114TH CONGRESS
2D SESSION

H. R. 4652

To amend the Higher Education Act of 1965 to codify the Revised Pay As You Earn Repayment plan, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 29, 2016

Mr. TAKAI (for himself, Ms. JUDY CHU of California, Mr. HONDA, Ms. NORTON, Mr. BRADY of Pennsylvania, Ms. CLARKE of New York, Mr. BRENDAN F. BOYLE of Pennsylvania, Ms. MOORE, Mr. PALLONE, Ms. LEE, Mr. TED LIEU of California, Mrs. WATSON COLEMAN, Mr. NOLAN, Ms. SCHAKOWSKY, Mr. RANGEL, and Ms. JACKSON LEE) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend the Higher Education Act of 1965 to codify the Revised Pay As You Earn Repayment plan, and for other purposes.

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 ‘‘Clarity in Lending for Education and Repayment Act’’ or the ‘‘CLEAR Act’’.

SEC. 2. STREAMLINING REPAYMENT PLANS FOR NEW BORROWERS.

Section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e) is amended by striking subsection (d) and inserting the following:

"(d) REPAYMENT PLANS.—

"(1) DESIGN AND SELECTION FOR BORROWERS BEFORE JULY 1, 2016.—With respect to a borrower of a loan made under this part before July 1, 2016, and consistent with criteria established by the Secretary, the Secretary shall offer such borrower a variety of plans for repayment of such loan, including principal and interest on the loan. The borrower shall be entitled to accelerate, without penalty, repayment on the borrower's loans under this part. The borrower may choose—

"(A) a standard repayment plan, consistent with subsection (a)(1) of this section and with section 428(b)(9)(A)(i);

"(B) a graduated repayment plan, consistent with section 428(b)(9)(A)(ii);

"(C) an extended repayment plan, consistent with section 428(b)(9)(A)(iv), except that the borrower shall annually repay a minimum amount determined by the Secretary in accordance with section 428(b)(1)(L);

"(D) an income contingent repayment plan, with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years, except that the plan described in this subparagraph shall not be available to the borrower of a Federal Direct PLUS loan made on behalf of a dependent student; and

"(E) an income-based repayment plan that enables borrowers who have a partial financial hardship to make a lower monthly payment in accordance with section 493C, except that the plan described in this subparagraph shall not be available to the borrower of a Federal Direct PLUS Loan made on behalf of a dependent student or a Federal Direct Consolidation Loan, if the proceeds of such loan were used to discharge the liability on such Federal Direct PLUS Loan or a loan under section 428B made on behalf of a dependent student.

"(2) DESIGN AND SELECTION FOR NEW BORROWERS ON OR AFTER JULY 1, 2016.—The Secretary shall offer a borrower of a loan made under this part on or after July 1, 2016, the following plans for repayment of such loan, including principal and interest on the loan. The borrower shall be entitled to accelerate, without penalty, repayment on the borrower's loans under this part. The borrower may choose—

"(A) a standard repayment plan, consistent with subsection (a)(1) of this section and with section 428(b)(9)(A)(i); or

"(B) a revised pay-as-you-earn repayment plan, consistent with section 461, except the plan described in this subparagraph shall not be available to a borrower of a Federal Direct PLUS Loan made on behalf of a dependent student, a Federal Direct Consolidation Loan, if the proceeds of such loan were used to discharge the liability on such Federal Direct PLUS Loan or a loan under section 428B made on behalf of a dependent student.

"(3) BORROWER NON-SELECTION.—If a borrower of a loan made under this part does not select a repayment plan described in paragraph (1) or (2), the Secretary may provide the borrower with a repayment plan described in subparagraph (A), (B), or (C) of paragraph (1) for borrowers before July 1, 2016, or a repayment plan described in paragraph (2)(A) for new borrowers on or after July 1, 2016.

"(4) CHANGES IN SELECTIONS.—The borrower of a loan made under this part may change the borrower's selection of a repayment plan under paragraph (1) or (2), or the Secretary's selection of a plan for the borrower under paragraph (3), as the case may be, under such terms and conditions as may be established by the Secretary.

