

116TH CONGRESS
1ST SESSION

S. 2405

To establish additional protections and disclosures for students and cosigners with respect to student loans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2019

Mr. MENENDEZ (for himself, Mr. BOOKER, Ms. WARREN, Mr. BROWN, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To establish additional protections and disclosures 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” or
6 “Christopher’s Law”.

7 (b) FINDINGS.—Congress finds the following:

1 (1) The Bureau of Consumer Financial Protec-
2 tion (referred to in this section as the “CFPB”)
3 Student Loan Ombudsman stated the following:

4 (A) “The CFPB received more than 7,700
5 private student loan complaints and approxi-
6 mately 2,300 debt collection complaints related
7 to student loans between September 1, 2016,
8 and August 31, 2017.”.

9 (B) “cosigners complain that information
10 about discharge or alternative arrangements in
11 the case of death of the primary borrower is not
12 readily available and that decisions are made on
13 a case-by-case basis, giving cosigners little un-
14 derstanding of how the process works, or if they
15 will be successful.”.

16 (C) “The complaints and input received by
17 the CFPB resemble many of the same issues
18 experienced by mortgage borrowers, such as im-
19 proper application of payments, untimeliness in
20 error resolution, and inability to contact appro-
21 priate personnel in times of hardship.”.

22 (D) “The difference between Federal and
23 private student loans in periods of disability
24 was not well-understood.”.

1 (2) An estimated 2,500,000 individuals sustain
 2 a traumatic brain injury each year and older adoles-
 3 cents between 15 and 19 years of age are more like-
 4 ly to sustain a traumatic brain injury than individ-
 5 uals in other age groups.

6 (3) It has been estimated that the annual inci-
 7 dence of spinal cord injury, not including those indi-
 8 viduals who die at the scene of an accident, is ap-
 9 proximately 54 cases per 1,000,000 individuals in
 10 the United States, or approximately 17,000 new
 11 cases each year. These injuries can lead to perma-
 12 nent disability or loss of movement and can prohibit
 13 the victim from engaging in any substantial gainful
 14 activity.

15 (4) According to the CFPB, more than 90 per-
 16 cent of new private student loans are co-signed.

17 (5) According to the CFPB, private student
 18 loan companies provide cosigner release to less than
 19 1 percent of eligible borrowers.

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

21 (a) IN GENERAL.—Section 140(g) of the Truth in
 22 Lending Act (15 U.S.C. 1650(g)) is amended to read as
 23 follows:

24 “(g) ADDITIONAL PROTECTIONS RELATING TO BOR-
 25 ROWER OR COSIGNER OF A PRIVATE EDUCATION LOAN.—

1 “(1) CLEAR AND CONSPICUOUS DESCRIPTION
2 OF OBLIGATION OF BORROWER AND COSIGNER.—In
3 the case of any private educational lender that pro-
4 vides a private education loan, the lender shall clear-
5 ly and conspicuously describe, in writing, the obliga-
6 tions of a cosigner with respect to the loan, includ-
7 ing the effect that the death, disability, or inability
8 to engage in any substantial gainful activity of the
9 borrower or any cosigner would have on any such
10 obligation, in language that the Bureau determines
11 would give a reasonable person a reasonable under-
12 standing of the obligation being assumed by becom-
13 ing a cosigner for the loan.

14 “(2) PROHIBITION ON AUTOMATIC DEFAULT
15 WITH RESPECT TO A PERFORMING LOAN.—

16 “(A) DEATH, DISABILITY, OR BANKRUPTCY
17 OF COSIGNER.—If a private education loan in-
18 cludes a cosigner, a private educational lender
19 may not take any adverse action (including de-
20 claring a default, accelerating any loan obliga-
21 tion, increasing the interest rate, or altering
22 any obligations under the private education loan
23 in a way that is adverse to the borrower)
24 against the borrower based on—

1 “(i) the death, disability, or inability
2 to engage in any substantial gainful activ-
3 ity of the cosigner; or

4 “(ii) the bankruptcy of the cosigner.

5 “(B) BANKRUPTCY OF BORROWER.—If a
6 private education loan includes a cosigner, a
7 private educational lender may not take any ad-
8 verse action (including declaring a default, ac-
9 celerating any loan obligation, increasing the in-
10 terest rate, or altering any obligations under
11 the private education loan in a way that is ad-
12 verse to any cosigner) against the cosigner
13 based on the bankruptcy of the borrower.

