

110TH CONGRESS
1ST SESSION

S. 1262

To protect students receiving student loans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 2, 2007

Mr. ENZI (for himself, Mr. ALEXANDER, Mr. ALLARD, Mr. BURR, Mr. ISAKSON, Ms. MURKOWSKI, and Mr. ROBERTS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To protect students receiving student loans, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Student Loan Account-
5 ability and Disclosure Reform Act”.

6 **SEC. 2. INSURANCE PROGRAM AGREEMENTS.**

7 Paragraph (3) of section 428(b) of the Higher Edu-
8 cation Act of 1965 (20 U.S.C. 1078(b)(3)) is amended
9 to read as follows:

1 “(3) RESTRICTIONS ON INDUCEMENTS, PAY-
 2 MENTS, MAILINGS, AND ADVERTISING.—A guaranty
 3 agency shall not—

4 “(A) offer, directly or indirectly, premiums,
 5 payments, stock or other securities, prizes, trav-
 6 el, entertainment expenses, tuition repayment,
 7 or other inducements to—

8 “(i) any institution of higher edu-
 9 cation or the employees of an institution of
 10 higher education in order to secure appli-
 11 cants for loans made under this part; or

12 “(ii) any lender, or any agent, em-
 13 ployee, or independent contractor of any
 14 lender or guaranty agency, in order to ad-
 15 minister or market loans made under this
 16 part (other than a loan made under section
 17 428H or a loan made as part of the guar-
 18 anty agency’s lender-of-last-resort program
 19 pursuant to section 439(q)) for the pur-
 20 pose of securing the designation of the
 21 guaranty agency as the insurer of such
 22 loans;

23 “(B) conduct unsolicited mailings, by post-
 24 al or electronic means, of student loan applica-
 25 tion forms to students enrolled in secondary

1 school or postsecondary educational institutions,
 2 or to the parents of such students, except that
 3 applications may be mailed, by postal or elec-
 4 tronic means, to students or borrowers who
 5 have previously received loans guaranteed under
 6 this part by the guaranty agency;

7 “(C) perform, for an institution of higher
 8 education participating in a program under this
 9 title and without appropriate compensation by
 10 such institution, any function that the institu-
 11 tion is required to perform under part B, D, or
 12 G (except for the exit counseling described in
 13 section 485(b));

14 “(D) pay, on behalf of the institution of
 15 higher education, another person to perform
 16 any function that the institution of higher edu-
 17 cation is required to perform under part B, D,
 18 or G (except for the exit counseling described in
 19 section 485(b)); or

20 “(E) conduct fraudulent or misleading ad-
 21 vertising concerning loan availability, terms, or
 22 conditions.

23 It shall not be a violation of this paragraph for a
 24 guaranty agency to provide assistance to institutions
 25 of higher education comparable to the kinds of as-

1 sistance provided to institutions of higher education
2 by the Department.”.

3 **SEC. 3. DISCLOSURE RULES FOR EDUCATIONAL LOANS.**

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

7 **“PART E—DISCLOSURE RULES FOR**
8 **EDUCATIONAL LOANS**

9 **“SEC. 151. DISCLOSURE RULES RELATING TO EDU-**
10 **CATIONAL LOANS.**

11 “(a) DEFINITIONS.—In this part:

12 “(1) COST OF ATTENDANCE.—The term ‘cost of
13 attendance’ has the meaning given the term in sec-
14 tion 472.

15 “(2) INSTITUTION OF HIGHER EDUCATION.—
16 The term ‘institution of higher education’—

17 “(A) has the meaning given the term in
18 section 102; and

19 “(B) includes an employee or agent of the
20 institution of higher education or any organiza-
21 tion or entity directly or indirectly controlled by
22 such institution.

23 “(3) LENDER.—The term ‘lender’ means—

1 “(A) any lender of a loan made, insured,
2 or guaranteed under title IV, including a con-
3 solidation loan under section 428C;

4 “(B) any lender that is a financial institu-
5 tion, as such term is defined in section 509 of
6 the Gramm-Leach-Bliley Act (15 U.S.C. 6809);
7 and

8 “(C) for any loan issued or provided to a
9 student under part D of title IV, the Secretary.

10 “(4) PRIVATE EDUCATIONAL LOAN.—The term
11 ‘private educational loan’ means a private loan
12 that—

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

15 “(B) is offered to a borrower by an institu-
16 tion of higher education through an award let-
17 ter or other notification.

18 “(b) DISCLOSURES.—

19 “(1) DISCLOSURES BY LENDERS.—Before a
20 lender issues or otherwise provides a loan under title
21 IV or a private educational loan to a student, the
22 lender shall provide the student, in writing, with the
23 disclosures described in paragraph (2).

