

117TH CONGRESS  
2D SESSION

# S. 4897

To make reforms at institutions of higher education.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2022

Mr. COTTON introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To make reforms at institutions of higher education.

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

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Student Loan Reform  
5 Act of 2022”.

6 **SEC. 2. PLUS LOAN REFORMS.**

7       (a) IN GENERAL.—Section 455(a) of the Higher  
8 Education Act of 1965 (20 U.S.C. 1087e(a)) is amended  
9 by adding at the end the following:

10               “(4) TERMINATION AND RESTRICTION OF AU-  
11 THORITY TO MAKE FEDERAL DIRECT PLUS LOANS.—

1           “(A) TERMINATION OF AUTHORITY TO  
2 MAKE FEDERAL DIRECT PLUS LOANS TO GRAD-  
3 UATE OR PROFESSIONAL STUDENTS WHO ARE  
4 NOT COVERED HEALTHCARE STUDENTS.—Not-  
5 withstanding any provision of this part or part  
6 B, for any period of instruction beginning on or  
7 after July 1, 2023, a graduate or professional  
8 student (except for a covered healthcare stu-  
9 dent) shall not be eligible to receive a Federal  
10 Direct PLUS Loan under this part for the stu-  
11 dent’s graduate or professional studies.

12           “(B) EXCEPTION FOR PARENT BOR-  
13 ROWERS AND COVERED HEALTHCARE STU-  
14 DENTS.—Notwithstanding any provision of this  
15 part or part B, for any period of instruction be-  
16 ginning on or after July 1, 2023 and for any  
17 parent borrower of a Federal Direct PLUS loan  
18 or any covered healthcare student—

19                   “(i) the maximum annual amount of  
20 any Federal Direct PLUS Loan shall not  
21 exceed \$10,000; and

22                   “(ii) the maximum aggregate lifetime  
23 amount of any Federal Direct PLUS  
24 Loans shall not exceed \$40,000.

1                   “(C) COVERED HEALTHCARE STUDENT.—

2                   In this paragraph, the term ‘covered healthcare  
3                   student’ means—

4                   “(i) a student who is in a course of  
5                   study to—

6                   “(I) become a Doctor of  
7                   Allopathic Medicine, Doctor of Osteo-  
8                   pathic Medicine, Doctor of Dentistry,  
9                   Doctor of Optometry, Doctor of  
10                  Podiatric Medicine, Doctor of Naturo-  
11                  pathic Medicine, Doctor of Naturop-  
12                  athy, Doctor of Veterinary Medicine,  
13                  Doctor of Pharmacy, or Doctor of  
14                  Chiropractic; or

15                  “(II) earn a doctoral degree in  
16                  clinical psychology or a masters or  
17                  doctoral degree in health administra-  
18                  tion; and

19                  “(ii) a student who is in a course of  
20                  study to become a nurse who will have the  
21                  same scope of practice as a doctor or de-  
22                  gree program described in clause (i).”.

23                  (b) REPORT.—

24                  (1) IN GENERAL.—By not later than 3 years  
25                  after the date of enactment of this Act, the Sec-

1       retary of Education shall submit a report to Con-  
2       gress offering recommendations on other critical  
3       STEM-based professions with a high return on in-  
4       vestment for which graduate and professional stu-  
5       dents should be allowed to access Federal Direct  
6       PLUS Loans under part D of title IV of the Higher  
7       Education Act of 1965 (20 U.S.C.1087a et seq.) for  
8       their graduate and professional studies.

9               (2) CONSIDERATIONS.—In carrying out para-  
10       graph (1), the Secretary shall consider—

11                   (A) how expanding Federal Direct PLUS  
12       Loans to graduate and professional students as  
13       described in paragraph (1) would benefit low-in-  
14       come students; and

15                   (B) how Congress could index the max-  
16       imum amount of Federal Direct PLUS Loans  
17       for each graduate or professional student bor-  
18       rower to the median earnings for graduates of  
19       the borrower’s program of study at the bor-  
20       rower’s institution of higher education, or the  
21       borrower’s program of study at a peer institu-  
22       tion of higher education.

23               (3) DEFINITION OF STEM-BASED.—In this sub-  
24       section, the term “STEM-based” means based in  
25       science, technology, engineering, or mathematics.

1 **SEC. 3. LOAN DEFAULT PENALTY.**

2 Section 454 of the Higher Education Act of 1965 (20  
3 U.S.C. 1087d(a)) is amended—

4 (1) in subsection (a)—

5 (A) in paragraph (5), by striking “and”  
6 after the semicolon;

7 (B) by redesignating paragraph (6) as  
8 paragraph (8); and

9 (C) by inserting after paragraph (5) the  
10 following:

11 “(6) provide that the institution accepts the  
12 loan default penalty requirements under subsection  
13 (d);”; and

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

15 “(d) **LOAN DEFAULT PENALTY REQUIREMENTS.**—

16 “(1) **IN GENERAL.**—Beginning with the second  
17 fiscal year that begins after the date of enactment  
18 of the Student Loan Reform Act of 2022, and each  
19 succeeding fiscal year, each institution of higher  
20 education participating in the direct student loan  
21 program under this part shall remit to the Sec-  
22 retary, at such times as the Secretary may specify,  
23 a student loan default penalty, as determined under  
24 paragraph (2).

25 “(2) **STUDENT LOAN DEFAULT PENALTY.**—For  
26 each fiscal year, the student loan default penalty

1 shall be an amount equal to 25 percent of the total  
 2 amount of loans under this part received for attend-  
 3 ance at the institution—

4 “(A) that entered into default loan status  
 5 in the previous fiscal year;

6 “(B) for which a borrower entered default  
 7 loan status for the first time; and

8 “(C) for which the borrower did not exit  
 9 default loan status within the first 60 days  
 10 after entering such status.”.

11 **SEC. 4. INSTITUTIONAL RESPONSIBILITY FOR LOAN REPAY-**  
 12 **MENT.**

13 Section 454 of the Higher Education Act of 1965 (20  
 14 U.S.C. 1087d(a)), as amended by section 3, is further  
 15 amended—

16 (1) in subsection (a), by inserting after para-  
 17 graph (6) the following:—

18 “(7) provide that the institution accepts the in-  
 19 stitutional responsibility guarantee requirements  
 20 under subsection (e); and”;

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

22 “(e) INSTITUTIONAL RESPONSIBILITY GUAR-  
 23 ANTEE.—

24 “(1) IN GENERAL.—Beginning with respect to  
 25 loans under this part that are disbursed during the

1 first award year that begins after the date of enact-  
2 ment of the Student Loan Reform Act of 2022, and  
3 each succeeding fiscal year, each institution of high-  
4 er education participating in the Direct student loan  
5 program under this part shall provide a written  
6 agreement to the Secretary asserting that the insti-  
7 tution will remit to the Secretary, at such times as  
8 the Secretary may specify, an institutional responsi-  
9 bility payment, as determined under paragraph (2).

10 “(2) INSTITUTIONAL RESPONSIBILITY PAY-  
11 MENT.—The institutional responsibility payment  
12 shall be, for each borrower who was enrolled in the  
13 institution, an amount equal to the lesser of—

14 “(A) a percentage of the total outstanding  
15 balance of that borrower that was received for  
16 attendance at the institution by that borrower  
17 that is equal to 1 percent for each \$1000 of the  
18 total amount under this part received for at-  
19 tendance at the institution by that borrower; or

20 “(B) 50 percent of the total outstanding  
21 balance of that borrower that was received  
22 under this part for attendance at the institution  
23 by that borrower.

24 “(3) USE OF INSTITUTIONAL RESPONSIBILITY  
25 PAYMENT.—The Secretary shall apply all of an insti-

1       tutional responsibility payment received under this  
2       subsection for a borrower to the outstanding Direct  
3       student loan obligation of such student, and shall  
4       notify the student of the reduction in the balance of  
5       the student's Direct student loan obligations.

