To protect students of institutions of higher education and the taxpayer
investment in institutions of higher education by improving oversight
and accountability of institutions of higher education, particularly for-
profit colleges, improving protections for students and borrowers, and
ensuring the integrity of postsecondary education programs, and for
other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. HASSAN (for herself and Mr. DURBIN) introduced the following bill; which
was read twice and referred to the Committee on

A BILL

To protect students of institutions of higher education and
the taxpayer investment in institutions of higher edu-
cation by improving oversight and accountability of insti-
tutions of higher education, particularly for-profit col-
leges, improving protections for students and borrowers,
and ensuring the integrity of postsecondary education
programs, 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,
SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Preventing Risky Operations from Threatening the Education and Career Trajectories of Students Act of 2019” or the “PROTECT Students Act of 2019”.

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References.
Sec. 3. Effective date.
Sec. 4. Definitions.

TITLE I—FOR-PROFIT INSTITUTIONS

Sec. 101. Closing the GI Bill loophole and restoring the 85/15 rule for for-profit institutions.
Sec. 102. Process for for-profit institutions to convert to nonprofit or public status.
Sec. 103. For-Profit Education Oversight Coordination Committee.

TITLE II—STUDENT AND BORROWER PROTECTIONS

Sec. 201. Gainful employment programs.
Sec. 203. Enforcement unit established in the Office of Federal Student Aid.
Sec. 204. Establishment and maintenance of complaint resolution and tracking system.
Sec. 205. Borrower defense to repayment.

TITLE III—ENSURING INTEGRITY AT INSTITUTIONS OF HIGHER EDUCATION

Sec. 301. Restrictions on sources of funds for recruiting and marketing activities.
Sec. 302. Strengthening the incentive compensation ban.
Sec. 303. Definition of nonprofit institution of higher education.
Sec. 304. Definition of public institution of higher education.
Sec. 305. Enhanced civil penalties, State enforcement, and private right of action.
Sec. 306. Substantial misrepresentation prohibited.

SEC. 2. REFERENCES.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provi-
sion, the reference shall be considered to be made to a
section or other provision of the Higher Education Act of
1965 (20 U.S.C. 1001 et seq.).

SEC. 3. EFFECTIVE DATE.

Except as otherwise specified, this Act, and the
amendments made by this Act, shall take effect beginning
on July 1, 2020.

SEC. 4. DEFINITIONS.

(a) IN GENERAL.—Section 103 (20 U.S.C. 1003) is
amended—

(1) by redesignating paragraphs (15) through
(22), (23), and (24) as paragraphs (17) through
(24), (26), and (27);

(2) by inserting after paragraph (14) the fol-
lowing:

“(16) Revenue sharing arrangements.—
The term ‘revenue sharing arrangement’ means an
arrangement between an institution of higher edu-
cation and a third party contractor under which—

“(A) the third party contractor provides,
exclusively or nonexclusively, educational prod-
ucts or services to prospective students or stu-
dents attending the institution of higher edu-
cation; and
“(B) the third party contractor or institution of higher education pays a fee or provides other material benefits, including revenue- or profit-sharing, to the institution of higher education or third party contractor in connection with the educational products or services provided to prospective students or students attending the institution of higher education.”;

and

(3) by inserting after paragraph (24), as redesignated by paragraph (1), the following:

“(25) THIRD PARTY CONTRACTOR.—The term ‘third party contractor’ means any State, person, or entity that enters into a contract or agreement, including a revenue sharing arrangement, with an eligible institution of higher education to act on the institution’s behalf, including any entity that—

“(A) sells the names of prospective students (also known as a ‘lead generator’); or

“(B) offers services including recruiting, financial aid packaging, curriculum development, facilities management, hiring and oversight of faculty, and the provision of student services representatives, job placement counselors, or
other employees (also known as an ‘online program manager’).”.

(b) **Renaming Proprietary Institutions For-Profit Institutions.**—

(1) **In General.**—Section 102 (20 U.S.C. 1002) is amended—

(A) in subsection (a)(1)(A), by striking “proprietary institution” and inserting “for-profit institution”; and

(B) in subsection (b)—

(i) in the subsection heading, by striking “PROPRIETARY” and inserting “FOR-PROFIT”;

(ii) in the matter preceding subparagraph (A) of paragraph (1), by striking “proprietary” and inserting “for-profit”; and

(iii) in paragraph (2), by striking “proprietary” each place the term appears and inserting “for-profit”.

(2) **Conforming Amendments.**—

(A) **Department of Education Organization Act.**—The Department of Education Organization Act (20 U.S.C. 3401 et seq.) is amended—
(i) in section 219 (20 U.S.C. 3426)—

(I) in the section heading, by striking “PROPRIETARY” and inserting “FOR-PROFIT”;

(II) by striking “Proprietary” each place the term appears and inserting “For-Profit”; and

(III) by striking “proprietary” each place the term appears and inserting “for-profit”; and

(ii) in section 1, by striking the item relating to section 219 in the table of contents and inserting the following:

“219. Liaison for For-Profit Institutions of Higher Education.”.

(B) HIGHER EDUCATION ACT OF 1965.—

The Act (20 U.S.C. 1001 et seq.) is amended—

(i) in each of sections 435 and 443(b)(8), by striking “proprietary” each place the term appears and inserting “for-profit”; and

(ii) in section 807(d)(1)(A)(iii), by striking “proprietary” and inserting “for-profit”.

(C) SCIENTIFIC AND ADVANCED-TECHNOLOGY ACT OF 1992.—Section 3(j)(2)(B) of the Scientific and Advanced-Technology Act of

(3) REFERENCES.—

(A) PROPRIETARY INSTITUTION.—Any reference to a proprietary institution, as defined in section 102(b) of the Higher Education Act of 1965 (20 U.S.C. 1002) on the day before the date of enactment of this Act, in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the date of enactment of this Act shall be considered to refer and apply to a for-profit institution, as defined in section 102(b) of the Higher Education Act of 1965 (20 U.S.C. 1002(b)), as amended by this Act.

(B) LIAISON.—Any reference to the Liaison for Proprietary Institutions of Higher Education in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the date of enactment of this Act shall be considered to refer and apply to the Liaison for For-Profit Institutions of Higher Education established under section 219 of the Depart-

TITLE I—FOR-PROFIT INSTITUTIONS

SEC. 101. CLOSING THE GI BILL LOOPHOLE AND RESTORING THE 85/15 RULE FOR FOR-PROFIT INSTITUTIONS.

(a) IN GENERAL.—Section 102(b) (20 U.S.C. 1002), as amended by section 4(b), is further amended—

(1) in paragraph (1)—

(A) in subparagraph (D), by striking “and” after the semicolon; and

(B) in subparagraph (E), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(F) meets the requirements of paragraph (2).”;

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following:

“(2) REVENUE SOURCES.—

“(A) IN GENERAL.—In order to qualify as a for-profit institution of higher education under this subsection, an institution shall derive
not less than 15 percent of the institution’s revenues from sources other than Federal education assistance funds, as calculated in accordance with subparagraphs (B) and (C).

“(B) Federal education assistance funds.—In this paragraph, the term ‘Federal education assistance funds’ means any Federal financial assistance provided, under this Act or any other Federal law, through a grant, contract, subsidy, loan, guarantee, insurance, or other means to an institution of higher education, including Federal financial assistance that is disbursed or delivered to an institution or on behalf of a student or to a student to be used to attend the institution, except that such term shall not include any monthly housing stipend provided under the Post-9/11 Veterans Educational Assistance Program under chapter 33 of title 38, United States Code.

“(C) Implementation of non-federal revenue requirement.—In making calculations under subparagraph (A), an institution of higher education shall—

“(i) use the cash basis of accounting;
“(ii) consider as revenue only those funds generated by the institution from—

“(I) tuition, fees, and other institutional charges for students enrolled in programs eligible for assistance under title IV;

“(II) activities conducted by the institution that are necessary for the education and training of the institution’s students, if such activities are—

“(aa) conducted on campus or at a facility under the control of the institution;

“(bb) performed under the supervision of a member of the institution’s faculty; and

“(cc) required to be performed by all students in a specific educational program at the institution; and

“(III) a contractual arrangement with a Federal agency for the purpose of providing job training to low-income individuals who are in need of such training;
“(iii) presume that any Federal education assistance funds that are disbursed or delivered to an institution on behalf of a student or directly to a student will be used to pay the student’s tuition, fees, or other institutional charges, regardless of whether the institution credits such funds to the student’s account or pays such funds directly to the student, except to the extent that the student’s tuition, fees, or other institutional charges are satisfied by—

“(I) grant funds provided by an outside source that—

“(aa) has no affiliation with the institution; and

“(bb) shares no employees, executives, or board members with the institution;

“(II) funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals who are in need of that training; or
“(III) institutional scholarships described in clause (v);

“(iv) include no loans made by an institution of higher education as revenue to the school, except for payments made by students on such loans;

“(v) include a scholarship provided by the institution—

“(I) only if the scholarship is in the form of monetary aid based upon the academic achievements or financial need of students, disbursed to qualified student recipients during each fiscal year from an established restricted account; and

“(II) only to the extent that funds in that account represent designated funds, or income earned on such funds, from an outside source that—

“(aa) has no affiliation with the institution; and

“(bb) shares no employees, executives, or board members with the institution; and
“(vi) exclude from revenues—

“(I) the amount of funds the institution received under part C of title IV, unless the institution used those funds to pay a student’s institutional charges;

“(II) the amount of funds the institution received under subpart 4 of part A of title IV;

“(III) the amount of funds provided by the institution as matching funds for any Federal program;

“(IV) the amount of Federal education assistance funds provided to the institution to pay institutional charges for a student that were refunded or returned; and

“(V) the amount charged for books, supplies, and equipment, unless the institution includes that amount as tuition, fees, or other institutional charges.

“(D) REPORT TO CONGRESS.—Not later than July 1, 2020, and by July 1 of each succeeding year, the Secretary shall submit to the
authorizing committees a report that contains,
for each for-profit institution of higher edu-
cation that receives assistance under title IV
and as provided in the audited financial state-
ments submitted to the Secretary by each insti-
tution pursuant to the requirements of section
487(c)—

“(i) the amount and percentage of
such institution’s revenues received from
Federal education assistance funds; and

“(ii) the amount and percentage of
such institution’s revenues received from
other sources.”.

(b) REPEAL OF EXISTING REQUIREMENTS.—Section
487 (20 U.S.C. 1094) is amended—

(1) in subsection (a)—

(A) by striking paragraph (24);

(B) by redesignating paragraphs (25)
through (29) as paragraphs (24) through (28),
respectively;

(C) in paragraph (24)(A)(ii) (as redesig-
nated by subparagraph (B)), by striking “sub-
section (e)” and inserting “subsection (d)”;
and
(D) in paragraph (26) (as redesignated by subparagraph (B)), by striking “subsection (h)” and inserting “subsection (g)”;
(2) by striking subsection (d);
(3) by redesignating subsections (e) through (j) as subsections (d) through (i), respectively;
(4) in subsection (d) (as redesignated by paragraph (3)), by striking “(a)(25)” and inserting “(a)(24)”;
(5) in subsection (f)(1) (as redesignated by paragraph (3)), by striking “subsection (e)(2)” and inserting “subsection (d)(2)”; and
(6) in subsection (g)(1) (as redesignated by paragraph (3)), by striking “subsection (a)(27)” in the matter preceding subparagraph (A) and inserting “subsection (a)(26)”.
(c) CONFORMING AMENDMENTS.—The Act (20 U.S.C. 1001 et seq.) is amended—
(1) in section 152 (20 U.S.C. 1019a)—
(A) in subsection (a)(1)(A), by striking “subsections (a)(27) and (h) of section 487” and inserting “subsections (a)(26) and (g) of section 487”; and
SEC. 102. PROCESS FOR FOR-PROFIT INSTITUTIONS TO CONVERT TO NONPROFIT OR PUBLIC STATUS.

(a) Conversion Process.—Part B of title I (20 U.S.C. 1011 et seq.) is further amended by adding at the end the following:

“SEC. 124. PROCESS FOR FOR-PROFIT INSTITUTIONS TO CONVERT TO NONPROFIT OR PUBLIC STATUS.

“(a) Determination.—

“(1) In General.—In any case where the Secretary determines that a for-profit institution of
higher education, as defined in section 102(b), meets the applicable requirements of subsection (b), the Secretary shall approve the conversion of the institution of higher education to a nonprofit or public institution of higher education for not more than a 5-year period.

“(2) Periodic review.—For each for-profit institution that is converted under this section to a nonprofit or public institution of higher education, the Secretary shall—

“(A) review the determination not less than once every 5 years; and

“(B) at the conclusion of a review described in subparagraph (A)—

“(i) in a case where the Secretary determines the institution continues to meet the requirements of this section, approve the institution’s status as a nonprofit institution of higher education or public institution of higher education for an additional period not to exceed 5 years; and

“(ii) in a case where the Secretary determines the institution no longer meets the requirements, classify the institution as a for-profit institution.
“(b) REQUIREMENTS.—To be eligible to convert to a nonprofit or public institution of higher education, a for-profit institution of higher education shall submit an application to the Secretary that demonstrates that—

“(1) the institution, as of the date of the application, meets the definition of a nonprofit or public institution of higher education;

“(2) the institution has not acquired any other institution of higher education (as defined in section 102), or a significant portion of the assets of such other institution, for more than the value of such other institution or such assets, respectively, as determined in accordance with subsection (d); and

“(3) in the case of an institution that has been acquired by another party, such institution is not controlled by such party.