"(5) ALTERNATIVE REPAYMENT PLANS.—The Secretary may provide, on a case by case basis, an alternative repayment plan to a borrower of a loan made under this part on or after July 1, 2016, who demonstrates to the satisfaction of the Secretary that the terms and conditions of the repayment plans available under paragraph (2) are not adequate to accommodate the borrower's exceptional circumstances. Upon request, the Secretary shall make available for such borrowers repayment plans described in subparagraphs (B) and (C) of paragraph (1). In designing such alternative repayment plans, the Secretary shall ensure that such plans do not exceed the cost to the Federal Government, as determined on the basis of the present value of future payments by such borrowers, of loans made using the plans available under paragraph (2).

"(6) REPAYMENT AFTER DEFAULT.—For any borrower who has defaulted on a loan made under this part, the Secretary—

"(A) may require the borrower to pay all reasonable collection costs associated with such loan; and

"(B) if such loan was made—

"(i) to any borrower who, before July 1, 2016, had an outstanding balance on a student loan made, insured, or guaranteed under this part or part B, may require the borrower to repay the loan pursuant to an income contingent repayment plan, as described in paragraph (1)(D), or an income-based repayment plan, as described in paragraph (1)(E); or

"(ii) to a new borrower (as defined in section 493E(a)(5)), may provide the borrower the option to enroll in the repayment plan described in paragraph (2)(B).

"(7) APPLICABILITY PROVISION.—

"(A) IN GENERAL.—Except as provided in paragraph (5) and subparagraph (B), the repayment plans under subparagraphs (B), (C), (D), and (E) of paragraph (1) are not available for a borrower who received the borrower's first disbursement of a Federal Direct Loan on or after July 1, 2016.

"(B) EXCEPTION.—The repayment plans available to a borrower of a Federal Direct PLUS Loan made on behalf of a dependent student or a Federal Direct Consolidation Loan whose proceeds were used to discharge the liability of a Federal Direct PLUS Loan made on behalf of a dependent student or a loan under section 428B made on behalf of a dependent student on or after July 1, 2016, shall be those described under subparagraphs (A), (B), and (C) of paragraph (1).".

SEC. 3. REPAYE.

Part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.) is amended by adding at the end the following:

"SEC. 461. REPAYE.

"(a) DEFINITIONS.—

"(1) COVERED FEDERAL DIRECT LOAN.—The term 'covered Federal Direct Loan' means a Federal Direct Stafford Loan, a Federal Direct Unsubsidized

Stafford Loan, a Federal Direct Consolidation Loan (other than an excepted consolidation loan), or a Federal Direct PLUS Loan (other than an excepted plus loan) made under this part.

"(2) NEW BORROWER.—The term 'new borrower' means a borrower who—

"(A) as of July 1, 2016, has no outstanding balance on a student loan made, insured, or guaranteed under part B or D; or

"(B) has no outstanding balance on a student loan made, insured, or guaranteed under part B or D on the date the borrower receives a loan made under part D on or after July 1, 2016.

"(3) EXCEPTED PLUS LOAN; EXCEPTED CONSOLIDATION LOAN.—The terms 'excepted plus loan' and 'excepted consolidation loan' have the meanings given such terms in section 493C.

"(4) INCOME-DRIVEN CALCULATION.—

"(A) IN GENERAL.—The term 'income-driven calculation'—

"(i) when used with respect to an unmarried borrower 10 percent of the result obtained by calculating, on at least an annual basis, the amount by which—

"(I) the borrower's adjusted gross income, as defined by the Secretary; exceeds

"(II) 150 percent of the poverty line applicable to the borrower's family size as determined under section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)); and

"(ii) subject to subparagraph (B), when used with respect to a married borrower—

"(I) the difference between the borrower's and borrower's spouse's adjusted gross income, as defined by the Secretary; exceeds

"(II) 150 percent of the poverty line applicable to the borrower's family size as determined under section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

"(B) EXCEPTION FOR CERTAIN MARRIED BORROWERS.—The income-driven calculation under subparagraph (A)(i) shall apply to a married borrower who certifies, on a form approved by the Secretary that the borrower is—

"(i) separated from the borrower's spouse; or

"(ii) unable to reasonably access the income information of the borrower's spouse.

