AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

I

110TH CONGRESS
1ST SESSION

H. R. 890

To establish requirements for lenders and institutions of higher education in order to protect students and other borrowers receiving educational loans.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2007

Mr. GEORGE MILLER of California (for himself, Mr. HINOJOSA, Mr. BISHOP of New York, Mr. COURTNEY, Mr. YARMUTH, Mr. TIERNEY, Mrs. DAVIS of California, Mr. GRIJALVA, Mr. DAVIS of Illinois, Mr. MICHAUD, Mr. MCDERMOTT, Ms. MATSUI, and Mr. VAN HOLLEN) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Financial Services, 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

---

A BILL

To establish requirements for lenders and institutions of higher education in order to protect students and other borrowers receiving educational loans.

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 ''Student Loan Sunshine Act''.

SEC. 2. INSTITUTION AND LENDER REPORTING AND DISCLOSURE REQUIREMENTS.

Title I of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is amended by adding at the end the following:

"PART E—LENDER AND INSTITUTION REQUIREMENTS RELATING TO EDUCATIONAL LOANS

"SEC. 151. DEFINITIONS.

''In this part:

''(1) COVERED INSTITUTION.—The term 'covered institution'—

''(A) means any educational institution that offers a postsecondary educational degree, certificate, or program of study (including any institution of higher education, as such term is defined in section 102) and receives any Federal funding or assistance; and

''(B) includes an agent of the educational institution (including an alumni association, booster club, or other organization directly or indirectly associated with such institution) or employee of such institution.

''(2) EDUCATIONAL LOAN.—The term 'educational loan' (except when used as part of the term 'private educational loan') means—

''(A) any loan made, insured, or guaranteed under title IV; or

''(B) a private educational loan (as defined in paragraph (5)).

''(3) EDUCATIONAL LOAN ARRANGEMENT.—The term 'educational loan arrangement' means an arrangement or agreement between a lender and a covered institution—

''(A) under which arrangement or agreement a lender provides or otherwise issues educational loans to the students attending the covered institution or the parents of such students; and

''(B) which arrangement or agreement—

''(i) relates to the covered institution recommending, promoting, endorsing, or using the loan product of the lender; and

''(ii) involves the payment of any fee or provision of other material benefit by the lender to the institution or to groups of students who attend the institution.

''(4) LENDER.—

''(A) IN GENERAL.—The term 'lender'—

''(i) means a creditor, except that such term shall not include an issuer of

credit under a residential mortgage transaction; and

"(ii) includes an agent of a lender.

"(B) INCORPORATION OF TILA DEFINITIONS.—The terms 'creditor' and 'residential mortgage transaction' have the meanings given such terms in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

"(5) PRIVATE EDUCATIONAL LOAN.—The term 'private educational loan' means a private loan provided by a lender that—

"(A) is not made, insured, or guaranteed under title IV; and

"(B) is issued by a lender for postsecondary educational expenses to a student, or the parent of the student, regardless of whether the loan is provided through the educational institution that the student attends or directly to the student or parent from the lender.

"(6) POSTSECONDARY EDUCATIONAL EXPENSES.—The term 'postsecondary educational expenses' means any of the expenses that are included as part of a student's cost of attendance, as defined under section 472.

"SEC. 152. REQUIREMENTS FOR LENDERS AND INSTITUTIONS PARTICIPATING IN EDUCATIONAL LOAN ARRANGEMENTS.

''(a) REPORTING FOR LENDERS.—In addition to any other disclosure required under Federal law, each lender that participates in 1 or more educational loan arrangements shall prepare and submit to the Secretary (at a time to be determined by the Secretary) an annual report that includes, with respect to each educational loan arrangement, the following:

''(1) The date on which the arrangement was entered into and the period for which the arrangement applies.

''(2) A summary of the terms of the arrangement related to the marketing, recommending, endorsing, or use of, the loans.

''(3) The full details of any aspect of the arrangement relating to the covered institution issuing loans and the lender (or a financial partner of the lender) servicing or purchasing such loans.

''(4) A summary of any direct or indirect benefit provided or paid to any party in connection with the arrangement.

''(b) PROVISION OF LOAN INFORMATION.—A lender may not provide a private educational loan to a student attending a covered institution with which the lender has

an educational loan arrangement, or the parent of such student, until the covered institution has informed the student or parent of their remaining options for borrowing under title IV, including information on any terms and conditions of available loans under such title that are more favorable to the borrower.