“(c) TRANSITION PERIOD.—A for-profit institution of higher education approved for conversion under subsection (a) shall be subject to any rules and regulations that apply to for-profit institutions of higher education, as defined in section 102(b), for a minimum 5 year-period after conversion, which may be extended by the Secretary if the Secretary identifies a reason for concern relating to the institution’s converted status.
“(d) VALUE.—The term ‘value’, with respect to an acquisition under subsection (b)(2)—

“(1) includes the value of any ongoing relationship (including any contract, agreement, lease, or other arrangement between the acquiring institution and the acquired institution) between affiliates, as defined in section 180.905 of title 2, Code of Federal Regulations, as in effect on the date of enactment of the PROTECT Students Act of 2019; and

“(2) may be demonstrated through—

“(A) third-party valuation;

“(B) independent financing of the acquisition based upon the assets acquired; or

“(C) full and open competition in the acquisition, as such term is defined in section 2.101(b) of title 48, Code of Federal Regulations, as in effect on the date of the enactment of the PROTECT Students Act of 2019, of services or assets.

“(e) PUBLICATION.—

“(1) APPLICATION.—Before the Secretary may approve the conversion of an institution of higher education under subsection (a), the Secretary shall publish the application of the institution in the Fed-
eral Register with a notice and comment period of not less than 60 days.

“(2) DETERMINATION.—The Secretary shall publish each determination on an application for conversion under this section, and the reasons for such determination, in the Federal Register.

“(f) TAX EXEMPT STATUS.—In carrying out this section, the Secretary may consider the nonprofit corporation status under State law or the tax exempt status of an institution of higher education under section 501(c)(3) of the Internal Revenue Code of 1986, but shall not use such statuses as the sole determining factor for approval under subsection (a).

“(g) PUBLIC REPRESENTATION AND MARKETING OF NONPROFIT STATUS.—A for-profit institution of higher education that receives assistance under title IV that is seeking to convert under this section shall not promote or market itself, in any manner, as a nonprofit institution of higher education until—

“(1) the Secretary has approved the conversion of the institution to a nonprofit institution under this section;

“(2) the Commissioner of Internal Revenue has approved the institution as tax exempt for purposes of the Internal Revenue Code of 1986 and the insti-
tution is an organization described in clause (ii) or (vi) of section 170(b)(1)(A) of such Code; and
“(3) a nationally recognized accrediting agency or association recognized by the Secretary pursuant to section 496 has approved the nonprofit status of the institution.”.

(b) REVIEW AND ENFORCEMENT PROCESS.—

(1) IN GENERAL.—Section 487(c)(1) of the Act (20 U.S.C. 1094(c)(1)) is amended—

(A) by redesignating subparagraphs (B) through (I) as subparagraphs (C) through (J), respectively; and

(B) by inserting after subparagraph (A) the following:

“(B)(i) a requirement that an institution of higher education shall use the same qualified, independent organization or person, in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, for both the financial and compliance audits required for a given year under subparagraph (A);
“(ii) a requirement that the qualified, independent organization or person chosen to conduct the annual financial and compliance audits under subparagraph (A) shall document, in the audit, any transactions or relationships that may conflict with an institution’s status as a nonprofit institution of higher education or public institution of higher education; and

“(iii) in accordance with section 489A, in any case where the Secretary determines, after providing an institution with reasonable notice and an opportunity for a hearing, that the institution is classified as a public institution of higher education or a nonprofit institution for purposes of this Act but is in violation of, or has failed to carry out, any requirements relating to such nonprofit or public status in accordance with paragraphs (13) and (15) of section 103 or section 124, a process through which the Secretary may—

“(I) limit, suspend, or terminate the institution’s participation in any program under this title under section 489A(b)(1);

“(II) impose a civil penalty under section 489A(e); or
“(III) take an emergency action under section 498A(d) against an institution.”;

(2) Conforming Amendments.—Section 487(i) (20 U.S.C. 1094(i)), as redesignated by section 101(b)(3), is further amended—

(A) by striking “subsection (c)(1)(D),”;

and

(B) by inserting “or subsection (b)(1) or (c) of section 489A” after “of this section”.

SEC. 103. FOR-PROFIT EDUCATION OVERSIGHT COORDINATION COMMITTEE.

Part B of title I (20 U.S.C. 1011 et seq.), as amended by section 102, is further amended by adding at the end the following:

“SEC. 125. FOR-PROFIT EDUCATION OVERSIGHT COORDINATION COMMITTEE.

“(a) Definitions.—In this section:

“(1) Executive Officer.—The term ‘executive officer’, with respect to a for-profit institution that is a publicly traded corporation, means—

“(A) the president of such corporation;

“(B) a vice president of such corporation who is in charge of a principal business unit, division, or function of such corporation, such as sales, administration, or finance; or
“(C) any other officer or person who performs a policy-making function for such corporation.

“(2) FEDERAL EDUCATION ASSISTANCE FUNDS.—The term ‘Federal education assistance funds’ has the meaning given the term in section 102(b)(2)(B).

“(3) FOR-PROFIT INSTITUTION.—The term ‘for-profit institution’—

“(A) means a for-profit institution of higher education as defined in section 102(b)(2); and

“(B) includes a former for-profit institution of higher education that has been approved for conversion under section 124 but is still in the transition period required under section 124(e).

“(4) PRIVATE EDUCATION LOAN.—The term ‘private education loan’—

“(A) means a loan provided by a private educational lender (as defined in section 140(a) of the Truth in Lending Act (15 U.S.C. 1650(a))) that—

“(i) is not made, insured, or guaranteed under title IV;
“(ii) is issued expressly for postsecond-
ary educational expenses to a borrower,
regardless of whether the loan is provided
through the educational institution that
the subject student attends or directly to
the borrower from the private educational
lender; and

“(iii) is not made, insured, or guaran-
teed under title VII or title VIII of the
Public Health Service Act (42 U.S.C. 292
et seq. and 296 et seq.); and

“(B) does not include an extension of cred-
it under an open end consumer credit plan, a
reverse mortgage transaction, a residential
mortgage transaction, or any other loan that is
secured by real property or a dwelling.

“(5) Recruiting and Marketing Activities.—The term ‘recruiting and marketing activi-
ties’ means the recruiting and marketing activities
described in section 126(d)(2).

“(6) State Approval Agency.—The term
‘State approval agency’ means any State agency that
determines whether an institution of higher edu-
cation is legally authorized within such State to pro-
provide a program of education beyond secondary education.

“(7) VETERANS SERVICE ORGANIZATION.—The term ‘veterans service organization’ means an organization recognized by the Secretary of Veterans Affairs for the representation of veterans under section 5902 of title 38, United States Code.

“(b) ESTABLISHMENT OF COMMITTEE.—

“(1) ESTABLISHMENT.—There is established in the executive branch a committee to be known as the ‘For-Profit Education Oversight Coordination Committee’ (referred to in this section as the ‘Committee’) and to be composed of the head (or the designee of such head) of each of the following Federal entities:

“(A) The Department of Education.

“(B) The Bureau of Consumer Financial Protection.

“(C) The Department of Justice.


“(E) The Department of Defense.

“(F) The Department of Veterans Affairs.


“(H) The Department of Labor.
“(I) The Internal Revenue Service.

“(J) The enforcement unit of the Performance-Based Organization established under section 141(g).

“(K) At the discretion of the Chairperson of the Committee, any other relevant Federal agency or department.

“(2) PURPOSES.—The Committee shall have the following purposes:

“(A) Coordinate Federal oversight of for-profit institutions to—

“(i) improve enforcement of applicable Federal laws and regulations;

“(ii) increase accountability of for-profit institutions to students and taxpayers; and

“(iii) ensure the promotion of quality education programs.

“(B) Coordinate Federal activities to protect students from unfair, deceptive, abusive, unethical, fraudulent, or predatory practices, policies, or procedures of for-profit institutions.

“(C) Encourage information sharing among agencies related to Federal investigations, audits, program reviews, inquiries, com-
plaints, financial statements, and other information relevant to the oversight of for-profit institutions.

“(D) Develop binding memoranda of understanding that the Federal entities represented on the committee will use regarding the sharing of information to exercise the oversight described in this section.

“(E) Increase coordination and cooperation between Federal and State agencies, including State Attorneys General and State approval agencies, with respect to improving oversight and accountability of for-profit institutions.

“(F) Develop best practices and consistency among Federal and State agencies in the dissemination of consumer information regarding for-profit institutions to ensure that students, parents, and other stakeholders have easy access to such information.

“(3) MEMBERSHIP.—

“(A) DESIGNEES.—For any designee described in paragraph (1), the head of the member entity shall appoint a high-level official who exercises significant decision-making authority for the oversight or investigatory activities and
responsibilities related to for-profit institutions
of the respective member entity.

“(B) CHAIRPERSON.—The Secretary of
Education or the designee of such Secretary
shall serve as the Chairperson of the Com-
mittee.

“(C) COMMITTEE SUPPORT.—The head of
each entity described in paragraph (1) shall en-
sure appropriate staff and officials of such enti-
ty are available to support the Committee-re-
lated work of such entity.

“(c) MEETINGS.—

“(1) COMMITTEE MEETINGS.—The members of
the Committee shall meet regularly, but not less
than once during each quarter of each fiscal year, to
carry out the purposes described in subsection
(b)(2).

“(2) MEETINGS WITH STATE AGENCIES AND
STAKEHOLDERS.—The Committee shall meet not
less than once each fiscal year, and shall otherwise
interact regularly, with State Attorneys General,
State approval agencies, veterans service organiza-
tions, and consumer advocates to carry out the pur-
poses described in subsection (b)(2).
“(d) DIRECTOR.—The Chairperson shall appoint a full-time executive director to support the Committee and may appoint and fix the pay of additional staff as the Chairperson considers appropriate.

“(e) REPORT.—

“(1) IN GENERAL.—The Committee shall submit a report each year to the authorizing committees and any other committee of Congress that the Committee determines appropriate.

“(2) PUBLIC ACCESS.—The report described in paragraph (1) shall be made available to the public in a manner that is easily accessible to parents, students, and other stakeholders, in accordance with the best practices developed under subsection (b)(2)(F).

“(3) CONTENTS.—

“(A) IN GENERAL.—The report shall include—

“(i) an accounting of any action (as defined in subparagraph (C)) taken by the Federal Government, any member entity of the Committee, or a State—

“(I) to enforce Federal or State laws and regulations applicable to for-profit institutions;
“(II) to hold for-profit institutions accountable to students and taxpayers; and
“(III) to promote quality education programs;
“(ii) a summary of complaints against each for-profit institution received by any member entity of the Committee;
“(iii) the data described in subparagraph (B) and any other data relevant to for-profit institutions that the Committee determines appropriate; and
“(iv) recommendations of the Committee for such legislative and administrative actions as the Committee determines are necessary to—
“(I) improve enforcement of applicable Federal laws;
“(II) increase accountability of for-profit institutions to students and taxpayers; and
“(III) ensure the promotion of quality education programs.
“(B) DATA.—
“(i) INDUSTRY-WIDE AND INSTITUTION-LEVEL DATA.—The report shall include data on all for-profit institutions, including the following:

“(I) The following data, in the aggregate for all for-profit institutions and disaggregated for each individual for-profit institution:

“(aa) The total amount of Federal education assistance funds that for-profit institutions received for the previous academic year, and the percentage of the total amount of Federal education assistance funds provided to institutions of higher education (as defined in section 102) for such previous academic year that reflects such total amount of Federal education assistance funds provided to for-profit institutions for such previous academic year.

“(bb) The total amount of Federal education assistance
funds that for-profit institutions received for the previous academic year, disaggregated by whether the funds were provided—

“(AA) in the form of a loan under title IV;

“(BB) in the form of a grant under such title;

“(CC) under chapter 33 of title 38, United States Code;

“(DD) for tuition and expenses under section 2007 of title 10, United States Code;

“(EE) under section 1784a of title 10, United States Code; and

“(FF) in a manner not described in subitems (AA) through (EE).

“(ce) The percentage of the total amount of Federal education assistance funds provided
to institutions of higher education (as defined in section 102) for such previous academic year for each of the programs described in subitems (AA) through (EE) of item (bb) that reflects such total amount of Federal education assistance funds provided to for-profit institutions for such previous academic year for each of such programs.

“(dd) Expenses by classification, including separate classifications for—

“(AA) pre-enrollment recruiting and marketing activities; “(BB) student instruction; and “(CC) student support services.

“(ee) Net income and other changes in equity.
“(ff) Executive compensation for the 10 highest-paid for-profit institution executives.

“(gg) The average retention and graduation rates for students pursuing a certificate or a degree at for-profit institutions.

“(hh) The average cohort default rate (as defined in section 435(m)).

