

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5458

To amend the Truth in Lending Act and the Higher Education Act of 1965 to require additional disclosures and protections for students and cosigners with respect to student loans, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 28, 2010

Mr. ADLER of New Jersey (for himself, Mr. PASCRELL, Mr. CUMMINGS, and Mr. ROTHMAN of New Jersey) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Education and Labor, 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 Truth in Lending Act and the Higher Education Act of 1965 to require additional disclosures and protections for students and cosigners with respect to student loans, 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; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Christopher Bryski Student Loan Protection Act” and  
6 “Christopher’s Law”.

1 (b) FINDINGS.—The Congress finds the following:

2 (1) There is no requirement for Federal or pri-  
3 vate education lenders to provide information with  
4 respect to, and discuss the benefit of, creating an  
5 advance directive (such as durable power of attor-  
6 ney, living will, etc.) for financial, legal, and medical  
7 decisionmaking in accordance with State law to be  
8 used in the event of the death, incapacitation, or dis-  
9 ability of the student or such cosigner (if any).

10 (2) In harsh contrast to existing comprehensive  
11 policies of the Secretary of Education, no require-  
12 ment exists for private education lenders to provide  
13 information with respect to, and discuss the benefit  
14 of, credit insurance in connection with private edu-  
15 cation loans that would protect the signer, and any  
16 such cosigner, in the event of their death, incapaci-  
17 tation, or disability.

18 (3) No requirement exists for private education  
19 lenders' master promissory notes to include the same  
20 clear and concise wording in regards to the respon-  
21 sible party in the event the signer or cosigner be-  
22 comes disabled, incapacitated, or dies. A clear and  
23 concise definition would provide standard terms and  
24 conditions within private education lenders' master  
25 promissory notes with respect to signer and cosigner

1 obligations. Not requiring clear and concise obliga-  
2 tions allows for a very unclear delineation of respon-  
3 sibility on the part of the private education lender,  
4 which is a great example of the freedom large pri-  
5 vate education lenders currently have.

6 (4) No standard forms exist for defining dis-  
7 ability, incapacity or death of a private education  
8 loan signer, or cosigner.

9 (5) No requirement exists for eligible lending  
10 institutions, as defined with the Higher Education  
11 Act of 1965, to disclose to the borrower, information  
12 on the conditions required to discharge the loan due  
13 to the disability, incapacity or death of the signer or  
14 cosigner (if any).

15 (6) Congress modeled the definition of disability  
16 in the Americans with Disabilities Act of 1990 on  
17 the definition in section 504 of the Rehabilitation  
18 Act of 1973, which, through the time of the enact-  
19 ment of the Americans with Disabilities Act of 1990,  
20 had been construed broadly to encompass both ac-  
21 tual and perceived limitations, and limitations im-  
22 posed by society.

23 (7) Of the 1,400,000 people who sustain a trau-  
24 matic brain injury each year in the United States,  
25 50,000 die; 235,000 are hospitalized; and 1,100,000

1 are treated and released from an emergency depart-  
2 ment.

3 (8) It is estimated that the annual incidence of  
4 spinal cord injury, not including those who die at the  
5 scene of the accident, is approximately 40 cases per  
6 1,000,000 people in the United States or approxi-  
7 mately 12,000 new cases each year. Since there have  
8 not been any overall incidence studies of spinal cord  
9 injuries in the United States since the 1970s, it is  
10 not known if incidence has changed in recent years.

11 (9) The number of disabled veterans has  
12 jumped by 25 percent since 2001 to 2,900,000. To-  
13 day's veterans, disabled or not, number nearly  
14 24,000,000.

15 (10) In the 2007–2008 academic year, 13 per-  
16 cent of students attending a 4-year public school,  
17 and 26.2 percent of students attending a 4-year pri-  
18 vate school, borrowed monies from private loan pro-  
19 viders.

20 (11) According to Sallie Mae, in 2009, the  
21 number of cosigned private educational loans in-  
22 creased from 66 percent to 84 percent of all private  
23 educational loans.

1 **SEC. 2. ADDITIONAL STUDENT LOAN PROTECTIONS.**

2 (a) IN GENERAL.—Section 140 of the Truth in Lend-  
3 ing Act (15 U.S.C. 1650) is amended by adding at the  
4 end the following new subsection:

5 “(f) ADDITIONAL PROTECTIONS RELATING TO  
6 DEATH OR DISABILITY OF SIGNER OR COSIGNER OF A  
7 PRIVATE EDUCATION LOAN.—