"(b) REVISED PAY AS YOU EARN REPAYMENT PLAN AUTHORIZED.—Notwithstanding any other provision of this Act, the Secretary shall carry out a program for new borrowers that meets the following requirements:

"(1) MONTHLY PAYMENT AMOUNT.—Except as otherwise provided in this subsection, a new borrower of any covered Federal Direct Loan may elect to have the borrower's aggregate monthly payment for all such loans not to exceed the result of the income-driven calculation divided by 12.

"(2) ADJUSTED MONTHLY PAYMENT AMOUNT.—The Secretary adjusts the aggregate monthly payment under paragraph (1), if—

"(A) in addition to covered Federal Direct Loans, the borrower has an outstanding loan made under part B (other than an excepted PLUS Loan or an excepted consolidation loan), in which case the Secretary determines the borrower's adjusted monthly payment by multiplying the aggregate monthly payment by the percentage of the total outstanding principal amount of the borrower's covered Federal Direct Loans;

"(B) the borrower and borrower's spouse have covered Federal Direct Loans and outstanding loans under part B (other than an excepted PLUS Loan or an excepted consolidation loan), in which case the Secretary determines—

"(i) each borrower's percentage of the couple's total outstanding amount of principal on such loans;

"(ii) the adjusted monthly payment for each borrower by multiplying the borrower's aggregate monthly payment by the percentage determined under clause (i) applicable to the borrower; and

"(iii) if the borrower's loans are held by multiple holders, the borrower's adjusted monthly payment for covered Federal Direct Loans by multiplying the adjusted monthly payment determined under clause (ii) by the percentage of the total outstanding principal amount of the borrower's covered Federal Direct Loans;

"(C) the calculated monthly payment amount under paragraph (1) or this paragraph is less than $5.00, in which case the borrower's monthly payment is $0.00; or

"(D) the calculated monthly payment amount under paragraph (1) or this paragraph or is equal to or greater than $5.00 but less than $10.00, in which case the borrower's monthly payment is $10.00.

"(3) ACCRUED INTEREST.—

"(A) IN GENERAL.—If the borrower's monthly payment amount under paragraph (1) or (2) is not sufficient to pay the accrued interest on the borrower's loan—

"(i) for a Federal Direct Stafford Loan or the portion of a Federal Direct Consolidation Loan attributable to a Federal Direct Stafford Loan—

"(I) the Secretary does not charge the borrower the remaining accrued interest for a period not to exceed 3 consecutive years beginning at the start of repayment period on such loan under this repayment plan; and

"(II) after the three-year period, the Secretary charges the borrower 50 percent of the remaining accrued interest on such loan or such portion of a Federal Direct Consolidation Loan; and

"(ii) for a Federal Direct Unsubsidized Stafford Loan, a Federal Direct PLUS Loan made to a graduate or professional student, or the portion of a Federal Direct Consolidation Loan attributable to a Federal Direct Unsubsidized Stafford Loan, or for a Federal Direct Subsidized Loan or the portion of a Federal Direct Consolidation Loan attributable to a Federal Direct Stafford Loan for which the borrower has become responsible for accruing interest in accordance with section 455(q)(2), the Secretary charges the borrower 50 percent of the remaining accrued interest.

"(B) THREE-YEAR PERIOD DEFINED.—The three-year period described in subparagraph (A)(i) does not include any period during which the borrower receives an economic hardship deferment.

"(C) CAPITALIZATION OF ACCRUED INTEREST.—

"(i) TIMING.—Accrued interest is capitalized at the time a borrower leaves the program under this section.

"(ii) CAPITALIZATION.—

"(I) LIMITATION.—The amount of accrued interest capitalized under clause (i)(I) is limited to 10 percent of the original principal balance at the time the borrower entered repayment under the plan under this section.

