrent with such information—

14 “(1) inform the student or parent of—

15 “(A) the student or parent’s eligibility for
16 assistance and loans under title IV; and

17 “(B) the terms and conditions of such pri-
18 vate educational loan that are less favorable
19 than the terms and conditions of educational
20 loans for which the student or parent is eligible,
21 including interest rates, repayment options, and
22 loan forgiveness; and

23 “(2) ensure that information regarding such
24 private educational loans is presented in such a
25 manner as to be distinct from information regarding

1 loans that are made, insured, or guaranteed under
2 title IV.

3 **“SEC. 155. GIFT BAN FOR EMPLOYEES OF INSTITUTIONS.**

4 “(a) GIFT BAN.—A lender or guarantor of edu-
5 cational loans shall not offer any gift to an employee or
6 agent of a covered institution.

7 “(b) REPORTS OF GIFT BAN VIOLATIONS.—

8 “(1) EMPLOYEE REPORT.—Each employee or
9 agent of a covered institution shall report to the In-
10 spector General of the Department of Education any
11 instance of a lender or guarantor of educational
12 loans (including an agent of the lender or guarantor)
13 that attempts to give a gift to the employee or agent
14 in violation of subsection (a).

15 “(2) INSPECTOR GENERAL REPORT.—The In-
16 spector General of the Department of Education
17 shall investigate any reported violation of this sub-
18 section and shall annually submit a report to the
19 Committee on Health, Education, Labor, and Pen-
20 sions of the Senate and the Committee on Education
21 and Labor of the House of Representatives identi-
22 fying all reported violations of the gift ban under
23 subsection (a), including the lenders involved in each
24 such violation, for the preceding year.

25 “(c) DEFINITION OF GIFT.—

1 “(1) IN GENERAL.—In this section, the term
2 ‘gift’ means any gratuity, favor, discount, entertain-
3 ment, hospitality, loan, or other item having a mone-
4 tary value of more than \$10. The term includes a
5 gift of services, transportation, lodging, or meals,
6 whether provided in kind, by purchase of a ticket,
7 payment in advance, or reimbursement after the ex-
8 pense has been incurred.

9 “(2) EXCEPTIONS.—The term ‘gift’ shall not
10 include any of the following:

11 “(A) Standard informational material re-
12 lated to a loan, such as a brochure.

13 “(B) Food, refreshments, training, or in-
14 formational material furnished to an employee
15 or agent of an institution as an integral part of
16 a training session or through participation in
17 an advisory council that is designed to improve
18 the lender’s service to the covered institution, if
19 such training or participation contributes to the
20 professional development of the employee or
21 agent of the institution.

22 “(C) Favorable terms, conditions, and bor-
23 rower benefits on an educational loan provided
24 to a student employed by the covered institu-
25 tion.

1 “(3) RULE FOR GIFTS TO FAMILY MEMBERS.—

2 For purposes of this section, a gift to a family mem-
3 ber of an employee or an agent of a covered institu-
4 tion, or a gift to any other individual based on that
5 individual’s relationship with the employee or agent,
6 shall be considered a gift to the employee or agent
7 if—

8 “(A) the gift is given with the knowledge
9 and acquiescence of the employee or agent; and

10 “(B) the employee or agent has reason to
11 believe the gift was given because of the official
12 position of the employee or agent.

13 **“SEC. 156. COMPLIANCE AND ENFORCEMENT.**

14 “(a) CONDITION OF ANY FEDERAL ASSISTANCE.—

15 Notwithstanding any other provision of law, a covered in-
16 stitution or lender shall comply with this part as a condi-
17 tion of receiving Federal funds or assistance provided after
18 the date of enactment of the Student Loan Sunshine Act.