6               “(4) TOTAL OUTSTANDING BALANCE.—In this  
7       subsection, the term ‘total outstanding balance’  
8       means the total amount of loans under this part—

9                       “(A) that have gone into default status  
10                      and remain unpaid after a period of 10 years  
11                      or more; and

12                     “(B) that remain unpaid after the period  
13                     described in subparagraph (A) and after the  
14                     Secretary has exhausted attempts to recover re-  
15                     payment from the borrower, including through  
16                     wage garnishment under section 488A, an ad-  
17                     ministrative offset under section 3716 of title  
18                     31, United States Code, a Federal salary offset,  
19                     or any other legal means through which the  
20                     Secretary may recover repayment of Federal  
21                     student loans.”.

22 **SEC. 5. LIMIT ON ADMINISTRATIVE STAFF.**

23       (a) PROGRAM PARTICIPATION AGREEMENT.—Section  
24 487(a) of the Higher Education Act of 1965 (20 U.S.C.  
25 1094(a)) is amended by adding at the end the following:

1           “(30) The institution will agree to the limit on  
2           administrative staff requirements described in sec-  
3           tion 487C.”.

4           (b) **LIMIT ON ADMINISTRATIVE STAFF.**—Part G of  
5 title IV of the Higher Education Act of 1965 (20 U.S.C.  
6 1088 et seq.) is amended by inserting after section 487B  
7 the following:

8           **“SEC. 487C. LIMIT ON ADMINISTRATIVE STAFF.**

9           “(a) **DEFINITIONS.**—In this section:

10           “(1) **ADMINISTRATIVE STAFF.**—The term ‘ad-  
11           ministrative staff’—

12           “(A) means staff whose duties are pri-  
13           marily non-academic, non-instructional, and  
14           non-research;

15           “(B) includes any institutional support  
16           staff, such as human resources, marketing, pub-  
17           lic relations, government relations, executive,  
18           administrative, or managerial staff;

19           “(C) includes student services staff, such  
20           as diversity, equity, and inclusion staff;

21           “(D) includes members of the academic  
22           administration, such as deans or provosts; and

23           “(E) excludes grounds and maintenance  
24           staff, cafeteria staff, healthcare practitioners,  
25           campus security, religious clergy supported by

1 the institution, and information technology sup-  
2 port staff.

3 “(2) COVERED INSTITUTION.—

4 “(A) IN GENERAL.—The term ‘covered in-  
5 stitution’—

6 “(i) means an institution that—

7 “(I) charged an amount for un-  
8 dergraduate tuition and fees equal to  
9 or greater than \$20,000 for an aca-  
10 demic year after the date of enact-  
11 ment of the Student Loan Reform Act  
12 of 2022, as determined by the Sec-  
13 retary on an annual basis; and

14 “(II) for the first covered year,  
15 had 200 or more individuals serving  
16 as administrative staff; and

17 “(ii) excludes—

18 “(I) an institution that is con-  
19 trolled by or that is closely identified  
20 with the tenets of a particular reli-  
21 gious organization, as described in  
22 section 106.12(c) of title 34, Code of  
23 Federal Regulations (as in effect on  
24 the date of enactment of the Student  
25 Loan Reform Act of 2022); and

1                   “(II) an institution that is a  
2                   medical school, as determined by the  
3                   Secretary.

4                   “(B) SPECIAL RULE.—If an institution  
5                   charges separate amounts of undergraduate tui-  
6                   tion and fees and for in-State and out-of-State  
7                   students, the amount of tuition and fees for the  
8                   purposes of this paragraph shall be determined  
9                   based on the amount that is an average of in-  
10                  State and out-of-State undergraduate tuition  
11                  and fees.

12                  “(3) FIRST COVERED YEAR.—The term ‘first  
13                  covered year’, when used with respect to a covered  
14                  institution, means the first academic year after the  
15                  date of enactment of the Student Loan Reform Act  
16                  of 2022 for which the institution’s undergraduate  
17                  tuition and fees exceeded \$20,000, as determined in  
18                  accordance with paragraph (2).

19                  “(b) IN GENERAL.—Beginning for the second aca-  
20                  demic year after the date of enactment of the Student  
21                  Loan Reform Act of 2022, a covered institution that par-  
22                  ticipates in a program under this title shall be required—

23                         “(1) each year of a school’s participation in a  
24                         program under this title, to reduce 10 percent of ad-  
25                         ministrative staff at the institution, as compared to

1 the total amount of such administrative staff at the  
2 institution in the first covered year, until the com-  
3 pletion of the 5th year of such reductions, at which  
4 time the institution shall be required to demonstrate  
5 to the Secretary that the institution has reduced 50  
6 percent of the administrative staff at the institution,  
7 as compared to the administrative staff at the insti-  
8 tution in the first covered year;

9 “(2) to ensure that after the completion of the  
10 5-year period described in paragraph (1), the insti-  
11 tution shall not increase the number of administra-  
12 tive staff at the institution by more than 1 percent  
13 annually for the remainder of the institution’s par-  
14 ticipation in a program under this title;

15 “(3) to eliminate administrative staff in the  
16 order specified under subsection (c); and

17 “(4) to submit an annual certification to the  
18 Secretary asserting that the institution meets the re-  
19 quirements of paragraphs (1), (2), and (3).

20 “(c) PRIORITY FOR ADMINISTRATIVE STAFF REDUC-  
21 TIONS.—An institution shall reduce administrative staff in  
22 the following order:

23 “(1) First, reducing diversity, equity, and inclu-  
24 sion staff by not less than 95 percent.

1           “(2) Second, reducing executive or management  
2           staff.

3           “(3) Third, reducing human resources staff.”.

4 **SEC. 6. AFFIRMATIVE ACTION.**

5           (a) INSTITUTION OF HIGHER EDUCATION.—The  
6 term “institution of higher education” has the meaning  
7 given that term in section 102 of the Higher Education  
8 Act of 1965 (20 U.S.C. 1002).

9           (b) PROHIBITION ON PREFERENTIAL TREATMENT  
10 OR DISCRIMINATION.—An institution of higher education  
11 receiving Federal funds shall not grant preferential treat-  
12 ment to, or discriminate against, any individual or group  
13 on the basis of race, color, ethnicity, or national origin,  
14 including treatment or discrimination related to employ-  
15 ment and student admissions.

16 **SEC. 7. CRITICAL RACE THEORY.**

17           (a) DEFINITIONS.—

18           (1) INSTITUTION OF HIGHER EDUCATION.—The  
19 term “institution of higher education” has the  
20 meaning given that term in section 102 of the High-  
21 er Education Act of 1965 (20 U.S.C. 1002).

22           (2) RACE-BASED THEORY.—The term “race-  
23 based theory” means a theory that—

24           (A) any race is inherently superior or infe-  
25           rior to any other race;

1 (B) the United States is a fundamentally  
2 racist country;

3 (C) the Declaration of Independence or the  
4 Constitution of the United States is a fun-  
5 damentally racist document;

6 (D) an individual's moral worth is deter-  
7 mined by the race of the individual;

8 (E) an individual, by virtue of the race of  
9 the individual, is inherently racist or oppressive,  
10 whether consciously or unconsciously; or

11 (F) an individual, because of the race of  
12 the individual, bears responsibility for the ac-  
13 tions committed by members of the race of the  
14 individual.

15 (b) PROHIBITION ON AWARD OF FUNDS TO CERTAIN  
16 INSTITUTIONS OF HIGHER EDUCATION.—No Federal  
17 funds may be awarded to an institution of higher edu-  
18 cation if such institution compels teachers or students to  
19 affirm, adhere to, adopt, or profess race-based theories or  
20 beliefs contrary to title VI of the Civil Rights Act of 1964  
21 (42 U.S.C. 2000d et seq.).

22 (c) RULES OF CONSTRUCTION.—

23 (1) PROTECTED SPEECH NOT RESTRICTED.—  
24 Nothing in this section shall be construed to restrict  
25 the speech of a student, a teacher, or any other indi-

1       vidual outside of an instructional setting of an insti-  
2       tution of higher education.

3               (2) ACCESS TO MATERIALS FOR THE PURPOSE  
4       OF RESEARCH OR INDEPENDENT STUDY.—Nothing  
5       in this section shall be construed to prevent an indi-  
6       vidual from accessing materials that advocate race-  
7       based theories for the purpose of research or inde-  
8       pendent study.