"(II) PARTICIPATION.—After the amount of accrued interest reaches the limit described in subclause (I), interest continues to accrue, but is not capitalized while the borrower participates in the plan under this section.

"(4) POSTPONEMENT OF PRINCIPAL PAYMENT.—If the borrower's monthly payment amount is not sufficient to pay any of the principal due, the payment of that principal is postponed until the borrower leaves the plan under this section.

"(5) SELECTION OF DIFFERENT REPAYMENT PLAN.—A borrower who no longer wishes to repay under the plan under this section may change to a standard repayment plan in accordance with section 455(d)(3).

"(6) PAYMENT APPLICATION AND PREPAYMENT.—

"(A) IN GENERAL.—The Secretary applies any payment made under the program under this section in the following order:

"(i) Accrued interest.

"(ii) Collection costs.

"(iii) Late charges.

"(iv) Loan principal.

"(B) PREPAYMENT AUTHORIZED.—The borrower may prepay all or part of a loan at any time without penalty, as authorized under section 455(d)(1).

"(C) APPLICATION OF PREPAYMENT.—If the prepayment amount equals or exceeds—

"(i) a monthly payment amount of $10.00 or more under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of section 455(d)(1); or

“(ii) a monthly payment amount of $0.00 under the repayment schedule established for the loan, the Secretary applies the prepayment consistent with the requirements of subparagraph (A).

“(7) ELIGIBILITY DOCUMENTATION, VERIFICATION, AND NOTIFICATIONS.—

“(A) DOCUMENTATION.—

“(i) AGI.—The Secretary requires the borrower to provide documentation, acceptable to the Secretary, of the borrower’s adjusted gross income.

“(ii) OTHER DOCUMENTATION.—If the borrower’s adjusted gross income is not available, or if the Secretary believes that the borrower’s reported adjusted gross income does not reasonably reflect the borrower’s current income, the borrower must provide other documentation to verify income.

“(iii) FAMILY SIZE.—Unless otherwise directed by the Secretary, the borrower must annually certify the borrower's family size. If the borrower fails to certify family size, the Secretary assumes a family size of one for the applicable year.

"(B) NOTIFICATIONS.—

"(i) IN GENERAL.—Each year that the borrower participates in the program under this section, the Secretary sends the borrower a written notification that provides the borrower with—

"(I) the borrower's monthly payment amount, as calculated under paragraph (1) or (2), and the time period during which such monthly payment amount will apply (annual payment period);

"(II) information about the requirement for the borrower to annually provide the information described in subparagraph (A), and an explanation that the borrower will be notified in advance of the date by which the Secretary must receive this information;

"(III) an explanation of the consequences, as described under subparagraph (E), if the borrower does not provide the required information; and

"(IV) information about the borrower's option to request, at any time during the borrower's annual payment period, that the Secretary recalculate the borrower's monthly payment amount if the borrower's financial circumstances have changed and the income amount that was used to calculate the borrower's current monthly payment no longer reflects the borrower's current income.

"(ii) RECALCULATION.—If the Secretary recalculates the borrower's monthly payment amount based on the borrower's request, the Secretary sends the borrower a written notification that includes the information described in this subparagraph.

"(C) SUBSEQUENT YEARS.—

"(i) IN GENERAL.—For each year following the first year in which a borrower participating in the plan under this section, the Secretary notifies the borrower in writing of the requirements of subparagraph (A) not later than 60 days and not earlier than 90 days prior to the date specified in clause (ii)(I).

"(ii) CONTENTS.—The notification under clause (i) shall provide the borrower with—

"(I) the date, no earlier than 35 days before the end of the borrower's annual payment period, by which the Secretary must receive all of the documentation described in subparagraph (A) (annual deadline); and

"(II) the consequences if the Secretary does not receive the information within 10 days following the annual deadline specified in the notice, as described under subparagraph (E).

"(D) NO DOCUMENTATION PROVIDED.—If a borrower who is currently repaying under the standard repayment plan elects the plan under this section but does not provide the documentation described in subparagraph (A), the borrower remains on such standard repayment plan.