14 “(3) BORROWER REQUIREMENTS REGARDING
15 DEATH OR DISABILITY OF BORROWER.—In the event
16 of the death, disability, or inability to engage in any
17 substantial gainful activity of a borrower of a private
18 education loan—

19 “(A) the borrower, the estate of the bor-
20 rower, and any cosigner of the private edu-
21 cation loan shall not be obligated to repay the
22 outstanding principal and interest on the loan;
23 and

24 “(B) the private educational lender with
25 respect to, or the servicer of, the private edu-

1 cation loan, as applicable, shall, upon notifica-
2 tion of the death, disability, or inability to en-
3 gage in any substantial gainful activity, dis-
4 charge the liability of the borrower, estate of
5 the borrower, and any cosigner of the private
6 education loan.

7 “(4) COSIGNER RELEASE.—

8 “(A) REQUIREMENTS FOR AUTOMATIC RE-
9 LEASE OF COSIGNER.—

10 “(i) CRITERIA ESTABLISHED BY THE
11 BUREAU.—Not later than 180 days after
12 the date of enactment of this subsection,
13 the Bureau shall establish criteria, which,
14 if met by the borrower of a private edu-
15 cation loan, shall require the private edu-
16 cational lender with respect to, or servicer
17 of, the private education loan, as applica-
18 ble, to promptly release any cosigner from
19 the obligations of the cosigner under the
20 loan without requiring any action on behalf
21 of the borrower.

22 “(ii) CRITERIA ESTABLISHED BY
23 LENDER.—A private educational lender
24 may establish criteria for automatic release
25 that are different from the criteria de-

scribed in clause (i) if the criteria established by the lender are not more restrictive with respect to the borrower or any cosigner of the private education loan than the criteria established under clause (i).

“(B) DISCLOSURE OF CRITERIA FOR COSIGNER RELEASE.—A private educational lender shall—

“(i) include in the promissory note of a private education loan the criteria under which a cosigner may be released from the obligation of the cosigner under a private education loan under this paragraph; and

“(ii) disclose to the borrower and any cosigner at the time the private education loan is consummated, clearly and conspicuously, the criteria under which a cosigner may be released from the obligation of the cosigner under a private education loan.

“(C) MODIFICATIONS TO CRITERIA.—If a private education loan has a cosigner, the private educational lender with respect to, or servicer of, the private education loan, as applicable, may not modify the criteria under which the cosigner may be released from the obliga-

tion of the cosigner under the private education loan without the consent of the borrower and the cosigner if the modification would be adverse to the borrower.

“(D) NOTIFICATION ON RELEASE.—A private educational lender with respect to, or servicer of, a private education loan, as applicable, shall promptly notify the borrower and any cosigners for the private education loan if a cosigner is released from the obligations of the cosigner under the private education loan under this paragraph.

“(E) MODIFICATION OF EVALUATION OF CREDITWORTHINESS, CREDIT STANDING, OR CREDIT CAPACITY.—In determining whether the criteria for a cosigner release are met, a private educational lender with respect to, or servicer of, a private education loan, as applicable, may not evaluate the creditworthiness, credit standing, or credit capacity of the borrower or a cosigner of the private education loan using a standard that would be more adverse to the borrower or cosigner, as applicable, than the standard the private educational lender used to evaluate the creditworthiness, credit standing,

1 or credit capacity of the borrower or cosigner
2 on the date on which the private education loan
3 was consummated.

4 “(5) DESIGNATION OF INDIVIDUAL TO ACT ON
5 BEHALF OF THE BORROWER.—In the case of any
6 private educational lender that extends a private
7 education loan, the lender shall provide the borrower
8 an option to designate an individual to have the
9 legal authority to act on behalf of the borrower with
10 respect to the private education loan in the event of
11 the death, disability, or inability to engage in any
12 substantial gainful activity of the borrower.

13 “(6) COUNSELING.—In the case of any private
14 educational lender that extends a private education
15 loan, the lender shall ensure that the borrower, and
16 any cosigner, receives comprehensive information on
17 the terms and conditions of the loan and of the re-
18 sponsibilities the borrower has with respect to the
19 loan, including the information required under sub-
20 paragraphs (H), (I), (K), (L), (M), and (N) of sec-
21 tion 485(l)(2) of the Higher Education Act of 1965
22 (20 U.S.C. 1092(l)(2)).

23 “(7) MODEL FORM.—The Bureau shall publish
24 a model form under section 105 for describing the

1 obligation of a cosigner for the purposes of para-
2 graph (1).

3 “(8) DEFINITION OF DEATH, DISABILITY, OR
4 INABILITY TO ENGAGE IN ANY SUBSTANTIAL GAIN-
5 FUL ACTIVITY.—For the purposes of this subsection
6 with respect to a borrower or cosigner, the term
7 ‘death, disability, or inability to engage in any sub-
8 stantial gainful activity’—

9 “(A) means any condition described in sec-
10 tion 437(a) of the Higher Education Act of
11 1965 (20 U.S.C. 1087(a)); and

12 “(B) shall be interpreted by the Bureau in
13 such a manner as to conform with the regula-
14 tions prescribed by the Secretary of Education
15 under section 437(a) of the Higher Education
16 Act of 1965 (20 U.S.C. 1087(a)) to the fullest
17 extent practicable, including safeguards to pre-
18 vent fraud and abuse.”.

