

109TH CONGRESS
2^D SESSION

S. 3255

To provide student borrowers with basic rights, including the right to timely information about their loans and the right to make fair and reasonable loan payments, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 26, 2006

Mrs. CLINTON (for herself and Ms. MIKULSKI) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide student borrowers with basic rights, including the right to timely information about their loans and the right to make fair and reasonable loan payments, 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 “Student Borrower Bill
5 of Rights Act of 2006”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Postsecondary education is increasingly a
2 requirement for a high-paying job in the modern
3 economy; college graduates earn, on average,
4 \$1,000,000 more over their working lives than peo-
5 ple who stop their education after secondary school.

6 (2) As the cost of college increases and as need-
7 based grant aid stagnates, more and more students
8 go into debt to pursue higher education and better
9 economic opportunities.

10 (3) The amount students borrowed from Fed-
11 eral student loan programs increased by 76 percent
12 from academic year 1994–1995 to academic year
13 2004–2005, totaling \$54,000,000,000 in academic
14 year 2004–2005.

15 (4) The fastest growing source of financial aid
16 is private credit, increasing by 734 percent from
17 academic year 1994–1995 to academic year 2004–
18 2005, totaling \$14,000,000,000 in academic year
19 2004–2005.

20 (5) In academic year 2003–2004, 62 percent of
21 students who graduated with a baccalaureate degree
22 from a public college or university graduated with
23 debt, and their debt averaged \$15,500, and 73 per-
24 cent of students who graduated with a baccalaureate

1 degree from a private college or university graduated
2 with debt, and their debt averaged \$19,400.

3 (6) Some student borrowers need additional
4 timely, clear, and complete information about the
5 terms and conditions of their loans, beyond the
6 counseling and information currently provided.

7 (7) High-interest rates and high fees have
8 caused the balance owed by some borrowers to bal-
9 loon in short periods of time.

10 (8) Income-contingent repayment plans are un-
11 available to many borrowers who, as a result, are re-
12 quired to make unaffordable high monthly payments.

13 (9) The prospect of high levels of debt, burden-
14 some monthly payments, and confusion about rights
15 and repayment options deters people from taking out
16 loans and pursuing higher education.

17 (10) There is a need to guarantee student bor-
18 rowers that they will have access to timely informa-
19 tion about student loans and that their loan repay-
20 ments will be affordable.

21 **SEC. 3. DEFINITION OF LENDER.**

22 In this Act, the term “lender” means any public or
23 private entity that—

1 (1) lends funds to an individual to enable such
2 individual to attend an institution of higher edu-
3 cation; or

4 (2) insures, guarantees, or collects on a loan
5 made to an individual to enable such individual to
6 attend an institution of higher education.

7 **SEC. 4. A RIGHT TO SHOP IN A FREE MARKETPLACE.**

8 (a) SENSE OF THE SENATE.—It is the sense of the
9 Senate that the Department of Education should vigor-
10 ously enforce rules requiring lenders to complete lender
11 verification certificates in a timely manner for borrowers
12 seeking to consolidate loans.

13 (b) ACCURATE AND COMPREHENSIVE REPORTING TO
14 CREDIT BUREAUS.—The Higher Education Act of 1965
15 (20 U.S.C. 1001 et seq.) is amended—

16 (1) in section 430A(a)—

17 (A) by striking “agreements with credit
18 bureau organizations” and inserting “an agree-
19 ment with each national credit bureau organiza-
20 tion (as described in section 603(p) of the Fair
21 Credit Reporting Act)”;

22 (B) in paragraph (2), by striking “and”
23 after the semicolon;

24 (C) by redesignating paragraph (3) as
25 paragraph (4);

1 (D) in paragraph (4), as redesignated by
2 subparagraph (C), by striking the period at the
3 end and inserting “; and”;

4 (E) by inserting after paragraph (2) the
5 following:

6 “(3) of any on time payments made for such
7 loan;” and

8 (F) by inserting at the end the following:

9 “(5) that such loan is a student loan.”; and

10 (2) in section 463(c)—

11 (A) in paragraph (1), by striking “coopera-
12 tive agreements with credit bureau organiza-
13 tions” and inserting “a cooperative agreement
14 with each national credit bureau organization
15 (as described in section 603(p) of the Fair
16 Credit Reporting Act)”;

17 (B) in paragraph (2)—

18 (i) in subparagraph (B), by striking
19 “and” after the semicolon;

20 (ii) in subparagraph (C), by striking
21 the period at the end and inserting “;
22 and”;

23 (iii) by adding at the end the fol-
24 lowing:

1 “(D) any on time payments made for such
2 loan; and

3 “(E) such loan as a student loan.”.

4 (c) REPEAL OF SINGLE HOLDER RULE.—Subpara-
5 graph (A) of section 428C(b)(1) of the Higher Education
6 Act of 1965 (20 U.S.C. 1078–3(b)(1)) is amended by
7 striking “and (i)” and all that follows through “so selected
8 for consolidation”.