"(E) ALTERNATE REPAYMENT PLAN.—

"(i) IN GENERAL.—If a borrower who is currently repaying under the plan under this section elects to participate in such program for a subsequent year but the Secretary does not receive the documentation described in subparagraph (A) not later than 10 days after the specified annual deadline, the Secretary removes the borrower from the plan and places the borrower on an alternative repayment plan under which the borrower's required monthly payment is the amount necessary to repay the borrower's eligible loans in full within the earlier of—

"(I) 10 years from the date the borrower begins repayment under the alternative repayment plan; or

"(II) the ending date of the 20-year period as described in paragraph (8)(A)(i)(II).

"(ii) NOTIFICATION.—If the Secretary places the borrower on an alternative repayment plan in accordance with clause (i), the Secretary sends the borrower a written notification informing the borrower that—

"(I) the borrower has been placed on an alternative repayment plan;

"(II) the borrower's monthly payment amount has been recalculated under clause (i); and

"(III) the borrower may change to the standard repayment plan in accordance with section 455(d)(3).

"(iii) RETURN TO PROGRAM.—A borrower who has been removed from the plan under this section or changes to the standard repayment plan may return to the plan under this section if the borrower provides the documentation under subparagraph (A), necessary for the Secretary to calculate the borrower's current monthly payment amount and the monthly amount the borrower would have been required to pay under the plan during the period when the borrower was on the alternative repayment plan or the standard repayment plan.

"(iv) ADJUSTMENT OF MONTHLY PAYMENT AMOUNT.—If the Secretary determines that the total amount of the payments the borrower was required to make while on the alternative repayment plan or the standard repayment plan are less than the total amount the borrower would have been required to make under the program during that period, the Secretary will adjust the borrower's monthly payment amount to ensure that the difference between the two amounts is paid in full by the end of the 20-year period described in paragraph (8)(A)(i)(II).

"(v) APPLICATION OF LOAN FORGIVENESS.—If the borrower returns to the plan under this section, any payments that the borrower made under the alternative repayment plan after the borrower was removed from the plan shall count towards forgiveness under the plan under this section.

"(vi) PSLF.—Payments made under the alternative repayment plan described in clause (i) will not count towards public service loan forgiveness under section 455(m).

"(vii) EXCEPTION.—The Secretary does not take the action described in clause (i) if the Secretary receives the documentation described in subparagraph (A) more than 10 days after the specified annual deadline, but is able to determine the borrower's new monthly payment amount before the end of the borrower's current annual payment period.

"(viii) MONTHLY PAYMENT AMOUNT.—If the Secretary receives the documentation described in subparagraph (A) within 10 days of the specified annual deadline—

"(I) the Secretary promptly determines the borrower's new scheduled monthly payment amount and maintains the borrower's current scheduled monthly payment amount until the new scheduled monthly payment amount is determined;

"(II) if the new monthly payment amount is less than the borrower's previously calculated plan monthly payment amount, and the borrower made payments at the previously calculated amount after the end of the most recent annual payment period—

"(aa) the Secretary makes the appropriate adjustment to the borrower's account; and

"(bb) unless the borrower requests otherwise, the Secretary applies the excess payment amounts made after the end of the most recent annual payment period in accordance with the requirements of paragraph (6)(A);

"(III) if the new monthly payment amount is equal to or greater than the borrower's previously calculated monthly payment amount, and the borrower made payments at the previously calculated payment amount after the end of the most recent annual payment period, the Secretary does not make any adjustment to the borrower's account;

"(IV) any payments that the borrower continued to make at the previously calculated payment amount after the end of the prior annual payment period and before the new monthly payment amount is calculated are considered to be qualifying payments for purposes of public service loan forgiveness under section 455(m), provided that the payments otherwise meet the requirements described in such section 455(m); and

"(V) the new annual payment period begins on the day after the end of the most recent annual payment period.

"(8) LOAN FORGIVENESS.—

"(A) IN GENERAL.—

"(i) CANCELLATION.—The Secretary cancels any remaining outstanding balance of principal and accrued interest on a borrower's covered Federal Direct Loans that are being repaid under the plan under this section after—

"(I) the borrower has made the equivalent of 240 qualifying monthly payments as defined in subparagraph (B); and

"(II) 20 years have elapsed, beginning on the date determined in accordance with subparagraph (C).

