

112TH CONGRESS
2D SESSION

S. 3550

To amend the Higher Education Act of 1965 to protect students from deceptive practices and high-pressure sales by institutions of higher education, to provide a waiting period for students to make enrollment decisions, to guard against misrepresentation, to standardize and elevate institutional disclosures, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13, 2012

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

A BILL

To amend the Higher Education Act of 1965 to protect students from deceptive practices and high-pressure sales by institutions of higher education, to provide a waiting period for students to make enrollment decisions, to guard against misrepresentation, to standardize and elevate institutional disclosures, 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 “Advancing College
5 Choice and Ethics to Protect Taxpayers Act of 2012”.

1 **SEC. 2. STRENGTHENING THE HIGHER EDUCATION ACT OF**
2 **1965 BAN ON INCENTIVE COMPENSATION.**

3 Section 487(a) of the Higher Education Act of 1965
4 (20 U.S.C. 1094(a)) is amended by striking paragraph
5 (20) and inserting the following:

6 “(20)(A) The institution will not provide any
7 commission, bonus, or other incentive payment based
8 directly or indirectly on success in securing enroll-
9 ments or financial aid to any persons or entities en-
10 gaged in any student recruiting or admission activi-
11 ties or in making decisions regarding the award of
12 student financial assistance, except that this sub-
13 paragraph shall not apply to the recruitment of for-
14 eign students residing in foreign countries who are
15 not eligible to receive Federal student assistance.

16 “(B) The Secretary shall not promulgate regu-
17 lations related to subparagraph (A) other than such
18 regulations promulgated in section 668.14(b)(22) of
19 title 34, Code of Federal Regulations (as in effect on
20 July 1, 2011).”.

21 **SEC. 3. PROHIBITION OF DECEPTIVE PRACTICES AND PRO-**
22 **TECTION FROM HIGH PRESSURE SALES.**

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

1 “(30) The institution will not engage in decep-
2 tive practices, defined as a practice that—

3 “(A) is likely to mislead consumers acting
4 reasonably under the circumstance; and

5 “(B) is material, that is, likely to affect
6 consumers’ conduct or decisions with respect to
7 the product at issue.

8 “(31)(A) If the institution has a Student De-
9 fault Risk Index for a year (calculated by the De-
10 partment and defined as the institution’s 3-year co-
11 hort default rate, as defined in section 435(m), for
12 the most recent year available, multiplied by the per-
13 centage of students borrowing at the institution for
14 the most recent year available) of 0.1 or greater, the
15 institution will, for such year—

16 “(i) provide individuals accepted to enroll
17 at the institution with a waiting period of not
18 less than 2 weeks to consider and compare
19 among postsecondary options, program costs at
20 the institution, and employment prospects upon
21 completion of a program of study;

22 “(ii) ensure that the receipt of financial
23 aid, incentives, or other benefits is not made
24 contingent on a student confirming enrollment

1 before the end of the student’s waiting period;
 2 and

3 “(iii) notify students accepted to enroll at
 4 the institution of financial aid determinations
 5 not less than 1 week before the enrollment con-
 6 firmation deadline, provided that all requested
 7 application forms are received on time.

8 “(B) If an institution described in subpara-
 9 graph (A) fails to meet the requirements of this
 10 paragraph, the institution shall be subject to a civil
 11 penalty in accordance with subsection
 12 (c)(3)(B)(i)(I).”.

13 **SEC. 4. GUARDING AGAINST MISREPRESENTATION.**

14 Section 487(c)(3) of the Higher Education Act of
 15 1965 (20 U.S.C. 1094(c)(3)) is amended—

16 (1) in subparagraph (A), by inserting “the
 17 space availability in a program for which a student
 18 is considering enrollment, its admission require-
 19 ments, the transferability of credits, whether the
 20 program meets the necessary standards to qualify
 21 students to sit for licensing examinations or obtain
 22 certification required as a precondition for employ-
 23 ment, the passage rates of students in obtaining cer-
 24 tification requirements, the passage rates of students

1 who sit for licensing examinations,” after “its finan-
2 cial charges,”; and

3 (2) by striking subparagraph (B)(i) and insert-
4 ing the following:

5 “(B)(i)(I) Upon determination, after rea-
6 sonable notice and opportunity for a hearing,
7 that an eligible institution has failed to meet
8 the requirements described under paragraph
9 (31) of subsection (a), if applicable to the eligi-
10 ble institution, or has engaged in substantial
11 misrepresentation of the nature of its edu-
12 cational program, its financial charges, the
13 space availability in a program for which a stu-
14 dent is considering enrollment, its admission re-
15 quirements, the transferability of credits,
16 whether the program meets the necessary
17 standards to qualify students to sit for licensing
18 examinations or obtain certification required as
19 a precondition for employment, the passage
20 rates of students in obtaining certification re-
21 quirements, the passage rates of students who
22 sit for licensing examinations, or the employ-
23 ability of its graduates, the Secretary may im-
24 pose a civil penalty upon an eligible institution
25 of not less than—