8 “(1) OBLIGATION TO DISCUSS ADVANCE DIREC-  
9 TIVES.—In conjunction with—

10 “(A) any student loan counseling provided  
11 by a covered educational institution to any new  
12 signer and cosigner (if any) at the time of any  
13 loan origination, loan reapplication, or loan con-  
14 solidation, or at the time the cosigner assumes  
15 responsibility for repayment, the institution  
16 shall provide information with respect to, and  
17 discuss the benefit of, creating an advance di-  
18 rective (such as a durable power of attorney,  
19 living will, etc.) for financial, legal, and medical  
20 decisionmaking, in accordance with State law,  
21 in the event of the death, incapacitation, or dis-  
22 ability of the signer or cosigner (if any); and

23 “(B) any negotiation or other discussion  
24 with respect to any private education loan, the  
25 private educational lender involved in such loan  
26 shall discuss with the signer, and cosigner (if

1 any), the benefit of creating an advance direc-  
2 tive (such as a durable power of attorney, living  
3 will, etc.) for financial, legal, and medical deci-  
4 sionmaking, in accordance with State law, with  
5 respect to such loan, in the event of the death,  
6 incapacitation, or disability of the student or  
7 such cosigner (if any).

8 “(2) CLEAR AND COMPLETE DESCRIPTION OF  
9 COSIGNER’S OBLIGATION.—In the case of any pri-  
10 vate education lender who extends a private edu-  
11 cation loan for which any cosigner is jointly liable,  
12 the lender shall define, clearly and concisely, the  
13 terms of such person’s obligations with respect to  
14 the loan, including the effect the death, incapacita-  
15 tion, or disability of the signer or cosigner (if any)  
16 would have on any such obligation, in language that  
17 the Board determines would give a reasonable per-  
18 son a reasonable apprehension of the obligation  
19 being assumed by becoming a cosigner for the loan.

20 “(3) CREDIT INSURANCE.—In the case of any  
21 private education loan for which there is a cosigner,  
22 the private educational lender involved in such  
23 loan—

24 “(A) shall provide information with respect  
25 to, and discuss the benefit of credit insurance

1 with the signer, and the cosigner, in connection  
2 with such loan that would protect the signer  
3 and any cosigner in the event of the death, in-  
4 capacitation, or disability of the signer or any  
5 such cosigner;

6 “(B) shall discuss with the student and the  
7 cosigner the benefit of credit insurance in con-  
8 nection with such loan that would protect the  
9 student and any cosigner in the event of the  
10 death or disability of the student or any such  
11 cosigner;

12 “(C) may provide or make arrangements  
13 for the provision of any credit insurance re-  
14 ferred to in subparagraph (A) in conjunction  
15 with the loan; and

16 “(D) may not—

17 “(i) establish any condition or require-  
18 ment that the signer and cosigner (if any)  
19 has or has not obtained any such consumer  
20 credit insurance from the private edu-  
21 cational lender, and affiliate of the private  
22 education lender or any other consumer  
23 credit insurance provider; or

24 “(ii) extend or deny a loan, or fix or  
25 vary the terms of the loan, on the basis

1           that the signer and cosigner (if any) has or  
2           has not obtained any such consumer credit  
3           insurance from the private educational  
4           lender, and affiliate of the private edu-  
5           cation lender, or any other consumer credit  
6           insurance provider.

7           “(4) MODEL FORMS.—The Board shall publish  
8           model forms under section 105 for describing a co-  
9           signer’s obligation for purposes of paragraph (2).

10           “(5) REGULATIONS DEFINING DEATH OR DIS-  
11           ABILITY.—

12           “(A) IN GENERAL.—The Board shall—

13           “(i) prescribe regulations defining the  
14           manner and standards for establishing that  
15           a private education loan signer, or  
16           cosigner (if any), has died or become in-  
17           capacitated or disabled; and

18           “(ii) implement and enforce such reg-  
19           ulations in connection with any private  
20           education loan.

21           “(B) COORDINATION WITH SECRETARY OF  
22           EDUCATION.—In prescribing regulations under  
23           subparagraph (A), the Board shall—

24           “(i) consult with the Secretary of  
25           Education; and

1           “(ii) conform such regulations with  
2           the regulations prescribed by such Sec-  
3           retary under section 437(a)(1) of the  
4           Higher Education Act of 1965 (20 U.S.C.  
5           1087(a)(1)) to the fullest extent prac-  
6           ticable, including safeguards to prevent  
7           fraud and abuse.

8           “(C) DETERMINATION BY THE SECRETARY  
9           OF VETERANS AFFAIRS.—The regulations pre-  
10          scribed under subparagraph (A) shall provide  
11          that a determination described in section  
12          437(a)(2) of the Higher Education Act of 1965  
13          (20 U.S.C. 1087(a)(2)) by the Secretary of Vet-  
14          erans Affairs with respect to any person shall  
15          be dispositive for such person for purposes of  
16          this subsection and any agreement covered by  
17          this subsection.”.

