

112TH CONGRESS
2D SESSION

S. 2280

To amend the Truth in Lending Act and the Higher Education Act of 1965 to require certain creditors to obtain certifications from institutions of higher education, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 29, 2012

Mr. DURBIN (for himself and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Truth in Lending Act and the Higher Education Act of 1965 to require certain creditors to obtain certifications from institutions of higher education, 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 “Know Before You Owe
5 Private Student Loan Act of 2012”.

6 **SEC. 2. AMENDMENTS TO THE TRUTH IN LENDING ACT.**

7 (a) IN GENERAL.—Section 128(e) of the Truth in
8 Lending Act (15 U.S.C. 1638(e)) is amended—

(1) by striking paragraph (3) and inserting the following:

“(3) INSTITUTIONAL CERTIFICATION REQUIRED.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), before a creditor may issue any funds with respect to an extension of credit described in this subsection, the creditor shall obtain from the relevant institution of higher education where such loan is to be used for a student, such institution’s certification of—

“(i) the enrollment status of the student;

“(ii) the student’s cost of attendance at the institution as determined by the institution under part F of title IV of the Higher Education Act of 1965; and

“(iii) the difference between—

“(I) such cost of attendance; and

“(II) the student’s estimated financial assistance, including such assistance received under title IV of the Higher Education Act of 1965 and other financial assistance known to the institution, as applicable.

“(B) EXCEPTION.—Notwithstanding subparagraph (A), a creditor may issue funds with respect to an extension of credit described in this subsection without obtaining from the relevant institution of higher education such institution’s certification if such institution fails to provide within 15 business days of the creditor’s request for such certification—

“(i) the requested certification; or

“(ii) notification that the institution has received the request for certification and will need additional time to comply with the certification request.

“(C) LOANS DISBURSED WITHOUT CERTIFICATION.—If a creditor issues funds without obtaining a certification, as described in subparagraph (B), such creditor shall report the issuance of such funds in a manner determined by the Director of the Consumer Financial Protection Bureau.”;

(2) by redesignating paragraphs (9), (10), and (11) as paragraphs (10), (11), and (12), respectively; and

(3) by inserting after paragraph (8) the following:

1 “(9) PROVISION OF INFORMATION.—

2 “(A) PROVISION OF INFORMATION TO STU-
3 DENTS.—

4 “(i) LOAN STATEMENT.—A creditor
5 that issues any funds with respect to an
6 extension of credit described in this sub-
7 section shall send loan statements, where
8 such loan is to be used for a student, to
9 borrowers of such funds not less than once
10 every 3 months during the time that such
11 student is enrolled at an institution of
12 higher education.

13 “(ii) CONTENTS OF LOAN STATE-
14 MENT.—Each statement described in
15 clause (i) shall—

16 “(I) report the borrower’s total
17 remaining debt to the creditor, includ-
18 ing accrued but unpaid interest and
19 capitalized interest;

20 “(II) report any debt increases
21 since the last statement; and

22 “(III) list the current interest
23 rate for each loan.

24 “(B) NOTIFICATION OF LOANS DISBURSED
25 WITHOUT CERTIFICATION.—On or before the

1 date a creditor issues any funds with respect to
 2 an extension of credit described in this sub-
 3 section, the creditor shall notify the relevant in-
 4 stitution of higher education, in writing, of the
 5 amount of the extension of credit and the stu-
 6 dent on whose behalf credit is extended. The
 7 form of such written notification shall be sub-
 8 ject to the regulations of the Consumer Finan-
 9 cial Protection Bureau.

10 “(C) ANNUAL REPORT.—A creditor that
 11 issues funds with respect to an extension of
 12 credit described in this subsection shall prepare
 13 and submit an annual report to the Consumer
 14 Financial Protection Bureau containing the re-
 15 quired information about private student loans
 16 to be determined by the Consumer Financial
 17 Protection Bureau, in consultation with the
 18 Secretary of Education.”.

19 (b) DEFINITION OF PRIVATE EDUCATION LOAN.—

20 Section 140(a)(7)(A) of the Truth in Lending Act (15
 21 U.S.C. 1650(a)(7)(A)) is amended—

22 (1) by redesignating clause (ii) as clause (iii);

23 (2) in clause (i), by striking “and” after the
 24 semicolon; and

25 (3) by adding after clause (i) the following:

1 “(ii) is not made, insured, or guaran-
 2 teed under title VII or title VIII of the
 3 Public Health Service Act (42 U.S.C. 292
 4 et seq. and 296 et seq.); and”.