"(ii) DETERMINATION.—The Secretary determines when a borrower has met the loan forgiveness requirements under clause (i) and does not require the borrower to submit a request for loan forgiveness.

"(B) QUALIFYING MONTHLY PAYMENT DEFINED.—

"(i) IN GENERAL.—For purposes of this paragraph, a qualifying monthly payment is—

"(I) a monthly payment under the plan under this section, including a monthly payment amount of $0.00, as provided under paragraph (2)(C);

"(II) a monthly payment made under the standard repayment plan under section 455(d)(2)(A); or

"(III) a month during which the borrower was not required to make a payment due to receiving an economic hardship deferment on the borrower's covered Federal Direct Loans.

"(ii) DEFAULTED LOANS EXCLUDED.—Any payments made on a defaulted loan are not qualifying monthly payments and are not counted toward the 20-year forgiveness period.

"(C) DETERMINATION OF BEGINNING DATE.—For a borrower who qualifies for the program under this section, the beginning date for the 20-year repayment period is—

"(i) for a borrower who has a Federal Direct Consolidation Loan, the date the borrower made a qualifying monthly payment on the consolidation loan, before the date the borrower qualified for the program plan under this section;

"(ii) for a borrower who has one or more other covered Federal Direct Loans, the date the borrower made a qualifying monthly payment on that loan, before the date the borrower qualified for the plan under this section;

"(iii) for a borrower who did not make a qualifying monthly payment under clause (i) or (ii), the date the borrower made a payment on the borrower's covered Federal Direct Loans under the plan under this section;

"(iv) if the borrower consolidates the borrower's loans under this title, the date the borrower made a qualifying monthly payment on the Federal Direct Consolidation Loan; or

"(v) if the borrower did not make a qualifying monthly payment on the loan under clauses (i) through (iv), the date the borrower made a payment on the loan under the plan under this section.

"(D) NOTIFICATION.—

"(i) PRIOR TO LOAN CANCELLATION.—Not later than 6 months prior to the anticipated date that the borrower will meet the forgiveness requirements, the

Secretary sends the borrower a written notice that includes—

"(I) an explanation that the borrower is approaching the date that the borrower is expected to meet the requirements to receive loan forgiveness;

"(II) a reminder that the borrower must continue to make the borrower's scheduled monthly payments; and

"(III) general information on the current treatment of the forgiveness amount for tax purposes, and instructions for the borrower to contact the Internal Revenue Service for more information.

"(ii) AFTER LOAN CANCELLATION.—After determining that a borrower has satisfied the loan forgiveness requirements, the Secretary—

"(I) notifies the borrower that the borrower's obligation on the loans is satisfied;

"(II) provides the borrower with the information described in clause (i)(III); and

"(III) returns to the sender any payment received on a loan after loan forgiveness has been granted.".

SEC. 4. DISCLOSURES.

Section 455(p) of the Higher Education Act of 1965 (20 U.S.C. 1087e(p)) is amended—

(1) by striking "Each institution" and inserting the following:

"(1) IN GENERAL.—Each institution"; and

"(2) CONSULTATION.—The Secretary shall regularly consult with current and prospective college students, family members of such students, institutions of higher education, and other experts to improve the usefulness and relevance of the disclosures described in paragraph (1).".

SEC. 5. EXCLUSION OF CERTAIN STUDENT LOAN DISCHARGE BY REASON OF DEATH OR DISABILITY.

(a) IN GENERAL.—Section 108(f)(1) of the Internal Revenue Code of 1986 is amended—

(1) by striking the period at the end and inserting ", or",

(2) by striking “if such discharge was pursuant to a provision” and inserting the following: “if such discharge was pursuant to—

“(A) a provision”, and

(3) by adding at the end the following:

“(B) section 437(a) of the Higher Education Act of 1965.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges of indebtedness after the date of the enactment of this Act.

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