

Public Law 102-26
102d Congress

An Act

To resolve legal and technical issues relating to Federal postsecondary student assistance programs and to prevent undue burdens on participants in Operation Desert Storm, and for other purposes.

Apr. 9, 1991
[H.R. 1285]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the “Higher Education Technical Amendments of 1991”.

(b) REFERENCES.—References in this Act to “the Act” are references to the Higher Education Act of 1965.

Higher
Education
Technical
Amendments of
1991.
Colleges and
universities.
20 USC 1001
note.

SEC. 2. ABILITY TO BENEFIT.

(a) DEFINITION OF ELIGIBLE INSTITUTION.—

(1) STAFFORD LOANS.—Section 435(c)(1) of the Act (20 U.S.C. 1085(c)(1)) is amended by striking out “and who have the ability to benefit (as determined by the institution under section 481(d)) from the training offered by such institution” and inserting in lieu thereof “or who are beyond the age of compulsory school attendance in the State in which the institution is located”.

(2) DEFINITION OF PROPRIETARY INSTITUTION OF HIGHER EDUCATION.—Section 481(b) of the Act (20 U.S.C. 1088 (b)) is amended—

(A) by striking out “and who have the ability to benefit (as determined by the institution under section 484(d)) from the training offered by the institution”; and

(B) by striking out the last sentence thereof.

(3) DEFINITION OF POSTSECONDARY VOCATIONAL INSTITUTION.—Section 481(c) of the Act (20 U.S.C. 1088(c)) is amended by striking out “and who have the ability to benefit (as determined by the institution under section 484(d)) from the training offered by the institution”.

(4) DEFINITION FOR INSTITUTIONAL AID PROGRAMS.—Section 1201(a) of the Act (20 U.S.C. 1141(a)) is amended by striking “and who meets the requirements of section 484(d) of this Act” in the third sentence.

(b) DEFINITION OF ELIGIBLE STUDENT.—Section 484(d) of the Act (20 U.S.C. 1091(d)) is amended to read as follows:

“(d) TESTING OF STUDENTS WHO ARE NOT HIGH SCHOOL GRADUATES.—In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible for any assistance under subparts 1, 2, and 3 of part A and parts B, C, D and E of this title, the student shall pass an independently administered examination approved by the Secretary.”

(c) CONFORMING AMENDMENTS.—

(1) SUPPLEMENTAL LOANS.—Section 428A(a)(1) of the Act is amended by striking the last sentence thereof and inserting “No 20 USC 1078-1.

student shall be eligible to borrow funds under this section until such student has obtained a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate.”

20 USC 1091.

(2) **STUDENT ELIGIBILITY.**—Section 484(a)(1) of the Act is amended by inserting before the semicolon at the end thereof the following: “, and not be enrolled in an elementary or secondary school”.

20 USC 1094.

(3) **PROGRAM PARTICIPATION AGREEMENTS.**—Section 487(a)(11) of the Act is amended by striking “which admits” and all that follows through “484(d),” and inserting “whose students receive financial assistance pursuant to section 484(d),”.

(d) **EFFECTIVE DATE.**—

20 USC 1078-1
note.

(1) **IN GENERAL.**—The amendments made by this section shall apply to any grant, loan, or work assistance to cover the cost of instruction for periods of enrollment beginning on or after July 1, 1991.

20 USC 1088 and
note, 1091.

(2) **ELIMINATION OF CONFLICTING PROVISIONS.**—(A) Section 3005 of the Omnibus Budget Reconciliation Act of 1990 is repealed. Sections 484(d) and 481(b) of the Act shall be applied as if such section 3005 had not been enacted.

(B) The last proviso of the paragraph under the heading “STUDENT FINANCIAL ASSISTANCE” of title III of Public Law 101-517 (104 Stat. 2213) is repealed.

SEC. 3. ELIMINATION OF STATUTE OF LIMITATIONS FOR STUDENT LOAN COLLECTIONS.

