

Preventing Risky Operations from Threatening the Education and Career Trajectories of (PROTECT) Students Act of 2019 (S. 867)

Sponsored by Senators Maggie Hassan (D-NH) and Richard J. Durbin (D-IL)

TITLE I—FOR-PROFIT INSTITUTIONS

Sec.101. Closing the GI Bill loophole and restoring the 85/15 rule for for-profit institutions. This section includes all federal student assistance funds in calculating the percentage of federal revenue received by for-profit colleges and restores the cap on the amount of revenue for-profit colleges can receive from federal sources to the original 85 percent. The current 90/10 rule is designed to ensure that for-profit colleges demonstrate their financial soundness and educational quality by attracting revenue—at least 10 percent—from sources other than federal taxpayers. A loophole allows all non-Title IV federal educational benefits such as Department of Defense Tuition Assistance and Department of Veterans Affairs Post-9/11 GI Bill to be counted as private, non-federal revenue. By enrolling large numbers of these students, for-profits are able to receive as much as 100 percent of their revenues from federal taxpayers while still complying with the law—giving them an incentive to aggressively recruit service members and veterans.

Sec.102. Process for for-profit institutions to convert to nonprofit or public status. Improves the Department of Education’s (ED) review and oversight of for-profit institutions seeking to convert to nonprofit or public status. In recent years, several major for-profit college companies—including Center for Excellence in Higher Education, Dream Center, and Ashford—have completed or are attempting to complete to nonprofit status. Nonprofit status allows these institutions to escape critical accountability measures like the 90/10 Rule and Gainful Employment and the growing, and deserved, association by parents and students of the for-profit college industry with predatory practices. At the same time, many of these institutions continue to operate like for-profit colleges—executives or board members who still receive direct or indirect financial benefits, including through leases or other contracting arrangements, and prioritizing recruitment and marketing over student instruction. This section keeps institutions from gaming the system by requiring periodic review of any conversions and requiring converted for-profit institutions to continue complying with federal requirements for for-profit colleges for at least 5 years after converting. Many institutions seeking to convert begin marketing themselves to students as nonprofit after receiving the IRS’ tax exempt designation despite not having received other necessary approvals. This section requires the institution to have received approval from all required entities (IRS, ED, and accreditors) before marketing itself as nonprofit.

Sec.103. For-profit Education Oversight Coordination Committee. Creates an interagency committee to improve federal coordination of for-profit college oversight and enforcement activities. In the last decade, nearly every major for-profit college has been the subject of state or federal investigations or lawsuits for a variety of unfair, deceptive, and abusive practices. Many federal agencies, not just ED, have responsibility for oversight of for-profit colleges, including the Federal Trade Commission (FTC), Consumer Financial Protection Bureau, Department of Defense, and Department of Veterans Affairs. The committee will publish an annual report on federal oversight actions, student complaints, data about student outcomes, and financial information related to executive compensation, marketing, and other metrics. It will also publish a For-Profit College Warning List for parents and students that will include especially predatory or risky schools. In 2014, the Obama Administration created a similar interagency committee—successes included a \$100 million joint FTC-ED settlement with DeVry over false job placement claims. The Trump Administration has not continued this committee.

TITLE II—STUDENT AND BORROWER PROTECTIONS

Sec.201. Gainful employment programs. Improves and codifies the October 2014 gainful employment (GE) regulation published by the Obama Administration to ensure that career education programs lead to good-paying jobs that allow graduates to repay their loans. The Higher Education Act requires career education programs to prepare students for “gainful employment in a recognized occupation” in order to receive federal funds. GE simply defines this requirement. The regulation uses debt-to-earnings ratios of program graduates to determine whether that program is truly preparing students for gainful employment as required by the law. Programs that consistently fail to meet the debt-to-earnings benchmarks must improve or lose access to federal financial aid. This protects students from attending low-quality programs and being stuck with debt they are likely to be unable to repay. It also protects taxpayer dollar from being wasted at worthless programs—resulting in an estimated \$4.7 billion savings. Despite these benefits, the Trump Administration has failed to enforce the rule and is working to repeal it.