9 (d) CONSOLIDATION BETWEEN PROGRAMS.—Section
10 428C(b)(5) of the Higher Education Act of 1965 (20
11 U.S.C. 1078–3(b)(5)) is amended by striking the first two
12 sentences and inserting the following: “In the event that
13 a borrower is unable to obtain a consolidation loan from
14 a lender with an agreement under subsection (a)(1), or
15 is unable to obtain a consolidation loan with income-sen-
16 sitive repayment terms acceptable to the borrower from
17 such a lender, the Secretary shall offer any such borrower
18 who applies for it, a Federal Direct Consolidation Loan.”.

19 (e) A RIGHT TO RECONSOLIDATE LOANS.—

20 (1) PART B.—Section 428C(a)(3)(B) of the
21 Higher Education Act of 1965 (20 U.S.C. 1078–
22 3(a)(3)(B)) is amended to read as follows:

23 “(B)(i) Except as provided in clause (ii), an in-
24 dividual who has received a consolidation loan under
25 this section, or the consolidation lender, shall pay a

1 fee of 1 percent of the balance owed on the sum of
2 such loans to be consolidated to the Department to
3 obtain a subsequent consolidation loan under this
4 section.

5 “(ii) An individual who has received a consoli-
6 dation loan under this section may obtain a subse-
7 quent consolidation loan under this section for no
8 fee if such individual was eligible to obtain a subse-
9 quent consolidation loan pursuant to this subpara-
10 graph on the day before the date of enactment of
11 the Student Borrower Bill of Rights Act of 2006.”.

12 (2) PART D.—Section 455(g) of the Higher
13 Education Act of 1965 (20 U.S.C. 1087e(g)) is
14 amended—

15 (A) by striking “A borrower” and inserting
16 the following:

17 “(1) IN GENERAL.—A borrower”; and

18 (B) by adding at the end the following:

19 “(2) REFINANCING AUTHORITY.—Notwith-
20 standing any other provision of this part, a borrower
21 may refinance a Federal Direct Consolidation
22 Loan.”.

1 **SEC. 5. A RIGHT TO TIMELY INFORMATION ABOUT LOANS.**

2 (a) IN GENERAL.—Title IV of the Higher Education
3 Act of 1965 (20 U.S.C. 1070 et seq.) is amended by add-
4 ing at the end the following:

5 **“PART I—STUDENT BORROWER BILL OF RIGHTS**

6 **“SEC. 499. DEFINITIONS.**

7 “In this part:

8 “(1) FEDERAL STUDENT LOAN.—The term
9 ‘Federal student loan’ means a loan made, insured,
10 or guaranteed under this title (except loans made to
11 parents under section 428B or under the Federal
12 Direct PLUS Loan program).

13 “(2) LENDER.—The term ‘lender’ means any
14 public or private entity that—

15 “(A) lends funds to an individual to enable
16 such individual to attend an institution of high-
17 er education; or

18 “(B) insures, guarantees, or collects on a
19 loan made to an individual to enable such indi-
20 vidual to attend an institution of higher edu-
21 cation.

22 **“SEC. 499A. A RIGHT TO TIMELY INFORMATION ABOUT**
23 **LOANS.**

24 “(a) REGULAR BILL PROVIDING PERTINENT INFOR-
25 MATION ABOUT A LOAN.—A lender of a Federal student
26 loan shall provide the borrower of such loan a bill each

1 month or, in the case of a loan payable less frequently
2 than monthly, a bill that corresponds to each payment in-
3 stallment time period, including a clear and conspicuous
4 notice of—

5 “(1) the borrower’s principal borrowed;

6 “(2) the borrower’s current balance;

7 “(3) the interest level on such loan;

8 “(4) the amount the borrower has paid in inter-
9 est;

10 “(5) the amount of additional interest payments
11 the borrower is expected to pay over the life of the
12 loan;

13 “(6) the total amount the borrower has paid for
14 the loan, including the amount the borrower has
15 paid in interest, the amount the borrower has paid
16 in fees, and the amount the borrower has paid
17 against the balance;

18 “(7) a description of each fee the borrower has
19 been charged for the current payment period;

20 “(8) the applicable monthly payment amount
21 set by the Secretary under section 499B for such
22 borrower and the amount such borrower would owe
23 each month according to the borrower’s repayment
24 plan absent the provisions of section 499B, or, in
25 the case of a loan payable less frequently than

1 monthly, the amount that corresponds to the pay-
2 ment installment time period taking into consider-
3 ation the applicable monthly payment amount set by
4 the Secretary under section 499B for such borrower
5 and the amount such borrower would owe that cor-
6 responds to the payment installment time period ac-
7 cording to the borrower's repayment plan absent the
8 provisions of section 499B;

9 “(9) the date by which the borrower needs to
10 make the payment described in paragraph (8) to
11 avoid additional fees;

12 “(10) the amount of such payment that will be
13 put towards interest, the balance, and any fees;

14 “(11) the lender's address and toll-free phone
15 number for payment purposes;

16 “(12) the lender's address and toll-free number
17 for billing error purposes; and

18 “(13) any change in the terms and conditions
19 of the loan.