9       **SEC. 8. EXCISE TAXES ON CERTAIN COLLEGES AND UNI-**  
10               **VERSITIES.**

11       (a) EXCISE TAX ON CERTAIN LARGE PRIVATE COL-  
12       LEGE AND UNIVERSITY ENDOWMENTS.—

13               (1) IN GENERAL.—Subchapter H of chapter 42  
14       of the Internal Revenue Code of 1986 is amended by  
15       adding at the end the following new section:

16       **“SEC. 4969. EXCISE TAX ON CERTAIN LARGE PRIVATE COL-**  
17               **LEGE AND UNIVERSITY ENDOWMENTS.**

18       “(a) TAX IMPOSED.—There is hereby imposed on  
19       each specified applicable educational institution for the  
20       taxable year a tax equal to 1 percent of the aggregate fair  
21       market value of the assets of the institution at the end  
22       of the preceding taxable year.

23       “(b) SPECIFIED APPLICABLE EDUCATIONAL INSTI-  
24       TUTION.—For purposes of this subchapter, the term ‘spec-  
25       ified applicable educational institution’ means any applica-

1 ble educational institution, other than an institution which  
 2 is religious in nature, the aggregate fair market value of  
 3 the assets of which at the end of the preceding taxable  
 4 year (other than those assets which are used directly in  
 5 carrying out the institution's exempt purpose) is at least  
 6 \$2,500,000,000.

7 “(c) OTHER TERMS.—For purposes of this section—

8 “(1) ASSETS.—The rules of section 4968(d)  
 9 shall apply.

10 “(2) STUDENT.—The rules of section  
 11 4968(b)(2) shall apply.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-  
 13 tions for subchapter H of chapter 42 of the Internal  
 14 Revenue Code of 1986 is amended by adding at the  
 15 end the following new item:

“Sec. 4969. Excise tax on certain large private college and university endow-  
 ments.”.

16 (b) FAILURE TO DISTRIBUTE ENDOWMENT AS-  
 17 SETS.—

18 (1) IN GENERAL.—Subchapter H of chapter 42  
 19 of the Internal Revenue Code of 1986, as amended  
 20 by subsection (a), is amended by adding at the end  
 21 the following new section:

22 **“SEC. 4970. FAILURE TO DISTRIBUTE ENDOWMENT ASSETS.**

23 “(a) TAX IMPOSED.—There is hereby imposed on the  
 24 undistributed excess endowment amount of each specified

1 applicable educational institution for the taxable year,  
2 which has not been distributed before the first day of the  
3 second (or any succeeding) taxable year following such  
4 taxable year (if such first day falls within the taxable pe-  
5 riod), a tax equal to 30 percent of such undistributed ex-  
6 cess endowment amount remaining undistributed at the  
7 beginning of such second (or succeeding) taxable year. The  
8 tax imposed by this section shall not apply to the undis-  
9 tributed excess endowment amount of a specified applica-  
10 ble educational institution to the extent that the founda-  
11 tion failed to distribute any amount solely because of an  
12 incorrect valuation of assets, if—

13           “(1) the failure to value the assets properly was  
14           not willful and was due to reasonable cause,

15           “(2) such amount is distributed as qualifying  
16           distributions by the institution during the allowable  
17           distribution period,

18           “(3) the institution notifies the Secretary that  
19           such amount has been distributed as qualifying dis-  
20           tributions to correct such failure, and

21           “(4) such distribution is treated, by reason of  
22           subsection (e)(2), as made out of the undistributed  
23           income for the taxable year for which a tax would  
24           (except for this paragraph) have been imposed under  
25           this subsection.

1           “(b) ADDITIONAL TAX.—In any case in which an ini-  
2 tial tax is imposed under subsection (a) on the undistrib-  
3 uted excess endowment amount of any specified applicable  
4 educational institution for any taxable year, if any portion  
5 of such amount remains undistributed at the close of the  
6 taxable period, there is hereby imposed a tax equal to 100  
7 percent of the amount remaining undistributed at such  
8 time.

9           “(c) UNDISTRIBUTED EXCESS ENDOWMENT  
10 AMOUNT.—For purposes of this section, the term ‘undis-  
11 tributed excess endowment amount’ means, with respect  
12 to any specified applicable educational institution for any  
13 taxable year as of any time, the amount by which—

14                   “(1) the distributable amount for such taxable  
15 year, exceeds

16                   “(2) the qualifying distributions made before  
17 such time out of such distributable amount.

18           “(d) DISTRIBUTABLE AMOUNT.—For purposes of  
19 this section, the term ‘distributable amount’ means, with  
20 respect to any specified applicable educational institution  
21 for any taxable year, an amount equal to 5 percent of the  
22 aggregate fair market value of the assets of the institution  
23 at the end of the preceding taxable year. The rules of sec-  
24 tion 4968(d) shall apply for purposes of this section.

1       “(e) QUALIFYING DISTRIBUTIONS.—For purposes of  
2 this section—

3               “(1) IN GENERAL.—The term ‘qualifying dis-  
4 tribution’ has the meaning given such term in sec-  
5 tion 4942(g).

6               “(2) OTHER RULES.—The rules of subsections  
7 (h) and (i) of section 4942 shall apply.

8       “(f) TAXABLE PERIOD; ALLOWABLE DISTRIBUTION  
9 PERIOD.—The rules of paragraphs (1) and (2) of section  
10 4942(j) shall apply for purposes of this section.”.

11               (2) CLERICAL AMENDMENT.—The table of sec-  
12 tions for subchapter H of chapter 42 of the Internal  
13 Revenue Code of 1986, as amended by subsection  
14 (a), is further amended by adding at the end the fol-  
15 lowing new item:

“Sec. 4970. Failure to distribute endowment assets.”.

16       (c) ESTABLISHMENT OF EXCISE TAX ON EXCESSIVE  
17 TUITION.—

18               (1) IN GENERAL.—Subchapter H of chapter 42  
19 of the Internal Revenue Code of 1986, as amended  
20 by subsections (a) and (b), is amended by adding at  
21 the end the following new section:

22 **“SEC. 4970A. EXCISE TAX ON EXCESSIVE TUITION.**

23       “(a) TAX IMPOSED.—There is hereby imposed on  
24 each applicable institution of higher education for the tax-  
25 able year a tax equal to 20 percent of the total amount

1 of excessive tuition received by such applicable institution  
2 of higher education during such taxable year.

3 “(b) EXCESSIVE TUITION.—

4 “(1) IN GENERAL.—In this section, the term  
5 ‘excessive tuition’ means, with respect to any indi-  
6 vidual enrolled at the undergraduate level in the ap-  
7 plicable institution of higher education during any  
8 taxable year, the amount (if any) equal to the excess  
9 of—

10 “(A) the amount of undergraduate tuition  
11 and fees paid by such individual to such appli-  
12 cable institution of higher education during  
13 such taxable year, over

14 “(B) \$40,000.

15 “(2) TUITION AND FEES.—For purposes of  
16 paragraph (1)(A), the term ‘tuition and fees’ has the  
17 same meaning given the term ‘qualified tuition and  
18 related expenses’ under section 25A(f)(1).

19 “(c) APPLICABLE INSTITUTION OF HIGHER EDU-  
20 CATION.—In this section, the term ‘applicable institution  
21 of higher education’ means an institution of higher edu-  
22 cation as defined in section 102 of the Higher Education  
23 Act of 1965 (20 U.S.C. 1002) that is not—

1           “(1) an institution which is controlled by or  
2           which is closely identified with the tenets of a par-  
3           ticular religious organization; or

4           “(2) a medical school, as described in section  
5           487C(a)(2)(A)(ii)(II) of the Higher Education Act  
6           of 1965.”.

7           (2) CLERICAL AMENDMENT.—The table of sec-  
8           tions for subchapter H of chapter 42 of such Code,  
9           as amended by subsections (a) and (b), is amended  
10          by adding at the end the following new item:

“Sec. 4970A. Excise tax on excessive tuition.”.