“(aa) in the case of a first violation, the minimum amount of a civil penalty pursuant to clause (ii) or an amount equal to \$1,000,000 multiplied by the institution’s Student Default Risk Index described in subsection (a)(31), whichever is larger;

“(bb) in the case of a second violation, the minimum amount of a civil penalty pursuant to clause (ii) or an amount equal to \$2,000,000 multiplied by the institution’s Student Default Risk Index described in subsection (a)(31), whichever is larger; and

“(cc) in the case of a third or subsequent violation, the minimum amount of a civil penalty pursuant to clause (ii) or an amount equal to \$3,000,000 multiplied by the institution’s Student Default Risk Index described in subsection (a)(31), whichever is larger.

“(II) For the purpose of subclause (I), any violation by a particular institution will accrue against all Office of Postsecondary Education Identifications (OPE ID) for such institution

1 and within the period of participation for the
2 institution, as defined in section 668.13(b) of
3 title 34, Code of Federal Regulations.

4 “(ii) Upon determination, after reasonable
5 notice and opportunity for a hearing, that an
6 eligible institution has violated or failed to carry
7 out any other provision of this title, the Sec-
8 retary may impose a civil penalty upon such in-
9 stitution of not more than \$27,500 (subject to
10 such adjustments for inflation as may be pre-
11 scribed in regulation) for each such violation or
12 failure to carry out a provision of this title.

13 “(iii) Any civil penalty under this subpara-
14 graph may be compromised by the Secretary. In
15 determining the amount of such penalty, or the
16 amount agreed upon in compromise, the appro-
17 priateness of the penalty to the size of the insti-
18 tution of higher education subject to the deter-
19 mination, and the gravity of the violation, fail-
20 ure, or misrepresentation shall be considered.
21 The amount of such penalty or the amount
22 agreed upon in compromise may be deducted
23 from any sums owing by the United States to
24 the institution charged.”.

1 **SEC. 5. STANDARDIZED DISCLOSURE SHEET.**

2 Section 485 of the Higher Education Act of 1965 (20
3 U.S.C. 1092) is amended by adding at the end the fol-
4 lowing:

5 “(n) STANDARDIZED DISCLOSURE SHEET.—

6 “(1) DUTIES OF THE SECRETARY.—

7 “(A) IN GENERAL.—Not later than 6
8 months after the date of enactment of the Ad-
9 vancing College Choice and Ethics to Protect
10 Taxpayers Act of 2012, the Secretary shall de-
11 velop, in coordination with the Director of the
12 Consumer Financial Protection Bureau, a dis-
13 closure sheet template to disclose information,
14 including the information required under para-
15 graph (3), in a format that is easily under-
16 standable by students, families, institutions,
17 and institution-affiliated organizations.

18 “(B) CALCULATE AVERAGES, PRODUCE
19 AND MAKE AVAILABLE DISCLOSURE SHEETS,
20 AND ESTABLISH REQUIREMENTS FOR DISTRIBU-
21 TION.—Not later than 6 months after the date
22 of enactment of the Advancing College Choice
23 and Ethics to Protect Taxpayers Act of 2012,
24 the Secretary shall—

1 “(i) calculate the State and national
2 averages for the information described in
3 paragraph (3);

4 “(ii) produce complete disclosure
5 sheets for each eligible institution, includ-
6 ing the information described in paragraph
7 (3) based on the latest information avail-
8 able;

9 “(iii) make the completed disclosure
10 sheets described in clause (ii) available on-
11 line to institutions and the public; and

12 “(iv) establish requirements for insti-
13 tutional distribution of the disclosure
14 sheets to each enrolled student and student
15 accepted to enroll, as required under para-
16 graph (2).

17 “(C) PROVISION OF SHEETS AND DATA.—
18 The Secretary shall annually produce and make
19 available to institutions and the public disclo-
20 sure sheets with institutional data, and State,
21 institutional category, and national averages.

22 “(D) CONSULTATION AND CONTENT AND
23 FORMAT OF DISCLOSURE SHEET.—

24 “(i) IN GENERAL.—In carrying out
25 this subsection, the Secretary shall consult

1 with students, the families of such stu-
2 dents, representatives of eligible institu-
3 tions participating in any program under
4 this title (including financial aid adminis-
5 trators, admission officers, and business
6 officers), representatives of institution-af-
7 filiated organizations, secondary school
8 guidance counselors, and consumer advo-
9 cacy groups to—

10 “(I) develop the layout and de-
11 sign for the disclosure sheets de-
12 scribed in this paragraph; and

13 “(II) consider the merits of re-
14 quiring additional information in in-
15 stitutional disclosure sheets, as au-
16 thorized under paragraph (3)(Q).

