II

113TH CONGRESS
2D SESSION

S. 2385

To amend the Higher Education Act of 1965 and the Truth in Lending Act to provide for disclosure and codes of conduct with respect to consumer financial products or services and institutions of higher education.

IN THE SENATE OF THE UNITED STATES

MAY 22, 2014

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

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A BILL

To amend the Higher Education Act of 1965 and the Truth in Lending Act to provide for disclosure and codes of conduct with respect to consumer financial products or services and institutions of higher education.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Protecting Aid for Students Act of 2014''.

SEC. 2. DISBURSEMENT OF CREDIT BALANCE.

Part G of title IV of the Higher Education Act of 1965 (20 U.S.C. 1088 et seq.) is amended by adding at the end the following:

“SEC. 493E. DISBURSEMENT OF CREDIT BALANCE.

“(a) CREDIT BALANCE.—In this section, the term ‘credit balance’ means the amount of program funds under this title credited to a student’s ledger account at the institution of higher education that exceed the amount assessed the student by the institution for allowable institutional charges, as defined by the Secretary.

“(b) ESTABLISHMENT OF SYSTEM FOR DISBURSEMENT.—Not later than 3 years after the date of enactment of the Protecting Aid for Students Act of 2014, each institution of higher education that enrolls a student who receives a grant or loan under this title shall establish a system for the disbursement of credit balances in accordance with subsection (c).

“(c) ELECTRONIC PAYMENT SYSTEM.—

“(1) IN GENERAL.—Each institution of higher education described in subsection (b) shall establish a system for disbursement of credit balances through electronic payments to a deposit account or a general use prepaid card with the protections afforded under the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.).

"(2) NO PREFERRED FINANCIAL INSTITUTION OR DENIAL OR DELAY.—In carrying out the system under paragraph (1), an institution of higher education shall not—

"(A) require or encourage a student to select a particular financial institution to which an electronic payment under this section shall be made; or

"(B) deny or cause a delay in the disbursement of credit balances based on the selection by a student of a particular financial institution.

"(d) DISTRIBUTION OPTIONS.—

"(1) PILOT PROGRAM.—The Secretary of Education, in consultation with the Secretary of the Treasury and the Director of the Bureau of Consumer Financial Protection, shall conduct a pilot program on providing students with the option of receiving credit balances, through the electronic payment system of the institution of higher education in accordance with subsection (c), by using the Treasury Direct Express system established under section 3336 of title 31, United States Code, or through any other low-cost alternative as determined by the Secretary.

"(2) IMPLEMENTATION.—If the Secretary of Education, after conducting the pilot program described in paragraph (1), determines that allowing students with credit balances to use any option described in such paragraph is in the best interest of students, the Secretary shall take such actions as are necessary to provide any such option to students, which may include entering into agreements with the Secretary of Treasury or other entity to implement this paragraph.".

SEC. 3. CODE OF CONDUCT IN AFFILIATED CONSUMER FINANCIAL PRODUCTS OR SERVICES.

Part B of title I of the Higher Education Act of 1965 (20 U.S.C. 1011 et seq.) is amended by adding at the end the following:

"SEC. 124. CODE OF CONDUCT IN AFFILIATED CONSUMER FINANCIAL PRODUCTS OR SERVICES.

"(a) DEFINITIONS.—In this section:

"(1) AFFILIATED.—

"(A) IN GENERAL.—The term 'affiliated', when used with respect to a consumer financial product or service and an institution of higher education, means an association between such institution and product or service resulting from—

"(i) the name, emblem, mascot, or logo of the institution being used with respect to such product or service; or

"(ii) some other word, picture, or symbol readily identified with the institution in the marketing of the consumer financial product or service in any way that implies that the institution endorses the consumer financial product or service.

"(B) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) shall be construed to deem an association between an institution of higher education and a consumer financial product or service to be affiliated if such association is solely based on an advertisement by a financial institution that is delivered to a wide and general audience consisting of more than enrolled students at the institution of higher education.

"(2) ASSOCIATED INDIVIDUAL.—The term 'associated individual', when used with respect to an institution of higher education, means an individual who is—

"(A) an officer of such institution of higher education;

"(B) an employee or agent of the institution of higher education who is involved in the contracting, approval, analysis, or decision-making process for an affiliated consumer financial product or service; or

"(C) an employee or agent of the institution of higher education involved in the marketing or solicitation process pertaining to an affiliated consumer financial product or service.

"(3) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term 'consumer financial product or service' has the meaning given the term in section 1002 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481).

"(4) FINANCIAL INSTITUTION.—The term 'financial institution' has the meaning given the term in section 140B of the Truth in Lending Act.

"(5) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' means an institution of higher education as defined in section 102.