11          (d) TRANSFER OF FUNDS.—The Secretary of the  
12          Treasury (or such Secretary’s delegate) shall from time  
13          to time transfer from the general fund of the Treasury  
14          to the Secretary of Commerce amounts equal to the in-  
15          crease in revenues by reason of the enactment of sub-  
16          sections (a), (b), and (c), for the purpose of expanding  
17          opportunities relating to employer-led apprenticeship pro-  
18          grams and on-the-job workforce training. Such funds shall  
19          be available until expended to carry out such activities  
20          through grants, cooperative agreements, contracts and  
21          other arrangements, with States and other appropriate en-  
22          tities.

23          (e) EFFECTIVE DATE.—The amendments made by  
24          this section shall apply to taxable years beginning after  
25          the date of enactment of this Act.

1 **SEC. 9. BAN ON REQUIRING FAFSA FOR FAMILIES WHO ARE**  
2 **NOT USING FEDERAL STUDENT AID.**

3 Section 487(a) of the Higher Education Act of 1965  
4 (20 U.S.C. 1094(a)), as amended by section 5, is further  
5 amended by adding at the end the following:

6 “(31) The institution will not require or pres-  
7 sure any prospective, accepted, or enrolled student  
8 at the institution to submit a Free Application for  
9 Federal Student Aid under section 483 if such stu-  
10 dent does not wish to apply for or accept Federal  
11 student aid.”.

12 **SEC. 10. CAMPUS FREE SPEECH RESTORATION.**

13 (a) PROTECTION OF STUDENT SPEECH AND ASSO-  
14 CIATION RIGHTS.—Section 112(a) of the Higher Edu-  
15 cation Act of 1965 (20 U.S.C. 1011a(a)) is amended—

16 (1) by redesignating paragraph (2) as para-  
17 graph (4); and

18 (2) by inserting after paragraph (1) the fol-  
19 lowing:

20 “(2) It is the sense of Congress that—

21 “(A) every individual should be free to profess,  
22 and to maintain, the opinion of such individual in  
23 matters of religion or philosophy, and that pro-  
24 fessing or maintaining such opinion should in no  
25 way diminish, enlarge, or affect the civil liberties or

1 rights of such individual on the campus of an insti-  
2 tution of higher education; and

3 “(B) no public institution of higher education  
4 directly or indirectly receiving financial assistance  
5 under this Act should limit religious expression, free  
6 expression, or any other rights provided under the  
7 First Amendment to the Constitution of the United  
8 States.

9 “(3) It is the sense of Congress that—

10 “(A) free speech zones and restrictive speech  
11 codes are inherently at odds with the freedom of  
12 speech guaranteed by the First Amendment to the  
13 Constitution of the United States;

14 “(B) bias reporting systems are susceptible to  
15 abuses that may put them at odds with the freedom  
16 of speech guaranteed by the First Amendment to the  
17 Constitution of the United States; and

18 “(C) no public institution of higher education  
19 directly or indirectly receiving financial assistance  
20 under this Act should restrict the speech of such in-  
21 stitution’s students through improperly restrictive  
22 zones, codes, or bias reporting systems.”.

23 (b) CAMPUS SPEECH POLICIES AT INSTITUTIONS OF  
24 HIGHER EDUCATION.—Title IV of the Higher Education  
25 Act of 1965 (20 U.S.C. 1070 et. seq.) is amended—

1 (1) in section 487(a), as amended by sections 5  
2 and 9, by adding at the end the following:

3 “(32) In the case of an institution that is—

4 “(A) a public institution, the institution  
5 will comply with the expressive activity protec-  
6 tions described in section 493E; and

7 “(B) not a public institution, the institu-  
8 tion will comply with the policies in section  
9 493F.”; and

10 (2) in part G, by inserting after section 493D  
11 the following:

12 **“SEC. 493E. CAMPUS SPEECH POLICIES AT PUBLIC UNIVER-**  
13 **SITIES.**

14 “(a) DEFINITION OF EXPRESSIVE ACTIVITIES.—

15 “(1) IN GENERAL.—In this section, the term  
16 ‘expressive activity’ includes—

17 “(A) peacefully assembling, protesting,  
18 speaking, or listening;

19 “(B) distributing literature;

20 “(C) carrying a sign;

21 “(D) circulating a petition; or

22 “(E) other expressive rights guaranteed  
23 under the First Amendment to the Constitution  
24 of the United States.

1           “(2) EXCLUSIONS.—In this section, the term  
2           ‘expressive activity’ does not include unprotected  
3           speech (as defined by the precedents of the Supreme  
4           Court of the United States).

5           “(b) EXPRESSIVE ACTIVITIES AT AN INSTITUTION.—

6           “(1) IN GENERAL.—Each public institution of  
7           higher education participating in a program under  
8           this title may not prohibit, subject to paragraph (2),  
9           a person from freely engaging in noncommercial ex-  
10          pressive activity in a generally accessible outdoor  
11          area on the institution’s campus if the person’s con-  
12          duct is lawful.

13          “(2) RESTRICTIONS.—An institution of higher  
14          education described in paragraph (1) may not main-  
15          tain or enforce time, place, or manner restrictions on  
16          an expressive activity in a generally accessible out-  
17          door area of the institution’s campus unless the re-  
18          striction—

19                 “(A) is necessary to achieve a compelling  
20                 governmental interest;

21                 “(B) is the least restrictive means of fur-  
22                 thering that compelling governmental interest;

23                 “(C) is based on published, content-neu-  
24                 tral, and viewpoint-neutral criteria;

1           “(D) leaves open ample alternative chan-  
2           nels for communication; and

3           “(E) provides for spontaneous assembly  
4           and distribution of literature.

5           “(3) APPLICATION.—The protections provided  
6           under paragraph (1) do not apply to expressive ac-  
7           tivity in an area on an institution’s campus that is  
8           not a generally accessible outdoor area.

9           “(4) NONAPPLICATION TO SERVICE ACAD-  
10          EMIES.—This section shall not apply to an institu-  
11          tion of higher education whose primary purpose is  
12          the training of individuals for the military services  
13          of the United States, or the merchant marine.

14          “(c) CAUSES OF ACTION.—

15                 “(1) AUTHORIZATION.—The following persons  
16                 may bring an action in a Federal court of competent  
17                 jurisdiction to enjoin a violation of subsection (b) or  
18                 to recover compensatory damages, reasonable court  
19                 costs, or reasonable attorney fees:

20                         “(A) The Attorney General.

21                         “(B) A person claiming that the person’s  
22                         expressive activity rights, as described in sub-  
23                         section (b)(1), were violated.

24                 “(2) ACTIONS.—Notwithstanding any other  
25                 provision of law, in an action brought under this sec-

1 tion, the Federal court shall decide de novo all rel-  
2 evant questions of fact and law, including the inter-  
3 pretation of constitutional, statutory, and regulatory  
4 provisions, unless the parties stipulate otherwise. In  
5 an action brought under this subsection, if the court  
6 finds a violation of subsection (b), the court—

7 “(A) shall—

8 “(i) enjoin the violation; and

9 “(ii) if a person whose expressive ac-  
10 tivity rights were violated brought the ac-  
11 tion, award the person—

12 “(I) not less than \$500 for an  
13 initial violation; and

14 “(II) if the person notifies the in-  
15 stitution of the violation, \$50 for each  
16 day the violation continues after the  
17 notification if the institution did not  
18 act to discontinue the cause of the  
19 violation; and

20 “(B) may award a prevailing plaintiff—

21 “(i) compensatory damages;

22 “(ii) reasonable court costs; or

23 “(iii) reasonable attorney fees.

24 “(d) STATUTE OF LIMITATIONS.—

1           “(1) IN GENERAL.—Except as provided in para-  
2           graph (3), an action under subsection (c) may not  
3           be brought later than 1 year after the date of the  
4           violation.

5           “(2) CONTINUING VIOLATION.—Each day that  
6           a violation of subsection (b) continues after an ini-  
7           tial violation of subsection (b), and each day that an  
8           institution’s policy in violation of subsection (b) re-  
9           mains in effect, shall constitute a continuing viola-  
10          tion of subsection (b).

11          “(3) EXTENSION.—For a continuing violation  
12          described in paragraph (2), the limitation described  
13          in paragraph (1) shall extend to 1 year after the  
14          date on which the most recent violation occurs.