1 “(2) DISCLOSURES.—The disclosures required
2 by this paragraph shall include a clear and promi-
3 nent statement—

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

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

10 “(C) showing sample educational loan
11 costs, disaggregated by type;

12 “(D) that describes, with respect to each
13 loan being provided to the student by the lend-
14 er—

15 “(i) how the applicable interest rate is
16 determined, including whether the rate is
17 based on the credit score of the borrower;

18 “(ii) the types of repayment plans
19 that are available;

20 “(iii) whether, and under what condi-
21 tions, early repayment may be made with-
22 out penalty;

23 “(iv) when and how often the loan
24 would be recapitalized;

1 “(v) all fees, deferments, or forbear-
2 ance;

3 “(vi) all available repayment benefits,
4 and the percentage of all borrowers who
5 qualify for such benefits;

6 “(vii) the collection practices in the
7 case of default;

8 “(viii) the late payment penalties and
9 associated fees; and

10 “(ix) whether the amount of all loans
11 issued by the lender to the borrower ex-
12 ceeds the student’s cost of attendance; and

13 “(E) such other information as the Sec-
14 retary may require.”.

15 **SEC. 4. REVIEW OF PRIVATE EDUCATIONAL LOAN MARKET.**

16 Section 495 of the Higher Education Act of 1965 (20
17 U.S.C. 1099a) is amended by adding at the end the fol-
18 lowing:

19 “(c) REVIEW OF PRIVATE EDUCATION LOAN MAR-
20 KETS.—The Secretary and the Secretary of the Treasury
21 shall conduct an evaluation of markets for educational
22 loans to—

23 “(1) evaluate any variations in availability,
24 terms, and conditions of educational loans provided
25 to students who qualify for a simplified needs test

1 under section 479 or any income-contingent sim-
 2 plified version of the Free Application for Federal
 3 Student Aid;

4 “(2) identify possible discriminatory lending
 5 patterns affecting students described in paragraph
 6 (1); and

7 “(3) report, not later than 1 year after the date
 8 of enactment of the Student Loan Accountability
 9 and Disclosure Reform Act to the Committee on
 10 Health, Education, Labor, and Pensions and the
 11 Committee on Banking, Housing, and Urban Affairs
 12 of the Senate, and the Committee on Education and
 13 Labor and the Committee on Financial Services of
 14 the House of Representatives, on findings and rec-
 15 ommendations for the need to afford protections
 16 from predatory lending practices to such students.”.

17 **SEC. 5. DISQUALIFICATION OF ELIGIBLE LENDER.**

18 Section 435(d)(5) of the Higher Education Act of
 19 1965 (20 U.S.C. 1085(d)(5)) is amended—

20 (1) by redesignating subparagraphs (C) and
 21 (D) as subparagraphs (H) and (I), respectively; and

22 (2) by striking subparagraphs (A) and (B) and
 23 inserting the following:

24 “(A) offered, directly or indirectly, points,
 25 premiums, payments (including payments for

1 referrals and for processing or finder fees),
2 prizes, stock or other securities, travel, enter-
3 tainment expenses, tuition repayment, the pro-
4 vision of information technology equipment at
5 below-market value, additional financial aid
6 funds, or other inducements to any institution
7 of higher education or any employee of an insti-
8 tution of higher education in order to secure
9 applicants for loans under this part;

10 “(B) conducted unsolicited mailings, by
11 postal or electronic means, of student loan ap-
12 plication forms to students enrolled in sec-
13 ondary school or postsecondary institutions, or
14 to parents of such students, except that applica-
15 tions may be mailed, by postal or electronic
16 means, to students or borrowers who have pre-
17 viously received loans under this part from such
18 lender;

19 “(C) entered into any type of consulting
20 arrangement, or other contract to provide serv-
21 ices to a lender, with an employee who is em-
22 ployed in the financial aid office of an institu-
23 tion of higher education, or who otherwise has
24 responsibilities with respect to student loans or
25 other financial aid of the institution;

1 “(D) compensated an employee who is em-
2 ployed in the financial aid office of an institu-
3 tion of higher education, or who otherwise has
4 responsibilities with respect to student loans or
5 other financial aid of the institution, and who
6 is serving on an advisory board, commission, or
7 group established by a lender or group of lend-
8 ers for providing such service, except that the
9 eligible lender may reimburse such employee for
10 reasonable expenses incurred in providing such
11 service;

12 “(E) performed for an institution of higher
13 education, without compensation from the insti-
14 tution, any function that the institution of high-
15 er education is required to carry out under part
16 B, D, or G (except for general debt counseling,
17 such as the exit counseling described in section
18 485(b));

19 “(F) paid, on behalf of an institution of
20 higher education, another person to perform
21 any function that the institution of higher edu-
22 cation is required to perform under part B, D,
23 or G (except for general debt counseling, such
24 as the exit counseling described in section
25 485(b));

“(G) provided payments or other benefits to a student at an institution of higher education to act as the lender’s representative to secure applications under this title from individual prospective borrowers, unless such student—

“(i) is also employed by the lender for other purposes; and

“(ii) made all appropriate disclosures regarding such employment;”.

