II

117TH CONGRESS
2D SESSION

S. 5065

To provide for institutional risk-sharing in the Federal student loan programs.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2022

Mr. REED (for himself, Ms. WARREN, and Mr. DURBIN) 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 provide for institutional risk-sharing in the Federal student loan programs.

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 "Protect Student Borrowers Act of 2022".

SEC. 2. PURPOSE.

The purpose of this Act is to protect student loan borrowers and taxpayers by requiring institutions of higher education to assume some of the costs of default for student loans under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.).

SEC. 3. INSTITUTIONAL REBATES TO THE DEPARTMENT OF EDUCATION FOR DEFAULTED LOANS.

Section 454 of the Higher Education Act of 1964 (20 U.S.C. 1087d) is amended—

(1) in subsection (a)—

(A) in paragraph (5), by striking ‘‘and’’ after the semicolon;

(B) in paragraph (6), by striking the period at the end and inserting ‘‘; and’’; and

(C) by adding at the end the following:

‘‘(7) provide that the institution accepts the institutional risk-sharing requirements under subsection (d), if applicable.’’; and

(2) by adding at the end the following:

‘‘(d) INSTITUTIONAL RISK-SHARING FOR STUDENT LOAN DEFAULTS.—

‘‘(1) IN GENERAL.—Subject to paragraph (3), each institution of higher education participating in the direct student loan program under this part for a fiscal year that has a rate of participation in such program for all students enrolled at that institution for such fiscal year that is 33 percent or higher or a cohort repayment rate of 50 percent or lower shall remit, at such times as the Secretary may specify, a risk-sharing payment based on a percentage of the volume of student loans under this part that are in default, as determined under paragraph (2).

"(2) DETERMINATION OF RISK-SHARING PAYMENTS.—Subject to paragraph (3), with respect to each fiscal year, an institution of higher education described in paragraph (1) that has a cohort default rate (as defined in section 435(m))—

"(A) that is 20 percent or higher for the most recent fiscal year for which data are available, shall pay to the Secretary for the fiscal year an amount that is equal to 20 percent of the total amount owed on loans by borrowers from the covered cohort that are in default;

"(B) that is lower than 20 percent but not lower than 15 percent for the most recent fiscal year for which data are available, shall pay to the Secretary for the fiscal year an amount that is equal to 15 percent of the total amount owed on loans by borrowers from the covered cohort that are in default;

"(C) that is lower than 15 percent but not lower than 10 percent for the most recent fiscal year for which data are available, shall pay to the Secretary for the fiscal year an amount that is equal to 10 percent of the total amount owed on loans by borrowers from the covered cohort that are in default; or

"(D) that is lower than 10 percent but not lower than 5 percent for the most recent fiscal year for which data are available, shall pay to the Secretary for the fiscal year an amount that is equal to 5 percent of the total amount owed on loans by borrowers from the covered cohort that are in default.

"(3) WAIVER AND REDUCED RISK-SHARING PAYMENTS.—

"(A) WAIVER.—The Secretary shall waive the risk-sharing payments described in paragraph (1) for an institution described in paragraph (2)(D) that meets the requirements of this paragraph.

"(B) REDUCED RISK-SHARING PAYMENTS.—If an institution has in place a student loan management plan described in subparagraph (D) that is approved by the Secretary, the Secretary shall reduce the total annual amount of risk-sharing payments as follows:

"(i) With respect to an institution with a cohort default rate described in paragraph (2)(A), the risk-sharing payment shall be in an amount that is equal to 15 percent of the total amount owed on loans by borrowers from the covered cohort that are in default.

"(ii) With respect to an institution with a cohort default rate described in paragraph (2)(B), the risk-sharing payment shall be in an amount that is equal to 10 percent of the total amount owed on loans by borrowers from the covered cohort that are in default.

"(iii) With respect to an institution with a cohort default rate described in paragraph (2)(C), the risk-sharing payment shall be in an amount that is equal to 5 percent of the total amount owed on loans by borrowers from the covered cohort that are in default.

"(C) CONTINUATION OF WAIVER OR REDUCED PAYMENTS.—An institution that receives a waiver under subparagraph (A) or a reduced risk-sharing payment under subparagraph (B) may receive a waiver or reduced payment for a subsequent fiscal year only if the Secretary determines that the institution is making satisfactory progress in carrying out the student loan management plan described in subparagraph (D), including evidence of the effectiveness of the individualized financial aid counseling for students.

