

113TH CONGRESS  
1ST SESSION

# S. 528

To amend the Higher Education Opportunity Act to restrict institutions of higher education from using revenues derived from Federal educational assistance funds for advertising, marketing, or recruiting purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 12, 2013

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

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## A BILL

To amend the Higher Education Opportunity Act to restrict institutions of higher education from using revenues derived from Federal educational assistance funds for advertising, marketing, or recruiting purposes.

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; FINDINGS.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “Protecting Financial Aid for Students and Taxpayers  
6       Act”.

7       (b) **FINDINGS.**—Congress finds the following:

1           (1) From 1998 to 2008, enrollment in for-profit  
2 institutions of higher education increased by 225  
3 percent, from 553,000 students to 1,800,000 stu-  
4 dents.

5           (2) On average, 86 percent of revenues at 15  
6 large, publicly traded companies that operate for-  
7 profit institutions of higher education came from the  
8 Federal Government through student financial as-  
9 sistance programs.

10          (3) In 2009, students who enrolled at for-profit  
11 institutions of higher education received  
12 \$30,000,000,000 in Federal Pell Grants and student  
13 loans.

14          (4) Eight out of the 10 top recipients of Post-  
15 9/11 Educational Assistance funds are for-profit in-  
16 stitutions of higher education. For-profit colleges re-  
17 ceived 37 percent (\$4,400,000,000) of all Post-9/11  
18 Educational Assistance funds during the 2-year pe-  
19 riod of August 1, 2009 through June 15, 2011.

20          (5) Six of the top 10 military tuition assistance  
21 recipients are for-profit institutions of higher edu-  
22 cation. For-profit colleges received half of all tuition  
23 assistance dollars—\$280,000,000 out of  
24 \$563,000,000 spent in 2011.

1           (6) The 15 companies that received 86 percent  
2 of their revenues from Federal student aid programs  
3 spent \$3,700,000,000 (23 percent of revenues) on  
4 advertising, marketing, and recruitment in fiscal  
5 year 2009.

6           (7) According to documents obtained by the  
7 Committee on Health, Education, Labor and Pen-  
8 sions of the Senate (referred to in this Act as the  
9 “HELP Committee”), 30 companies operating for-  
10 profit institutions of higher education spent  
11 \$4,100,000,000 on advertising, marketing, and re-  
12 cruitment in fiscal year 2009.

13           (8) An analysis of 15 publicly traded companies  
14 that operate institutions of higher education shows  
15 that, on average, they spend 28 percent of expendi-  
16 tures on advertising, marketing, and recruiting.

17           (9) Documents obtained by the HELP Com-  
18 mittee reveal that for-profit institutions of higher  
19 education have created sophisticated marketing  
20 plans and employed many third parties as well as  
21 large sales forces specifically tasked with enrolling as  
22 many students as possible, including veterans, serv-  
23 ice members, and their families.

24           (10) In 2010, an undercover investigation by  
25 the Government Accountability Office documented

1 misleading and deceptive recruitment practices at  
2 each of 15 for-profit institutions of higher education  
3 campuses visited. Misleading statements included in-  
4 formation regarding the cost of attendance, transfer-  
5 ability of credits, loan repayment by future employ-  
6 ers, job placement, and likelihood of graduation.

7 (11) Documents produced to the HELP Com-  
8 mittee demonstrate that revenue from Federal funds  
9 is used to pay recruiters, who, at some for-profit in-  
10 stitutions of higher education, are trained to exploit  
11 emotional vulnerabilities of prospective students to  
12 meet enrollment thresholds.

13 (12) Documents produced to the HELP Com-  
14 mittee demonstrate that revenues from Federal  
15 funds are used to pay very large sales staff titled  
16 “enrollment advisors”, including 8,137, 5,669 and  
17 3,069 of such individuals at 3 large for-profit com-  
18 panies.

19 (13) The number of enrollment advisors at sev-  
20 eral for-profit institutions of higher education exam-  
21 ined by the HELP Committee are very dispropor-  
22 tionate with the number of staff engaged in all stu-  
23 dent support services, including job placement,  
24 which were 3,737, 2,582 and 2,472 at the same 3  
25 for-profit companies.