(a) **AMENDMENT.**—Section 484A(a) of the Act (20 U.S.C. 1091a(a)) is amended to read as follows:

“(a) **IN GENERAL.**—(1) It is the purpose of this subsection to ensure that obligations to repay loans and grant overpayments are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced.

“(2) Notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken by—

“(A) an institution that receives funds under this title that is seeking to collect a refund due from a student on a grant made, or work assistance awarded, under this title;

“(B) a guaranty agency that has an agreement with the Secretary under section 428(c) that is seeking the repayment of the amount due from a borrower on a loan made under part B of this title after such guaranty agency reimburses the previous holder of the loan for its loss on account of the default of the borrower;

“(C) an institution that has an agreement with the Secretary pursuant to section 453 or 463(a) that is seeking the repayment of the amount due from a borrower on a loan made under part D or E of this title after the default of the borrower on such loan; or

“(D) the Secretary, the Attorney General, or the administrative head of another Federal agency, as the case may be, for payment of a refund due from a student on a grant made under this title, or for the repayment of the amount due from a

borrower on a loan made under this title that has been assigned to the Secretary under this title.”

(b) **CONFORMING AMENDMENT.**—Section 16041 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) is amended—

20 USC 1071
note.

(1) by striking out subsection (e);

(2) in subsection (f), by striking out “The amendment made by section 16034” and inserting in lieu thereof “The amendments made by sections 16033 and 16034”; and

(3) by redesignating subsection (f) as subsection (e).

(c) **EFFECTIVE DATE.**—The amendments made by this section shall be effective as if enacted by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and shall apply to any actions pending on or after the date of enactment of the Higher Education Technical Amendments of 1991 that are brought before November 15, 1992.

20 USC 1091a
note.

SEC. 4. OPERATION DESERT SHIELD/DESERT STORM WAIVER AUTHORITY.

Armed Forces.
20 USC 1070
note.

(a) **PURPOSE.**—It is the purpose of this section to ensure that—

(1) the men and women serving on active duty in connection with Operation Desert Shield or Operation Desert Storm who are borrowers of Stafford Loans or Perkins Loans are not placed in a worse position financially in relation to those loans because of such service;

(2) the administrative requirements placed on all borrowers of student loans made in accordance with title IV of the Act who are engaged in such military service are minimized to the extent possible without impairing the integrity of the student loan programs, in order to ease the burden on such borrowers, and to avoid inadvertent, technical defaults; and

(3) the future eligibility of such an individual for Pell Grants is not reduced by the amount of such assistance awarded for a period of instruction that such individual was unable to complete, or for which the individual did not receive academic credit, because he or she was called up for such service.

(b) **WAIVER REQUIREMENT.**—Notwithstanding any other provision of law, unless enacted with specific reference to this section, the Secretary of Education shall waive or modify any statutory or regulatory provision applicable to the student financial aid programs under title IV of the Act that the Secretary deems necessary to achieve the purposes stated in subsection (a), including—

(1) the length of, and eligibility requirements for, the military deferments authorized under sections 427(a)(2)(C)(ii), 428(b)(1)(M)(ii), and 464(c)(2)(A)(ii) of the Act, in order to enable the borrower of a Stafford Loan or a Perkins Loan who is or was serving on active duty in connection with Operation Desert Shield or Operation Desert Storm to obtain a military deferment, under which interest shall accrue and shall, if otherwise payable by the Secretary, be paid by the Secretary of Education, for the duration of such service;

(2) administrative requirements placed on all borrowers of student loans made in accordance with title IV of the Act who are or were engaged in such military service;

(3) the number of years for which individuals who are engaged in such military service may be eligible for Pell Grants under subpart 1 of part A of title IV of the Act;

(4) the point at which the borrower of a Stafford Loan who is or was engaged in such military service is required to resume repayment of principal and interest on such loan after the borrower completes a period of deferment under section 427(a)(2)(C)(ii) or 428(b)(1)(M)(ii) of the Act;

(5) the point at which the borrower of a Stafford Loan who is or was engaged in such military service is required to resume repayment of principal and interest on such loan after the borrower completes a single period of deferment under section 427(a)(2)(C)(i) or 428(b)(1)(M)(i) of the Act subsequent to such service; and

(6) the modification of the terms "annual adjusted family income" and "available income," as used in the determination of need for student financial assistance under title IV of the Act for such individual (and the determination of such need for his or her spouse and dependents, if applicable), to mean the sums received in the first calendar year of the award year for which such determination is made, in order to reflect more accurately the financial condition of such individual and his or her family.