"(D) STUDENT LOAN MANAGEMENT PLAN.—An institution that seeks a waiver or reduction of its risk-sharing payment, shall develop and carry out a student loan management plan that shall include an analysis of the risk factors correlated with higher student loan defaults that are present at the institution and actions that the institution will take to address such factors. Such plan shall include individualized financial aid counseling for students and strategies to minimize student loan default and delinquency.

"(E) WAIVER OR REDUCTION FOR CERTAIN INSTITUTIONS.—In addition to the other risk-sharing payment waivers and reductions described in this paragraph, the Secretary may waive or reduce risk-sharing payments if—

"(i) an institution is eligible under—

"(I) part A or part B of title III; or

"(II) title V; and

"(ii) the Secretary determines that—

"(I) the institution is making satisfactory progress in carrying out the institution's student loan management plan described under subparagraph (D); and

"(II) granting a waiver or reduction of risk-sharing payments would be in the best financial interest of students at the institution.

"(4) PROHIBITION.—An institution of higher education shall not deny admission or financial aid to a student who otherwise meets the admission requirements of the institution based on such student having a risk factor associated with higher student loan default rates, such as those described in section 456(c)(1)(C).

"(5) FUND FOR THE DEPOSIT OF RISK-SHARING PAYMENTS.—

"(A) IN GENERAL.—There is established in the Treasury of the United States a separate account for the deposit of risk-sharing payments collected under this subsection for the purpose of reducing student loan debt, delinquency, and default. The Secretary shall deposit any payments collected pursuant to this subsection into such fund.

"(B) USE OF FUNDS.—Of the amounts in the fund described in subparagraph (A), for each fiscal year—

"(i) not more than 50 percent of such amounts shall be made available to the Secretary to enter into contracts or cooperative agreements for delinquency and default prevention or rehabilitation under section 456(c); and

"(ii) the Secretary shall reserve the remainder of such amounts for a Supplemental Federal Grant fund that shall be used to award grants to students—

"(I) who are eligible for a Federal Pell Grant; and

"(II) who attend an institution—

"(aa) that participates in the direct student loan program under this part;

"(bb) in which not less than 33 percent of the students enrolled at the institution have received a Federal Pell Grant; and

"(cc) that is not subject to the risk-sharing payments under this subsection.

"(C) SUPPLEMENTAL FEDERAL GRANT.—Eligibility for a Federal Pell Grant, including the duration of eligibility and the amount of a Federal Pell Grant, shall not be affected by receipt of a Supplemental Federal Grant.

"(6) APPLICABILITY.—The Secretary shall carry out this subsection beginning with the cohort default rate for the 2024 cohort and the repayment rate for the 2024 cohort. The 2024 cohort shall include current and former students who enter repayment in fiscal year 2024.

"(7) REPORT TO CONGRESS.—The Secretary shall report on an annual basis to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives the following information:

"(A) A list of institutions that have been subject to risk-sharing payments in the previous year.

"(B) The required risk-sharing payment from such institutions.

"(C) The amount of risk-sharing payments collected from such institutions.

"(D) A list of the institutions that have received waivers from the risk-sharing payment and the reason for such waiver.

"(E) A list of the institutions that have received reductions in the required risk-sharing payment.

"(F) The use of funds deposited from risk-sharing payments, including—

"(i) the amount reserved for contracts or cooperative agreements for delinquency and default prevention or rehabilitation;

"(ii) a list of contracts or cooperative agreements entered into for delinquency and default prevention or rehabilitation;

"(iii) information on the performance of such contracts or cooperative agreements;

"(iv) the amount reserved for the Federal Pell Grant program; and

"(v) a list of institutions for which students in attendance at the institution are eligible for the increased maximum Federal Pell Grant under paragraph (5)(B)(ii) and the amount of such increase.

"(8) DEFINITIONS.—In this subsection:

"(A) COVERED COHORT.—In this paragraph, the term 'covered cohort' means the cohort with respect to which the cohort default rate was calculated.

"(B) REPAYMENT RATE.—The term 'repayment rate' means, for any fiscal year, the percentage of student and parent borrowers who have Federal student loans for attendance at the institution who entered repayment on those loans in the second preceding fiscal year who have paid at least $1 of the principle balance of the borrower's Federal student loans received for attendance at the institution within 3 years of entering repayment. In the case of a loan for a student who has attended and borrowed at more than one institution, the borrower (and such borrower's subsequent repayment or default) is attributed to each institution for attendance at which the borrower received a loan that entered repayment in the fiscal year.''.

SEC. 4. CONTRACTS AND COOPERATIVE AGREEMENTS.