15          “(e) FEDERAL REVIEW OF SPEECH POLICIES.—

16                 “(1) NO ELIGIBILITY FOR FUNDS.—

17                         “(A) IN GENERAL.—No public institution  
18                         of higher education shall be eligible to receive  
19                         funds under this Act, including participation in  
20                         any program under this title, if the Secretary  
21                         determines that the institution—

22                                 “(i) maintains a policy that infringes  
23                                 upon the expressive rights of students  
24                                 under the First Amendment to the Con-  
25                                 stitution of the United States; or

1                   “(ii) maintains or enforces time,  
2                   place, or manner restrictions on an expres-  
3                   sive activity in a generally accessible out-  
4                   door area of the institution’s campus that  
5                   do not comply with subparagraphs (A)  
6                   through (E) of subsection (b)(2).

7                   “(B) COURT REVIEW.—Notwithstanding  
8                   any other provision of law, the Secretary’s de-  
9                   terminations under this subsection shall be re-  
10                  viewed de novo with respect to all relevant ques-  
11                  tions of fact and law, including the interpreta-  
12                  tion of constitutional, statutory, and regulatory  
13                  provisions, unless the parties stipulate other-  
14                  wise.

15                  “(2) DESIGNATION OF AN EMPLOYEE TO RE-  
16                  CEIVE COMPLAINTS.—The Secretary shall designate  
17                  an employee in the Office of Postsecondary Edu-  
18                  cation of the Department to receive complaints from  
19                  students or student organizations at a given public  
20                  institution of higher education, or from any other  
21                  person or organization, regarding policies at the in-  
22                  stitution—

23                         “(A) that infringe upon the expressive  
24                         rights of students under the First Amendment  
25                         to the Constitution of the United States; or

1           “(B) that maintain or enforce time, place,  
2           or manner restrictions on an expressive activity  
3           in a generally accessible outdoor area of the in-  
4           stitution’s campus that do not comply with sub-  
5           paragraphs (A) through (E) of subsection  
6           (b)(2).

7           “(3) COMPLAINT.—A complaint submitted  
8           under subparagraph (2)—

9           “(A) shall include the provision of the in-  
10          stitution’s policy the complainant believes either  
11          infringes upon the expressive rights of students  
12          under the First Amendment to the Constitution  
13          of the United States or maintains or enforces  
14          time, place, or manner restrictions on an ex-  
15          pressive activity in a generally accessible out-  
16          door area of the institution’s campus that does  
17          not comply with subparagraphs (A) through (E)  
18          of subsection (b)(2), along with any evidence re-  
19          garding the operation and enforcement of such  
20          policy the complainant deems relevant; and

21          “(B) may include an argument as to why  
22          the policy in question either infringes upon the  
23          expressive rights of students under the First  
24          Amendment to the Constitution of the United  
25          States or maintains or enforces time, place, or

1 manner restrictions on an expressive activity in  
2 a generally accessible outdoor area of the insti-  
3 tution's campus that does not comply with sub-  
4 paragraphs (A) through (E) of subsection  
5 (b)(2).

6 “(4) SYSTEM OF REVIEW.—

7 “(A) FIRST STAGE REVIEW.—

8 “(i) REQUEST FOR RESPONSE.—Not  
9 later than 7 days after the date of receipt  
10 of a complaint under paragraph (2), the  
11 Secretary shall review the complaint and  
12 request a response to the complaint from  
13 the institution.

14 “(ii) INSTITUTION RESPONSE.—Not  
15 later than 30 days after the date the Sec-  
16 retary requests a response under clause (i),  
17 the institution shall—

18 “(I) certify to the Secretary that  
19 the institution has entirely withdrawn  
20 the policy that occasioned the com-  
21 plaint;

22 “(II) submit a revised policy for  
23 review by the Secretary; or

24 “(III) submit a defense of the  
25 policy that occasioned the complaint.

1                   “(iii) AVAILABILITY TO COMPLAIN-  
2                   ANT.—

3                   “(I) IN GENERAL.—Not later  
4                   than 7 days after the date of receipt  
5                   of a revised policy or defense of the  
6                   original policy as submitted by the in-  
7                   stitution pursuant to clause (ii), the  
8                   Secretary shall make available to the  
9                   complainant a copy of such revised  
10                  policy or defense.

11                  “(II) RESPONSE BY COMPLAIN-  
12                  ANT.—Not later than 60 days after  
13                  the date of receipt of a revised policy  
14                  or defense of the original policy under  
15                  subclause (I), the complainant may  
16                  submit to the Secretary a response to  
17                  the revised policy or defense of the  
18                  original policy.

19                  “(III) SUBMISSION TO THE IN-  
20                  STITUTION OF RESPONSE.—Not later  
21                  than 7 days after the date of receipt  
22                  of a response under subclause (II),  
23                  the Secretary shall submit to the in-  
24                  stitution a copy of such response.

1           “(iv) DETERMINATIONS.—If the insti-  
2           tution declines to entirely withdraw the  
3           policy that occasioned the complaint and  
4           either submits a revised policy for review  
5           or submits a defense of the policy that oc-  
6           casioned the complaint, the Secretary shall,  
7           not later than 60 days after the date of the  
8           deadline for a response by the complaint as  
9           described in clause (iii)(II), make one of  
10          the following determinations:

11                   “(I) Determine that the com-  
12                   plaint in question has insufficient  
13                   merit to proceed to Second Stage Re-  
14                   view described in subparagraph (B).

15                   “(II) Determine that the com-  
16                   plaint in question has sufficient merit  
17                   to proceed to Second Stage Review  
18                   described in subparagraph (B).

19           “(v) NOTIFICATION.—Not later than  
20          7 days after the date the Secretary makes  
21          a determination under clause (iv), the Sec-  
22          retary shall notify the institution and the  
23          complainant of such determination.

1           “(vi) END.—The determination under  
2           clause (iv) shall constitute the end of First  
3           Stage Review.

4           “(B) SECOND STAGE REVIEW.—

5           “(i) IN GENERAL.—In a Second Stage  
6           Review, the Secretary shall notify the insti-  
7           tution and the complainant of the com-  
8           mencement of the Second Stage Review,  
9           and shall give the institution the option of  
10          entirely withdrawing the policy that occa-  
11          sioned the complaint or submitting a re-  
12          vised policy for review within 30 days of  
13          the commencement of the Second Stage  
14          Review. In such notification submitted to  
15          the institution and complainant, the Sec-  
16          retary shall indicate the relevant sections  
17          of the institution’s policy in question and  
18          explain why these sections may be out of  
19          compliance.

20          “(ii) DETERMINATION.—Not later  
21          than 90 days from the commencement of  
22          the Second Stage Review, the Secretary  
23          shall determine whether the policy that oc-  
24          casioned the complaint, or the revised pol-  
25          icy submitted during the First Stage Re-

1 view, or the revised policy submitted within  
2 the first 30 days of the Second Stage Re-  
3 view, is in violation of student rights under  
4 the First Amendment to the Constitution  
5 of the United States or of the restrictions  
6 on the regulation of speech by time, place,  
7 and manner set forth in this section, there-  
8 by ending Second Stage Review.

9 “(iii) INVESTIGATION.—During Sec-  
10 ond Stage Review, the Secretary may con-  
11 duct an investigation in which further in-  
12 formation may be sought or requested  
13 from the complainant, the institution, or  
14 any other source the Secretary determines  
15 pertinent.

16 “(iv) CERTIFICATION OF WITH-  
17 DRAWAL.—At any point during the Second  
18 Stage Review, the institution in question  
19 may certify to the Secretary that it has en-  
20 tirely withdrawn the policy that occasioned  
21 the complaint, thereby ending the Second  
22 Stage Review.