"(b) CODE OF CONDUCT.—Notwithstanding any other provision of law, no institution of higher education that is affiliated with a consumer financial product or service shall be eligible to receive funds or any other form of financial assistance under this Act, unless the institution—

"(1) develops a code of conduct with respect to affiliated consumer financial products or services with which associated individuals shall comply that—

"(A) prohibits a conflict of interest with the responsibility of an associated individual with respect to such affiliated consumer financial product or services;

"(B) requires each associated individual to act in the best interest of the students enrolled at the institution of higher education in carrying out their duties; and

"(C) at a minimum, is aligned with the requirements and prohibitions described under subsections (c) through (g);

"(2) publishes such code of conduct prominently on the institution's website; and

"(3) administers and enforces such code by, at a minimum, requiring that all of the institution's associated individuals be annually informed of the provisions of the code of conduct.

"(c) BAN ON REVENUE-SHARING ARRANGEMENTS.—

"(1) PROHIBITION.—An institution of higher education that is affiliated with a consumer financial product or service shall not enter into any revenue-sharing arrangement with the financial institution.

"(2) DEFINITION.—In this subsection, the term 'revenue-sharing arrangement'—

"(A) means an arrangement between an institution of higher education and a financial institution under which—

"(i) the financial institution provides or issues a consumer financial product or service to students attending the institution of higher education;

"(ii) the institution of higher education recommends, promotes, sponsors, or otherwise endorses the financial institution, or the consumer financial products or services offered by the financial institution; and

"(iii) the financial institution pays a fee or provides other material benefits, including revenue or profit sharing, to the institution of higher education in connection with the consumer financial products or services provided to students of the institution of higher education; and

"(B) does not include an arrangement under which a financial institution pays a fair market price to an institution of higher education for the advertising or marketing of the financial institution to the general public by the institution of higher education.

"(d) GIFT BAN.—

"(1) PROHIBITION.—No associated individual of an institution of higher education shall solicit or accept any gift from a financial institution that has a consumer financial product or service with which the institution is affiliated.

"(2) DEFINITION OF GIFT.—

"(A) IN GENERAL.—In this subsection, the term 'gift' means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having a monetary value of more than a de minimus amount. The term includes a gift of services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

"(B) EXCEPTIONS.—The term 'gift' shall not include any of the following:

"(i) Standard material, activities, or programs on issues related to a consumer financial product or service or financial literacy, such as a brochure, a workshop, or training. Such material, training, or program shall not promote a product or service of any specific financial institution.

"(ii) Food, refreshments, training, or informational material furnished to an associated individual as an integral part of a training session that is designed to improve the service of a financial institution to the institution of higher education, if such training contributes to the professional development of the associated individual.

"(iii) Favorable terms, conditions, and borrower benefits on a consumer financial product or service provided to all employees of the institution of higher education if such terms, conditions, or benefits are comparable to those provided to all students of the institution.

"(iv) Philanthropic contributions to an institution of higher education from a financial institution that are unrelated to the affiliated consumer financial product or service or the financial institution in general or any contribution from the financial institution that is not made in exchange for any advantage related to the financial institution.

"(C) RULE FOR GIFTS TO FAMILY MEMBERS.—For purposes of this subsection, a gift to a family member of an associated individual of an institution of higher education shall be considered a gift to the associated individual if—

"(i) the gift is given with the knowledge and acquiescence of the associated individual; and

"(ii) the associated individual has reason to believe the gift was given because of the official position of the associated individual.

"(e) CONTRACTING ARRANGEMENTS PROHIBITED.—

"(1) PROHIBITION.—No associated individual of an institution of higher education shall accept from a financial institution that has a consumer financial product or service with which the institution is affiliated a fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation for any type of consulting arrangement or other contract to provide services to the financial institution or on behalf of the financial institution.

"(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as prohibiting the conduct of an individual who is not an associated individual.

"(f) BAN ON STAFFING ASSISTANCE.—An institution of higher education shall not request or accept from a financial institution with which the institution has an affiliated consumer financial product or service any assistance with call center staffing, financial aid office staffing, or any other office or department of the institution of higher education.

"(g) ADVISORY BOARD COMPENSATION.—Any associated individual of an institution of higher education who serves on an advisory board, commission, or group established by a financial institution that has a consumer financial product or service with which the institution is affiliated shall be prohibited from receiving anything of value from the financial institution, except that the individual may be reimbursed for reasonable expenses incurred in serving on such advisory board, commission, or group.''.

SEC. 4. REVENUE SHARING AND DISCLOSURE OF AFFILIATION.

Chapter 2 of title I of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by adding at the end the following:

''SEC. 140B. PREVENTING UNFAIR AND DECEPTIVE MARKETING OF CONSUMER FINANCIAL PRODUCTS AND SERVICES TO STUDENTS OF INSTITUTIONS OF HIGHER EDUCATION.

''(a) DEFINITIONS.—In this section:

''(1) AFFILIATE.—The term 'affiliate' means any person that controls, is controlled by, or is under common control with another person.

''(2) AFFILIATED.—

''(A) IN GENERAL.—The term 'affiliated', when used with respect to a consumer financial product or service and an institution of higher education, means an association between such institution and product or service resulting from—

"(i) the name, emblem, mascot, or logo of the institution being used with respect to such product or service; or

"(ii) some other word, picture, or symbol readily identified with the institution in the marketing of the consumer financial product or service in any way that implies that the institution endorses the consumer financial product or service.