19 “(b) PENALTIES.—Notwithstanding any other provi-
20 sion of law, if the Secretary determines, after providing
21 notice and an opportunity for a hearing for a covered insti-
22 tution or lender, that the covered institution or lender has
23 violated subsection (a)—

24 “(1) in the case of a covered institution, or a
25 lender that does not participate in a loan program

1 under title IV, the Secretary may impose a civil pen-
2 alty in an amount of not more than \$25,000; and

3 “(2) in the case of a lender that does partici-
4 pate in a program under title IV, the Secretary may
5 limit, terminate or suspend the lender’s participation
6 in such program.

7 “(c) CONSIDERATIONS.—In taking any action against
8 a covered institution or lender under subsection (b), the
9 Secretary shall take into consideration the nature and se-
10 verity of the violation of subsection (a).

11 **“SEC. 157. GAO STUDY AND REPORTS.**

12 “(a) STUDY.—The Comptroller General of the United
13 States shall conduct a study on—

14 “(1) the gifts or financial or other material ben-
15 efits that are provided by lenders to covered institu-
16 tions to secure, or as part of an effort to secure, the
17 covered institutions’ educational loan business;

18 “(2) the extent to which lenders issuing private
19 educational loans may be inappropriately using in-
20 ducements to secure, or as part of an effort to se-
21 cure, educational loan arrangements with covered in-
22 stitutions; and

23 “(3) whether educational loans made to stu-
24 dents attending a covered institution in connection
25 with an educational loan arrangement, and private

1 educational loans made directly to students, provide
2 competitive interest rates, terms, and conditions to
3 students who obtain such loans.

4 “(b) REPORTS.—The Comptroller General of the
5 United States shall—

6 “(1) not later than 1 year after the date of en-
7 actment of the Student Loan Sunshine Act, submit
8 to Congress a preliminary report regarding the find-
9 ings of the study described in subsection (a); and

10 “(2) not later than 2 years after such date of
11 enactment, submit to Congress a final report regard-
12 ing such findings.”.

13 **SEC. 3. PROGRAM PARTICIPATION AGREEMENTS.**

14 Section 487(a) of the Higher Education Act of 1965
15 (20 U.S.C. 1094(a)) is amended by adding at the end the
16 following:

17 “(24)(A) In the case of an institution (including
18 an employee or agent of an institution) that main-
19 tains a preferred lender list, in print or any other
20 medium, through which the institution recommends
21 1 or more specific lenders for loans made under part
22 B to the students attending the institution (or the
23 parents of such students), the institution will—

24 “(i) clearly and fully disclose on the pre-
25 ferred lender list—

1 “(I) why the institution has included
2 each lender as a preferred lender, espe-
3 cially with respect to terms and conditions
4 favorable to the borrower; and

5 “(II) that the students attending the
6 institution (or the parents of such stu-
7 dents) do not have to borrow from a lender
8 on the preferred lender list;

9 “(ii) ensure, through the use of the list
10 provided by the Secretary under subparagraph
11 (C), that—

12 “(I) there are not less than 3 lenders
13 named on the preferred lending list that
14 are not affiliates of each other; and

15 “(II) the preferred lender list—

16 “(aa) specifically indicates, for
17 each lender on the list, whether the
18 lender is or is not an affiliate of each
19 other lender on the list; and

20 “(bb) if the lender is an affiliate
21 of another lender on the list, describes
22 the specifics of such affiliation; and

23 “(iii) establish a process to ensure that
24 lenders are placed upon the preferred lender list

1 on the basis of the benefits provided to bor-
2 rowers, including —

3 “(I) highly competitive interest rates,
4 terms, or conditions for loans made under
5 part B;

6 “(II) high-quality servicing for such
7 loans; or

8 “(III) additional benefits beyond the
9 standard terms and conditions for such
10 loans.

11 “(B) For the purposes of subparagraph
12 (A)(ii)—

13 “(i) the term ‘affiliate’ means a person
14 that controls, is controlled by, or is under com-
15 mon control with another person; and

16 “(ii) a person has control over another per-
17 son if—

18 “(I) the person directly or indirectly,
19 or acting through 1 or more others, owns,
20 controls, or has the power to vote 5 per-
21 cent or more of any class of voting securi-
22 ties of such other person;

23 “(II) the person controls, in any man-
24 ner, the election of a majority of the direc-
25 tors or trustees of such other person; or

1 “(III) the Secretary determines (after
2 notice and opportunity for a hearing) that
3 the person directly or indirectly exercises a
4 controlling interest over the management
5 or policies of such other person.