20 “(b) INFORMATION PROVIDED FIVE MONTHS AFTER
21 CEASING TO BE AT LEAST A HALF-TIME STUDENT.—A
22 lender of a Federal student loan shall provide to the bor-
23 rower of such loan, on the date that is 5 months after
24 the borrower has ceased to be at least a half-time student
25 at the institution of higher education for which the loan

1 was made, who requests it, and make readily available on
2 the Internet, a clear and conspicuous notice of not less
3 than the following information:

4 “(1) The conditions under which a borrower
5 could be charged any fee, and the amount of such
6 fee.

7 “(2) The conditions under which a loan would
8 default and the consequences of default.

9 “(3) The borrower’s rights and options, includ-
10 ing repayment options, deferments, forbearances,
11 and discharge rights to which the borrower may be
12 entitled.

13 “(4) Legitimate resources, including nonprofit
14 organizations, advocates, and counselors (including
15 the Office of the Ombudsman at the Department),
16 where borrowers can receive advice and assistance, if
17 such resources exist.

18 “(5) Information about how a borrower can ap-
19 peal to the Department a decision made by a lender
20 about their loan.

21 “(c) INFORMATION PROVIDED DURING DELIN-
22 QUENCY.—

23 “(1) SENSE OF THE SENATE.—It is the sense
24 of the Senate that the Secretary should vigorously
25 enforce rules requiring that a lender of a Federal

1 student loan provide a borrower in delinquency in-
2 formation about such borrower's rights and options,
3 means of avoiding default, and the consequences of
4 default, at such a time and in such manner as is
5 most useful for such borrower.

6 “(2) ADDITIONAL INFORMATION.—In addition
7 to any other information required under law, a lend-
8 er of a Federal student loan shall provide a borrower
9 in delinquency with a clear and conspicuous notice
10 of the date on which the loan will default if no pay-
11 ment is made, the minimum payment that must be
12 made to avoid default, discharge rights to which the
13 borrower may be entitled, legitimate resources, in-
14 cluding nonprofit organizations, advocates, and
15 counselors (including the Office of the Ombudsman
16 at the Department), where borrowers can receive ad-
17 vice and assistance, if such resources exist, and in-
18 formation about how a borrower can appeal to the
19 Department a decision made by a lender about their
20 loan.

21 “(d) INFORMATION PROVIDED DURING DEFAULT.—
22 A lender of a Federal student loan shall provide a bor-
23 rower in default, on not less than 2 separate occasions,
24 with a clear and conspicuous notice of not less than the
25 following information:

1 “(1) The options available to the borrower to
2 get out of default.

3 “(2) The cost and conditions of each option.

4 “(3) Information about how a borrower can ap-
5 peal to the Department a decision made by a lender
6 about their loan.

7 “(e) SENSE OF THE SENATE.—It is the sense of the
8 Senate that the Department should—

9 “(1) write and distribute a training manual for
10 organizations, advocates, and counselors who help
11 people who are having problems repaying Federal
12 student loans, describing—

13 “(A) the rights of such borrowers; and

14 “(B) the Department’s policies for dealing
15 with particular programs; and

16 “(2) provide to such organizations, advocates,
17 and counselors technical assistance where needed.”.

18 (b) INFORMATION PROVIDED DURING THE TRANS-
19 FER OF A LOAN TO A NEW SERVICER.—Section
20 428(b)(2)(F) of the Higher Education Act of 1965 (20
21 U.S.C. 1078(b)(2)(F)) is amended—

22 (1) in clause (i)—

23 (A) in subclause (III), by striking “and”
24 after the semicolon;

1 (B) in subclause (IV), by striking “and”
2 after the semicolon; and

3 (C) by adding at the end the following:

4 “(V) the effective date of the
5 transfer;

6 “(VI) the date the current
7 servicer will stop accepting payments;

8 “(VII) the date at which the new
9 servicer will begin accepting pay-
10 ments; and

11 “(VIII) that the transfer does
12 not affect any term or condition of
13 their loan documents other than those
14 terms directly related to the servicing
15 of the loan;”;

16 (2) in clause (ii)(II), by striking the comma at
17 the end and inserting “; and”; and

18 (3) by adding at the end the following:

19 “(iii) the transferee will be required,
20 during the 60-day period beginning on the
21 effective date of the transfer, to not treat
22 a payment as late if the borrower mistak-
23 enly sends such payment to the transferor
24 instead of to the transferee and the pay-
25 ment is otherwise on time.”.