19 (b) RULEMAKING.—Not later than 1 year after the
20 date of enactment of this Act, the Bureau of Consumer
21 Financial Protection shall issue regulations to carry out
22 subsection (g) of section 140 of the Truth in Lending Act
23 (15 U.S.C. 1650), as amended by this section.

1 **SEC. 3. FEDERAL STUDENT LOANS.**

2 (a) COUNSELING INFORMATION.—Section 485(l)(2)
3 of the Higher Education Act of 1965 (20 U.S.C.
4 1092(l)(2)) is amended by adding at the end the following:

5 “(L) Information regarding the conditions
6 required to discharge the loan due to the death,
7 disability, or inability to engage in any substan-
8 tial gainful activity of the borrower in accord-
9 ance with section 437(a).

10 “(M) Any repayment, refinance, deferment,
11 forbearance, or forgiveness opportunities avail-
12 able to the borrower or cosigner in the event of
13 the death, disability, or inability to engage in
14 any substantial gainful activity of the borrower
15 or cosigner.

16 “(N) The effect that the death, disability,
17 or inability to engage in any substantial gainful
18 activity of the borrower would have on the obli-
19 gations of the borrower and any cosigner of the
20 loan.”.

21 (b) DESIGNATION OF INDIVIDUAL TO ACT ON BE-
22 HALF OF THE BORROWER.—Section 484 of the Higher
23 Education Act of 1965 (20 U.S.C. 1091) is amended—

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

1 “(4) file with the Secretary, as part of the
 2 original financial aid application process, a certifi-
 3 cation, which need not be notarized, but which—

4 “(A) shall include—

5 “(i) a statement of educational pur-
 6 pose stating that the money attributable to
 7 such grant, loan, or loan guarantee will be
 8 used solely for expenses related to attend-
 9 ance or continued attendance at such insti-
 10 tution; and

11 “(ii) such student’s social security
 12 number; and

13 “(B) may include a designation by such
 14 student of an individual who shall have the
 15 legal authority to act on behalf of the student
 16 with respect to any loan to the student under
 17 this title in the event of the student’s death,
 18 disability, or inability to engage in any substan-
 19 tial gainful activity;” and

20 (2) by adding at the end the following:

21 “(u) OPTION TO DESIGNATE INDIVIDUAL TO ACT ON
 22 BEHALF OF THE BORROWER IN CLEAR AND CON-
 23 SPICUOUS MANNER.—The option for a student to make
 24 a designation described in subsection (a)(4)(B) shall be

1 provided in a clear and conspicuous manner to the stu-
2 dent.”.

3 (c) CANCELLATION OF LOANS FOR PARENT BOR-
4 ROWERS IN CASE OF DISABILITY OF A STUDENT.—Sec-
5 tion 437(d) of the Higher Education Act of 1965 (20
6 U.S.C. 1087(d)) is amended by inserting “becomes perma-
7 nently and totally disabled, or is unable to engage in any
8 substantial gainful activity, as determined for purposes of
9 subsection (a)(1),” after “dies,”.

10 **SEC. 4. RULE OF CONSTRUCTION.**

11 Nothing in this Act, or any amendment made by this
12 Act, may be construed to adversely affect the eligibility
13 of a student to receive any grant, loan, or work assistance
14 under part C or part G of title IV of the Higher Education
15 Act of 1965 (20 U.S.C. 1087–51 et seq. and 20 U.S.C.
16 1088 et seq.) based on a designation, or the lack of a des-
17 ignation, under section 484(a)(4)(B) of that Act (20
18 U.S.C. 1091(a)(4)(B)), as added by section 3(b)(1).

19 **SEC. 5. APPLICABILITY.**

20 (a) PRIVATE EDUCATIONAL LOANS.—Paragraphs
21 (2), (3), and subparagraphs (A), (C), (D) and (E) of sec-
22 tion 140(g)(4) of the Truth in Lending Act (15 U.S.C.
23 1650(g)), as amended by section 2 of this Act, shall apply
24 to any outstanding private educational loan received by a

1 borrower before, on, or after the date of enactment of this
2 Act.

3 (b) FEDERAL LOANS.—The amendment made by sec-
4 tion 3(c) of this Act shall apply to any outstanding loan
5 received by a parent before, on, or after the date of enact-
6 ment of this Act.

7 (c) DATE OF ONSET.—The provisions described in
8 subsections (a) and (b) shall apply without regard to the
9 date of the onset of any disability or impairment, the date
10 of death, or the date of bankruptcy filing.

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