1 **SEC. 2. RESTRICTIONS ON SOURCES OF FUNDS FOR RE-**  
2 **CRUITING AND MARKETING ACTIVITIES.**

3 Section 119 of the Higher Education Opportunity  
4 Act (20 U.S.C. 1011m) is amended—

5 (1) in the section heading, by inserting “**AND**  
6 **RESTRICTIONS ON SOURCES OF FUNDS FOR**  
7 **RECRUITING AND MARKETING ACTIVITIES**”  
8 after “**FUNDS**”;

9 (2) in subsection (d), by striking “subsections  
10 (a) through (c)” and inserting “subsections (a), (b),  
11 (c), and (e)”;

12 (3) by redesignating subsection (e) as sub-  
13 section (f); and

14 (4) by inserting after subsection (d) the fol-  
15 lowing:

16 “(e) **RESTRICTIONS ON SOURCES OF FUNDS FOR RE-**  
17 **CRUITING AND MARKETING ACTIVITIES.**—

18 “(1) **IN GENERAL.**—An institution of higher  
19 education, or other postsecondary educational insti-  
20 tution, may not use revenues derived from Federal  
21 educational assistance funds for recruiting or mar-  
22 keting activities described in paragraph (2).

23 “(2) **COVERED ACTIVITIES.**—Except as pro-  
24 vided in paragraph (3), the recruiting and marketing  
25 activities subject to paragraph (1) shall include the  
26 following:

1           “(A) Advertising and promotion activities,  
2 including paid announcements in newspapers,  
3 magazines, radio, television, billboards, elec-  
4 tronic media, naming rights, or any other public  
5 medium of communication, including paying for  
6 displays or promotions at job fairs, military in-  
7 stallations, or college recruiting events.

8           “(B) Efforts to identify and attract pro-  
9 spective students, either directly or through a  
10 contractor or other third party, including con-  
11 tact concerning a prospective student’s potential  
12 enrollment or application for grant, loan, or  
13 work assistance under title IV of the Higher  
14 Education Act of 1965 (20 U.S.C. 1070 et  
15 seq.) or participation in preadmission or advis-  
16 ing activities, including—

17                   “(i) paying employees responsible for  
18 overseeing enrollment and for contacting  
19 potential students in-person, by phone, by  
20 email, or by other internet communications  
21 regarding enrollment; and

22                   “(ii) soliciting an individual to provide  
23 contact information to an institution of  
24 higher education, including websites estab-

1           lished for such purpose and funds paid to  
2           third parties for such purpose.

3           “(C) Such other activities as the Secretary  
4           of Education may prescribe, including paying  
5           for promotion or sponsorship of education or  
6           military-related associations.

7           “(3) EXCEPTIONS.—Any activity that is re-  
8           quired as a condition of receipt of funds by an insti-  
9           tution under title IV of the Higher Education Act of  
10          1965 (20 U.S.C. 1070 et seq.), is specifically author-  
11          ized under such title, or is otherwise specified by the  
12          Secretary of Education, shall not be considered to be  
13          a covered activity under paragraph (2).

14          “(4) FEDERAL EDUCATIONAL ASSISTANCE  
15          FUNDS.—In this subsection, the term ‘Federal edu-  
16          cational assistance funds’ means funds provided di-  
17          rectly to an institution or to a student attending  
18          such institution under any of the following provi-  
19          sions of law:

20                  “(A) Title IV of the Higher Education Act  
21                  of 1965 (20 U.S.C. 1070 et seq.).

22                  “(B) Chapter 30, 31, 32, 33, 34, or 35 of  
23                  title 38, United States Code.

24                  “(C) Chapter 101, 105, 106A, 1606, 1607,  
25                  or 1608 of title 10, United States Code.

1           “(D) Section 1784a, 2005, or 2007 of title  
2           10, United States Code.

3           “(E) Title I of the Workforce Investment  
4           Act of 1998 (29 U.S.C. 2801 et seq.).

5           “(F) The Adult Education and Family Lit-  
6           eracy Act (20 U.S.C. 9201 et seq.).

7           “(5) RULE OF CONSTRUCTION.—Nothing in  
8           this section shall be construed as a limitation on the  
9           use by an institution of revenues derived from  
10          sources other than Federal educational assistance  
11          funds.

12          “(6) REPORTING.—Each institution of higher  
13          education, or other postsecondary educational insti-  
14          tution, that receives revenues derived from Federal  
15          educational assistance funds shall report annually to  
16          the Secretary and to Congress the institution’s ex-  
17          penditures on advertising, marketing, and recruit-  
18          ing.”.

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