

114TH CONGRESS
2D SESSION

S. 3347

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

SEPTEMBER 15, 2016

Mr. DURBIN (for himself, Mr. FRANKEN, and Mr. REED) 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 Education Loan Act of 2016”.

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

3 “(3) INSTITUTIONAL CERTIFICATION RE-
 4 QUIRED.—

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

12 “(i) the enrollment status of the stu-
 13 dent;

14 “(ii) the student’s cost of attendance
 15 at the institution as determined by the in-
 16 stitution under part F of title IV of the
 17 Higher Education Act of 1965; and

18 “(iii) the difference between—

19 “(I) such cost of attendance; and

20 “(II) the student’s estimated fi-
 21 nancial assistance, including such as-
 22 sistance received under title IV of the
 23 Higher Education Act of 1965 and
 24 other financial assistance known to
 25 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 Bureau of Consumer Financial Protection.”;

(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 Bureau.

9 “(C) ANNUAL REPORT.—A creditor that
 10 issues funds with respect to an extension of
 11 credit described in this subsection shall prepare
 12 and submit an annual report to the Bureau
 13 containing the required information about pri-
 14 vate student loans to be determined by the Bu-
 15 reau, in consultation with the Secretary of Edu-
 16 cation.”.

17 (b) DEFINITION OF PRIVATE EDUCATION LOAN.—

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

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

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

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

24 “(ii) is not made, insured, or guaran-
 25 teed under title VII or title VIII of the

1 Public Health Service Act (42 U.S.C. 292
2 et seq. and 296 et seq.); and”.

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

10 **SEC. 3. AMENDMENT TO THE HIGHER EDUCATION ACT OF**
11 **1965.**

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

16 “(28)(A) The institution shall—

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

24 “(I) that the student who initiated the
25 application for the private education loan,

1 or on whose behalf the application was ini-
2 tiated, is enrolled or is scheduled to enroll
3 at the institution;

4 “(II) of such student’s cost of attend-
5 ance at the institution as determined under
6 part F of this title; and

7 “(III) of the difference between—

8 “(aa) the cost of attendance at
9 the institution; and

10 “(bb) the student’s estimated fi-
11 nancial assistance received under this
12 title and other assistance known to
13 the institution, as applicable; and

14 “(ii) provide the certification described in
15 clause (i), or notify the creditor that the institu-
16 tion has received the request for certification
17 and will need additional time to comply with the
18 certification request—

19 “(I) within 15 business days of receipt
20 of such certification request; and

21 “(II) only after the institution has
22 completed the activities described in sub-
23 paragraph (B).

1 “(B) The institution shall, upon receipt of a
2 certification request described in subparagraph
3 (A)(i), and prior to providing such certification—

4 “(i) determine whether the student who
5 initiated the application for the private edu-
6 cation loan, or on whose behalf the application
7 was initiated, has applied for and exhausted the
8 Federal financial assistance available to such
9 student under this title and inform the student
10 accordingly; and

11 “(ii) provide the borrower whose loan ap-
12 plication has prompted the certification request
13 by a private education lender, as described in
14 subparagraph (A)(i), with the following infor-
15 mation and disclosures:

16 “(I) The amount of additional Federal
17 student assistance for which the borrower
18 is eligible and the potential advantages of
19 Federal loans under this title, including
20 disclosure of the fixed interest rates,
21 deferments, flexible repayment options,
22 loan forgiveness programs, and additional
23 protections, and the higher student loan
24 limits for dependent students whose par-

1 ents are not eligible for a Federal Direct
2 PLUS Loan.

3 “(II) The borrower’s ability to select a
4 private educational lender of the bor-
5 rower’s choice.

6 “(III) The impact of a proposed pri-
7 vate education loan on the borrower’s po-
8 tential eligibility for other financial assist-
9 ance, including Federal financial assistance
10 under this title.

11 “(IV) The borrower’s right to accept
12 or reject a private education loan within
13 the 30-day period following a private edu-
14 cational lender’s approval of a borrower’s
15 application and about a borrower’s 3-day
16 right to cancel period.

17 “(C) For purposes of this paragraph, the terms
18 ‘private educational lender’ and ‘private education
19 loan’ have the meanings given such terms in section
20 140 of the Truth in Lending Act (15 U.S.C.
21 1650).”.

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

1 **SEC. 4. REPORT.**

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

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