“(ii) With respect to all careers requiring the passage of a licensing examination, and disaggregated by each such career—

“(AA) the average passage rate of individuals who attended a for-profit institution taking such examination to pursue such a career;

“(BB) the average passage rate of all individuals taking such exam to pursue such a career; and
“(CC) the percentage of all individuals taking such exam who attended a for-profit institution.

“(jj) Information regarding the use of private education loans at for-profit institutions that includes—

“(AA) an estimate of the total number of such loans; and

“(BB) information on the average debt, default rate, and interest rate of such loans.

“(II) The financial composite scores, in accordance with section 498, for each for-profit institution, the name and dollar amount of any letters of credit required under subpart L of part 668 of title 34, Code of Federal Regulations (or any successor regulation), and the name of each institution placed under the heightened cash monitoring payment
method, as established under section 668.162(d) of title 34, Code of Federal Regulations (or any successor regulation).

“(ii) DATA ON CORPORATIONS.—

“(I) IN GENERAL.—The report shall include data on for-profit institutions that are publicly traded corporations, consisting of information on—

“(aa) any pre-tax profit of such for-profit institutions—

“(AA) reported as a total amount and as the average percentage of revenue for all such for-profit institutions; and

“(BB) reported as a total amount and as the average percentage of revenue for each such for-profit institution;

“(bb) spending on pre-enrollment recruiting and marketing activities, student instruction, and student support serv-
ices, and for each of the 3 categories separately reported—

“(AA) as a total amount and the average percentage of revenue for all such for-profit institutions; and

“(BB) for each such for-profit institution;

“(cc) total compensation packages of the executive officers of each such for-profit institution;

“(dd) a list of institutional loan programs offered by each such for-profit institution that includes information on the default and interest rates of such programs; and

“(ee) the data described in subclauses (II) and (III).

“(II) DISAGGREGATED BY OWNERSHIP.—The report shall include data on for-profit institutions that are corporations, disaggregated by cor-
porate or parent entity, brand name, and campus, consisting of—

“(aa) the total cost of attendance for each program at each such for-profit institution;

“(bb) total enrollment, disaggregated by—

“(AA) individuals enrolled in programs taken exclusively online;

“(BB) individuals enrolled in programs that are exclusively in person; and

“(CC) individuals enrolled in programs that are a mix of online and in person;

“(cc) the retention and graduation rates for students pursuing a degree at such for-profit institutions, including the number of students who enroll in each year and withdraw in less than one year;
“(dd) the percentage of students enrolled in such for-profit institutions who complete a program of such an institution within—

“(AA) the standard period of completion for such program; and

“(BB) a period that is 150 percent of such standard period of completion;

“(ee) the average cohort default rate, as defined in section 435(m), for such for-profit institutions, and an annual list of cohort default rates (as so defined) for all for-profit institutions;

“(ff) the median educational debt incurred by students who complete a program at such a for-profit institution of higher education;

“(gg) the median educational debt incurred by students who start but do not com-
complete a program at such a for-
profit institution of higher edu-
cation;

“(hh) the job placement rate
for students who complete a pro-
gram at such a for-profit institu-
tion of higher education and the
type of employment obtained by
such students;

“(ii) for careers requiring
the passage of a licensing exam-
ination, the rate of individuals
who attended such a for-profit in-
stitution and passed such an ex-
amination; and

“(jj) the number of com-
plaints from students enrolled in
such for-profit institutions that
have been submitted to any mem-
ber entity of the Committee.

“(III) Department of De-
fense and Veterans Affairs As-
sistance.—

“(aa) In general.—To the
extent practicable, the report
shall provide information on the
data described in subclause (II)
for individuals who pay for the
costs of attending a for-profit in-
stitution of higher education that
is a corporation by using Federal
education assistance provided
under—

“(AA) chapter 33 of
title 38, United States Code;
“(BB) section 2007 of
title 10, United States Code;
and
“(CC) section 1784a of
title 10, United States Code.
“(bb) REVENUE.—The report
shall provide information on
the revenue of such for-profit in-
stitutions that is derived from
the Federal education assistance
described in item (aa).
“(iii) COMPARISON DATA.—The report
shall provide information comparing, in the
aggregate and disaggregated by State,
each of the data elements described in
clause (ii) for for-profit institutions that are publicly traded corporations, for-profit institutions that are not owned or operated by a publicly traded company, nonprofit institutions, and public institutions.

“(iv) INFORMATION REGARDING OWNERSHIP INTERESTS.—The report shall, for each for-profit institution of higher education that is not a publicly traded corporation, report the name of any individual, partnership, or corporation that holds an ownership interest of 5 percent or greater of the for-profit institution of higher education.

“(C) ACCOUNTING OF ANY ACTION.—For the purposes of subparagraph (A)(i), the term ‘any action’ shall include—

“(i) a complaint filed by a Federal or State agency in a local, State, Federal, or Tribal court;

“(ii) an administrative proceeding by a Federal or State agency involving non-compliance of any applicable law or regulation;
“(iii) any other review, audit, or administrative process by any Federal or State agency that results in a penalty, suspension, or termination from any Federal or State program; or

“(iv) a negative or adverse action taken by an accrediting agency or association recognized by the Secretary pursuant to section 496 with respect to an approved institution or program.

“(f) **FOR-PROFIT COLLEGE WARNING LIST FOR PARENTS AND STUDENTS.—**

“(1) **IN GENERAL.**—Each academic year, the Committee shall publish a list to be known as the ‘For-Profit College Warning List for Parents and Students’ to be comprised of for-profit institutions—

“(A) that have engaged in illegal activity during the previous academic year as determined by a Federal or State court;

“(B) that have entered into a settlement with a Federal or State entity resulting in a monetary payment;

“(C) that have had any higher education program limited, withdrawn, or suspended by an external entity (such as a Federal or State
entity or an accrediting agency or association recognized by the Secretary pursuant to section 496);

“(D) for which the Committee has sufficient evidence of widespread or systemic unfair, deceptive, abusive, unethical, fraudulent, or predatory practices, policies, or procedures that pose a threat to the academic success, financial security, or general best interest of students.

“(2) DETERMINATIONS.—In making a determination pursuant to paragraph (1)(D), the Committee may consider evidence that includes the following:

“(A) Any consumer complaint collected by any member entity of the Committee.

“(B) Any complaint filed by a Federal or State entity in a Federal, State, local, or Tribal court.

“(C) Any administrative proceeding by a Federal or State entity involving noncompliance of any applicable law or regulation.

“(D) Any other review, audit, or administrative process by any Federal or State entity that results in a penalty, suspension, or termination from any Federal or State program.
“(E) Data or information submitted by a for-profit institution to any accrediting agency or association recognized by the Secretary pursuant to section 496 or the findings or adverse actions of any such accrediting agency or association.

“(F) Information submitted by a for-profit institution to any member entity of the Committee.

“(G) Any other evidence that the Committee determines relevant in making such determination.

“(3) Publication.—Not later than July 1 of each fiscal year, the Committee shall publish the list under paragraph (1) prominently and in a manner that is easily accessible to parents, students, and other stakeholders, in accordance with any best practices developed under subsection (b)(2)(F).”.

TITLE II—STUDENT AND BORROWER PROTECTIONS

SEC. 201. GAINFUL EMPLOYMENT PROGRAMS.

(a) In General.—Section 102 (20 U.S.C. 1002), as amended by sections 4(b) and 101, is further amended—

(1) in subsection (b)(1)(A)—

(A) by striking clause (ii);
(B) by striking ``(i) provides'' and inserting ``provides''; and

(C) by striking ``recognized occupation; or'' and inserting ``recognized occupation, as described in subsection (e);'';

(2) in subsection (c)(1)(A), by inserting ``(as described in subsection (e)'' after ``recognized occupation''; and

(3) by adding at the end the following:

``(e) GAINFUL EMPLOYMENT IN A RECOGNIZED OCCUPATION.—

``(1) DEFINITIONS.—In this subsection:

``(A) DEBT-TO-EARNINGS RATES.—The term ‘debt-to-earnings rates’ means the discretionary income rate and the annual earnings rate, as determined under the gainful employment rules.

``(B) ELIGIBLE TRAINING PROGRAM.—The term ‘eligible training program’ means a program of training that—

``(i) in order to qualify for assistance under title IV, is required under subsection (b)(1)(A)(i) or (c)(1)(A), or section 101(b)(1), to satisfy the gainful employment requirements of this subsection; and
“(ii) is offered by an institution eligible to receive assistance under such title.

“(C) GAINFUL EMPLOYMENT RULES.—The term ‘gainful employment rules’ means the rules issued under subpart Q of title 34, Code of Federal Regulations, as published on October 31, 2014, relating to gainful employment in a recognized occupation.

“(2) IN GENERAL.—An eligible training program prepares students for gainful employment in a recognized occupation if the eligible training program complies with all requirements of the gainful employment rules (including any modifications made by this subsection), including—

“(A) the provisions relating to the calculation of debt-to-earnings rates for the eligible training program, using actual annual earnings data of students who completed the eligible training program;

“(B) the provisions relating to the determination of outcomes for an eligible training program based on the debt-to-earnings rates, including whether an eligible training program is a ‘passing’, ‘failing’, or ‘zone’ program;
“(C) the provisions relating to the associated consequences for an eligible training program that is not passing the debt-to-earnings rates, including a student warning and ultimate loss of eligibility for assistance under title IV;

“(D) the requirements relating to disclosure, reporting, and certification; and

“(E) the calculation of completion rates, withdrawal rates, repayment rates, program cohort default rates, and median loan debt for the eligible training program.

“(3) Annual Calculations and Verifications.—The Secretary shall carry out all of the following:

“(A) On an annual calendar year basis (notwithstanding section 668.403(c)(5) of the gainful employment rules) and for each eligible training program, calculate for each award year both of the debt-to-earnings rates for the eligible training program, issue a notice of determination, and enforce restrictions based on those determinations. In order to carry out the preceding sentence, the Secretary shall—

“(i) create a list of students who completed the eligible training program during
the cohort period identified by the Secretary;

“(ii) provide the list to the institution offering the eligible training program and allow the institution a 45-day period beginning the day after the date that the Secretary provides the list to the institution, to submit any corrections to the list;

“(iii) after resolving any corrections, provide the institution with the final list and submit the final list of students who completed the eligible training program to the Social Security Administration, the Internal Revenue Service, or any other Federal agency that administers a database that contains earnings information that can be matched to the individuals named in the final list, and retrieve the mean and median annual earnings of students on the lists, in aggregate and not in individual form, within 10 business days after submission;

“(iv) calculate and send the debt-to-earnings rates to the institution offering the eligible training program and allow the
institution a 45-day period, beginning after the date the Secretary notifies an institution of the debt-to-earnings rates, to challenge the accuracy of information used to calculate the eligible training program’s median loan debt;

“(v) subject to the resolution of any challenge, issue a notice of determination informing the institution—

“(I) of the final debt-to-earnings rates of each eligible training program to the institution offering the program;

“(II) of the final determination regarding whether the program is a passing, failing, or zone program, or is ineligible, and the consequences of that determination;

“(III) whether the program could become ineligible based on its final debt-to-earnings rates for the next award year;

“(IV) whether the institution is required to provide warnings to en-
rolled students and prospective students; and

“(V) if the program is determined to be a failing or zone program due to the final debt-to-earnings rates, how the program may make an alternate earnings appeal, in accordance with paragraph (4);

“(vi) with respect to an institution that receives a notification from the Secretary under clause (v)(III) and that does not submit an intent to appeal in accordance with paragraph (4) or for which the appeal is denied, require the institution, not later than 30 days after receiving the notification of the determination or denial, to—

“(I) issue warnings to enrolled students and prospective students; and

“(II) update the disclosure template, as required by the gainful employment rules, as modified by paragraph (5); and

“(vii) enforce restrictions whereby—
“(I) an institution may not disburse program funds under title IV to students enrolled in an ineligible program; and

“(II) an institution may not seek to reestablish the eligibility of a failing or zone program that it discontinued voluntarily, reestablish the eligibility of a program that is ineligible under the debt-to-earnings rates, or establish the eligibility of a program that is substantially similar to the discontinued or ineligible program, until 3 years following the date specified in the notice of determination informing the institution of the program’s ineligibility or the date the institution discontinued the failing or zone program; and

“(B) develop processes to verify, on an annual calendar year basis, that—

“(i) required warnings under the gainful employment rules are delivered to enrolled students and prospective students and are published on the eligible training
program’s disclosure template, in accordance with subparagraph (A)(vii); and

“(ii) each eligible training program is publishing the disclosure template on the website of the eligible training program, as required by the gainful employment rules, as modified by paragraph (5).