17 “(ii) CONSUMER TESTING.—The Sec-
18 retary shall carry out consumer testing of
19 the disclosure sheets, targeted to low-in-
20 come students, first-generation students,
21 and students of color, and their families.

22 “(2) DUTIES OF INSTITUTIONS.—

23 “(A) IN GENERAL.—Each eligible institu-
24 tion participating in any program under this
25 title shall disclose to each student enrolled and

1 accepted to enroll in the institution in a manner
2 that allows for the student or the family of the
3 student to take such information into account
4 before enrolling, regardless of whether the in-
5 formation was requested or not, and through
6 appropriate publications, mailings, or electronic
7 media, the information described in paragraph
8 (3).

9 “(B) USE OF DISCLOSURE SHEETS.—In
10 carrying out the requirement of subparagraph
11 (A), an eligible institution shall use the disclo-
12 sure sheet produced in accordance with para-
13 graph (1)(B)(ii).

14 “(C) TIMING OF DISCLOSURE.—An institu-
15 tion that is required under section 487(a)(31)
16 to provide a student accepted for enrollment
17 with a waiting period of not less than 2 weeks
18 to consider postsecondary options, shall disclose
19 to the student the information described in
20 paragraph (3) at or before the start of such
21 waiting period.

22 “(3) CONTENT OF THE DISCLOSURE SHEETS.—
23 Each disclosure sheet produced in accordance with
24 paragraph (1)(B)(ii) shall include the following in-

1 formation based on the latest information available,
2 for the most recent year available:

3 “(A) The category of the institution as
4 public, nonprofit, or for-profit, and the level of
5 the institution as less than 2-year, 2-year, or 4-
6 year, as defined by the most common degree or
7 credential awarded by the institution.

8 “(B) The information described in sub-
9 section (a)(1)(E), and the average cost of at-
10 tendance for institutions at the same level as
11 the institution in the State in which the institu-
12 tion is located and for institutions at the same
13 level as the institution throughout the United
14 States.

15 “(C) The average net price (as defined in
16 section 132) of the institution, and the average
17 net price (as defined in section 132) for institu-
18 tions at the same level as the institution in the
19 State in which the institution is located and for
20 institutions at the same level as the institution
21 throughout the United States.

22 “(D) The average net price (as defined in
23 section 132) of the institution for students en-
24 rolled at the institution who receive assistance

1 under this title, for each of the following family
2 income categories:

3 “(i) \$0 to \$30,000.

4 “(ii) \$30,001 to \$48,000.

5 “(iii) \$48,001 to \$75,000.

6 “(iv) \$75,001 to \$110,000.

7 “(v) \$110,001 or more.

8 “(E) The percentage of students receiving
9 grant aid at the institution, and the average
10 percentage of students receiving grant aid for
11 institutions at the same level as the institution
12 in the State in which the institution is located
13 and for institutions at the same level as the in-
14 stitution throughout the United States.

15 “(F) The web address for the net price cal-
16 culator of the institution.

17 “(G) The cohort default rate, as described
18 in section 435(m), of the institution, and the
19 average cohort default rate for institutions at
20 the same level as the institution in the State in
21 which the institution is located and for institu-
22 tions at the same level as the institution
23 throughout the United States.

24 “(H) The percentage of graduates who
25 borrowed Federal student loans prior to grad-

uating for the most recent year available, and the average percentage of graduates who borrowed Federal student loans prior to graduating for institutions at the same level as the institution in the State in which the institution is located and for institutions at the same level as the institution throughout the United States.

“(I) The average Federal student loan debt of Federal student loan borrowers after graduating from the institution in the most recent year available, and the average Federal student loan debt of Federal student loan borrowers after graduating from institutions at the same level as the institution in the State in which the institution is located and for institutions at the same level as the institution throughout the United States.

“(J) For an institution that determines that its mission includes providing substantial preparation for students to enroll in another eligible institution, the transfer-out rate for the most recent year available.

“(K) For an institution that does not determine that its mission includes providing substantial preparation for students to enroll in an-

1 other eligible institution, the retention rate as
2 described in subsection (a)(1)(U).

3 “(L) The information described in sub-
4 section (a)(1)(L), and the average completion
5 or graduation rate for institutions at the same
6 level as the institution in the State in which the
7 institution is located and for institutions at the
8 same level as the institution throughout the
9 United States.

10 “(M) A statement acknowledging the pro-
11 hibition on incentive compensation under sec-
12 tion 487(a)(20).