1 (c) INFORMATION PROVIDED DURING CONSOLIDA-
2 TION.—Section 428C(b)(1) of the Higher Education Act
3 of 1965 (20 U.S.C. 1078–3(b)(1)) is amended—

4 (1) in subparagraph (E), by striking “and”
5 after the semicolon;

6 (2) by redesignating subparagraph (F) as sub-
7 paragraph (G); and

8 (3) by inserting after subparagraph (E) the fol-
9 lowing:

10 “(F) that the lender of the consolidation
11 loan shall, upon application for such loan, pro-
12 vide the borrower with a clear and conspicuous
13 notice of not less than the following informa-
14 tion:

15 “(i) the effects of consolidation on
16 total interest to be paid, fees to be paid,
17 and length of repayment, relative to the
18 borrower’s currently scheduled total inter-
19 est to be paid, fees to be paid, and length
20 of repayment at the borrower’s current in-
21 terest rate;

22 “(ii) the effects of consolidation on a
23 borrower’s underlying loan benefits, includ-
24 ing loan forgiveness, cancellation,

1 deferment, and reduced interest rates on
2 those underlying loans;

3 “(iii) the ability of the borrower to
4 prepay the loan, pay on a shorter schedule,
5 and to change repayment plans;

6 “(iv) that borrower benefit programs
7 may vary among different loan holders,
8 and a description of how the borrower ben-
9 efits may vary among different loan hold-
10 ers;

11 “(v) the tax benefits for which bor-
12 rowers may be eligible;

13 “(vi) the consequences of default; and

14 “(vii) that by making the application
15 the applicant is not obligated to agree to
16 take the consolidation loan; and”.

17 (d) INFORMATION PROVIDED DURING CONSOLIDA-
18 TION OR RECONSOLIDATION OF A FEDERAL STUDENT
19 LOAN WITH A PRIVATE LOAN.—A lender shall, upon ap-
20 plication for a consolidation or reconsolidation loan of one
21 or more loans made, insured, or guaranteed under part
22 B, part D, or part E of title IV of the Higher Education
23 Act of 1965 (20 U.S.C. 1071, 1087a, 1087aa) with one
24 or more private loans, provide the borrower with a clear

1 and conspicuous notice of not less than the following infor-
2 mation:

3 (1) That the consolidation or reconsolidation
4 loan would be a private loan, not a Federal loan.

5 (2) A description of the benefits and protections
6 for the loan made, insured, or guaranteed under
7 part B, part D, or part E that the borrower would
8 lose by consolidating such loan with a private loan.

9 (3) That the lender may be eligible to consoli-
10 date two or more loans made, insured, or guaranteed
11 under part B, part D, or part E within the Federal
12 loan program.

13 **SEC. 6. A RIGHT TO MAKE AFFORDABLE LOAN PAYMENTS.**

14 (a) AFFORDABLE LOAN PAYMENTS.—Part I of title
15 IV of the Higher Education Act of 1965, as added by sec-
16 tion 5, is amended by adding at the end the following:

17 **“SEC. 499B. A RIGHT TO MAKE AFFORDABLE LOAN PAY-
18 MENTS.**

19 **“(a) LIMIT ON MONTHLY PAYMENT AMOUNTS TO AN
20 AFFORDABLE LEVEL.—**

21 **“(1) IN GENERAL.—**

22 **“(A) LIMITATION.—**

23 **“(i) IN GENERAL.—**With respect to
24 Federal student loans that are made, in-
25 sured, or guaranteed after the date of en-

1 actment of this section, the Secretary shall
2 limit the total monthly payment amount
3 for all of such loans of a student borrower
4 to not more than the amount determined
5 pursuant to subparagraph (B), except as
6 provided in subsection (b)(3).

7 “(ii) COMMENCEMENT.—The limit on
8 the monthly payment amount described in
9 clause (i) shall begin the day after 1 year
10 after the date the student ceases to carry
11 at least one-half the normal full-time aca-
12 demic workload (as determined by the in-
13 stitution).

14 “(B) FORMULA AMOUNT.—

15 “(i) IN GENERAL.—The amount re-
16 ferred to in subparagraph (A) shall be the
17 same amount for each month of a year.
18 Such amount shall be an amount that is
19 the quotient of the sum of 10 percent of
20 the borrower’s annual adjusted gross in-
21 come between 100 percent and 200 percent
22 of the poverty line for the previous year
23 and 20 percent of the borrower’s annual
24 adjusted gross income above 200 percent

1 of the poverty line for the previous year di-
2 vided by 12.

3 “(ii) POVERTY LINE.—In this sub-
4 paragraph, the term ‘poverty line’ means
5 the poverty line described in section 673 of
6 the Community Services Block Grant Act
7 (42 U.S.C. 9902), applicable to a family of
8 the size involved.

9 “(2) PROVISION OF INFORMATION TO THE SEC-
10 RETARY.—

11 “(A) IN GENERAL.—The limit on the
12 monthly payment amount set by the Secretary
13 under paragraph (1) shall apply only if a bor-
14 rower provides the Secretary, in such form and
15 at such time—

16 “(i) such information as the Secretary
17 shall require to determine the monthly pay-
18 ment amount that is applicable for such
19 borrower; and

20 “(ii) certification that the borrower is
21 employed full time or is actively seeking
22 full-time employment.