“(4) ALTERNATE EARNINGS APPEALS PROCESSES.—The Secretary shall establish and enforce an appeals process for any institution of higher education that wish to file an alternate earnings appeal for an eligible training program that is a failing or zone program under the debt-to-earnings rates. The appeals process shall be carried out in accordance with the gainful employment rules, except that the appeals process shall also—

“(A) allow an institution to file an alternate earnings appeal, in accordance with the gainful employment rules, to request the recalculation of a gainful employment program’s most recent final debt-to-earnings rates issued by the Secretary, except that—

“(i) any institution that elects to submit alternate earnings from an institutional survey shall, in addition to the other
requirements in the gainful employment rules—

“(I) include a test for non-response bias;

“(II) allow for an exception to issues of bias due to sample sizes below 10; and

“(III) subject the institutional survey instrument and survey responses to an audit by the Inspector General of the Department; and

“(ii) the Inspector General of the Department shall—

“(I) audit the institutional survey instrument, and the survey responses, submitted by an institution under clause (i); and

“(II) furnish data showing the Inspector General verified the accuracy of student survey responses; and

“(B) require the Secretary to accept the alternate earnings estimate from an institutional survey if the test for non-response bias includes a response rate that guarantees that the lower bound of the 95 percent confidence
interval of the alternate earnings estimate is at or above the earnings level retrieved from the Social Security Administration, the Internal Revenue Service, or any other Federal agency with a database containing individual-level earnings data.

“(5) Gainful Employment Disclosure Requirements.—Notwithstanding section 668.412(a) of the gainful employment rules, the Secretary shall include in the disclosure template all the information listed in paragraphs (1) through (16) of section 668.412(a) of the gainful employment rules, unless the Secretary—

“(A) determines that consumer testing supports the noninclusion of the information listed in any such paragraph; and

“(B) publishes the Secretary’s determination, and the consumer testing supporting the determination, on the public website of the Department.

“(6) Role of Social Security Administration, the Internal Revenue Service, and Other Federal Agencies.—The Commissioner of Social Security, the Commissioner of Internal Revenue, and the head of any other Federal agency that
administers the database of individual-level earnings data shall, in coordination with the Secretary, timely provide the Secretary with the earnings information as required in accordance with paragraph (3)(A)(iii) and the gainful employment rules.”.

(b) Conforming Amendment.—Section 101(b)(1) (20 U.S.C. 1001(b)(1)) is amended by inserting “, as described in section 102(e),” after “recognized occupation”.

c) Effective Date.—Notwithstanding section 3, this section shall take effect on the date of enactment of this Act.


(a) Enforcement of Arbitration Agreements.—

(1) In general.—Chapter 1 of title 9, United States Code, (relating to the enforcement of arbitration agreements) shall not apply to an enrollment agreement made between a student and an institution of higher education.

(2) Definition.—In this section, the term “institution of higher education” has the meaning given such term in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002), as amended by section 101 of this Act.
(b) Prohibition on Limitations on Ability of Students to Pursue Claims Against Certain Institutions of Higher Education.—Section 487(a) (20 U.S.C. 1094(a)), as amended by section 101, is further amended by adding at the end the following:

“(29) The institution will not require any student to agree to, and will not enforce, any limitation or restriction (including a limitation or restriction on any available choice of applicable law, a jury trial, or venue) on the ability of a student to pursue a claim, individually or with others, against an institution in court.”.

(c) Effective Date.—Notwithstanding section 3, this section shall take effect on the date of enactment of this Act.

SEC. 203. ENFORCEMENT UNIT ESTABLISHED IN THE OFFICE OF FEDERAL STUDENT AID.

Section 141 (20 U.S.C. 1018) is amended—

(1) by redesignating subsections (g) through (i) as subsections (h) through (j), respectively; and

(2) by inserting after subsection (f) the following:

“(g) Enforcement Unit.—

“(1) In general.—The Chief Operating Officer, in consultation with the Secretary, shall estab-
lish an enforcement unit within the PBO (referred to in this section as the ‘enforcement unit’).

“(2) APPOINTMENT.—

“(A) CHIEF ENFORCEMENT OFFICER.—
The Chief Operating Officer, in consultation with the Secretary, shall appoint a Chief Enforcement Officer as a senior manager, in accordance with subsection (e), to perform the functions described in this subsection. The Chief Enforcement Officer shall report solely and directly to the Chief Operating Officer.

“(B) BONUS.—Notwithstanding subsection (e), the Chief Enforcement Officer may receive a bonus, separately determined from the methodology which applies to the calculation of bonuses for other senior managers, based upon the Chief Operating Officer’s evaluation of the Chief Enforcement Officer’s performance in relation to the goals set forth in a performance agreement related to the specific duties of the enforcement unit.

“(3) DUTIES.—The enforcement unit shall—

“(A) receive, process, and analyze allegations and complaints regarding the potential violation of Federal or State law (including civil
and criminal law) or other unfair, deceptive, or abusive acts or practices, by institutions of higher education, third party servicers that contract with such institutions, and third party contractors;

“(B) investigate and coordinate investigations of potential or actual misconduct of institutions of higher education, third party servicers that contract with such institutions, and third party contractors; and

“(C) enforce compliance with laws governing Federal student financial assistance programs under title IV, including through the use of an emergency action in accordance to section 489A, the limitation, suspension, or termination of the participation of an eligible institution in a program under title IV, or the imposition of a civil penalty in accordance with section 489A.

“(4) COORDINATION AND STAFFING.—The enforcement unit shall—

“(A) coordinate with relevant Federal and State agencies and oversight bodies, including the For-Profit Education Oversight Coordination Committee established under section 125; and
“(B) hire staff, (including by appointing not more than 10 individuals in positions of excepted service, as described in subsection (h)(3)) with such expertise as is necessary to conduct investigations, respond to allegations and complaints, and enforce compliance with laws governing Federal student financial assistance programs under title IV.

“(5) DIVISIONS.—

“(A) IN GENERAL.—The enforcement unit shall have separate divisions with the following focus areas:

“(i) An investigations division to investigate potential or actual misconduct at institutions of higher education, third party servicers that contract with such institutions, and third party contractors.

“(ii) A division focused on evaluating the claims of borrowers who assert a defense to repayment of Federal student loans, or groups of borrowers who qualify to assert such a defense to repayment, under section 455(h).

“(iii) A division focused on oversight of the Jeanne Clery Disclosure of Campus
Security Policy and Campus Crime Statistics Act, the reporting of crime and fire statistics by institutions of higher education, and the oversight and enforcement of section 120 (relating to drug and alcohol abuse prevention).

“(iv) A division to administer the Secretary’s authority to fine, limit, suspend, terminate, or take action against institutions of higher education, third party servicers that contract with such institutions, and third party contractors, participating in the Federal student financial assistance programs under title IV.

“(v) A division that administers a program of compliance monitoring and oversight of institutions of higher education, third party servicers that contract with such institutions, and third party contractors, including systems and procedures to support the eligibility, certification, and oversight of program participants, for all institutions of higher education participating in the Federal student financial assistance programs under title IV.
“(vi) Any other division that the Chief Enforcement Officer, in coordination with the Chief Operating Officer and the Secretary, determines is necessary.

“(B) REPORTING.—The staff of each division described in subparagraph (A) shall report to the Chief Enforcement Officer.

“(6) ACTIONS RECOMMENDED.—The Chief Enforcement Officer may recommend, as appropriate to the particular circumstance, that the Chief Operating Officer—

“(A) terminate, suspend, or limit an institution of higher education, a third party servicer that contracts with such institution, or a third party contractor, from participation in one or more programs under title IV (in accordance with section 489A), or provisionally certify such participation (in accordance to section 498(h));

“(B) impose a civil penalty in accordance with section 489A;

“(C) make a recommendation to the Secretary about whether to approve or deny the claims of borrowers, including groups of bor-
rowers, who assert a defense to repayment in accordance with section 455(h); or

“(D) carry out any other enforcement activity applicable to the Department under section 489A.

“(7) DEFINITIONS.—In this subsection—

“(A) the term ‘institution of higher education’ has the meaning given that term in section 102; and

“(B) the term ‘third party servicer’ has the meaning given that term in section 481(c).”.

SEC. 204. ESTABLISHMENT AND MAINTENANCE OF COMPLAINT RESOLUTION AND TRACKING SYSTEM.

Title I (20 U.S.C. 1001 et seq.) is amended by adding at the end the following new part:

“PART F—COMPLAINT TRACKING SYSTEM

SEC. 161. COMPLAINT TRACKING SYSTEM.

“(a) IN GENERAL.—

“(1) IN GENERAL.—The Secretary shall maintain a complaint tracking system that includes a single, toll-free telephone number and a website to facilitate the centralized collection of, monitoring of, and response to complaints and reports (including evidence, as available) of suspicious activity (such as
unfair, deceptive, or abusive acts or practices) regard-

“(A) Federal student financial aid and the servicing of postsecondary education loans by loan servicers;

“(B) educational practices and services of institutions of higher education; and

“(C) the recruiting and marketing practices of institutions of higher education.

“(2) DEFINITIONS.—In this section—

“(A) the term ‘institution of higher education’ has the meaning given that term in section 102; and

“(B) the term ‘recruiting and marketing activities’ means activities described in section 126(d)(2) (as added by section 301 of the Preventing Risky Operations from Threatening the Education and Career Trajectories of Students Act of 2019).

“(b) COMPLAINTS.—Complaints and reports of suspicious activity submitted to the tracking system by stu-
dents, borrowers of student loans, staff, or the general public—

“(1) may remain anonymous, if the complain-
ant so chooses; and
“(2) may describe problems that are systematic in nature and not associated with a particular student.

“(c) ESTABLISHMENT OF COMPLAINT TRACKING OFFICE.—The Secretary shall establish within the Department an office whose functions shall include establishing and administering the complaint tracking system, and widely disseminating information about the complaint tracking system, established under this subsection. The Secretary shall—

“(1) to the extent necessary, combine and consolidate the other offices and functions of the Department to ensure that the office established under this subsection is the single point of contact for students and borrowers with complaints or reports of suspicious activity regarding Federal student financial aid, student loan servicers, educational practices and services of institutions of higher education, and recruiting and marketing activities of institutions of higher education; and

“(2) to the extent practicable, ensure that the office established under this subsection will work with the Student Loan Ombudsman appointed in accordance with section 141(f) and the Student Loan Ombudsman of the Bureau of Consumer Financial
Protection to assist borrowers of Federal student loans that submit complaints or reports of suspicious activity to the complaint tracking system.

“(d) HANDLING OF COMPLAINTS.—

“(1) TIMELY RESPONSE TO COMPLAINTS.—The Secretary shall establish, in consultation with the heads of appropriate agencies (including the Director of the Bureau of Consumer Financial Protection), reasonable procedures to provide a response to complainants not more than 90 days after receiving a complaint in the complaint tracking system, in writing where appropriate. Each response shall include a description of—

“(A) the steps that have been taken by the Secretary in response to the complaint or report of suspicious activity;

“(B) any responses received by the Secretary from the institution of higher education or from a servicer; and

“(C) any additional actions that the Secretary has taken, or plans to take, in response to the complaint or report of suspicious activity.

“(2) TIMELY RESPONSE TO SECRETARY BY INSTITUTION OF HIGHER EDUCATION OR LOAN SERVICER.—If the Secretary determines that it is
necessary, the Secretary shall notify an institution of higher education or loan servicer that is the subject of a complaint or report of suspicious activity through the complaint tracking system under this subsection regarding the complaint or report and directly address and resolve the complaint or report in the system. Not later than 60 days after receiving such notice, such institution or loan servicer shall provide a response to the Secretary concerning the complaint or report, including—

“(A) the steps that have been taken by the institution or loan servicer to respond to the complaint or report;

“(B) all responses received by the institution or loan servicer from the complainant; and

“(C) any additional actions that the institution or loan servicer has taken, or plans to take, in response to the complaint or report.

“(3) FURTHER INVESTIGATION.—The Secretary may, in the event that the complaint is not adequately resolved or addressed by the responses of the institution of higher education or loan servicer under paragraph (2), ask additional questions of such institution or loan servicer or seek additional informa-
tion from or action by the institution or loan servicer.

“(4) Provision of information.—

“(A) In general.—An institution of higher education or loan servicer shall, in a timely manner, comply with a request by the Secretary for information in the control or possession of such institution or loan servicer concerning a complaint or report of suspicious activity received by the Secretary under this subsection, including supporting written documentation, subject to subparagraph (B).

“(B) Exceptions.—An institution of higher education or loan servicer shall not be required to make available under this subsection—

“(i) any nonpublic or confidential information, including any confidential commercial information;

“(ii) any information collected by the institution for the purpose of preventing fraud or detecting or making any report regarding other unlawful or potentially unlawful conduct; or
“(iii) any information required to be kept confidential by any other provision of law.

“(5) COMPLIANCE.—An institution of higher education or loan servicer shall comply with the requirements to provide responses and information, in accordance with this subsection, as a condition of receiving funds under title IV or as a condition of the contract with the Department, as applicable.

“(e) TRANSPARENCY.—

“(1) COLLECTING AND SHARING INFORMATION WITH FEDERAL, STATE, AND NATIONALLY RECOGNIZED ACCREDITING AGENCIES.—In accordance with section 444 of the General Education Provisions Act (20 U.S.C. 1232g) (commonly referred to as the ‘Family Educational Rights and Privacy Act of 1974’) and other laws, the Secretary shall coordinate with the heads of relevant Federal or State agencies or entities, and nationally recognized accrediting agencies or associations recognized by the Secretary pursuant to section 496 to—

“(A) collect any complaints and reports of suspicious activity described in subsection (a)(1) from such agencies, entities, or associations; and
“(B) route complaints and reports received by the complaint tracking system under this section and complaints and reports collected in accordance with subparagraph (A) to the Department, the Department of Justice, the Department of Defense, the Department of Veterans Affairs, the Federal Trade Commission Consumer Sentinel Network, the Bureau of Consumer Financial Protection, any equivalent State agency, or the relevant nationally recognized accrediting agency or association.