(c) **NOTICE OF WAIVER.**—Notwithstanding section 431 of the General Education Provisions Act (20 U.S.C. 1232) and section 553 of title 5, United States Code, the Secretary shall, by notice in the Federal Register, publish the waivers or modifications of statutory and regulatory provisions the Secretary deems necessary to achieve the purposes of this section. Such notice shall include the terms and conditions to be applied in lieu of such statutory and regulatory provisions. The Secretary is not required to exercise the waiver or modification authority under this section on a case-by-case basis.

(d) **DEFINITIONS.**—For purposes of this Act—

(1) Individuals "serving on active duty in connection with Operation Desert Shield or Operation Desert Storm" shall include—

(A) any Reserve of an Armed Force called to active duty under section 672(a), 672(g), 673, 673b, 674, or 688 of title 10, United States Code, for service in connection with Operation Desert Shield or Operation Desert Storm, regardless of the location at which such active duty service is performed; and

(B) for purposes of waivers of administrative requirements under subsection (b)(2) only, any other member of an Armed Force on active duty in connection with Operation Desert Shield or Operation Desert Storm, who has been assigned to a duty station at a location other than the location at which such member is normally assigned.

(2) The term "active duty" has the meaning given such term in section 101(22) of title 10, United States Code, except that such term does not include active duty for training or attendance at a service school.

Federal
Register,
publication.

20 USC 1070
note.

SEC. 5. TUITION REFUNDS OR CREDITS.

(a) **SENSE OF CONGRESS.**—It is the sense of the Congress that all institutions offering postsecondary education should provide a full refund to any member or Reserve of an Armed Force on active duty service in connection with Operation Desert Shield or Operation Desert Storm for that portion of a period of instruction such individual was unable to complete, or for which such individual did not receive academic credit, because he or she was called up for such

service. For purposes of this section, a full refund includes a refund of required tuition and fees, or a credit in a comparable amount against future tuition and fees.

(b) **ENCOURAGEMENT AND REPORT.**—The Secretary of Education shall encourage institutions to provide such refunds or credits, and shall report to the appropriate committees of Congress on the actions taken in accordance with this subsection as well as information he receives regarding any institutions that are not providing such refunds or credits.

SEC. 6. TERMINATION OF AUTHORITY.

The provisions of sections 4 and 5 shall cease to be effective on September 30, 1997.

20 USC 1070
note.

SEC. 7. EDUCATION PROGRAMS FOR COMMERCIAL DRIVERS.

Part C of the Adult Education Act (20 U.S.C. 1211 et seq.) is amended by inserting at the end thereof the following new section 373:

“SEC. 373. EDUCATION PROGRAMS FOR COMMERCIAL DRIVERS.

20 USC 1211b.

“(a) **PROGRAM AUTHORIZED.**—The Secretary is authorized to make grants on a competitive basis to pay the Federal share of the costs of establishing and operating adult education programs which increase the literacy skills of eligible commercial drivers so that such drivers may successfully complete the knowledge test requirements under the Commercial Motor Vehicle Safety Act of 1986.

“(b) **FEDERAL SHARE.**—The Federal share of the costs of the adult education programs authorized under subsection (a) shall be 50 percent. Nothing in this subsection shall be construed to require States to meet the non-Federal share from State funds.