23 “(v) NOTIFICATION AND JUSTIFICA-  
24 TION.—If the Secretary determines by the  
25 conclusion of Second Stage Review that

1 the policy that occasioned the complaint or  
2 the revised policy submitted for review dur-  
3 ing First Stage Review or Second Stage  
4 Review is consistent with the expressive  
5 rights of students under the First Amend-  
6 ment to the Constitution of the United  
7 States and the restrictions on the regula-  
8 tion of speech by time, place, and manner  
9 set forth in this Act—

10 “(I) the Secretary shall notify the  
11 complainant and the institution of  
12 such determination not more than 7  
13 days after the date of the determina-  
14 tion; and

15 “(II) the Secretary shall explain  
16 and justify such determination in a  
17 written decision citing relevant legal  
18 precedent, copies of which shall be  
19 sent to the complainant, the institu-  
20 tion, and made available for public in-  
21 spection, including for online reading  
22 by the public.

23 “(C) DETERMINATION THAT INSTITUTION  
24 IS OUT OF COMPLIANCE.—

1           “(i) IN GENERAL.—If, upon comple-  
2           tion of the Second Stage Review, the Sec-  
3           retary determines that the policy that occa-  
4           sioned the complaint, or the revised policy  
5           submitted for review during the First  
6           Stage Review or Second Stage Review, vio-  
7           lates the First Amendment to the Con-  
8           stitution of the United States or the re-  
9           strictions on the regulation of speech set  
10          forth in this section, the Secretary shall  
11          notify the complainant and the institution  
12          not more than 7 days after the date of  
13          completion of Second Stage Review that  
14          the institution is out of compliance with  
15          the requirements for receiving funds under  
16          this Act, including participation in any  
17          program under this title, but will be grant-  
18          ed a grace period of 120 days to return to  
19          compliance before being formally stripped  
20          of eligibility.

21           “(ii) POSTING; EXPLANATION; FINAL  
22          REVIEW.—As part of the notification under  
23          clause (i), the Secretary shall—

24                   “(I) require the institution to  
25                   post the determination of the Sec-

1           retary on the website of the institu-  
2           tion within 2 clicks of the homepage,  
3           without a paywall, email login, or  
4           other restriction to access;

5           “(II) explain and justify the de-  
6           termination of the Secretary in a writ-  
7           ten decision citing relevant legal  
8           precedent, copies of which shall be  
9           sent to the complainant, the institu-  
10          tion, and made available for public in-  
11          spection, including for online reading  
12          by the public; and

13          “(III) inform the institution that  
14          Final Review has begun and that the  
15          institution must either certify to the  
16          Secretary that it has entirely with-  
17          drawn the policy that occasioned the  
18          complaint, or submit a revised policy  
19          for review to the Secretary not later  
20          than 60 days after the date of receipt  
21          of notice of the conclusion of Second  
22          Stage Review.

23          “(D) FINAL REVIEW.—

24                 “(i) IN GENERAL.—If an institution  
25                 submits a revised policy for review as de-

1           scribed in subparagraph (C)(ii)(III), the  
2           Secretary shall review such revised policy  
3           and determine not later than 120 days  
4           after the date of commencement of Final  
5           Review whether the revised policy is con-  
6           sistent with the expressive rights of stu-  
7           dents under the First Amendment to the  
8           Constitution of the United States and with  
9           the restrictions on the regulation of speech  
10          by time, place, and manner set forth in  
11          this Act.

12           “(ii) DETERMINATION OF COMPLI-  
13          ANCE.—If the Secretary determines, as de-  
14          scribed in clause (i), that the revised policy  
15          is consistent with the expressive rights of  
16          students under the First Amendment to  
17          the Constitution of the United States and  
18          with the restrictions on the regulation of  
19          speech by time, place, and manner set  
20          forth in this Act, the Secretary shall notify  
21          the complainant and the institution of such  
22          determination not more than 7 days after  
23          the date the determination is made, there-  
24          by ending the final Stage Review.

1           “(iii) DETERMINATION OF VIOLA-  
2           TION.—If the Secretary determines, as de-  
3           scribed in clause (i), that the revised policy  
4           violates the expressive rights of students  
5           under the First Amendment to the Con-  
6           stitution of the United States or the re-  
7           strictions on the regulation of speech by  
8           time, place, and manner set forth in this  
9           Act, the Secretary shall—

10                   “(I) notify the complainant and  
11                   the institution of such determination  
12                   not more than 7 days after the date  
13                   the determination is made, thereby  
14                   ending the final Stage Review; and

15                   “(II) explain and justify the de-  
16                   termination in a written decision cit-  
17                   ing relevant legal precedent, copies of  
18                   which shall be sent to the complain-  
19                   ant, the institution, and made avail-  
20                   able for public inspection, including  
21                   for online reading by the public.

22           “(E) LOSS OF ELIGIBILITY.—

23                   “(i) IN GENERAL.—If the Secretary  
24                   determines, during the Final Stage Review,  
25                   that the institution’s policy in question vio-

1           lates the expressive rights of students  
2           under the First Amendment to the Con-  
3           stitution of the United States or the re-  
4           strictions on the regulation of speech by  
5           time, place, and manner set forth in this  
6           Act, the Secretary shall—

7                   “(I) notify the complainant and  
8                   the institution not more than 7 days  
9                   after the date of the determination  
10                  that the institution will lose eligibility  
11                  to receive funds under this Act, in-  
12                  cluding participation in any program  
13                  under this title, in accordance with  
14                  this subparagraph;

15                  “(II) notify the institution that  
16                  the loss of eligibility shall go into ef-  
17                  fect beginning with any student noti-  
18                  fied of acceptance for admission to the  
19                  institution during the academic year  
20                  subsequent to the academic year dur-  
21                  ing which the determination is made,  
22                  and that no restoration of eligibility  
23                  for ineligible students in subsequent  
24                  academic years will occur prior to the  
25                  beginning of the third academic year

1 subsequent to the academic year dur-  
2 ing which the determination is made;

3 “(III) explain and justify the de-  
4 termination in a written decision cit-  
5 ing relevant legal precedent, copies of  
6 which shall be sent to the complain-  
7 ant, the institution, and made avail-  
8 able for public inspection, including  
9 for online reading by the public; and

10 “(IV) require the institution to  
11 post the determination of the Sec-  
12 retary on the website of the institu-  
13 tion, within two clicks of the home-  
14 page, without a paywall, email login,  
15 or other restriction to access.

16 “(ii) CONTINUED ELIGIBILITY.—Each  
17 student enrolled at the institution during  
18 the academic year in which eligibility is  
19 lost as described in this subparagraph, and  
20 each student notified of acceptance for ad-  
21 mission to the institution during the aca-  
22 demic year in which eligibility is lost as de-  
23 scribed in this subparagraph, shall con-  
24 tinue to be eligible to participate, through  
25 the institution, in programs funded under

1 this Act during the 5-year period after the  
2 date of the loss of eligibility.

3 “(F) RESTORATION OF ELIGIBILITY.—

4 “(i) IN GENERAL.—Not later than 7  
5 days after the loss of eligibility under sub-  
6 paragraph (E), the Secretary shall inform  
7 the institution that it may restore eligi-  
8 bility, either by certifying to the Secretary  
9 that it has entirely withdrawn the policy  
10 that precipitated loss of eligibility, or by  
11 submitting a revised policy for review at  
12 any time following the failure of the Final  
13 Review.

14 “(ii) REVIEW OF REVISED POLICY.—  
15 The Secretary shall review a revised policy  
16 submitted for review after the loss of eligi-  
17 bility and determine not later than 120  
18 days after the date the revised policy is  
19 submitted whether it is consistent with the  
20 expressive rights of students under the  
21 First Amendment to the Constitution of  
22 the United States and with the restrictions  
23 on the regulation of speech by time, place,  
24 and manner set forth in this Act.

1           “(iii) INVESTIGATION.—While con-  
2           ducting a review to restore eligibility under  
3           this subparagraph, the Secretary may con-  
4           duct an investigation in which further in-  
5           formation may be sought or requested  
6           from the institution, or any other source  
7           the Secretary determines pertinent.

8           “(iv) WRITTEN DECISION.—In making  
9           a determination of whether a revised policy  
10          submitted for review after the loss of eligi-  
11          bility is either consistent or inconsistent  
12          with the expressive rights of students  
13          under the First Amendment to the Con-  
14          stitution of the United States and with the  
15          restrictions on the regulation of speech by  
16          time, place, and manner set forth in this  
17          Act, the Secretary shall explain and justify  
18          the determination in a written decision cit-  
19          ing relevant legal precedent, copies of  
20          which shall be sent to the complainant, the  
21          institution, and made available for public  
22          inspection, including for online reading by  
23          the public.