“(2) Interaction with existing complaint systems.—To the extent practicable, all procedures established under this section, and all coordination carried out under paragraph (1), shall be established and carried out in accordance with the complaint tracking systems established under Executive Order 13607 (77 Fed. Reg. 25861; relating to establishing principles of excellence for educational institutions serving servicemembers, veterans, spouses, and other family members).

“(3) Public information.—

“(A) In general.—The Secretary shall, on an annual basis, publish on the website of the Department information on the complaints
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and reports of suspicious activity received for each institution of higher education or loan servicer under this subsection, including—

“(i) the number of complaints and reports received;

“(ii) the types of complaints and reports received; and

“(iii) where applicable, information about the resolution of the complaints and reports.

“(B) DATA PRIVACY.—In carrying out subparagraph (A), the Secretary shall—

“(i) comply with applicable data privacy laws and regulations; and

“(ii) ensure that personally identifiable information is not shared.

“(4) REPORTS.—Each year, the Secretary shall prepare and submit to Congress a report describing—

“(A) the types and nature of complaints or reports the Secretary has received under this section;

“(B) the extent to which complainants are receiving adequate resolution pursuant to this section;
“(C) whether particular types of complaints or reports are more common in a given sector of institutions of higher education or with particular loan servicers;

“(D) any legislative recommendations that the Secretary determines are necessary to better assist students and families regarding the activities described in subsection (a)(1); and

“(E) the institutions of higher education and loan servicers with the highest volume of complaints and reports, as determined by the Secretary.”

SEC. 205. BORROWER DEFENSE TO REPAYMENT.

Section 455(h) (20 U.S.C. 1087e) is amended to read as follows:

“(h) BORROWER DEFENSES.—

“(1) APPLICATION.—

“(A) IN GENERAL.—A borrower of a loan under this part or part B may submit an application to the Secretary claiming a defense to repayment of the loan (as described in paragraph (7)) (referred to in this subsection as a ‘borrower defense’), at any time and regardless of the current payment status of the loan. The application shall—
“(i) certify that the borrower received
the proceeds of a loan or loans issued
under this part or part B to attend an eli-
gible institution of higher education;

“(ii) provide evidence that supports
the borrower defense;

“(iii) indicate whether the borrower
has made a claim with respect to the infor-
mation underlying the borrower defense
with any third party, such as the holder of
a performance bond or a tuition recovery
program, and, if so, the amount of any
payment received by the borrower or cred-
itized to the borrower’s loan obligation; and

“(iv) provide any other information or
supporting documentation reasonably re-
quested by the Secretary.

“(B) BORROWER DEFENSE FOR A
GROUP.—

“(i) IN GENERAL.—

“(I) GROUP DEFENSE.—The Sec-
retary may initiate and carry out a
process to determine whether a group
of borrowers, identified by the Sec-
retary, has a borrower defense.
“(II) IDENTIFICATION OF GROUP.—The Secretary may—

“(aa) identify members of such a group from individually filed applications submitted under subparagraph (A); or

“(bb) if the Secretary determines that there are common facts and claims that apply to borrowers who have not filed an application under subparagraph (A), identify such members based on information in the possession of the Secretary.

“(III) REPRESENTATIVE.—In the case of a group identified by the Secretary under this clause, the Secretary shall designate a Department official to present the group’s claim in the process described under paragraph (2).

“(ii) APPLICATION FOR A GROUP.—A State attorney general or nonprofit legal assistance organization that represents borrowers may submit an application de-
scribed in subparagraph (A) on behalf of a group of borrowers whose claims are similar or identical, without requiring an application from each individual borrower in that group or class.

“(iii) Notification.—

“(I) Upon initiation of the process under clause (i) or receipt of an application under clause (ii), the Secretary shall provide the borrowers who may be members of a group borrower defense claim with a written notice of such initiation or receipt, as the case may be, and an option to opt out of the proceeding under this subsection for that group.

“(II) Upon receipt of an application on behalf of a group of borrowers under clause (ii), the Secretary shall provide the entity submitting that application with a written determination, not later than 120 days after receipt of the application, stating—

“(aa) whether the Secretary will forgo the review of claims for
individual borrowers and instead
will review the claims for the
group described in that applica-
tion (or for a subset of borrowers
in that group, if applicable);

“(bb) if the Secretary deter-
dines not to evaluate the applica-
tion for that group (or not to
evaluate the application for all
the requested members of that
group), the reasons for the deter-
mination; and

“(ce) that the Secretary may
reconsider the determination in
item (bb) if presented with new
evidence that would allow for the
consideration of claims for the
group described in the applica-
tion.

“(iv) RELIEF.—If the Secretary ap-
proves a group application for relief under
this subsection, all borrowers in the group
who have not affirmatively opted out are
entitled to relief, regardless of whether an
individual borrower filed an application.
“(2) Process.—

“(A) In general.—Upon receipt of an application from an individual borrower or upon receipt of an application from a group of borrowers or initiation of a claim on behalf of a group of borrowers, as described in paragraph (1)(B), the Secretary shall carry out the following activities:

“(i) With regard to the borrower’s payment status (including each borrower in such group who does not opt out under paragraph (1)(B)(iii)(I)), the Secretary shall—

“(I) grant an administrative forbearance without requiring documentation from the borrower, including a forbearance for any period necessary for the Secretary to determine the borrower’s eligibility for discharge;

“(II) notify the borrower of the option to decline that forbearance and continue making payments on the loan;
“(III) provide the borrower with information about the availability of an income-based repayment plan; and

“(IV) if the borrower’s loan is in default—

“(aa) suspend collection activity on the loan, including any garnishments or offsets, until a decision on the borrower’s claim is issued;

“(bb) notify the borrower of the suspension of collection activity;

“(cc) notify the borrower that if the Secretary determines the borrower does not qualify for a discharge of the loan, collection activity will resume unless the borrower chooses to make payments under any repayment plan, including income-based repayment described under section 493C; and

“(dd) notify the borrower that if the Secretary determines
the borrower does not qualify for
a discharge of the loan, and if
the borrower makes payments
under any repayment plan, in-
cluding an income-based repay-
ment, as described in item (ce),
the Secretary shall submit a re-
port to the consumer reporting
agencies to which the Secretary
previously made adverse credit
reports with regard to the bor-
rower’s loan under this part or
part B to remove the borrower’s
record of default and the Sec-
retary shall refund any collection
costs paid by the borrower subse-
quent to the borrower submitting
an application under paragraph
(1), but prior to the suspension
of the collection activity, as de-
scribed in item (aa).

“(ii) With regard to the fact-finding
process, the Secretary shall designate a
Department official (which shall not be an
official designated under paragraph
(1)(B)(i)(III) and shall be a staff member in the enforcement unit, in accordance with section 141(g) to—

“(I) notify the institution of higher education of the borrower defense application or the initiation of the borrower defense claim;

“(II) determine whether the borrower has established a borrower defense, which shall include—

“(aa) consideration of evidence or argument presented by the borrower; and

“(bb) consideration of additional information, including—

“(AA) Department records;

“(BB) any response or submission from the institution; and

“(CC) any additional information; and

“(III) upon the borrower’s reasonable request, identify and provide to the borrower any records the Sec-
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retary is considering as part of the borrower’s claim.

“(iii) Not later than 18 months after the date of receipt of an application under paragraph (1)(A) or (1)(B)(ii), or the initiation of a claim under paragraph (1)(B)(i), as the case may be, the Secretary shall determine if a borrower or group of borrowers has a successful borrower defense claim. If the Secretary fails to issue a determination by the date that is 18 months after the date of receipt of such application or initiation, the loan underlying the borrower defense claim shall be automatically discharged.

“(B) INSTITUTION’S RESPONSE.—An institution shall provide information to the Secretary, not later than 30 days after the date of a request by the Secretary, and as directed by the Secretary, regarding any response or submission that is requested from the Secretary relating to a borrower defense claim.

“(3) STANDARD OF EVIDENCE.—A borrower defense claim shall be approved under this subsection, if the Secretary finds that a preponderance of the
evidence shows that the borrower has established a borrower defense that meets the requirements of this subsection.

“(4) SUCCESSFUL BORROWER DEFENSE CLAIM.—

“(A) BORROWER RELIEF.—If a borrower is determined to have a borrower defense in accordance with this subsection, the Secretary shall—

“(i) discharge the borrower of the borrower’s obligation to repay the loan (including associated interest, costs, and fees that the borrower would otherwise be obligated to pay) in regards to which there is a borrower defense;

“(ii) notify the borrower of the discharge described in clause (i) and the other information described in subparagraph (C);

“(iii) retroactively waive any interest that accrued after the borrower submitted an application under this subsection;

“(iv) provide the borrower such further relief as the Secretary determines is appropriate under the circumstances, which shall include—
“(I) reimbursing the borrower for amounts paid toward the loan voluntarily or through enforced collection; and

“(II) determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV; and

“(v) not later than 30 days after the date of such determination, submit new reports to consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower’s loan under this part or part B.

“(B) AMOUNT OF LOAN DISCHARGE.—

“(i) IN GENERAL.—There shall be a presumption that on the finding of a successful borrower defense claim, the full amount of the borrower’s loan shall be discharged as described in subparagraph (A). If the Secretary determines that discharge of the full amount of the loan is not appropriate in a particular case, the Secretary shall provide the borrower with—
“(I) a written explanation as to why partial relief is appropriate; and

“(II) if the borrower defense is a defense based on State law and described in paragraph (7)(B)(i) or is a defense described in paragraph (7)(B)(ii) or (7)(B)(iii), include an assurance that the amount of relief is not less than the amount of relief that would be afforded under State law.

“(ii) SUBSTANTIAL MISREPRESENTATION.—Notwithstanding clause (i), in the case of a determination that a borrower defense based on paragraph (7)(B)(iv) has been established, the full amount of the borrower’s loan shall be discharged.

“(iii) LIMITATION.—The total amount of relief granted with respect to a borrower defense regarding a loan under this part or part B shall not exceed the amount of the loan under this part or part B, as the case may be, and any associated interest, costs, and fees. Such amount will be reduced by the amount of any refund, reimbursement, indemnification, restitution, compensatory
damages, settlement, debt forgiveness, discharge, cancellation, compromise, or any other financial benefit received by, or on behalf of, the borrower that was related to the borrower defense and that reduced the borrower’s debt for the loan under this part or part B.

“(iv) Relief for a Non-Federal Loan or Out-Of-Pocket Expenses.—
Any relief provided to a borrower, such as relief for an education loan that is not a Federal loan or refunds from a State tuition recovery fund for out-of-pocket expenses, shall not decrease the amount of relief that the borrower shall be entitled to for a loan under this part or part B based on a borrower defense.

“(v) Minimum Amount of Relief.—
A borrower that has a borrower defense based on State law and described in paragraph (7)(B)(i) or a defense described in paragraph (7)(B)(ii) or (7)(B)(iii) shall not receive an amount of relief that is less than the relief the borrower would receive under the applicable State law.
“(C) NOTIFICATION.—If a borrower defense is successful the Secretary shall notify the borrower (or the entity that submitted the application, in the case of an application described in paragraph (1)(B)(ii)) in writing—

“(i) of the reasons for the approval and the evidence that was relied upon;

“(ii) that the borrower is relieved of the obligation to repay the loan (or a portion of the loan, as described in subparagraph (B)) and associated costs and fees that the borrower would otherwise be obligated to pay;

“(iii) in the event the Secretary does not grant a discharge of the full amount of the loan, an explanation of the reason why partial relief is granted, and (if applicable) an assurance described in subparagraph (B)(i)(II);

“(iv) that the borrower will be reimbursed for some or all of the amounts paid toward the loan voluntarily or through enforced collection, if applicable;
“(v) of the amount of any portion of the loan that is due and payable to the Secretary;

“(vi) that if any balance remains on the loan, the loan will return to the status prior to the borrower’s submission of the application, except that in the case of a loan that was in default prior to such application, the borrower shall first be removed from default status and given the opportunity to enter repayment, including income-based repayment described under section 493C, before the loan will be sent to collections;

“(vii) that if the borrower chooses to make payments, including payments under income-based repayment as described in clause (vi), the Secretary shall—

“(I) submit a report to the consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower’s loan under this part or part B to remove the record of default; and
“(II) refund any collection costs paid with regard to that loan by the borrower subsequent to the borrower submitting an application under paragraph (1);

“(viii) that if only some of the loan will be discharged, the borrower will have the opportunity for reconsideration of the borrower’s claim as described in paragraph (6);

“(ix) that the borrower is eligible to receive assistance under title IV, if applicable; and

“(x) that reports to consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower’s loan shall be updated not later than 30 days from the date the determination under this paragraph was made.