''(c) USE OF INSTITUTION NAME.—

''(1) IN GENERAL.—A covered institution that has entered into an educational loan arrangement with a lender regarding private educational loans shall not allow the lender to use the name, emblem, mascot, or logo of the institution, or other words, pictures, or symbols readily identified with the institution, in the marketing of private educational loans to the students attending the institution in any way that implies that the institution endorses the private educational loans offered by the lender.

''(2) APPLICABILITY.—Paragraph (1) shall apply to any educational loan arrangement, or extension of such arrangement, entered into or renewed after the date of enactment of the Student Loan Sunshine Act.

"SEC. 153. INTEREST RATE REPORT FOR INSTITUTIONS AND LENDERS PARTICIPATING IN EDUCATIONAL LOAN ARRANGEMENTS.

''(a) SECRETARY DUTIES.—

''(1) REPORT AND MODEL FORMAT.—Not later than 180 days after the date of enactment of the Student Loan Sunshine Act, the Secretary shall—

''(A) prepare a report on the adequacy of the information provided to students and the parents of such students about educational loans (including loans made, insured, or guaranteed under title IV and private educational loans), after consulting with students, representatives of covered institutions (including financial aid administrators, registrars, and business officers), lenders (including lenders of private educational loans), loan servicers, and guaranty agencies;

''(B) include in the report a model format, based on the report's findings, to be used by lenders and covered institutions in carrying out subsections (b) and (c)—

''(i) that provides information on the applicable interest rates and other terms and conditions of the educational loans provided by a lender to students attending

the institution, or the parents of such students, disaggregated by each type of educational loans provided to such students or parents by the lender, including—

''(I) the interest rate and terms and conditions of the loans offered by the lender for the upcoming academic year;

''(II) with respect to such loans, any benefits that are contingent on the repayment behavior of the borrower;

''(III) the annual percentage rate for such loans, based on the actual disbursed amount of the loan;

''(IV) the average amount borrowed from the lender by students enrolled in the institution who obtain loans of such type from the lender for the preceding academic year; and

''(V) the average interest rate on such loans provided to such students for the preceding academic year; and

''(ii) which format shall be easily usable by lenders, institutions, guaranty agencies, and loan servicers; and

''(C)(i) submit the report and model format to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives; and

''(ii) make the report and model format available to covered institutions, lenders, and the public.

''(2) FORMAT UPDATE.—Not later than 1 year after the submission of the report and model format described in paragraph (1), the Secretary shall—

''(A) assess the adequacy of the model format included in the report;

''(B) after consulting with students, representatives of covered institutions (including financial aid administrators, registrars, and business officers), lenders (including lenders of private educational loans), loan servicers, and guaranty agencies—

''(i) prepare a list of any improvements to the model format that have been identified as beneficial to borrowers; and

"(ii) update the model format after taking such improvements into consideration; and

"(C)(i) submit the list of improvements and updated model format to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives; and

"(ii) make the list of improvements and updated model format available to covered institutions, lenders, and the public.

"(3) USE OF FORM.—The Secretary shall take such steps as necessary to make the model format, and any updated model format, available to covered institutions and to encourage—

"(A) lenders subject to subsection (b) to use the model format or updated model format (if available) in providing the information required under subsection (b); and

"(B) covered institutions to use such format in preparing the information report under subsection (c).

"(b) LENDER DUTIES.—Each lender that has an educational loan arrangement with a covered institution shall annually, by a date determined by the Secretary, pro-

vide to the covered institution and to the Secretary the information included on the model format or an updated model format (if available) for each type of educational loan provided by the lender to students attending the covered institution, or the parents of such students, for the preceding academic year.

''(c) COVERED INSTITUTION DUTIES.—Each covered institution shall—

''(1) prepare and submit to the Secretary an annual report, by a date determined by the Secretary, that includes, for each lender that has an educational loan arrangement with the covered institution and that has submitted to the institution the information required under subsection (b)—

''(A) the information included on the model format or updated model format (if available) for each type of educational loan provided by the lender to students attending the covered institution, or the parents of such students; and

''(B) a detailed explanation of why the covered institution believes the terms and conditions of each type of educational loan provided pursuant to the agreement are beneficial for students attending the covered institution, or the parents of such students; and

''(2) ensure that the report required under paragraph (1) is made available to the public and provided to students attending or planning to attend the covered institution, and the parents of such students, in time for the student or parent to take such information into account before applying for or selecting an educational loan.

"SEC. 154. PRIVATE EDUCATIONAL LOAN DISCLOSURE REQUIREMENTS FOR COVERED INSTITUTIONS.