23 “(B) UPDATE TO INFORMATION.—The
24 Secretary shall require a borrower to—

1 “(i) provide the information required
2 under subparagraph (A)(i) annually for the
3 term of the loan of such borrower; or

4 “(ii) during each year for the term of
5 the loan of such borrower, authorize the
6 Secretary to obtain the information re-
7 quired under subparagraph (A)(i) from the
8 Internal Revenue Service for such year.

9 “(3) CONTINUOUS UPDATE.—Upon receiving
10 information under paragraph (2)(B), the Secretary
11 shall revise the limit on the monthly payment
12 amount for such borrower under paragraph (1), as
13 necessary.

14 “(4) APPLICABILITY TO ALL REPAYMENT
15 PLANS.—Regardless of which repayment plan a bor-
16 rower of a loan selects under this title, the limit on
17 the monthly payment amount set by the Secretary
18 under paragraph (1) shall apply to the monthly re-
19 payment amount applicable for such repayment plan.

20 “(5) NO FEES OR CHARGES.—Notwithstanding
21 any other term or condition of Federal student loans
22 of a borrower that are made, insured, or guaranteed
23 after the date of enactment of this section, if the
24 borrower pays the maximum monthly payment
25 amount that is applicable for the borrower for such

1 loans, as determined under this section, on time ac-
2 cording to the terms and conditions of such loans,
3 such borrower may not be charged any late fee, un-
4 derpayment fee, or finance charge for such loans for
5 such month.

6 “(6) SUBSIDIZED LOANS.—In the case of a
7 Federal student loan made, insured, or guaranteed
8 after the date of enactment of this section for which
9 an interest subsidy is paid under section 428(a), if
10 the amount owed each month in interest payments
11 for such loan exceeds the applicable amount for such
12 borrower as determined under this section, and, at
13 the discretion of the Secretary, if the borrower pays
14 such applicable amount, the Federal Government
15 shall pay the difference between such amount owed
16 in interest payments and such amount that has been
17 determined is applicable.

18 “(b) STUDY.—

19 “(1) IN GENERAL.—The Secretary shall con-
20 duct a study to determine what additional protec-
21 tions beyond those described in subsection (a) are
22 necessary, if any, to ensure that monthly payment
23 amounts for student borrowers of different incomes
24 and with different costs of living are affordable.

1 “(2) CONTENT OF STUDY.—The study under
2 paragraph (1) shall—

3 “(A) consider the payments required of
4 student borrowers in other countries, including
5 the United Kingdom, Australia, and New Zea-
6 land, and compare such payments to the pay-
7 ments required of student borrowers in the
8 United States; and

9 “(B) be completed and submitted to the
10 appropriate committees of Congress not later
11 than 12 months after the date of enactment of
12 this section.

13 “(3) ADDITIONAL LIMITS ON MONTHLY REPAY-
14 MENTS.—If the Secretary determines in the study
15 under paragraph (1) that additional protections are
16 necessary to ensure that monthly payment amounts
17 of student borrowers of Federal student loans made,
18 insured, or guaranteed after the date of enactment
19 of this section are affordable, the Secretary may es-
20 tablish rules based on such study that limits the
21 monthly payment amount for a student borrower to
22 a level that is affordable for such borrower.

23 “(c) NOTIFICATION OF RIGHT TO MAKE PAYMENTS
24 OF MORE THAN MINIMUM.—Notwithstanding any other
25 provision of this section, a borrower whose applicable

1 monthly payment amount set by the Secretary under this
 2 section is less than the amount such borrower would owe
 3 each month according to the borrower’s repayment plan
 4 absent the provisions of this section—

5 “(1) shall be notified of the amount the bor-
 6 rower would owe each month according to the bor-
 7 rower’s repayment plan absent the provisions of this
 8 section; and

9 “(2) may pay the amount described in para-
 10 graph (1) or another amount that is greater than
 11 the applicable monthly payment amount set by the
 12 Secretary under this section.”.

13 (b) INCOME CONTINGENT REPAYMENT.—Section
 14 455(e) of the Higher Education Act of 1965 (20 U.S.C.
 15 1087e(e)) is amended by adding at the end the following:

16 “(7) TAX BURDEN.—The balance due on a loan
 17 made under this part at the end of the maximum re-
 18 payment period is exempted from the definition of
 19 income for the purpose of taxes.”.