“(5) Denial of borrower defense claim.—If the Secretary denies a borrower defense, the Secretary shall retroactively waive a portion of interest that accrued during the forbearance period
(as described in subparagraph (B)) and notify the borrower—

“(A) of the reasons for the denial and the evidence that was relied upon;

“(B) that the interest accruing on the relevant loan after the first 12 month period of forbearance that occurred from the time the borrower’s application was submitted under this subsection will be retroactively waived;

“(C) of the amount of any portion of the loan that is due and payable to the Secretary;

“(D) whether the Secretary will reimburse any amounts previously collected prior to the suspension of the collection activity, as described in paragraph(2)(A)(i)(IV)(aa);

“(E) that if any balance remains on the loan, the loan will return to the status prior to the borrower’s submission of the application, except that in the case of a loan that was in default prior to such application, the borrower shall first be removed from default status and given the opportunity to enter repayment, including income-based repayment described under section 493C, before the loan will be sent to collections; and
“(F) that the borrower shall have the opportunity for reconsideration of the borrower’s claim as described in paragraph (6).

“(6) RECONSIDERATION.—

“(A) IN GENERAL.—The decision of the Secretary and any relief that may be granted on the claim shall be considered the final agency action that shall be subject to appeal in district court, except that—

“(i) if the borrower defense is denied in full or in part, the borrower may request that the Secretary reconsider the borrower defense upon the identification of new evidence in support of the borrower’s claim; and

“(ii) the Secretary may reopen a borrower defense application at any time to consider evidence that was not considered in making the previous decision on that application.

“(B) PROHIBITION ON RESCINDING RELIEF.—The Secretary shall not reduce the amount of any relief that was previously granted to a borrower under this section, or reinstate
any amounts owed on a previously discharged loan.

“(7) BORROWER DEFENSE CLAIMS AND ESTABLISHING A BORROWER DEFENSE.—

“(A) Claims.—

“(i) In general.—Notwithstanding any other provision of State or Federal law, a borrower may claim as a defense to repayment of a loan made under this part or part B any borrower defense established under subparagraph (B). Such a borrower defense claim may include—

“(I) a defense to repayment of amounts owed to the Secretary on a loan under this part or part B, in whole or in part;

“(II) a right to recover amounts previously collected by the Secretary on such loan, in whole or in part.

“(ii) CONSOLIDATION LOAN.—In the case of a Direct Consolidation Loan—

“(I) the Secretary shall consider a borrower defense claim to such loan by determining whether a borrower defense described in subparagraph (B)
has been established with regard to a
loan made under this part or part B
that was paid off by the Direct Con-
solidation Loan;

“(II) the Secretary shall dis-
charge the appropriate portion of the
Direct Consolidation Loan if the bor-
rower is determined to have a bor-
rower defense with respect to a loan
made under this part or part B that
was paid off by the Direct Consolida-
tion Loan; and

“(III) the Secretary shall return
to the borrower any payments made
by the borrower or otherwise recov-
ered on the Direct Consolidation Loan
or the loans that were paid off by the
Direct Consolidation Loan that exceed
the amount owed on that portion of
the Direct Consolidation Loan that
was not discharged, if—

“(aa) the borrower is deter-
mined to have a borrower defense
with respect to a loan made
under this part or part B that
was paid off by the Direct Consolidation Loan; and

“(bb) the payment was made directly to the Secretary on the loan.

“(iii) PLUS LOAN.—In the case of a Direct PLUS Loan made on behalf of a student, the Secretary shall consider a borrower defense claim related to the student on whose behalf the Direct PLUS Loan was borrowed. Any amounts discharged will be applied to the parent or borrower of the Direct PLUS Loan.

“(B) ESTABLISHING A BORROWER DEFENSE.—A borrower has established a borrower defense if—

“(i) the borrower (whether as an individual or as a member of a group or class) or a government agency, has obtained against the institution of higher education a judgment relating to the borrower’s claim based on State or Federal law in a court or administrative tribunal of competent jurisdiction;
“(ii) the institution of higher education that the borrower attended using a loan under this part failed to perform the institution’s obligations under the terms of a contract with the borrower;

“(iii) the borrower was subject to any act or omission of the institution related to the making of the loan for enrollment at the institution or the provision of educational services for which the loan was provided that would give rise to a cause of action against the institution under applicable State law;

“(iv) the institution of higher education, a third servicer that contracts with such institution, or third party contractor made a substantial misrepresentation; or

“(v) the institution has made any other act or omission that the Secretary, through regulations, or any Federal law, has established is an act or omission that constitutes a borrower defense under this subsection.

“(C) LIMITATION.—A violation by an institution of a requirement in this Act (including
implementing regulations) is not a basis for a borrower defense under this subsection unless the violation would otherwise constitute a basis for a borrower defense, as described in this paragraph.

“(8) FINDING OF SUBSTANTIAL MISREPRESENTATION.—An eligible institution is deemed to have engaged in a substantial misrepresentation for purposes of this subsection when an eligible institution, third party servicer that contracts with such institution, or third party contractor, commits a substantial misrepresentation, as defined in section 489A. A sworn statement or attestation from the borrower shall be considered as evidence, and, in the Secretary’s discretion, may be sufficient evidence for the Secretary to find that a substantial misrepresentation was made to a borrower. If the Secretary determines that an eligible institution, third party servicer that contracts with such institution, or third party contractor, has engaged in a substantial misrepresentation, the Secretary shall, in addition to finding a borrower defense under this section, take enforcement action against the institution, third party servicer that contracts with such institution,
or third party contractor, in accordance with section 489A.

“(9) ACTION AGAINST THE INSTITUTION.—If a borrower is determined to have established a borrower defense in accordance with this subsection, the Secretary shall initiate an appropriate proceeding to require the institution whose act or omission resulted in the borrower defense to repay to the Secretary the amount discharged under paragraph (7)(A) whether by offset, claim on a letter of credit, or other protection provided by the institution.

“(10) REPORTING.—Not less than once every 3 months, the Secretary shall publish on a website, and report to Congress, data—

“(A) for each institution, on—

“(i) the number of claims considered under this subsection;

“(ii) the number of those claims pending and the date of receipt of the application, or the date of the initiation of the claim by the Secretary, of those claims; and

“(iii) the number of claims under this subsection for which a determination has
been made and the results of each such de-
termination; and
“(B) in the aggregate, and disaggregated
by State, on—
“(i) the total number of claims pend-
ing under this subsection;
“(ii) the number of those claims that
are approved borrower defense claims and
total dollar amount of relief;
“(iii) the percentage of those total ap-
proved claims receiving partial relief and
the median student loan debt remaining
for borrowers receiving partial relief; and
“(iv) the number of those claims that
are denied borrower defense claims.”.

TITLE III—ENSURING INTEG-
RITY AT INSTITUTIONS OF
HIGHER EDUCATION

SEC. 301. RESTRICTIONS ON SOURCES OF FUNDS FOR RE-
CRUITING AND MARKETING ACTIVITIES.

(a) REPEAL.—Section 119 of the Higher Education
Opportunity Act (20 U.S.C. 1011m) is repealed.

(b) AMENDMENT TO THE HIGHER EDUCATION ACT
OF 1965.—Part B of title I of the Act (20 U.S.C. 1011
et seq.), as amended by title I, is further amended by adding at the end the following:

“SEC. 126. USE OF FEDERAL FUNDS; RESTRICTIONS ON SOURCES OF FUNDS FOR RECRUITING AND MARKETING ACTIVITIES.

“(a) Prohibition.—

“(1) In general.—No Federal student aid funding under this Act received by an institution of higher education may be used to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action described in paragraph (2).

“(2) Applicability.—The prohibition in paragraph (1) applies with respect to the following Federal actions:

“(A) The awarding of any Federal contract.

“(B) The making of any Federal grant.

“(C) The making of any Federal loan.

“(D) The entering into of any Federal cooperative agreement.
“(E) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

“(b) LOBBYING AND EARMARKS.—No Federal student aid funding under this Act may be used to hire a registered lobbyist or pay any person or entity for securing an earmark.

“(c) RESTRICTIONS ON SOURCES OF FUNDS FOR RECRUITING AND MARKETING ACTIVITIES.—

“(1) IN GENERAL.—An institution of higher education may not use revenues derived from Federal education assistance funds for recruiting or marketing activities described in paragraph (2).

“(2) COVERED ACTIVITIES.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the recruiting and marketing activities subject to paragraph (1) shall include the following:

“(i) Advertising and promotion activities, including paid announcements in newspapers, magazines, radio, television, billboards, electronic media, naming rights, or any other public medium of communication, including paying for displays or pro-
motions at job fairs, military installations, or college recruiting events.

“(ii) Efforts to identify and attract prospective students, either directly or through a third party contractor, including contact concerning a prospective student’s potential enrollment or application for grant, loan, or work assistance under title IV or participation in preadmission or advising activities, including—

“(I) paying employees responsible for overseeing enrollment and for contacting potential students in-person, by phone, by email, or by other Internet communications regarding enrollment; and

“(II) soliciting an individual to provide contact information to an institution of higher education, including websites established for such purpose and funds paid to third parties for such purpose.

“(iii) Such other activities as the Secretary may prescribe, including paying for
promotion or sponsorship of education or military-related associations.

“(B) Exceptions.—Any activity that is required as a condition of receipt of funds by an institution under title IV, is specifically authorized under such title, or is otherwise specified by the Secretary, shall not be considered to be a covered activity under this paragraph.

“(3) Rule of Construction.—Nothing in this subsection shall be construed as a limitation on the use by an institution of revenues derived from sources other than Federal education assistance funds.

“(4) Reports.—Each institution of higher education, that derives 65 percent or more of revenues from Federal education assistance funds shall report annually to the Secretary and to Congress and shall include in such report—

“(A) the institution’s expenditures on advertising, marketing, and recruiting;

“(B) a verification from an independent auditor that the institution is in compliance with the requirements of this subsection; and
“(C) a certification from the institution that the institution is in compliance with the requirements of this subsection.

“(5) Federal education assistance funds.—In this subsection, the term ‘Federal education assistance funds’ has the meaning given that term in section 102(b)(2)(B) (as added by section 101 of the Preventing Risky Operations from Threatening the Education and Career Trajectories of Students Act of 2019).

“(d) Certification.—Each institution of higher education receiving Federal funding under this Act, as a condition for receiving such funding, shall annually certify to the Secretary that the requirements of this section have been met.

“(e) Actions to Implement and Enforce.—The Secretary shall take such actions as are necessary to ensure that the provisions of this section are implemented and enforced.”.

SEC. 302. STRENGTHENING THE INCENTIVE COMPENSATION BAN.

(a) Sense of Congress Regarding Incentive Compensation.—It is the sense of Congress that—

(1) the use of commission-paid sales practices, also known as incentive compensation, leads to over-
ly aggressive, manipulative, and often misleading
tactics in advertising, recruiting, and counseling stu-
dents;

(2) such practices are inappropriate at any in-
stitution benefitting from Federal funding and an
implied Federal endorsement through participation
in programs under title IV of the Higher Education
Act of 1965 (20 U.S.C. 1070 et seq.);

(3) previous investigations by the Federal
Trade Commission, as well as by Congress, including
the Permanent Subcommittee on Investigations of
the Senate (referred to as the “Nunn Commission”)
in 1991 and the Committee on Health, Education,
Labor, and Pensions of the Senate in 2012, found
that incentive compensation schemes frequently con-
tribute to high-pressure sales and other predatory
abuses at federally supported schools;

(4) the ban on incentive compensation under
section 487(a)(20) of the Higher Education Act of
1965 (20 U.S.C. 1094(a)(20)), as amended by sub-
section (b), is intended to preclude the use of such
abusive practices at any point in the process of re-
cruiting or enrolling students, or assisting students
in securing employment; and
(5) an institution that receives assistance under title IV of such Act remains responsible for the actions of any entity that performs functions and tasks on the institution’s behalf, and these responsibilities include ensuring that employees, third party servicers that contract with such institutions, and third party contractors are not paid for services that would convert these payments into prohibited incentive compensation because of the activities in which the employees, third party servicers that contract with such institutions, or third party contractors engage.

(b) AMENDMENTS.—Section 487 (20 U.S.C. 1094) is amended—

(1) in subsection (a), by striking paragraph (20) and inserting the following:

“(20) The institution, any third party servicer that contracts with such institution, and any third party contractor will comply with the ban on prohibited incentive compensation ban under subsection (j).”; and

(2) by adding at the end the following:

“(j) INCENTIVE COMPENSATION BAN.—

“(1) DEFINITIONS.—In this subsection:

“(A) COVERED ACTIVITY.—
“(i) IN GENERAL.—The term ‘covered activity’ means any of the following activities:

“(I) Securing enrollment of students into the institution of higher education, which includes—

“(aa) activities that an individual or entity engages in at any point in time during an educational program for the purpose of the admission or matriculation of students for any period of time, including contact in any form with a prospective student, such as contact through preadmission or advising activities, scheduling an appointment to visit the enrollment office or any other office of the institution, attendance at such an appointment, or involvement in a prospective student’s signing of an enrollment agreement or financial aid application; and
“(bb) other recruitment and marketing activities.

“(II) Securing or awarding financial aid to students for attendance at the institution, including—

“(aa) any involvement in a prospective student’s signing of a financial aid application; and

“(bb) completing financial aid applications on behalf of a prospective applicant (including activities authorized by the Department, such as the FAA Access tool, which can be used to enter, correct, verify, or analyze financial aid application data).