24          “(v) LIMIT ON REVIEW.—The Sec-  
25          retary may conduct not more than 1 review

1 to restore eligibility for a single institution  
2 in any given academic year.

3 “(vi) RESTORATION.—If an institu-  
4 tion certifies to the Secretary that the pol-  
5 icy that precipitated the loss of eligibility  
6 has been entirely withdrawn, or if Sec-  
7 retary determines that the revised policy  
8 submitted for review is consistent with the  
9 expressive rights of students under the  
10 First Amendment to the Constitution of  
11 the United States and with the restrictions  
12 on the regulation of speech by time, place,  
13 and manner set forth in this Act, the insti-  
14 tution’s eligibility to receive funds under  
15 this Act, including participation in any  
16 program under this title, shall be restored  
17 not earlier than the beginning of the third  
18 academic year following the year in which  
19 notification of loss of eligibility was re-  
20 ceived.

21 “(G) GOOD FAITH REPRESENTATION.—

22 “(i) IN GENERAL.—The Secretary  
23 shall inform any institution undergoing re-  
24 view of its campus speech policies that it  
25 expects the institution to represent its poli-

1                   cies, along with any proposed revisions in  
2                   such policies, in good faith.

3                   “(ii) MISREPRESENTATION.—

4                   “ (I) COMPLAINTS.—A student,  
5                   student organization, or any other  
6                   person or organization may file, with  
7                   the employee in the Office of Postsec-  
8                   ondary Education of the Department  
9                   designated by the Secretary under  
10                  paragraph (2) to receive complaints, a  
11                  complaint that an institution has sub-  
12                  stantially misrepresented its speech  
13                  policies, or withheld information re-  
14                  quested by the Secretary during an  
15                  investigation, or attempted to cir-  
16                  cumvent the review process by reinsti-  
17                  tuting a policy under review in a sub-  
18                  stantially similar form without inform-  
19                  ing the Secretary.

20                  “(II) LOSS OF ELIGIBILITY.—If  
21                  the Secretary determines upon inves-  
22                  tigation, or after receiving a complaint  
23                  under subclause (I), that an institu-  
24                  tion has substantially misrepresented  
25                  its speech policies, or withheld infor-

1                   mation requested by the Secretary  
2                   during an investigation, or attempted  
3                   to circumvent the review process by  
4                   reinstating a policy under review in  
5                   a substantially similar form without  
6                   informing the Secretary, the institu-  
7                   tion shall lose eligibility to receive  
8                   funds under this Act, including par-  
9                   ticipation in any program under this  
10                  title.

11                  “(iii) LOSS OF ELIGIBILITY.—If an in-  
12                  stitution loses eligibility under clause (ii),  
13                  the Secretary shall notify the institution,  
14                  not later than 7 days after the determina-  
15                  tion, that the loss of eligibility shall go into  
16                  effect beginning with any student notified  
17                  of acceptance for admission to the institu-  
18                  tion during the academic year subsequent  
19                  to the academic year during which the de-  
20                  termination is made, and that no restora-  
21                  tion of eligibility for students admitted in  
22                  subsequent academic years will occur prior  
23                  to the beginning of the third academic year  
24                  subsequent to the academic year during  
25                  which the determination is made.

1 “(f) RETALIATION PROHIBITED.—

2 “(1) IN GENERAL.—No person may intimidate,  
3 threaten, coerce, or discriminate against any indi-  
4 vidual because the individual has made a report or  
5 complaint, testified, assisted, or participated or re-  
6 fused to participate in any manner in an investiga-  
7 tion, proceeding, or hearing under this section.

8 “(2) SPECIFIC CIRCUMSTANCES.—

9 “(A) EXERCISE OF FIRST AMENDMENT  
10 RIGHTS.—The exercise of rights protected  
11 under the First Amendment to the Constitution  
12 of the United States does not constitute retalia-  
13 tion prohibited under paragraph (1).

14 “(B) CODE OF CONDUCT VIOLATION FOR  
15 MATERIALLY FALSE STATEMENT.—Charging an  
16 individual with a code of conduct violation for  
17 making a materially false statement in bad  
18 faith in the course of a grievance proceeding  
19 under this section does not constitute retalia-  
20 tion prohibited under paragraph (1). A deter-  
21 mination regarding responsibility, alone, is not  
22 sufficient to conclude that any party made a  
23 materially false statement in bad faith.

1 **“SEC. 493F. CAMPUS SPEECH POLICIES AT PRIVATE UNI-**  
 2 **VERSITIES.**

3 “(a) IN GENERAL.—Each private institution of high-  
 4 er education eligible to receive funds under this Act, in-  
 5 cluding any program under this title, shall—

6 “(1) post in one place on the website of the in-  
 7 stitution all policies that pertain to the protection  
 8 and regulation of the expressive rights of students,  
 9 including the right to submit a complaint under this  
 10 section, within 2 clicks of the homepage, without a  
 11 paywall, email login, or other restriction to access;

12 “(2) include a copy of such policies in a hand-  
 13 book distributed to new students; and

14 “(3) send a copy of—

15 “(A) such policies to the employee of the  
 16 Department designated by the Secretary to re-  
 17 ceive such policies; and

18 “(B) any updates to such policies to such  
 19 employee not later than 60 days after the date  
 20 of a change to such policies.

21 “(b) RESPONSIBILITY FOR FULL POLICY DISCLO-  
 22 SURE.—Each private institution of higher education de-  
 23 scribed in subsection (a) shall include with the copy of the  
 24 policies described in subsection (a)—

25 “(1) a statement affirming that all policies per-  
 26 tinent to the protection and regulation of the expres-

1 sive rights of students have been disclosed in the  
2 manner required by this section, along with an ac-  
3 ceptance of contractual obligation to publicly disclose  
4 all such policies; and

5 “(2) a statement affirming that publication of  
6 such policies as required by this section establishes  
7 a contractual obligation on the part of the institu-  
8 tion to its students to maintain and enforce the dis-  
9 closed policies, and only those policies, in matters  
10 pertaining to the protection and regulation of the ex-  
11 pressive rights of students.

12 “(c) CAUSE OF ACTION.—

13 “(1) AUTHORIZATION.—A student claiming  
14 that a private institution of higher education in  
15 which the student is enrolled has violated any re-  
16 quirement or contractual obligation imposed by this  
17 section may bring an action in a Federal court of  
18 competent jurisdiction to enjoin such violation or to  
19 recover compensatory damages, reasonable court  
20 costs, or reasonable attorney fees.

21 “(2) ACTIONS.—Notwithstanding any other  
22 provision of law, in an action brought under this  
23 subsection, the Federal court shall decide de novo all  
24 relevant questions of fact and law, including the in-  
25 terpretation of constitutional, statutory, and regu-

1 latory provisions, unless the parties stipulate other-  
2 wise. In an action brought under this subsection, if  
3 the court finds a violation of subsection (b), the  
4 court—

5 “(A) shall—

6 “(i) enjoin the violation; and

7 “(ii) award the student—

8 “(I) not less than \$500 for an  
9 initial violation; and

10 “(II) if the student notifies the  
11 institution of the violation, \$50 for  
12 each day the violation continues after  
13 the notification if the institution did  
14 not act to discontinue the cause of the  
15 violation; and

16 “(B) may award a prevailing plaintiff—

17 “(i) compensatory damages;

18 “(ii) reasonable court costs; or

19 “(iii) reasonable attorney fees.