6 “(C) The Secretary shall maintain and update
7 a list of lender affiliates of all eligible lenders, and
8 shall provide such list to the eligible institutions for
9 use in carrying out subparagraph (A).”.

10 **SEC. 4. NOTICE OF AVAILABILITY OF FUNDS FROM FED-**
11 **ERAL SOURCES.**

12 Section 128 of the Truth in Lending Act (15 U.S.C.
13 1638) is amended by adding at the end the following:

14 “(e) DISCLOSURES RELATING TO PRIVATE EDU-
15 CATIONAL LOANS.—

16 “(1) IN GENERAL.—In the case of an extension
17 of credit that is a private educational loan, other
18 than a residential mortgage transaction, the creditor
19 shall provide in every application for such extensions
20 of credit and together with any solicitation, mar-
21 keting, or advertisement of such extensions of credit,
22 written, electronic, or otherwise, the disclosures de-
23 scribed in paragraph (2).

1 “(2) DISCLOSURES.—Disclosures required by
2 this subsection shall include a clear and prominent
3 statement—

4 “(A) that the borrower may qualify for
5 Federal financial assistance through a program
6 under title IV of the Higher Education Act of
7 1965, in lieu of or in addition to a loan from
8 a non-Federal source;

9 “(B) of the interest rates available with re-
10 spect to such Federal financial assistance;

11 “(C) describing how the applicable interest
12 rate is determined, including whether it is based
13 on the credit score of the borrower;

14 “(D) showing sample loan costs,
15 disaggregated by type;

16 “(E) of the types of repayment plans that
17 are available;

18 “(F) of whether, and under what condi-
19 tions, early repayment may be made without
20 penalty;

21 “(G) of when and how often the loan
22 would be recapitalized;

23 “(H) describing all fees, deferments, or
24 forbearance;

1 “(I) describing all available repayment
2 benefits, and the percentage of all borrowers
3 who qualify for such benefits;

4 “(J) describing collection practices in the
5 case of default;

6 “(K) describing late payment penalties and
7 associated fees;

8 “(L) of any complaints (and their resolu-
9 tion) filed with any State or private consumer
10 protection agency (including the Better Busi-
11 ness Bureau); and

12 “(M) such other information as the Board
13 may require.

14 “(3) PROVISION OF INFORMATION.—Before a
15 creditor may issue any funds with respect to an ex-
16 tension of credit described in paragraph (1) for an
17 amount equal to more than \$1,000—

18 “(A) the creditor shall notify the relevant
19 postsecondary educational institution, in writ-
20 ing, of the proposed extension of credit and the
21 amount thereof; and

22 “(B) if such relevant institution is a cov-
23 ered institution, the institution shall, in an ex-
24 pedient manner, notify the prospective bor-
25 rower, in accordance with procedures estab-

1 lished by rule of the Board, whether and to
2 what extent the proposed extension of credit ex-
3 ceeds the cost of attendance (as defined in sec-
4 tion 472 of the Higher Education Act of 1965)
5 for the student at that institution, after consid-
6 eration of the Federal and State grant and loan
7 aid and institutional aid that the student has or
8 is eligible to receive.

9 “(4) REGULATORY AUTHORITY.—The Board—

10 “(A) shall issue such rules and regulations
11 as may be necessary to implement this sub-
12 section; and

13 “(B) may, by rule, establish appropriate
14 exceptions to the disclosures required by this
15 subsection.

16 “(5) DEFINITIONS.—As used in this subsection,
17 the terms ‘private educational loan’ and ‘covered in-
18 stitution’ have the same meanings as in section 151
19 of the Higher Education Act of 1965.”.

○