SEC. 6. CERTIFICATIONS; CODE OF CONDUCT REGARDING STUDENT LOANS.

Section 487 of the Higher Education Act of 1965 (20 U.S.C. 1094) is amended—

(1) in subsection (a)—

(A) by striking paragraph (6) and inserting the following:

“(6) The institution will not provide any student with any statement or certification to a lender that qualifies the student for a loan or loans in excess of the amount that student is eligible to borrow in accordance with sections 425(a), 428(a)(2), and subparagraphs (A) and (B) of section 428(b)(1) unless—

1 “(A) the loan in question is a private edu-
 2 cational loan as defined under section 151(a);
 3 and

4 “(B) the student does not qualify for the
 5 simplified needs test under section 479 or any
 6 income-contingent simplified version of the Free
 7 Application for Federal Student Aid.”;

8 (B) by redesignating paragraphs (21),
 9 (22), and (23) as (22), (23), and (24), respec-
 10 tively; and

11 (C) by inserting after paragraph (20) the
 12 following:

13 “(21)(A) The institution will establish, follow,
 14 and enforce a code of conduct regarding student
 15 loans that includes not less than the following:

16 “(i) REVENUE SHARING PROHIBITION.—
 17 The institution is prohibited from receiving any-
 18 thing of value from any lender in exchange for
 19 any advantage sought by the lender.

20 “(ii) GIFT AND TRIP PROHIBITION.—Any
 21 employee who is employed in the financial aid
 22 office of the institution, or who otherwise has
 23 responsibilities with respect to student loans or
 24 other financial aid of the institution, is prohib-
 25 ited from taking from any lender any gift or

trip worth more than nominal value, except for reasonable expenses for professional development that will improve the efficiency and effectiveness of programs under this title and for domestic travel to such professional development.

“(iii) CONTRACTING ARRANGEMENTS.—

Any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to student loans or other financial aid of the institution, shall be prohibited from entering into any type of consulting arrangement or other contract to provide services to a lender.

“(iv) ADVISORY BOARD COMPENSATION.—

Any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to student loans or other financial aid of the institution, and who serves on an advisory board, commission, or group established by a lender or group of lenders shall be prohibited from receiving anything of value as compensation from the lender or group of lenders for serving on such advisory board, commission, or group, except that the employee may be reimbursed for rea-

1 sonable expenses incurred in providing such
2 service.

3 “(v) LENDER INFORMATION REQUIRE-
4 MENTS.—The institution—

5 “(I) will not designate any lender as
6 a preferred lender for loans under this title
7 or private educational loans;

8 “(II) may invite a lender of such
9 loans to submit to the institution a stand-
10 ard electronic template that specifies the
11 rates, services, discounts, and terms and
12 conditions of the loans, and the lender’s
13 contact information;

14 “(III) upon request of a lender inter-
15 ested in offering loans under this title or
16 private educational loans to students at the
17 institution, will provide the lender with the
18 ability to submit the standard electronic
19 template described in subclause (II) to the
20 institution;

21 “(IV) will make all submitted stand-
22 ard electronic templates available to cur-
23 rent and prospective students of the insti-
24 tution, and the parents of such students;

1 “(V) if such student, or a parent of
2 such student, requests information on the
3 lenders that have submitted standard elec-
4 tronic templates to the institution, will pro-
5 vide the student or parent with a guide
6 that—

7 “(aa) enables students and par-
8 ents to do their own evaluation of the
9 loan products, benefits, and services
10 offered by such lenders; and

11 “(bb) includes the disclosures re-
12 quired under clause (vi).