20 “(d) SECRETARIAL REQUIREMENTS.—

21 “(1) DESIGNATION OF AN EMPLOYEE.—The  
22 Secretary shall designate an employee in the Office  
23 of Postsecondary Education in the Department who  
24 shall—

1           “(A) receive and compile updated copies of  
2 all policies pertaining to the protection and reg-  
3 ulation of the expressive rights of students at  
4 private institutions of higher education that re-  
5 ceive funds under this section, including any  
6 programs under this title;

7           “(B) preserve all records of such policies  
8 for a period of not less than 10 years and make  
9 such policies, and the dates they were disclosed,  
10 modified, or withdrawn, available for public in-  
11 spection, including for online reading by the  
12 public;

13           “(C) receive complaints from students, stu-  
14 dent organizations, or from any other person or  
15 organization, that believes a private institution  
16 of higher education has not disclosed a policy  
17 pertaining to the protection and regulation of  
18 the expressive rights of students as required by  
19 this section, is enforcing a policy pertaining to  
20 the expressive rights of students that has not  
21 been disclosed as required by this section, or  
22 has failed to make and publish a statement af-  
23 firming contractual responsibility for full policy  
24 disclosure, or affirming contractual responsi-

1           bility for the enforcement of speech policies, as  
2           required by this section;

3           “(D) not more than 7 days after the date  
4           of receipt of a complaint under subparagraph  
5           (C), review the complaint and request a re-  
6           sponse from the institution;

7           “(E) undertake an investigation, in re-  
8           sponse to a complaint under subparagraph (C)  
9           or at the Secretary’s independent initiative, to  
10          determine whether a private institution of high-  
11          er education has failed to disclose a policy per-  
12          taining to the protection and regulation of the  
13          expressive rights of students as required by this  
14          section, is enforcing a policy pertaining to the  
15          expressive rights of students that has not been  
16          disclosed as required by this section, or has  
17          failed to make and publish a statement affirm-  
18          ing contractual responsibility for full policy dis-  
19          closure, or affirming contractual responsibility  
20          for the enforcement of speech policies, as re-  
21          quired by this section; and

22          “(F) determine, not later than 120 days  
23          after the date of receipt of a complaint or 120  
24          days after the date of the start of an investiga-  
25          tion opened at the Secretary’s independent ini-

1            tiative, whether the private institution of higher  
2            education in question has failed to disclose a  
3            policy pertaining to the protection and regula-  
4            tion of the expressive rights of students as re-  
5            quired by this section, is enforcing a policy per-  
6            taining to the expressive rights of students that  
7            has not been disclosed as required by this sec-  
8            tion, or has failed to make and publish a state-  
9            ment affirming contractual responsibility for  
10           full speech policy disclosure, or affirming con-  
11           tractual responsibility for the enforcement of  
12           speech policies, as required by this section.

13           “(2) LOSS OF ELIGIBILITY.—

14                   “(A) IN GENERAL.—If the Secretary deter-  
15           mines that a private institution of higher edu-  
16           cation has failed to disclose a policy pertaining  
17           to the protection and regulation of the expres-  
18           sive rights of students as required by this sec-  
19           tion, is enforcing a policy pertaining to the ex-  
20           pressive rights of students that has not been  
21           disclosed as required by this section, or has  
22           failed to make and publish a statement affirm-  
23           ing contractual responsibility for full speech  
24           policy disclosure, or affirming contractual re-  
25           sponsibility for the enforcement of speech poli-

1           cies, as required by this section, the Secretary  
2           shall notify the institution and, if applicable,  
3           the complainant, not more than 7 days after  
4           the date of such determination, that the institu-  
5           tion is out of compliance with the requirements  
6           for receiving funds under this Act, including  
7           participation in any program under this title,  
8           but will be granted a grace period of 60 days  
9           to return to compliance before formally losing  
10          eligibility for receiving funds under this Act, in-  
11          cluding participation in any program under this  
12          title.

13                 “(B) SPECIFICATIONS IN NOTIFICATION.—  
14           As part of the notification under subparagraph  
15           (A), the Secretary shall specify which policies  
16           need to be disclosed and which statements af-  
17           firming contractual responsibility for speech  
18           policy disclosure and contractual responsibility  
19           for speech policy enforcement need to be made  
20           and published in order for eligibility to be re-  
21           stored.

22                 “(C) NOTIFICATION OF LOSS OF ELIGI-  
23           BILITY.—

24                         “(i) IN GENERAL.—If the Secretary  
25                         determines that, 60 days after being noti-

1           fied that it is out of compliance as de-  
2           scribed in subparagraph (A), the institu-  
3           tion has failed to return to compliance by  
4           making the appropriate speech policy dis-  
5           closures, or statement affirming contrac-  
6           tual responsibility for full speech policy  
7           disclosure, or statement affirming contrac-  
8           tual responsibility for speech policy en-  
9           forcement, the Secretary shall notify the  
10          institution and, if applicable, the complain-  
11          ant, not more than 7 days after the date  
12          of such determination—

13                   “(I) that the institution will lose  
14                   eligibility to receive funds under this  
15                   Act, including participation in any  
16                   program under this title;

17                   “(II) that the loss of eligibility  
18                   shall go into effect beginning with any  
19                   student notified of acceptance for ad-  
20                   mission to the institution during the  
21                   academic year subsequent to the aca-  
22                   demic year during which the deter-  
23                   mination is made, and that no res-  
24                   toration of eligibility for ineligible stu-  
25                   dents in subsequent years will occur

1 prior to the beginning of the third  
2 academic year subsequent to the aca-  
3 demic year during which the deter-  
4 mination is made; and

5 “(III) that the institution shall  
6 post the determination of the Sec-  
7 retary on the website of the institu-  
8 tion, within two clicks of the home-  
9 page, without a paywall, email login,  
10 or other restriction to access.

11 “(ii) CONTINUED ELIGIBILITY.—Each  
12 student enrolled at the institution during  
13 the academic year in which eligibility is  
14 lost as described in this subparagraph, and  
15 each student notified of acceptance for ad-  
16 mission to the institution during the aca-  
17 demic year in which eligibility is lost as de-  
18 scribed in this subparagraph, shall con-  
19 tinue to be eligible to participate, through  
20 the institution, in programs funded under  
21 this Act during the 5-year period after the  
22 date of the loss of eligibility.

23 “(3) RESTORATION OF ELIGIBILITY.—

24 “(A) IN GENERAL.—Not later than 7 days  
25 after the loss of eligibility under paragraph (2),

1 the Secretary shall inform the institution that it  
2 may restore eligibility by making the appro-  
3 priate speech policy disclosures, or statement  
4 affirming contractual responsibility for full  
5 speech policy disclosure, or statement affirming  
6 contractual responsibility for speech policy en-  
7 forcement, as directed by the Secretary in con-  
8 formity with this section.

9 “(B) REVIEW.—The Secretary shall review  
10 any policy disclosures, or statement affirming  
11 contractual responsibility for full speech policy  
12 disclosure, or statement affirming contractual  
13 responsibility for speech policy enforcement,  
14 and determine whether they are sufficient to re-  
15 store eligibility for receiving funds under this  
16 Act, including participation in any program  
17 under this title, not later than 120 days after  
18 the date of receipt of such disclosures or state-  
19 ment.

20 “(C) INVESTIGATION.—While conducting a  
21 review to restore eligibility under this para-  
22 graph, the Secretary may conduct an investiga-  
23 tion in which further information may be  
24 sought or requested from the institution, or any

1 other source the Secretary determines perti-  
2 nent.

3 “(D) RESTORATION.—If the Secretary de-  
4 termines that the institution under review to re-  
5 store eligibility under this paragraph has made  
6 the policy disclosures, and issued the statement  
7 affirming contractual responsibility for full  
8 speech policy disclosure, and the statement af-  
9 firming contractual responsibility for speech  
10 policy enforcement, as required by this section,  
11 the institution’s eligibility to receive funds  
12 under this Act, including participation in any  
13 program under this title, shall be restored not  
14 earlier than the beginning of the third academic  
15 year following the year in which notification of  
16 loss of eligibility was received.

17 “(E) LIMIT ON REVIEW.—The Secretary  
18 may conduct not more than 1 review to restore  
19 eligibility for a single institution in any given  
20 academic year.

21 “(e) NONAPPLICATION TO CERTAIN INSTITUTIONS.—  
22 This section shall not apply to an institution of higher  
23 education that is controlled by a religious organization.”.

1 **SEC. 11. SEVERABILITY.**

2       If any provision of this Act, or the application of such  
3 provision to any person or circumstance, is held to be un-  
4 constitutional, the remainder of this Act, and the applica-  
5 tion of the remaining provisions of this Act to any person  
6 or circumstance shall not be affected.

○