"(B) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) shall be construed to deem an association between an institution of higher education and a consumer financial product or service to be affiliated if such association is solely based on an advertisement by a financial institution that is delivered to a wide and general audience consisting of more than enrolled students at the institution of higher education.

"(3) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term 'consumer financial product or service' has the meaning given the term in section 1002 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481).

"(4) FINANCIAL INSTITUTION.—The term 'financial institution' means—

"(A) any person that engages in offering or providing a consumer financial product or service; and

"(B) any affiliate of such person described in subparagraph (A) if such affiliate acts as a service provider to such person.

"(5) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given the term in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002).

"(6) PERSON.—The term 'person' means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

"(7) REVENUE-SHARING ARRANGEMENT.—The term 'revenue-sharing arrangement'—

"(A) means an arrangement between an institution of higher education and a financial institution under which—

"(i) a financial institution provides or issues a consumer financial product or service to college students attending the institution of higher education;

"(ii) the institution of higher education recommends, promotes, sponsors, or otherwise endorses the financial institution, or the consumer financial products or services offered by the financial institution; and

"(iii) the financial institution pays a fee or provides other material benefits, including revenue or profit sharing, to the institution of higher education, or to an officer, employee, or agent of the institution of higher education, in connection with the consumer financial products and services provided to college students attending the institution of higher education; and

"(B) does not include an arrangement under which a financial institution pays a fair market price to an institution of higher education for the advertising or marketing of the financial institution to the general public by the institution of higher education.

"(8) SERVICE PROVIDER.—The term 'service provider'—

"(A) means any person that provides a material service to another person in connection with the offering or provision by such other person of a consumer financial product or service, including a person that—

"(i) participates in designing, operating, or maintaining the consumer financial product or service; or

"(ii) processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes); and

"(B) does not include a person solely by virtue of such person offering or providing to another person—

"(i) a support service of a type provided to businesses generally or a similar ministerial service; or

"(ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

"(b) DISCLOSURE OF AFFILIATION.—

"(1) REPORTS BY FINANCIAL INSTITUTIONS.—

"(A) IN GENERAL.—Not later than 180 days after the date of enactment of the Protecting Aid for Students Act of 2014, and annually thereafter, each financial institution shall submit a report to the Bureau containing the terms and conditions of all business, marketing, and promotional agreements that the financial institution has with any institution of higher education, or an alumni organization or foundation that is an affiliate of or related to an institution of higher education, relating to any consumer financial product or service offered to college students at institutions of higher education.

"(B) DETAILS OF REPORT.—The information required to be reported under subparagraph (A) includes—

"(i) any memorandum of understanding between or among the financial institution and an institution of higher education, alumni association, or foundation that directly or indirectly relates to any aspect of an agreement referred to in subparagraph (A) or controls or directs any obligations or distribution of benefits between or among the entities; and

"(ii) the number and dollar amount outstanding of consumer financial products or services accounts covered by any such agreement that were originated during the period covered by the report, and the total number and dollar amount of consumer financial products or services accounts covered by the agreement that were outstanding at the end of such period.

"(C) AGGREGATION BY INSTITUTION.—The information required to be reported under subparagraph (A) shall be aggregated with respect to each institution of higher education or alumni organization or foundation that is an affiliate of or related to the institution of higher education.

"(2) REPORTS BY BUREAU.—The Bureau shall submit to Congress, and make available to the public, an annual report that lists the information submitted to the Bureau under paragraph (1).

"(3) ELECTRONIC DISCLOSURES.—

"(A) POSTING AGREEMENTS.—Each financial institution shall establish and maintain an

Internet site on which the financial institution shall post the written agreement between the financial institution and the institution of higher education for each affiliated consumer financial product or service.

"(B) FINANCIAL INSTITUTION TO PROVIDE CONTRACTS TO THE BUREAU.—Each financial institution shall provide to the Bureau, in electronic format, the written agreements that it publishes on its Internet site pursuant to this paragraph.

"(C) RECORD REPOSITORY.—The Bureau shall establish and maintain on its publicly available Internet site a central repository of the agreements received from financial institutions pursuant to this paragraph, and such agreements shall be easily accessible and retrievable by the public.

"(D) EXCEPTION.—This paragraph shall not apply to individually negotiated changes to contractual terms, such as individually modified workouts or renegotiations of amounts owed by an institution of higher education.

"(c) PROHIBITION OF REVENUE-SHARING ARRANGEMENT.—A financial institution that offers a consumer financial product or service that is affiliated with an institution of higher education may not enter into a revenue-sharing arrangement with the institution of higher education.

"(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a financial institution from establishing a consumer product or service affiliated with an institution of higher education if —

"(1) the consumer product or service will—

"(A) assist college students in reducing costs or fees associated with the use of consumer financial products or services;

"(B) increase consumer choice; and

"(C) enhance consumer protections; and

"(2) the financial institution is in compliance with the requirements of this Act.".

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