20 (c) DISCHARGE RIGHTS IN CASES OF SEVERE
 21 NEED.—

22 (1) DISCHARGE AND CANCELLATION RIGHTS IN
 23 CASES OF DISABILITY.—

24 (A) AMENDMENTS.—

1 (i) FFEL AND DIRECT LOANS.—Sec-
2 tion 437(a) of the Higher Education Act of
3 1965 (20 U.S.C. 1087(a)) is amended by
4 striking “or becomes permanently and to-
5 tally disabled (as determined in accordance
6 with regulations of the Secretary)” and in-
7 serting “or is unable to engage in any sub-
8 stantial gainful activity by reason of any
9 medically determinable physical or mental
10 impairment that can be expected to result
11 in death or has lasted, or can be expected
12 to last, for a continuous period of not less
13 than 60 months”.

14 (ii) PERKINS.—Section 464(c)(1)(F)
15 of the Higher Education Act of 1965 (20
16 U.S.C. 1087dd(c)(1)(F)) is amended by
17 striking “or if he” and all that follows
18 through the semicolon and inserting “or if
19 the borrower is unable to engage in any
20 substantial gainful activity by reason of
21 any medically determinable physical or
22 mental impairment that can be expected to
23 result in death or has lasted, or can be ex-
24 pected to last, for a continuous period of
25 not less than 60 months;”.

1 (B) SENSE OF THE SENATE.—It is the
2 Sense of the Senate that the Department of
3 Education should continue to administer the
4 discharge and cancellation right provisions of
5 the Higher Education Act of 1965 amended in
6 subparagraph (A) in such a way as to prevent
7 fraud and abuse.

8 (2) DISCHARGE RIGHTS IN CASES OF BANK-
9 RUPTCY.—

10 (A) SENSE OF THE SENATE.—It is the
11 Sense of the Senate that the Bankruptcy Abuse
12 Prevention and Consumer Protection Act of
13 2005 (Public Law 109–8) affords sufficient
14 protections to prevent fraud and abuse in the
15 carefully regulated discharge of student loans in
16 bankruptcy.

17 (B) AMENDMENT.—Section 523(a)(8) of
18 title 11, United States Code, is amended to
19 read as follows:

20 “(8) unless—

21 “(A) excepting such debt from discharge
22 under this paragraph would impose an undue
23 hardship on the debtor and the debtor’s de-
24 pendents, for—

1 “(i)(I) an educational benefit overpay-
2 ment or loan made, insured, or guaranteed
3 by a governmental unit, or made under
4 any program funded in whole or in part by
5 a governmental unit or nonprofit institu-
6 tion; or

7 “(II) an obligation to repay funds re-
8 ceived as an educational benefit, scholar-
9 ship, or stipend;

10 “(B) such debt is for an educational loan
11 that is a qualified education loan, as defined in
12 section 221(d)(1) of the Internal Revenue Code
13 of 1986, incurred by a debtor who is an indi-
14 vidual; or

15 “(C) such debt is for an educational loan
16 made, insured, or guaranteed by a govern-
17 mental unit, or made under any program fund-
18 ed in whole or in part by a governmental unit
19 or nonprofit institution, after the date of enact-
20 ment of the Student Borrower Bill of Rights
21 Act of 2006 and such loan first became due
22 more than 7 years (exclusive of any applicable
23 suspension of the repayment period) before the
24 date of the filing of the petition;”.

1 **SEC. 7. A RIGHT FOR INTEREST RATES AND FEES TO BE**
2 **REASONABLE.**

3 (a) IN GENERAL.—Part I of title IV of the Higher
4 Education Act of 1965, as added by section 5 and amend-
5 ed by section 6, is further amended by adding at the end
6 the following:

7 **“SEC. 499C. A RIGHT FOR INTEREST RATES AND FEES TO**
8 **BE REASONABLE.**

9 “(a) IN GENERAL.—The Secretary shall conduct a
10 study of the interest rates and fees that are charged of
11 borrowers of private student loans, including—

12 “(1) the conditions under which the interest
13 rate charged of such a borrower is raised or lowered,
14 including the conditions under which the interest
15 rate is raised on delinquent payments, and the
16 amount and frequency of such interest rate changes;

17 “(2) the conditions under which fees are
18 charged of such a borrower and frequency of such
19 fees, including fees that are charged as a condition
20 of taking a deferment or forbearance, and the
21 amount and frequency of such fees;

22 “(3) identifying such practices as described in
23 paragraphs (1) and (2) that are exploitative or un-
24 reasonable; and

25 “(4) determining what remedies exist for such
26 practices identified in paragraph (3).

1 “(b) MAXIMUM COLLECTION FEES.—

2 “(1) IN GENERAL.—Notwithstanding any other
3 provision of this title, the fee charged to a borrower
4 for collecting on a defaulted Federal student loan
5 shall not exceed the lesser of the expenses incurred
6 in collecting on such loan or the amount calculated
7 for such loan based on the following:

8 “(A) In the case of a defaulted loan that
9 is paid off through consolidation by the bor-
10 rower under this title, the amount that is 7.5
11 percent of the balance of such loan.

12 “(B) In the case of a defaulted loan reha-
13 bilitated under part D or pursuant to section
14 428F(a)(1)(A), the amount that is 13.5 percent
15 of the balance of such loan.