''A covered institution that provides information to any student, or the parent of such student, regarding a private educational loan from a lender shall, prior to or concurrent with such information—

''(1) inform the student or parent of—

''(A) the student or parent's eligibility for assistance and loans under title IV; and

''(B) the terms and conditions of such private educational loan that are less favorable than the terms and conditions of educational loans for which the student or parent is eligible, including interest rates, repayment options, and loan forgiveness; and

''(2) ensure that information regarding such private educational loans is presented in such a manner as to be distinct from information regarding

loans that are made, insured, or guaranteed under title IV.

"SEC. 155. GIFT BAN FOR EMPLOYEES OF INSTITUTIONS.

"(a) GIFT BAN.—A lender or guarantor of educational loans shall not offer any gift to an employee or agent of a covered institution.

"(b) REPORTS OF GIFT BAN VIOLATIONS.—

"(1) EMPLOYEE REPORT.—Each employee or agent of a covered institution shall report to the Inspector General of the Department of Education any instance of a lender or guarantor of educational loans (including an agent of the lender or guarantor) that attempts to give a gift to the employee or agent in violation of subsection (a).

"(2) INSPECTOR GENERAL REPORT.—The Inspector General of the Department of Education shall investigate any reported violation of this subsection and shall annually submit a report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives identifying all reported violations of the gift ban under subsection (a), including the lenders involved in each such violation, for the preceding year.

"(c) DEFINITION OF GIFT.—

''(1) IN GENERAL.—In this section, the term 'gift' means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having a monetary value of more than $10. The term includes a gift of services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

''(2) EXCEPTIONS.—The term 'gift' shall not include any of the following:

''(A) Standard informational material related to a loan, such as a brochure.

''(B) Food, refreshments, training, or informational material furnished to an employee or agent of an institution as an integral part of a training session or through participation in an advisory council that is designed to improve the lender's service to the covered institution, if such training or participation contributes to the professional development of the employee or agent of the institution.

''(C) Favorable terms, conditions, and borrower benefits on an educational loan provided to a student employed by the covered institution.

''(3) RULE FOR GIFTS TO FAMILY MEMBERS.—For purposes of this section, a gift to a family member of an employee or an agent of a covered institution, or a gift to any other individual based on that individual's relationship with the employee or agent, shall be considered a gift to the employee or agent if—

''(A) the gift is given with the knowledge and acquiescence of the employee or agent; and

''(B) the employee or agent has reason to believe the gift was given because of the official position of the employee or agent.

"SEC. 156. COMPLIANCE AND ENFORCEMENT.

''(a) CONDITION OF ANY FEDERAL ASSISTANCE.—Notwithstanding any other provision of law, a covered institution or lender shall comply with this part as a condition of receiving Federal funds or assistance provided after the date of enactment of the Student Loan Sunshine Act.

''(b) PENALTIES.—Notwithstanding any other provision of law, if the Secretary determines, after providing notice and an opportunity for a hearing for a covered institution or lender, that the covered institution or lender has violated subsection (a)—

''(1) in the case of a covered institution, or a lender that does not participate in a loan program

under title IV, the Secretary may impose a civil penalty in an amount of not more than $25,000; and

''(2) in the case of a lender that does participate in a program under title IV, the Secretary may limit, terminate or suspend the lender's participation in such program.

''(c) CONSIDERATIONS.—In taking any action against a covered institution or lender under subsection (b), the Secretary shall take into consideration the nature and severity of the violation of subsection (a).

''SEC. 157. GAO STUDY AND REPORTS.

''(a) STUDY.—The Comptroller General of the United States shall conduct a study on—

''(1) the gifts or financial or other material benefits that are provided by lenders to covered institutions to secure, or as part of an effort to secure, the covered institutions' educational loan business;

''(2) the extent to which lenders issuing private educational loans may be inappropriately using inducements to secure, or as part of an effort to secure, educational loan arrangements with covered institutions; and

''(3) whether educational loans made to students attending a covered institution in connection with an educational loan arrangement, and private

educational loans made directly to students, provide competitive interest rates, terms, and conditions to students who obtain such loans.

''(b) REPORTS.—The Comptroller General of the United States shall—

''(1) not later than 1 year after the date of enactment of the Student Loan Sunshine Act, submit to Congress a preliminary report regarding the findings of the study described in subsection (a); and

''(2) not later than 2 years after such date of enactment, submit to Congress a final report regarding such findings.''.

SEC. 3. PROGRAM PARTICIPATION AGREEMENTS.