“(III) Improving job placement activities for students attending, or who have attended, the institution.

“(IV) Reducing the number of students who default on their student loans.

“(ii) Exclusion.—The term ‘covered activity’ does not include—
“(I) the provision of student contact information for prospective students, if any payment for such service is not based on—

“(aa) any additional conduct or action by the third party servicer that contracts with such institutions or third party contractor or the prospective student, such as participation in preadmission or advising activities, scheduling an appointment to visit the enrollment office or any other office of the institution or attendance at such an appointment, or the signing, or being involved in the signing, of a prospective student’s enrollment agreement or financial aid application; or

“(bb) the number of students (calculated at any point in time of an educational program) who apply for enrollment, are awarded financial aid, or are en-
rolled for any period of time, including through completion of an educational program; or

“(II) student support services not included in the covered activities under clause (i).

“(B) Prohibited incentive compensation.—

“(i) In general.—The term ‘prohibited incentive compensation’ includes—

“(I) any commission, bonus, or other incentive payment, of a sum of money or other item of value, paid to or given to a person or an entity that is not a fixed salary or wages and that is paid or given for meeting a certain quota or numerical target, or avoiding penalties for a benchmark set in Federal law, relating to covered activities;

“(II) other direct or indirect forms of payment for meeting a certain quota or numerical target, or avoiding penalties for a benchmark set in Federal law, relating to covered activities, including—
“(aa) tuition sharing as a
measure of compensation when
based on a formula that relates
the amount payable to the entity
to meeting a certain quota or nu-
merical target, or avoiding pen-
alties for a benchmark set in
Federal law, as a result of the
covered activity of the entity;

“(bb) profit-sharing plans
from which distributions are
made to individuals based on
meeting a certain quota or nu-
merical target, or avoiding pen-
alties for a benchmark set in
Federal law, as a result of cov-
ered activities by the recipient;

“(cc) salary adjustments
that take the form of incentive
payments based directly or indi-
rectly on meeting a quota or nu-
merical target, or avoiding pen-
alties for a benchmark set in
Federal law, with respect to a
covered activity;
“(dd) payments based on meeting a certain quota or numerical target, or avoiding penalties for a benchmark set in Federal law, relating to covered activities; and

“(ee) bonuses or other payments based on meeting a certain quota or numerical target, or avoiding penalties for a benchmark set in Federal law, relating to covered activities;

“(III) a decrease or removal of a payment or benefit described in sub-clause (I) or (II) (and not excluded under clause (ii)), if that decrease or removal is based directly or indirectly on meeting a certain quota or numerical target, or avoiding penalties for a benchmark set in Federal law, relating to covered activities; and

“(IV) a change in employment status, such as a promotion, demotion, or termination if based on meeting a certain quota or numerical tar-
get, or avoiding penalties for a benchmark set in Federal law, relating to covered activities.

“(ii) Exclusions.—The following payments or benefits shall not be considered prohibited incentive compensation, if the payment or benefit is determined in a way that is not related to the role the recipient plays in any covered activity:

“(I) A profit sharing plan, including a qualified cash or deferred arrangement (as defined in section 401(k)(2) of the Internal Revenue Code of 1986) offered to all employees on a basis that is neutral with respect to the role the recipient plays in any covered activity.

“(II) An employee benefits plan offered to all employees on a basis that is neutral with respect to the role the recipient plays in any covered activity.

“(III) A cost of living adjustment.
“(IV) A payment to a senior executive with responsibility for the development of policies that affect marketing and recruitment, enrollment, financial aid, or student support services, including job placement services.

“(C) Recruitment and Marketing Activity.—The term ‘recruitment and marketing activity’ means—

“(i) broad information dissemination and disseminating targeted information to individuals;

“(ii) soliciting individuals regarding an institution;

“(iii) advertising a program that disseminates information to potential students;

“(iv) collecting contact information;

“(v) contacting potential applicants for the admission or matriculation of a student into an institution;

“(vi) screening pre-enrollment information to determine whether a prospective student meets the requirements that an in-
stitution has established for enrollment in
an academic program;

“(vii) aiding individuals in filling out
any information relating to an application
for admission or matriculation into an in-
stitution;

“(viii) determining whether an enroll-
ment application is materially complete, as
long as the enrollment decision remains
with the institution; or

“(ix) any other activity described in
section 126(d)(2).

“(D) STUDENT SUPPORT SERVICES.—The
term ‘student support services’ means any of
the following services:

“(i) Counseling or other nonacademic
support activities provided to students that
is not a covered activity;

“(ii) Institutional services provided to
students, such as information technology
assistance, food service, or housing, that is
not a covered activity or

“(iii) Other services involved in the
administration of support for students that
is not a covered activity.
“(2) INCENTIVE COMPENSATION BAN.—

“(A) IN GENERAL.—The institution, any third party servicer that contracts with such institution, and any third party contractor shall not provide any prohibited incentive compensation to any person or entity.

“(B) APPLICABILITY.—The ban on prohibited incentive compensation under this subsection applies to any entity or individual engaged in any covered activity, including—

“(i) with respect to an entity engaged in any student recruitment or admission activity or in making decisions about the award of financial aid, any institution or entity that undertakes the recruiting or the admitting of students or that makes decisions about and awards program funds under this title; and

“(ii) with respect to an individual engaged in any student recruitment or admission activity or in making decisions about the award of financial aid—

“(I) any employee who undertakes recruiting or admitting of students or who makes decisions about
and awards program funds under this title; and

“(II) any higher-level employee with responsibility for recruitment or admission of students, or making decisions about awarding program funds under this title.

“(C) Exclusion of Certain Employees.—The ban on prohibited incentive compensation under this subsection shall not apply to any senior manager or executive level employee who—

“(i) is involved only in the development of policy related to the manner in which marketing and recruitment, enrollment, financial aid, or student support services will be pursued or provided; and

“(ii) does not engage in individual student contact or other covered activities.

“(D) Individual with Multiple Adjustments to Compensation.—An employee of an institution, a third party servicer that contracts with such institution, or a third party contractor, who receives multiple adjustments to compensation in a calendar year and is en-
gaged in a covered activity shall be considered
to be engaged in prohibited incentive compensa-
tion if the adjustments create compensation
that is based in any part, directly or indirectly,
upon meeting certain quotas or numerical tar-
gets, or avoiding penalties for a benchmark set
in Federal law, regarding those covered activi-
ties.

“(3) Notice of Incentive Compensation
Ban.—

“(A) Notice to Servicer and Con-
tractor.—The institution shall provide notice
of the ban on prohibited incentive compensation
under this subsection at least once a year to
each third party servicer and third party con-
tractor that contracts with the institution.

“(B) Notice to Employees.—The insti-
tution, and any third party contractor or third
party servicer that contracts with such institu-
tion, shall—

“(i) provide notice of the ban on pro-
hibited incentive compensation under this
subsection at least once a year to employ-
ees; and
“(ii) publish a clear statement in all internal recruitment materials, including guides or manuals, acknowledging the ban on prohibited incentive compensation under this subsection.

“(4) Consequences for incentive compensation violation.—

“(A) In general.—The Secretary, in coordination with the Office of the Inspector General of the Department of Education, shall develop a written policy for the enforcement of the ban on prohibited incentive compensation under this subsection, and shall update that policy as needed.

“(B) Contents of policy.—The policy developed under subparagraph (A)—

“(i) shall require that compliance review occur on an annual basis;

“(ii) may include automatic triggers for inquiries by the Department or regular ‘secret shopper’ or audit-based investigations to ensure that institutions of higher education remain in compliance with the ban;
“(iii) shall explain the range of sanctions, as described in section 489A, that the Secretary may carry out to enforce this subsection.

“(C) REPORT.—The Department shall publish an annual report, and shall submit that report to the authorizing committees and the For-Profit Education Oversight Coordination Committee established under section 125, which shall include—

“(i) a description of the status of any investigations conducted under this subsection;

“(ii) the names of institutions found to be not in compliance with this subsection;

“(iii) the sanctions the non-compliant institution of higher education faced; and

“(iv) in the case of an institution subject to liability for funds under this title pursuant to subparagraph (B)(iii), the amount of such liability.”
SEC. 303. DEFINITION OF NONPROFIT INSTITUTION OF HIGHER EDUCATION.

Section 103 (20 U.S.C. 1003) is amended by striking paragraph (13) and inserting the following:

“(13) NONPROFIT.—

“(A) IN GENERAL.—The term ‘nonprofit’—

“(i) as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution controlled, owned, and operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual; and

“(ii) as applied to an institution of higher education, means an institution—

“(I) that meets the requirements of subparagraph (A);

“(II) that is an organization described in section 170(b)(1)(A)(ii) or (vi) of the Internal Revenue Code of 1986;

“(III) with respect to which—
“(aa) no member of the governing board of the institution (other than any ex officio member serving at the pleasure of the remainder of the governing board and receiving a fixed salary) receives any substantial direct or indirect economic benefit (including a lease, promissory note, or other contract) from the institution; and

“(bb) no person with the power to appoint or remove members of the governing board receives any such substantial direct or indirect economic benefit (including a lease, promissory note, or other contract) from the institution.

“(B) EXCLUSIONS.—

“(i) IN GENERAL.—An institution of higher education shall not be considered a nonprofit institution of higher education, as defined in this paragraph, if—
“(I) one or more core functions are under the control of, or subject to significant direction from an entity that is not a public institution of higher education or is not formed as a nonprofit corporation; or

“(II) a substantial share of the assets of the institution are committed to a joint venture with a person or entity that is not a public institution of higher education and is not a nonprofit corporation, and the core functions of the venture are conducted by, under the control of, or subject to significant direction from that person or entity.

“(ii) PRESUMPTION OF SIGNIFICANT DIRECTION.—There shall be a conclusive presumption that an entity exercises significant direction if one or more of the entity’s employees or owners serves as an officer, member of the board, or person holding similar authority for the institution of higher education.”.
1 SEC. 304. DEFINITION OF PUBLIC INSTITUTION OF HIGHER EDUCATION.

Section 103 (20 U.S.C. 1003), as amended by section 4, is further amended—

(1) by inserting after paragraph (14) the following:

“(15) PUBLIC INSTITUTION OF HIGHER EDUCATION.—

“(A) IN GENERAL.—The term ‘public’, when used with respect to an institution of higher education, means an institution of higher education—

“(i)(I) operated by—

“(aa) the Federal Government;

“(bb) a State, as defined in section 3306(j)(1) of the Internal Revenue Code of 1986;

“(cc) a local government, as defined in section 1393(a)(5) of such Code; or

“(dd) an Indian tribal government, as defined in section 7701(a)(40) of such Code;

“(II) for which all obligations of the institution are valid and binding obliga-
tions of the State, local government, or Indian tribal government; and

“(III) for which the full faith and credit of such State, local government, or Indian tribal government is pledged for the timely payment of such obligations; or

“(ii) that is an instrumentality of a State or local government (as such terms are defined in subparagraph (A)).

“(B) INSTRUMENTALITY OF A STATE OR LOCAL GOVERNMENT.—An institution shall be considered an instrumentality of a State or local government for purposes of this paragraph if the institution meets all of the following requirements:

“(i) The employees of the institution are employees of the State or local government.

“(ii) Any liability of the institution is payable to the same degree as if the liability was a liability of the State or local government, in the State or local government jurisdiction where the institution is formed.

“(iii) The institution is subject to the same financial oversight and open public
records laws as the State or local government, in the State or local government jurisdiction where the institution is formed.”.

SEC. 305. ENHANCED CIVIL PENALTIES, STATE ENFORCEMENT, AND PRIVATE RIGHT OF ACTION.

(a) IN GENERAL.—Part G of title IV (20 U.S.C. 1088 et seq.) is amended by inserting after section 489 the following:

“SEC. 489A. ENHANCED CIVIL PENALTIES, STATE ENFORCEMENT, AND PRIVATE RIGHT OF ACTION.

“(a) DEFINITIONS.—In this section:

“(1) MISREPRESENTATION.—The term ‘misrepresentation’ means any false, erroneous, or misleading statement an eligible institution of higher education, a third party servicer that contracts with such institution, or a third party contractor makes directly or indirectly to a student, prospective student, or any member of the public, or to an accrediting agency or association, State approval agency, or the Secretary. A misrepresentation includes—

“(A) the making of a statement that has the likelihood or tendency to deceive; or

“(B) the omission of any material facts necessary in order to make any statements made, in light of the circumstances under which
they were made, not false, deceptive, unfair, erroneous, or misleading.

“(2) Officer of an institution of higher education.—The term ‘officer of an institution of higher education’ including at any nonprofit, for-profit, or public institution of higher education, includes the president, chief executive officer, and chief financial officer of an institution of higher education as well as all officers charged with overseeing a principal business unit, division, or function, such as sales, administration, or finance.

“(3) Prospective student.—The term ‘prospective student’ means any individual who has contacted an institution of higher education for the purpose of requesting information about enrolling at the institution of higher education or who has been contacted directly or indirectly by the institution of higher education or a third party contractor through advertising about enrolling at the institution.