16 “(C) In the case of a defaulted loan col-
17 lected under part D or part B and not de-
18 scribed in subparagraph (A) or (B), the amount
19 that is 18 percent of the balance of such loan.

20 “(2) ITEMIZED LIST OF EXPENSES.—An entity
21 that charges a borrower for collecting on a defaulted
22 Federal student loan shall provide such borrower an
23 itemized list of any expenses incurred in collecting
24 on such loan.

25 “(c) CAP ON TOTAL CHARGES.—

1 “(1) IN GENERAL.—The Department shall set a
2 cap on the maximum total amount that can be
3 charged of a borrower on a Federal student loan, in-
4 cluding all interest and fees, as a percentage of the
5 original loan balance, over a period of 10 years, 15
6 years, and 20 years.

7 “(2) LEVEL OF CAP.—The cap set under para-
8 graph (1) shall be set—

9 “(A) at the minimum level beyond which
10 additional amount charged on a loan is unrea-
11 sonable or exploitative; and

12 “(B) for each time period, at a level that
13 is higher than the amount the borrower, who
14 makes regularly scheduled payments in accord-
15 ance with a standard repayment plan, currently
16 pays over such time period.”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) LOANS PAID OFF THROUGH CONSOLIDA-
19 TION.—Section 428(e)(6)(B) of the Higher Edu-
20 cation Act of 1965 (20 U.S.C. 1078(e)(6)(B)) is
21 amended—

22 (A) by striking clause (i) and inserting the
23 following:

24 “(i) on or after October 1, 2006, not
25 charge the borrower collection costs in excess of

1 the amount provided in section 499C(b)(1)(A);
2 and”; and

3 (B) in clause (ii), by striking “clause
4 (i)(I)” and inserting “clause (i)”.

5 (2) REHABILITATED LOANS.—Section
6 428F(a)(1)(C) of the Higher Education Act of 1965
7 (20 U.S.C. 1078–6(a)(1)(C)) is amended by striking
8 “not to exceed” and all that follows through the pe-
9 riod and inserting “not to exceed the amount pro-
10 vided in section 499C(b)(1)(B).”.

11 **SEC. 8. A RIGHT TO NOT BE EXPLOITED.**

12 Part I of title IV of the Higher Education Act of
13 1965, as added by section 5 and amended by sections 6
14 and 7, is further amended by adding at the end the fol-
15 lowing:

16 **“SEC. 499D. A RIGHT TO NOT BE EXPLOITED.**

17 “(a) PUBLICATION OF JOB PLACEMENT INFORMA-
18 TION.—

19 “(1) IN GENERAL.—Each institution of higher
20 education (as defined in section 102) that enrolls a
21 student receiving assistance under this Act and that
22 is determined by the Secretary, in accordance with
23 paragraph (2), to be a disclosure institution, shall
24 make publicly available and include in institution
25 materials (including applications for admission to

1 the institution) a clear and conspicuous notice of
2 group level job placement information for each of
3 the past 5 years of graduates (or, if the institution
4 has not been in operation for 5 years, for as long
5 as the institution has been in operation), including
6 not less than the following information:

7 “(A) The percentage of students entering
8 the institution who graduated within 150 per-
9 cent of their expected graduation date.

10 “(B) The percentage of graduates em-
11 ployed within 6 months of graduating.

12 “(C) The percentage of graduates em-
13 ployed in the field that the graduates studied at
14 the institution.

15 “(D) The median annual earnings of those
16 graduates who are employed.

17 “(E) The percentage of former students of
18 the institution who took out a loan to attend
19 the institution who defaulted on such loan at
20 least once after leaving the institution.

21 “(2) DISCLOSURE INSTITUTION.—In deter-
22 mining whether an institution is a disclosure institu-
23 tion, the Secretary primarily shall consider whether
24 the institution makes claims relating to the employ-
25 ment prospects of the graduates of the institution.

1 In addition, the Secretary shall consider each of the
2 following criteria as a supplementary factor in deter-
3 mining whether an institution is a disclosure institu-
4 tion with respect to a particular year:

5 “(A) More than 75 percent of the institu-
6 tion’s revenue for such year is loan volume.

7 “(B) Fewer than 50 percent of the stu-
8 dents enrolled in the institution the previous
9 year, who did not graduate from such institu-
10 tion in such previous year, are still enrolled in
11 the institution.

12 “(C) More than 10 percent of the students
13 who have taken out loans to attend the institu-
14 tion have defaulted on such loans at least once
15 after leaving the institution.

16 “(3) RECORDS.—Each institution of higher
17 education (as defined in section 102) that enrolls a
18 student receiving assistance under this Act and that
19 is determined by the Secretary, in accordance with
20 paragraph (2), to be a disclosure institution, shall
21 keep, for a period of 5 years, the records that sub-
22 stantiate the information the institution is required
23 to publicize under paragraph (1).