Sec.202. Prohibition on institutions limiting student legal action. Prohibits schools receiving Title IV funds from using pre-dispute mandatory arbitration clauses or class action bans in student enrollment agreements. While almost unheard of at public and legitimate not-for-profit institutions, the practice of forcing students to sign mandatory pre-dispute arbitration clauses and class-action bans as a condition of enrollment is a hallmark of the for-profit college industry. These clauses—often buried in the fine print of enrollment documents—prevent students, either as individuals or part of a class, from bringing suit against their school in a court of law. It prevents students from holding schools accountable directly for their misconduct. Instead, when students are defrauded by for-profit colleges, they often have no other choice but to seek relief from taxpayers through borrower defense. Corinthian and ITT Tech both used mandatory arbitration clauses to shield themselves from liability and force students into secret arbitration proceedings where the deck was stacked against the students.

Sec.203. Enforcement unit established in the Office of Federal Student Aid. Codifies an Enforcement Unit within FSA to ensure coordinated and timely investigations of institutions, fair resolution of student complaints, and enforcement of applicable federal rules for colleges. The Enforcement Unit was set up by the Obama Administration, in the wake of the collapse of Corinthian Colleges, to better combat fraud and abuses by schools. Secretary DeVos has dismantled the unit—starving it of resources and reassigning staff. This section ensures that a key part of the federal government’s response to the Corinthian disaster has adequate expertise and resources to ensure the Department is responsibly administering Federal student aid.

Sec.204. Establishment and maintenance of complaint resolution and tracking system. Codifies the Federal Student Aid’s (FSA) Feedback System—established in 2016 in response to a number of for-profit institutions colleges and federal student loan servicers and debt collectors engaging in predatory behavior and misconduct. It enables students, borrowers, and the public to report allegations of fraud and abuse by institutions or student loan servicers. The section reverses several changes to the Feedback System made by Secretary DeVos—including restoring anonymous complaints and the submission of information regarding general or systemic problems that are not related to a specific individual. This complaint system is critical to ensuring that all entities handling financial aid funds are in compliance with federal law.

Sec.205. Borrower defense to repayment. Codifies and improves the 2016 borrower defense rule. This regulation was promulgated after the collapse of Corinthian. As the Department received tens of thousands of borrower defense claims from Corinthian borrowers, it sought to standardize and simplify the process by which defrauded borrowers could seek and receive the relief to which they're entitled under the borrower defense provision of the Higher Education Act. The rule was supported by the Department of Education Inspector General. Secretary DeVos illegally delayed implementation of the rule, which took effect in July 2017, and is currently sitting on more than 140,000 borrower defense claims. The DeVos Department is currently working to rewrite the rule in a way that will likely make it harder for defrauded borrowers to get relief and for the Department to protect taxpayers from liability.

TITLE III—ENSURING INTEGRITY AT INSTITUTIONS OF HIGHER EDUCATION

Sec.301. Restrictions on sources of funds for recruiting and marketing activities. Bans the use of federal education assistance funds for recruiting and marketing at all institutions receiving Title IV funds. On average, for-profit colleges spend a much greater percentage of their revenue on recruiting and marketing activities than public or nonprofit institutions. Given that the 90/10 loophole allows them to receive up to 100 percent of revenue from federal taxpayers, many are using taxpayer dollars for recruiting and marketing in order to generate more taxpayer dollars. The section also bans the use of financial aid funds for federal lobbying activities.

Sec.302. Strengthening the incentive compensation ban. Improves and expands the ban on incentive compensation. The Federal Trade Commission and past Congressional investigations have found that the use of incentive compensation by institutions of higher education leads to aggressive, predatory, and often misleading tactics. Currently, the ban only applies to recruitment and financial aid activities. This section would prevent the use of incentive compensation in other aspects of an institution's activities and operations including job placement and reducing student loan defaults. This section also requires stricter enforcement of incentive compensation ban violations by the Department.

Sec.303. Definition of nonprofit institution of higher education. Establishes a definition of nonprofit institutions to help ensure that institutions with this designation truly meet the traditional understanding of nonprofit—including that earnings don't improperly benefit any individual. The recent trend of for-profit institutions converting to nonprofit status—while continuing to financially benefit executives and board members—has blurred the lines between for-profit and nonprofit institutions in a way that harms students and traditional nonprofit higher education.

Sec.304. Definition of public institution of higher education. Establishes a definition for public institutions of higher education to distinguish these institutions from nonprofit and for-profit institutions within the Higher Education Act as appropriate.

Sec.305 and 306. Enhanced civil penalties, State enforcement, and private right of action, and Substantial misrepresentation prohibited. Increases civil penalties for institutions and their contractors that violate Title IV requirements, including misrepresentations. It allows State attorneys general and borrowers (individually or as a class) to enforce the requirements through the courts. This ensures borrowers are not solely reliant on the Department of Education, which has too often been too slow to react.