13 “(N) A statement informing the student of
14 the institution’s obligation to provide a waiting
15 period of not less than 2 weeks between accept-
16 ance and enrollment, if applicable, as described
17 in section 487(a)(31)(A).

18 “(O) Federal resources available to stu-
19 dents to enable the students to compare pro-
20 grams of study and costs, such as the College
21 Navigator System, including the web address
22 for College Navigator.

23 “(P) Additional relevant information as de-
24 termined appropriate by the Secretary through

1 the process described in paragraph
 2 (1)(D)(i)(II).”.

3 **SEC. 6. ELEVATING KEY INSTITUTIONAL DISCLOSURES.**

4 Section 485 of the Higher Education Act of 1965 (20
 5 U.S.C. 1092), as amended by section 4, is further amend-
 6 ed—

7 (1) in subsection (a)(1)—

8 (A) by striking “The information required
 9 by this section” and inserting “Except as other-
 10 wise provided under subsection (o), the infor-
 11 mation required by this section”;

12 (B) in the matter preceding subparagraph
 13 (A), by inserting “and prospective students”
 14 after “provide to all enrolled students”; and

15 (C) by striking subparagraph (J) and in-
 16 serting the following:

17 “(J) the names of the associations, agen-
 18 cies, or governmental bodies that accredit, ap-
 19 prove, license, or certify the institution and its
 20 programs, and the procedures under which any
 21 current or prospective student may obtain or
 22 review upon request a copy of the documents
 23 describing the institution’s accreditation, ap-
 24 proval, licensing, certification, and the process
 25 for registering a complaint within any accred-

1 iting or licensure body, and the web address of,
 2 or a link to, the Department’s Accreditation in
 3 the United States online resource;” and

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

5 “(o) REQUIRED FRONT-END INFORMATION DISCLO-
 6 SURE.—Notwithstanding subsection (a), each eligible in-
 7 stitution participating in any program under this title
 8 shall directly disclose to each student accepted to enroll
 9 in a manner that allows for the students or the families
 10 to take such information into account before enrolling, re-
 11 gardless of whether the information was requested or not,
 12 the following information:

13 “(1) The information described in subsection
 14 (a)(1)(D).

15 “(2) A good-faith estimate of the cost of at-
 16 tendance for the duration of the program of instruc-
 17 tion in which the student is considering enrolling,
 18 based on the latest information available.

19 “(3) A statement of the requirements and pro-
 20 cedures for officially withdrawing from the institu-
 21 tion, including policies and procedures for reim-
 22 bursement, and a statement outlining the period
 23 during which students may withdraw from the insti-
 24 tution without incurring expenses or loan debt, as
 25 described in section 485(a)(1)(F).

1 “(4) A description of the procedures by which
2 a student may submit complaints regarding edu-
3 cational institutions to applicable Federal and State
4 agencies, including State approving agencies and ac-
5 crediting agencies or associations and such contact
6 information as may be necessary to submit such
7 complaints.

8 “(5) The information described in subsection
9 (a)(1)(G).

10 “(6) The information described in subsection
11 (a)(1)(I).

12 “(7) The information described in subsection
13 (a)(1)(J).

14 “(8) The information described in subsection
15 (a)(1)(M).

16 “(9) The information described in subsection
17 (a)(1)(R).

18 “(10) Accurate information about space avail-
19 ability in the program for which the student is con-
20 sidering enrollment for the current term, a calendar
21 of registration and financial aid deadlines for the
22 current term, and the frequency with which the pro-
23 gram begins in a calendar year.

1 “(11) Any articulation agreements the institu-
2 tion may have with any other educational institu-
3 tions.

4 “(12) The policies established by the institution
5 regarding transfer of course credit, including the fol-
6 lowing:

7 “(A) Any established criteria the institu-
8 tion uses regarding the transfer of course credit
9 earned at another institution.

10 “(B) Any changes by the institution in
11 such policies and established criteria that first
12 took effect in the 1-year period preceding the
13 date of such determination.

14 “(13) To the degree practicable to determine,
15 the median amount of private student loans, Federal
16 student loans, and total student loans, held by stu-
17 dents at the institution upon completion of a pro-
18 gram of education at the institution.

19 “(14) A general overview of Federal student aid
20 programs, the implications of incurring student loan
21 debt (including from private sources), and the con-
22 sequences of defaulting on a loan, including adverse
23 credit reports, delinquent debt collection procedures
24 under Federal law, and litigation.

1 “(15) The percentage of students who enroll in
2 the first term of a program of education at the insti-
3 tution who, on the date that is 1 year after the date
4 of enrolling, are not enrolled in any program of edu-
5 cation at the institution and have not completed a
6 degree or certificate at the institution.”.

○