24 “(b) SENSE OF THE SENATE.—It is the sense of the
25 Senate that the Secretary should enforce the rights of bor-

1 rowers of private student loans and Federal student loans
2 to raise claims and defenses related to the actions of for-
3 profit institutions of higher education against lenders from
4 which the borrowers borrowed money to attend such insti-
5 tutions, including the Federal Trade Commission Rule.

6 “(c) APPEAL TO THE SECRETARY.—

7 “(1) IN GENERAL.—

8 “(A) IN GENERAL.—Any borrower of a
9 Federal student loan who has suffered an eco-
10 nomic loss as a result of a violation of the bor-
11 rower’s rights under this title shall have the
12 right to appeal such action to the Secretary.

13 “(B) RIGHTS OF BORROWER.—For the
14 purpose of this subsection, the rights of a bor-
15 rower described in subparagraph (A) are those
16 rights involved in the solicitation for, disburse-
17 ment of, repayment of (including rights to ter-
18 minate or suspend repayment), or collection of
19 a Federal student loan, including—

20 “(i) such rights described in this part
21 and under the Student Borrower Bill of
22 Rights Act of 2006 and the amendments
23 made by such Act; and

24 “(ii) borrower rights under the fol-
25 lowing sections of this Act: 427, 428,

1 428C, 428F, 428J, 428K, 430A, 433, 437,
2 438, 463, 463A, 464, 465, 484, 484B, 485
3 (except subsections (f) and (g) of section
4 485), and 488A.

5 “(2) NOTIFICATION.—Not less than 30 days be-
6 fore making an appeal under this subsection, the
7 borrower shall jointly notify the Secretary and the
8 party whose action the borrower wishes to appeal
9 (referred to in this subsection as the ‘respondent’)
10 that the borrower intends to make an appeal, the ac-
11 tion that the borrower intends to appeal, and the
12 economic loss that the borrower suffered as a result
13 of the violation.

14 “(3) SETTLEMENT.—

15 “(A) IN GENERAL.—After the notification
16 under paragraph (2), the borrower and the re-
17 spondent shall make a good faith effort to settle
18 the dispute. If no settlement is reached or if the
19 respondent fails to respond to the borrower’s
20 notice within 30 days of the borrower providing
21 such notice, the borrower may appeal the appli-
22 cable action to the Secretary, which shall adju-
23 dicate the borrower’s claim in a fair, impartial,
24 and timely manner. In so doing, the Secretary
25 may, if it should choose, develop a policy by

1 which borrowers who make appeals work with
2 the office of the Ombudsman or another rel-
3 evant office within the Department to facilitate
4 dispute resolution before providing a formal
5 hearing. Whether or not the Secretary develops
6 such a policy, the Secretary shall provide a for-
7 mal hearing of the borrower’s appeal within 60
8 days of the start of the appeal, unless the Sec-
9 retary determines that there is no basis for
10 such a hearing or if the borrower making the
11 appeal provides written consent to waive the
12 borrower’s right to a hearing or to delay or
13 withdraw the appeal.

14 “(B) JUDICIAL REVIEW.—Any borrower
15 who is adversely affected by the final agency ac-
16 tion shall be entitled to judicial review of such
17 action pursuant to section 706 of title 5, United
18 States Code.

19 “(4) INFORMATION.—The Secretary shall make
20 publicly available on the Internet and elsewhere in-
21 formation about how borrowers can make appeals
22 under this subsection and in what circumstances
23 they can do so.

24 “(5) SAME RIGHTS.—Borrowers shall have the
25 same right to appeal, including the same rights and

1 remedies, whether their loans are held under part B,
2 part D, or part E, and whether the respondent is
3 the Department or another lender that participates
4 in programs described in part B, part D, or part E.

5 “(6) INAPPLICABILITY OF APA.—The Secretary
6 shall not be required to comply with the provisions
7 of subchapter II of chapter 5, and chapter 7, of title
8 5, United States Code (commonly referred to as the
9 Administrative Procedure Act), in implementing this
10 subsection, except as provided in paragraph (3)(B).

11 “(d) ADMISSIONS OFFICERS AS SALESPERSONS.—
12 Notwithstanding any other provision of this Act, an insti-
13 tution of higher education that does not comply with sec-
14 tion 487(a) by violating paragraph (20) of such section
15 shall be liable to a borrower of a Federal student loan
16 taken out to attend such institution for the entire amount
17 of such loan.

18 “(e) RIGHT TO PAY OFF PRINCIPAL FASTER THAN
19 SCHEDULED.—A lender of a Federal student loan shall
20 provide a borrower who pays more than the amount re-
21 quired for any regularly scheduled payment an easy and
22 unbiased means of choosing whether such overpayment
23 payment should count as a—

24 “(1) prepayment for a subsequently scheduled
25 payment; or

1 “(2) payment against the principal owed on
2 such loan.”.

○