5 (c) REGULATIONS.—Not later than 365 days after
 6 the date of enactment of this Act, the Consumer Financial
 7 Protection Bureau shall issue regulations in final form to
 8 implement paragraphs (3) and (9) of section 128(e) of the
 9 Truth in Lending Act (15 U.S.C. 1638(e)), as amended
 10 by subsection (a). Such regulations shall become effective
 11 not later than 6 months after their date of issuance.

12 **SEC. 3. AMENDMENT TO THE HIGHER EDUCATION ACT OF**
 13 **1965.**

14 (a) AMENDMENT TO THE HIGHER EDUCATION ACT
 15 OF 1965.—Section 487(a) of the Higher Education Act
 16 of 1965 (20 U.S.C. 1094(a)) is amended by striking para-
 17 graph (28) and inserting the following:

18 “(28)(A) The institution shall—

19 “(i) upon the request of a private edu-
 20 cational lender, acting in connection with
 21 an application initiated by a borrower for
 22 a private education loan in accordance with
 23 section 128(e)(3) of the Truth in Lending
 24 Act, provide certification to such private
 25 educational lender—

1 “(I) that the student who initi-
2 ated the application for the private
3 education loan, or on whose behalf the
4 application was initiated, is enrolled
5 or is scheduled to enroll at the institu-
6 tion;

7 “(II) of such student’s cost of at-
8 tendance at the institution as deter-
9 mined under part F of this title; and

10 “(III) of the difference be-
11 tween—

12 “(aa) the cost of attendance
13 at the institution; and

14 “(bb) the student’s esti-
15 mated financial assistance re-
16 ceived under this title and other
17 assistance known to the institu-
18 tion, as applicable; and

19 “(ii) provide the certification de-
20 scribed in clause (i), or notify the creditor
21 that the institution has received the re-
22 quest for certification and will need addi-
23 tional time to comply with the certification
24 request—

1 “(I) within 15 business days of
2 receipt of such certification request;
3 and

4 “(II) only after the institution
5 has completed the activities described
6 in subparagraph (B).

7 “(B) The institution shall, upon receipt of
8 a certification request described in subpara-
9 graph (A)(i), and prior to providing such cer-
10 tification—

11 “(i) determine whether the student
12 who initiated the application for the pri-
13 vate education loan, or on whose behalf the
14 application was initiated, has applied for
15 and exhausted the Federal financial assist-
16 ance available to such student under this
17 title and inform the student accordingly;
18 and

19 “(ii) provide the borrower whose loan
20 application has prompted the certification
21 request by a private education lender, as
22 described in subparagraph (A)(i), with the
23 following information and disclosures:

24 “(I) The availability of, and the
25 borrower’s potential eligibility for,

1 Federal financial assistance under this
2 title, including disclosing the terms,
3 conditions, interest rates, and repay-
4 ment options and programs of Federal
5 student loans.

6 “(II) The borrower’s ability to
7 select a private educational lender of
8 the borrower’s choice.

9 “(III) The impact of a proposed
10 private education loan on the bor-
11 rower’s potential eligibility for other
12 financial assistance, including Federal
13 financial assistance under this title.

14 “(IV) The borrower’s right to ac-
15 cept or reject a private education loan
16 within the 30-day period following a
17 private educational lender’s approval
18 of a borrower’s application and about
19 a borrower’s 3-day right to cancel pe-
20 riod.

21 “(C) For purposes of this paragraph, the
22 terms ‘private educational lender’ and ‘private
23 education loan’ have the meanings given such
24 terms in section 140 of the Truth in Lending
25 Act (15 U.S.C. 1650).”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall take effect on the effective date of the
3 regulations described in section 2(c).

4 **SEC. 4. REPORT.**

5 Not later than 24 months after the issuance of regu-
6 lations under section 2(c), the Director of the Consumer
7 Financial Protection Bureau and the Secretary of Edu-
8 cation shall jointly submit to Congress a report on the
9 compliance of institutions of higher education and private
10 educational lenders with section 128(e)(3) of the Truth
11 in Lending Act (15 U.S.C. 1638(e)), as amended by sec-
12 tion 2, and section 487(a)(28) of the Higher Education
13 Act of 1965 (20 U.S.C. 1094(a)), as amended by section
14 3. Such report shall include information about the degree
15 to which specific institutions utilize certifications in effec-
16 tively encouraging the exhaustion of Federal student loan
17 eligibility and lowering student private education loan
18 debt.

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