13 “(vi) DISCLOSURES.—An institution re-
14 quired to make the disclosures under this clause
15 will—

16 “(I) disclose the criteria and process
17 used to develop the guide described in
18 clause (v)(V) regarding the products of-
19 fered by each lender that submitted a
20 standard electronic template, as described
21 in clause (v)(II);

22 “(II) disclose which lenders listed in
23 the guide have an agreement in place to
24 sell the loans of the lender to another lend-
25 er; and

1 “(III) provide a notice to the student
 2 that the student has the right to select a
 3 lender of the student’s choosing, regardless
 4 of any information regarding the lender in
 5 the institution’s guide under clause (v) or
 6 whether the lender submitted a standard
 7 electronic template to the institution.

8 “(vii) LENDER SERVICES TO INSTITUTIONS
 9 OF HIGHER EDUCATION.—

10 “(I) Any agent, employee, or inde-
 11 pendent contractor of a lender who is per-
 12 forming any service for the institution shall
 13 disclose the individual’s relationship with
 14 the lender to any students and parents for
 15 whom the individual provides such service.

16 “(II) Any agreement for the perform-
 17 ance of a service by a lender for the insti-
 18 tution shall comply with all applicable
 19 State and institution ethics laws and codes
 20 of ethics.

21 “(viii) INTERACTION WITH BORROWERS.—

22 The institution will not—

23 “(I) for any first-time borrower, as-
 24 sign, through award packaging or other

1 methods, the borrower's loan to a par-
2 ticular lender; and

3 “(II) refuse to certify, or, delay cer-
4 tification of, any loan in accordance with
5 paragraph (6) based on the borrower's se-
6 lection of a particular lender or guaranty
7 agency.

8 “(B) The institution will designate an indi-
9 vidual who shall be responsible for signing an annual
10 attestation on behalf of the institution that the insti-
11 tution agrees to, and is in compliance with, the re-
12 quirements of the code of conduct described in this
13 paragraph. Such individual shall be the chief execu-
14 tive officer, chief operating officer, chief financial of-
15 ficer, or comparable official, of the institution, and
16 shall annually submit the signed attestation to the
17 Secretary.

18 “(C) The institution will make the code of con-
19 duct widely available to the institution's faculty
20 members, students, and parents through a variety of
21 means, including the institution's website.”;

22 (2) by redesignating subsections (d) and (e) as
23 subsections (e) and (f), respectively; and

24 (3) by inserting after subsection (c) the fol-
25 lowing:

1 “(d) VIOLATION OF CODE OF CONDUCT REGARDING
2 STUDENT LOANS.—

3 “(1) IN GENERAL.—Upon a finding by the Sec-
4 retary, after reasonable notice and an opportunity
5 for a hearing, that an institution of higher education
6 that has entered into a program participation agree-
7 ment with the Secretary under subsection (a) will-
8 fully contravened the institution’s attestation of
9 compliance with the provisions of subsection (a)(21),
10 the Secretary may impose a penalty described in
11 paragraph (2).

12 “(2) PENALTIES.—A violation of paragraph (1)
13 shall result in the limitation, suspension, or termi-
14 nation of the eligibility of the institution for the loan
15 programs under this title.”.

16 **SEC. 7. TERMINATION OF SCHOOL-AS-LENDER PROGRAM.**

17 Section 435(d) of the Higher Education Act of 1965
18 (20 U.S.C. 1085(d)) (as amended by section 5) is further
19 amended—

20 (1) in paragraph (1)(E), by inserting “subject
21 to paragraph (8),” before “an eligible institution”;
22 and

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

24 “(8) SUNSET OF AUTHORITY FOR SCHOOL AS
25 LENDER PROGRAM.—

1 “(A) SUNSET.—The authority provided
 2 under subsection (d)(1)(E) for an institution to
 3 serve as an eligible lender, and under paragraph
 4 (7) for an eligible lender to serve as a trustee
 5 for an institution of higher education or an or-
 6 ganization affiliated with an institution of high-
 7 er education, shall expire on June 30, 2008.

8 “(B) APPLICATION TO EXISTING INSTITU-
 9 TIONAL LENDERS.—An institution that was an
 10 eligible lender under this subsection, or an eligi-
 11 ble lender that served as a trustee for an insti-
 12 tution of higher education or an organization
 13 affiliated with an institution of higher education
 14 under paragraph (7), before June 30, 2008,
 15 shall—

16 “(i) not issue any new loans in such
 17 a capacity under part B after June 30,
 18 2008; and

19 “(ii) shall continue to carry out the
 20 institution’s responsibilities for any loans
 21 issued by the institution under part B on
 22 or before June 30, 2008, except that, be-
 23 ginning on June 30, 2010, the eligible in-
 24 stitution or trustee may, notwithstanding
 25 any other provision of this Act, sell or oth-

1 erwise dispose of such loans if all profits
2 from the divestiture are used for need-
3 based grant programs at the institution.”.

○