Section 456 of the Higher Education Act of 1965 (20 U.S.C. 1087f) is amended by adding at the end the following:

''(c) CONTRACTS AND COOPERATIVE AGREEMENTS FOR DELINQUENCY AND DEFAULT PREVENTION AND FOR DEFAULT REHABILITATION.—The Secretary may enter into contracts or cooperative agreements for—

''(1) statewide or institutionally based programs for the prevention of Federal student loan delinquency and default at institutions of higher education that—

''(A) have a high cohort default rate as defined under section 435(m);

''(B) have a low repayment rate (as defined in section 454(d)); or

''(C) serve large numbers or percentages of student loan borrowers who have a risk factor associated with higher default rates on Federal student loans under this title, such as coming from a low-income family, being a first generation postsecondary education student, not having a secondary school diploma, or having previously defaulted on, and rehabilitated, a loan made under this title; and

"(2) increasing the number of borrowers who successfully repay their loans.".

SEC. 5. FINANCIAL RESPONSIBILITY.

Section 498(c)(1) of the Higher Education Act of 1965 (20 U.S.C. 1099c(c)(1)) is amended by striking subparagraph (C) and inserting the following:

"(C) to meet all of its financial obligations, including institutional risk-sharing payments, refunds of institutional charges, and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary.".

SEC. 6. COHORT DEFAULT RATE, REPAYMENT RATE, AND OTHER AMENDMENTS.

(a) REQUIREMENTS FOR DISBURSEMENT OF STUDENT LOANS.—Section 428G of the Higher Education Act of 1965 (20 U.S.C. 1078–7) is amended—

(1) in subsection (a), by striking paragraph (4) and inserting the following:

"(4) AMENDMENTS TO THE SPECIAL RULE.—

"(A) PRIOR TO FISCAL YEAR 2024.—Beginning on October 1, 2011, and ending on September 30, 2023, the special rule under paragraph (3) shall be applied by substituting '15 percent' for '10 percent'.

"(B) BEGINNING FOR FISCAL YEAR 2024.—Beginning on October 1, 2023, the special rule under paragraph (3) shall be applied by substituting '5 percent' for '10 percent'."; and

(2) in subsection (b), by striking paragraph (3) and inserting the following:

"(3) AMENDMENT TO COHORT DEFAULT RATE EXEMPTION.—

"(A) PRIOR TO FISCAL YEAR 2024.—Beginning on October 1, 2011, and ending on September 30, 2023, the exemption to the requirements of paragraph (1) in the second sentence of such paragraph shall be applied by substituting '15 percent' for '10 percent'.

"(B) BEGINNING FOR FISCAL YEAR 2024.—Beginning on October 1, 2023, the exemption to the requirements of paragraph (1) in the second sentence of such paragraph shall be applied by substituting '5 percent' for '10 percent'.".

(b) DEFAULT MANAGEMENT PLAN FOR PROGRAM PARTICIPATION AGREEMENTS.—Section 487(a)(14)(C) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)(14)(C)) is amended by striking ''10 percent'' and inserting ''5 percent'' each place the term appears.

(c) PROGRAM REVIEW AND DATA.—Section 498A(a)(2)(A) of the Higher Education Act of 1965 (20 U.S.C. 1099c–1(a)(2)(A)) is amended by striking ''in excess of 25 percent'' and inserting ''in excess of 20 percent''.

(d) DEFINITIONS FOR STUDENT LOAN INSURANCE PROGRAM.—Section 435 of the Higher Education Act of 1965 (20 U.S.C. 1085) is amended—

(1) in subsection (a)(2)(B)—

(A) in clause (iii), by striking ''and'' after the semicolon;

(B) in clause (iv), by striking ''and any succeeding fiscal year.'' and inserting ''through fiscal year 2023; and''; and

(C) by adding at the end the following:

''(v) 20 percent for fiscal year 2024 and any succeeding fiscal year.''; and

(2) in subsection (m)(1)—

(A) in subparagraph (A), in the first sentence, by inserting ''and beginning for the cohort that enters repayment in 2024, including borrowers who enter repayment on Federal Direct PLUS Loans (including for student and parent borrowers) received for attendance at the institution'' after ''loans under section 428, 428A, or 428H, received for attendance at the institution,''; and

(B) by adding at the end the following:

''(D) Beginning for the cohort that enters repayment in 2024, references in this subsection to a student or former student shall be considered to include a parent who is a borrower of a Federal Direct PLUS Loan.''.

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