“(c) **ELIGIBLE ENTITIES.**—Entities eligible to receive a grant under this section include—

“(1) private employers employing commercial drivers in partnership with agencies, colleges, or universities described in paragraph (2);

“(2) local educational agencies, State educational agencies, colleges, universities, or community colleges;

“(3) approved apprentice training programs; and

“(4) labor organizations, the memberships of which include commercial drivers.

“(d) **REFERRAL PROGRAM.**—Grantees shall refer to appropriate adult education programs as authorized under this Act individuals who are identified as having literacy skill problems other than or beyond those which prevent them from successfully completing the knowledge test requirements under the Commercial Motor Vehicle Driver Safety Act of 1986.

“(e) **DEFINITIONS.**—For purposes of this section:

“(1) The term ‘approved apprentice training programs’ has the meaning given such term in the National Apprenticeship Act of 1937.

“(2) The term ‘eligible commercial driver’ means a driver licensed prior to the requirements of the Commercial Motor Vehicle Safety Act of 1986.

“(f) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated \$3,000,000 for each of fiscal years 1991, 1992, and 1993.”

Michigan.

SEC. 8. ADMINISTRATIVE TREATMENT.

The Secretary of Education shall treat the University of Detroit Mercy of Detroit, Michigan, as an eligible institution under part A of title III of the Act for purposes of section 356 of the Act for fiscal year 1991.

SEC. 9. LOAN CERTIFICATION BY ELIGIBLE INSTITUTIONS.

20 USC 1078.

Section 428(a)(2)(F) of the Act is amended to read as follows:

“(F) Except as provided in subparagraph (D), an eligible institution may refuse to certify a statement which permits a student to receive a loan under this part or to certify a loan amount that is less than the student’s determination of need (as determined under part F of this title), if the reason for such action is documented and provided in written form to each student so affected.”.

SEC. 10. STUDENT RIGHT-TO-KNOW AND CAMPUS SECURITY TECHNICAL AMENDMENTS.

20 USC 1092.

(a) **GRADUATION RATES.**—Section 485(a)(1)(L) of the Act is amended by inserting “undergraduate” after “full-time”.

(b) **CALCULATION OF RATES.**—Section 485(a)(3) of the Act is amended—

(1) by inserting “and” at the end of subparagraph (A);

(2) by striking “; and” at the end of subparagraph (B) and inserting a period; and

(3) by striking subparagraph (C).

(c) **USE OF COMPARABLE DATA.**—Section 485(a) of the Act is amended by adding at the end thereof the following new paragraph:

“(5) The Secretary shall permit any institution of higher education that is a member of an athletic association or athletic conference that has voluntarily published completion or graduation rate data or has agreed to publish data that, in the opinion of the Secretary, is substantially comparable to the information required under this subsection, to use such data to satisfy the requirements of this subsection.”.

(d) **SCHEDULE FOR DISCLOSURE.**—Section 485(f)(1) of the Act is amended—

(1) in the matter preceding subparagraph (A), by striking “September 1, 1991,” and inserting “August 1, 1991,”;

(2) in subparagraph (F)—

(A) by striking “school year” and inserting “calendar year”; and

(B) by striking “school years” and inserting “calendar years”.

(e) **EFFECTIVE DATE.**—Section 104(b) of the Student Right-to-Know and Campus Security Act is amended to read as follows:

“(b) **EFFECTIVE DATE.**—The report to the Secretary of Education required by the amendments made by this section shall be due on July 1, 1993, and annually thereafter, and shall cover the one-year period ending on June 30 of the preceding year.”.

20 USC 1092
note.

SEC. 11. SIMPLIFIED NEEDS ANALYSIS.

Section 479(a) of the Act is amended by adding before the period at the end thereof the following: “, or who file an income tax return pursuant to the tax code of the Commonwealth of Puerto Rico or who are not required to file pursuant to that tax code”.

20 USC 1087ss.

Approved April 9, 1991.

LEGISLATIVE HISTORY—H.R. 1285:**CONGRESSIONAL RECORD, Vol. 137 (1991):**

Mar. 19, considered and passed House.

Mar. 21, considered and passed Senate.