Section 487(a) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)) is amended by adding at the end the following:

''(24)(A) In the case of an institution (including an employee or agent of an institution) that maintains a preferred lender list, in print or any other medium, through which the institution recommends 1 or more specific lenders for loans made under part B to the students attending the institution (or the parents of such students), the institution will—

''(i) clearly and fully disclose on the preferred lender list—

''(I) why the institution has included each lender as a preferred lender, especially with respect to terms and conditions favorable to the borrower; and

''(II) that the students attending the institution (or the parents of such students) do not have to borrow from a lender on the preferred lender list;

''(ii) ensure, through the use of the list provided by the Secretary under subparagraph (C), that—

''(I) there are not less than 3 lenders named on the preferred lending list that are not affiliates of each other; and

''(II) the preferred lender list—

''(aa) specifically indicates, for each lender on the list, whether the lender is or is not an affiliate of each other lender on the list; and

''(bb) if the lender is an affiliate of another lender on the list, describes the specifics of such affiliation; and

''(iii) establish a process to ensure that lenders are placed upon the preferred lender list

on the basis of the benefits provided to borrowers, including —

"(I) highly competitive interest rates, terms, or conditions for loans made under part B;

"(II) high-quality servicing for such loans; or

"(III) additional benefits beyond the standard terms and conditions for such loans.

"(B) For the purposes of subparagraph (A)(ii)—

"(i) the term 'affiliate' means a person that controls, is controlled by, or is under common control with another person; and

"(ii) a person has control over another person if—

"(I) the person directly or indirectly, or acting through 1 or more others, owns, controls, or has the power to vote 5 percent or more of any class of voting securities of such other person;

"(II) the person controls, in any manner, the election of a majority of the directors or trustees of such other person; or

"(III) the Secretary determines (after notice and opportunity for a hearing) that the person directly or indirectly exercises a controlling interest over the management or policies of such other person.

"(C) The Secretary shall maintain and update a list of lender affiliates of all eligible lenders, and shall provide such list to the eligible institutions for use in carrying out subparagraph (A).".

SEC. 4. NOTICE OF AVAILABILITY OF FUNDS FROM FEDERAL SOURCES.

Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended by adding at the end the following:

"(e) DISCLOSURES RELATING TO PRIVATE EDUCATIONAL LOANS.—

"(1) IN GENERAL.—In the case of an extension of credit that is a private educational loan, other than a residential mortgage transaction, the creditor shall provide in every application for such extensions of credit and together with any solicitation, marketing, or advertisement of such extensions of credit, written, electronic, or otherwise, the disclosures described in paragraph (2).

''(2) DISCLOSURES.—Disclosures required by this subsection shall include a clear and prominent statement—

''(A) that the borrower may qualify for Federal financial assistance through a program under title IV of the Higher Education Act of 1965, in lieu of or in addition to a loan from a non-Federal source;

''(B) of the interest rates available with respect to such Federal financial assistance;

''(C) describing how the applicable interest rate is determined, including whether it is based on the credit score of the borrower;

''(D) showing sample loan costs, disaggregated by type;

''(E) of the types of repayment plans that are available;

''(F) of whether, and under what conditions, early repayment may be made without penalty;

''(G) of when and how often the loan would be recapitalized;

''(H) describing all fees, deferments, or forbearance;

''(I) describing all available repayment benefits, and the percentage of all borrowers who qualify for such benefits;

''(J) describing collection practices in the case of default;

''(K) describing late payment penalties and associated fees;

''(L) of any complaints (and their resolution) filed with any State or private consumer protection agency (including the Better Business Bureau); and

''(M) such other information as the Board may require.

''(3) PROVISION OF INFORMATION.—Before a creditor may issue any funds with respect to an extension of credit described in paragraph (1) for an amount equal to more than $1,000—

''(A) the creditor shall notify the relevant postsecondary educational institution, in writing, of the proposed extension of credit and the amount thereof; and

''(B) if such relevant institution is a covered institution, the institution shall, in an expedient manner, notify the prospective borrower, in accordance with procedures estab-

lished by rule of the Board, whether and to what extent the proposed extension of credit exceeds the cost of attendance (as defined in section 472 of the Higher Education Act of 1965) for the student at that institution, after consideration of the Federal and State grant and loan aid and institutional aid that the student has or is eligible to receive.

''(4) REGULATORY AUTHORITY.—The Board—

''(A) shall issue such rules and regulations as may be necessary to implement this subsection; and

''(B) may, by rule, establish appropriate exceptions to the disclosures required by this subsection.

''(5) DEFINITIONS.—As used in this subsection, the terms 'private educational loan' and 'covered institution' have the same meanings as in section 151 of the Higher Education Act of 1965.''.

○