“(4) State approval agency.—The term ‘State approval agency’ means any State agency that determines whether an institution of higher education is legally authorized within such State to provide a program of education beyond secondary education.
“(5) Substantial misrepresentation.—The term ‘substantial misrepresentation’ means any mis-
representation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person’s detriment.

“(b) Limitation, suspension, or termination of eligibility status.—

“(1) In general.—Upon determination, after reasonable notice and opportunity for a hearing, that an eligible institution, a third party servicer that contracts with such institution, or a third party con-
tractor has violated or failed to carry out any provi-
sion of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation, the Secretary may limit, suspend, or terminate the participation of that insti-
tution in any program under this title, or the eligi-

bility of that third party contractor or third party servicer to contract with any institution, subject to the requirements of paragraph (2).

“(2) Suspension procedures.—No period of suspension under this section shall exceed 60 days unless the institution and the Secretary agree to an extension or unless limitation or termination pro-
ceedings are initiated by the Secretary within that period of time.

“(3) SUBSTANTIAL MISREPRESENTATION.—Upon determination, after reasonable notice and opportunity for a hearing, that an eligible institution, a third party servicer that contracts with such institution, or a third party contractor has engaged in substantial misrepresentation, including a misrepresentation relating to the nature of an educational program, financial charges, the space availability in a program of the institution for which a student is considering enrollment, admission requirements, the transferability of credits, whether one of that institution’s programs meets necessary State standards to obtain certification or sit for licensing examinations, the passage rates of students in obtaining certifications or sitting for licensing examinations, or the employability or earnings of graduates, the Secretary may suspend, limit, or terminate the eligibility status for any or all programs under this title of any otherwise eligible institution, or of any third party contractor or third party servicer to contract with any institution, in accordance with procedures specified in paragraph (1), until the Secretary finds that such practices have been corrected.
“(c) CIVIL PENALTIES.—

“(1) IN GENERAL.—The Secretary shall impose a civil penalty upon an eligible institution, a third party servicer that contracts with such institution, or a third party contractor, upon making a determination, after reasonable notice and opportunity for a hearing, that an eligible institution, a third party servicer that contracts with such institution, or a third party contractor has—

“(A) violated or failed to carry out any provision of this title or any regulation prescribed under this title; or

“(B) engaged in a substantial misrepresentation, including a substantial misrepresentation described in subsection (b)(3).

“(2) AMOUNT OF CIVIL PENALTIES.—

“(A) A civil penalty imposed for a violation or failure described under paragraph (1)(A) shall not exceed $100,000 (subject to such adjustments for inflation as may be prescribed in regulation) for each such violation.

“(B) A civil penalty imposed for a violation described under paragraph (1)(B) shall be in an amount not to exceed the greater of—
“(i) $100,000 (subject to such adjustments for inflation as may be prescribed in regulation) for each such violation; or

“(ii)(I) in the case of an institution, 1.0 percent of the amount of funds the institution received through this title in the most recent award year prior to the determination for each such violation; and

“(II) in the case of a third party servicer that contracts with such institution or a third party contractor, the amount of the contract with the institution.

“(3) TREATMENT OF MULTIPLE INSTITUTIONS.—For the purpose of determining the amount of civil penalties under this subsection, any violation by a particular institution will accrue against all identification codes used by the Office of Postsecondary Education to designate campuses and institutions affiliated with the institution, and within the period of participation for the institution as defined in section 668.13(b) of title 34, Code of Federal Regulations, or any successor regulation.

“(d) EMERGENCY ACTION.—The Secretary may take an emergency action against an institution, a third party
servicer that contracts with such institution, or a third
party contractor, under which the Secretary shall, effective
on the date on which a notice and statement of the basis
of the action is mailed to the institution, third party
servicer that contracts with such institution, or third party
contractor (by registered mail, return receipt requested),
withhold funds from the institution or its students, or
from the third party servicer that contracts with such in-
stitution or third party contractor, and withdraw the insti-
tution’s authority to obligate funds under this title, or the
authority of the third party servicer that contracts with
such institution or third party contractor to act on behalf
of an institution under any program under this title, if
the Secretary—

“(1) receives information, determined by the
Secretary to be reliable, that the institution, or third
party servicer that contracts with such institution,
or third party contractor is violating any provision
of this title, any regulation prescribed under this
title, or any applicable special arrangement, agree-
ment, or limitation;

“(2) determines that immediate action is nec-
essary to prevent misuse of Federal funds; and

“(3) determines that the likelihood of loss out-
weighs the importance of the procedures prescribed
in subsection (b) for limitation, suspension, or termination,
except that an emergency action shall not exceed 30 days unless the limitation, suspension, or termination proceedings are initiated by the Secretary against the individual or organization within that period of time, and except that the Secretary shall provide the individual or organization an opportunity to show cause, if it so requests, that the emergency action is unwarranted.

“(e) INDIVIDUAL OR ORGANIZATION WITH SUBSTANTIAL CONTROL.—If an individual who, or entity that, exercises substantial control, as determined by the Secretary in accordance with the definition of substantial control in subpart 3 of part H, over one or more institutions participating in any program under this title, or, for purposes of this section over one or more organizations that contract with an institution to administer any aspect of the institution’s student assistance program under this title, is determined to have committed one or more violations of the requirements of any program under this title, or has been suspended or debarred in accordance with the regulations of the Secretary, the Secretary may use such determination, suspension, or debarment as the basis for imposing an emergency action on, or limiting, suspending,
or terminating, in a single proceeding, the participation of any or all institutions under the substantial control of that individual or entity.

“(f) Disposition of Amounts Recovered.—

“(1) Use for Student Relief Fund.—For each fiscal year, an amount equal to 100 percent of the amounts recovered or collected under this section shall be deposited into the Student Relief Fund established under subsection (g).

“(2) Report.—The Secretary shall regularly publish, on the website of the Department, a detailed accounting of the funds in the Student Relief Fund, including the amount of funds that were collected and deposited into the Student Relief Fund under paragraph (1), and how those funds were used, pursuant to subsection (g)(1).

“(g) Student Relief Fund.—

“(1) Establishment.—The Secretary shall establish a Student Relief Fund (referred to in this subsection as the ‘Fund’) that shall be used, subject to the availability of funds, to provide financial relief to any student that is enrolled in an institution of higher education that—

“(A) has failed to comply with an eligibility requirement under section 101 or 102 or
an obligation incurred under the terms of the
program participation agreement under section
487; or
“(B) has been sanctioned under subsection
(b) or (c).
“(2) TREATMENT AND AVAILABILITY OF
FUNDS.—
“(A) FUNDS THAT ARE NOT GOVERNMENT
FUNDS.—Funds obtained by or transferred to
the Fund shall not be construed to be Govern-
ment funds, appropriated monies, or Federal
education assistance funds, as defined in sec-
tion 102(b)(2)(B) (as added by section 101 of
the Preventing Risky Operations from Threat-
ening the Education and Career Trajectories of
Students Act of 2019).
“(B) AMOUNTS NOT SUBJECT TO APPOR-
TIONMENT.—Notwithstanding any other provi-
sion of law, amounts in the Fund shall not be
subject to apportionment for purposes of chap-
ter 15 of title 31, United States Code, or under
any other authority.
“(C) NO FISCAL YEAR LIMITATION.—Sums
deposited in the Fund shall remain in the Fund
and be available for expenditure under this subsection without fiscal year limitation.

“(h) STATE ENFORCEMENT.—

“(1) IN GENERAL.—

“(A) STATE CAUSE OF ACTION.—A violation described in subparagraph (B) shall be a cause of action enforceable by a State, through the attorney general (or the equivalent thereof) of such State, in any district court of the United States in that State or in a State court that is located in that State and that has jurisdiction over the defendant. The State may seek any relief provided under paragraph (3) for such violation, including a civil penalty under subsection (c), or any remedies otherwise available under law.

“(B) VIOLATIONS.—A violation described in this subparagraph is:

“(i) A substantial misrepresentation.

“(ii) A violation of section 487(a)(20).

“(iii) A violation of the default manipulation regulations promulgated by the Secretary under section 435(m)(3).

“(iv) A violation of the program integrity regulations promulgated by the Sec-
retary under this Act, including regulations promulgated in section 102, section 455, and part H.

“(v) In accordance with section 455(h), any act or omission of the institution, third party servicer that contracts with such institution, or third party contractor, related to the making of the loan for enrollment at the institution or the provision of educational services for which the loan was provided that would give rise to a cause of action against the institution under applicable State law.

“(2) NOTICE REQUIRED.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), before initiating any action in a court or other administrative or regulatory proceeding against any institution of higher education, third party servicer that contracts with such institution, or third party contractor, as authorized by paragraph (1), a State attorney general or the equivalent thereof shall timely provide to the Secretary a copy of the complete complaint to be filed and written notice describing such action or proceeding.
“(B) Waiver of prior notice.—If prior notice is not practicable under subparagraph (A), the State attorney general or equivalent thereof shall provide to the Secretary a copy of the complete complaint and the notice described in subparagraph (A) immediately upon instituting the action or proceeding.

“(C) Contents of notice.—The notification required under this paragraph shall, at a minimum, describe—

“(i) the identity of the parties;

“(ii) the alleged facts underlying the proceeding; and

“(iii) whether there may be a need to coordinate the prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Secretary or another Federal agency.

“(3) Preservation of State authority.—

“(A) State claims.—Nothing in this subsection shall be construed as altering, limiting, or affecting the authority of a State attorney general or any other regulatory or enforcement agency or authority to bring an action or other
regulatory proceeding arising solely under the law in effect in that State.

“(B) RELIEF.—

“(i) IN GENERAL.—Except as provided in clause (ii), relief under this subsection may include, without limitation—

“(I) rescission or reformation of contracts;

“(II) refund of moneys or return of real property;

“(III) restitution;

“(IV) disgorgement or compensation for unjust enrichment;

“(V) payment of damages or other monetary relief;

“(VI) public notification regarding the violation, including the costs of notification; or

“(VII) limits on the activities or functions of involved persons, institutions, third party servicers that contract with institutions, or third party contractors.

“(ii) EXCLUSION.—Relief under this subsection shall not include the ability to
suspend or terminate the eligibility status of an institution of higher education for programs under this title or withdrawal of the authority of the third party servicer or third party contractor to act on behalf of an institution or contract with an institution.

“(i) Private Right of Action.—

“(1) In general.—

“(A) Private right of action.—A violation described in subparagraph (B) shall be subject to a private right of action enforceable by a student or former student of an institution of higher education, on behalf of such individual or such individual and a class, in an appropriate district court of the United States or any other court of competent jurisdiction that also has jurisdiction over the defendant. The student or former student may seek any relief provided under subsection (h)(3)(B) for such violation, or any remedies otherwise available to the individual under law and equity.

“(B) Violations.—A violation described in this subparagraph is:

“(i) A substantial misrepresentation.
“(ii) A violation of section 487(a)(20).

“(iii) A violation of the default manipulation regulations promulgated by the Secretary under section 435(m)(3).

“(iv) A violation of the program integrity regulations promulgated by the Secretary under this Act, including regulations promulgated in section 102, section 455, and part H.

“(2) AMOUNT OF DAMAGES.—

“(A) IN GENERAL.—Any institution of higher education, third party servicer that contracts with such institution, or third party contractor, that commits a substantial misrepresentation may be held liable to a student or former student of that institution in an amount equal to the sum of—

“(i) any actual damage sustained by such individual as a result of each substantial misrepresentation;

“(ii) any additional damages as the court may allow; and

“(iii) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reason-
able attorney’s fee as determined by the court.

“(B) ABILITY TO ASSESS PUNITIVE DAMAGES.—

“(i) IN GENERAL.—On a finding by the court that the institution of higher education, third party servicer that contracts with such institution, or third party contractor, has committed a violation described in paragraph (1)(B) with actual or constructive knowledge or reckless disregard for such violation, the court may assess punitive damages not to exceed threefold the sum of actual damages sustained by the plaintiff or class, including court costs and a reasonable attorney’s fee.

“(ii) FACTORS CONSIDERED BY COURT.—In determining the amount of liability in any action under clause (i), the court shall consider, among other relevant factors—

“(I) in any individual action under this subsection, the frequency and persistence of noncompliance by the institution of higher education,
third party servicer that contracts with such institution, or third party contractor and the nature of such noncompliance; or

“(II) in any class action under this subsection, in addition to the factors listed in clause (i), the financial resources of the institution of higher education, third party servicer that contracts with such institution, or third party contractor and the number of persons adversely affected.

“(3) JURISDICTION.—An action to enforce any liability created by this subsection may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction.”.

(b) CONFORMING AMENDMENTS.—Section 487(c), as amended by section 102(b), is further amended—

(1) in paragraph (1), by striking subparagraphs (G) through (J); 

(2) by striking paragraphs (2) and (3); and 

(3) by redesignating paragraphs (4) through (7), as paragraphs (2) through (5), respectively.
SEC. 306. SUBSTANTIAL MISREPRESENTATION PROHIBITED.

Section 487(a) (20 U.S.C. 1094(a)), as amended by section 202(b), is further amended by adding at the end the following:

“(30) The institution will not make a substantial misrepresentation, as defined in section 489A.”.