18          (b) DEFINITIONS.—Subsection (a) of section 140 of  
19          the Truth in Lending Act (15 U.S.C. 1650(a)) is amended  
20          by adding at the end the following new paragraphs:

21               “(9) ADVANCE DIRECTIVE.—The term ‘advance  
22               directive’ means a written instruction, such as a liv-  
23               ing will or durable power of attorney for health care,  
24               recognized under State law (whether statutory or as  
25               recognized by the courts of the State), relating to

1 the provision of health care when the individual is  
2 incapacitated.

3 “(10) COSIGNER.—The term ‘cosigner’—

4 “(A) means any individual who is liable for  
5 the obligation of another without compensation,  
6 regardless of how designated in the contract or  
7 instrument;

8 “(B) includes any person whose signature  
9 is requested as condition to grant credit or to  
10 forebear on collection; and

11 “(C) does not include a spouse of an indi-  
12 vidual referred to in subparagraph (A) whose  
13 signature is needed to perfect security interest  
14 individual.

15 “(11) CREDIT INSURANCE.—The term ‘credit  
16 insurance’ has the meaning given to such term by  
17 the Board in regulations for purposes of this section.

18 “(12) DISABILITY.—The term ‘disability’ has  
19 the meaning given to such term in section 3 of the  
20 Americans with Disabilities Act of 1990.

21 “(13) DURABLE POWER OF ATTORNEY.—The  
22 term ‘durable power of attorney’ meaning given to  
23 such term in the Uniform Durable Power of Attor-  
24 ney Act of 1979 and sections 5-501 through 5-505

1 of the Uniform Probate Code, as in effect in any  
2 State.

3 “(14) INCAPACITY.—The terms ‘incapacity’, ‘in-  
4 capacitated’, or ‘incapacitation’ have the meanings  
5 given to such terms in the Family and Medical  
6 Leave Act of 1968, and regulations prescribed under  
7 such Act.”.

8 **SEC. 3. FEDERAL STUDENT LOANS.**

9 (a) FEDERAL PLUS LOANS.—Section 428B of the  
10 Higher Education Act of 1965 (20 U.S.C. 1078–2) is  
11 amended by adding at the end the following:

12 “(g) DISCLOSURE.—An eligible lender shall disclose  
13 to a prospective borrower, in simple and understandable  
14 terms, at the time the lender provides an application for  
15 a PLUS loan, information with respect to creating a dura-  
16 ble power of attorney to be used in the event of the death  
17 or disability of the borrower (or the student on whose be-  
18 half the loan is borrowed by the parent borrower) includ-  
19 ing the uses and benefits of creating such a power of attor-  
20 ney with respect to student loans and other financial obli-  
21 gations of the borrower.”.

22 (b) FEDERAL CONSOLIDATION LOANS.—Section  
23 428C(b)(1)(F) of the Higher Education Act of 1965 (20  
24 U.S.C. 1078–3(b)(1)(F)) is amended—

1           (1) by redesignating clauses (vi) and (vii) as  
2 clauses (vii) and (viii), respectively; and

3           (2) by inserting after clause (v) the following  
4 new clause:

5                   “(vi) information with respect to cre-  
6 ating an advanced directive (such as a du-  
7 rable power of attorney, living will, etc.)  
8 for financial legal and medical decision-  
9 making in accordance with State law in the  
10 event of the death, incapacitation, or dis-  
11 ability of the borrower, including the uses  
12 and benefits of such an advanced directive  
13 with respect to student loans and other fi-  
14 nancial obligations of the borrower;”.

15       (c)   ENTRANCE   COUNSELING   FOR   FEDERAL  
16 LOANS.—Section 485(l)(2) of the Higher Education Act  
17 of 1965 (20 U.S.C. 1092(l)(2)) is amended by adding at  
18 the end the following:

19                   “(L) Information on the conditions re-  
20 quired to discharge the loan due to the death,  
21 incapacitation, or disability of the borrower, in  
22 accordance with section 437(a), and an expla-  
23 nation that, in the case of a private education  
24 loan made through a private lender, the bor-  
25 rower, the borrower’s estate, and any consigner

1 of a such a private education loan may be obli-  
2 gated to repay the full amount of the loan, re-  
3 gardless of the death, incapacitation, or dis-  
4 ability of the borrower.

5 “(M) Information with respect to creating  
6 an advanced directive (such as a durable power  
7 of attorney, living will, etc.) for financial legal  
8 and medical decisionmaking in accordance with  
9 State law a durable power of attorney to be  
10 used in the event of the death, incapacitation,  
11 or disability of the borrower, including an ex-  
12 planation of the uses and benefits of such an  
13 advanced directive with respect to student loans  
14 and other financial obligations of the bor-  
15 rower.”.

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