

# **HEA Blackline, Title I**

## **H.R. 4872 Health Care and Education Reconciliation Act of 2010 (Title II, Subtitle A, - SAFRA Act)**

As signed by President Obama on March 30, 2010

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**Prepared by NCHELP Program Regulations Committee**

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**TITLE I—GENERAL PROVISIONS**  
**PART A—DEFINITIONS**

**SEC. 101. [20 U.S.C. 1001] GENERAL DEFINITION OF INSTITUTION OF HIGHER EDUCATION.**

**(a) INSTITUTION OF HIGHER EDUCATION.**—For purposes of this Act, other than title IV, the term “institution of higher education” means an educational institution in any State that—

**(1)** admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of section 484(d)(3);

**(2)** is legally authorized within such State to provide a program of education beyond secondary education;

**(3)** provides an educational program for which the institution awards a bachelor’s degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

**(4)** is a public or other nonprofit institution; and

**(5)** is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

**(b) ADDITIONAL INSTITUTIONS INCLUDED.**—For purposes of this Act, other than title IV, the term “institution of higher education” also includes—

**(1)** any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a); and

**(2)** a public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1), admits as regular students individuals—

**(A)** who are beyond the age of compulsory school attendance in the State in which the institution is located; or

**(B)** who will be dually or concurrently enrolled in the institution and a secondary school.

**(c) LIST OF ACCREDITING AGENCIES.**—For purposes of this section and section 102, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part H of title IV, to be reliable authority as to the quality of the education or training offered.

**SEC. 102. [20 U.S.C. 1002] DEFINITION OF INSTITUTION OF HIGHER EDUCATION FOR PURPOSES OF TITLE IV PROGRAMS.****(a) DEFINITION OF INSTITUTION OF HIGHER EDUCATION FOR PURPOSES OF TITLE IV PROGRAMS.—**

**(1) INCLUSION OF ADDITIONAL INSTITUTIONS.—**Subject to paragraphs (2) through (4) of this subsection, the term “institution of higher education” for purposes of title IV includes, in addition to the institutions covered by the definition in section 101—

**(A)** a proprietary institution of higher education (as defined in subsection (b) of this section);

**(B)** a postsecondary vocational institution (as defined in subsection (c) of this section); and

**(C)** only for the purposes of part [B D](#) of title IV, an institution outside the United States that is comparable to an institution of higher education as defined in section 101 and that has been approved by the Secretary for the purpose of part [B D](#) of title IV, [consistent with the requirements of section 452\(d\)](#).

**(2) INSTITUTIONS OUTSIDE THE UNITED STATES.—**

**(A) IN GENERAL.—**For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 101 (except that a graduate medical school, nursing school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 101(a)(4)). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, ~~insured, or guaranteed~~ under part [B D](#) unless—

**(i)** except as provided in subparagraph (B)(iii)(IV), in the case of a graduate medical school located outside the United States—

**(I)(aa)** at least 75 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 484(a)(5) in the year preceding the year for which a student is seeking a loan under part [B D](#) of title IV; and

**(bb)** at least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part [B D](#) of subchapter IV of this chapter; or

**(II)** the institution—

**(aa)** has or had a clinical training program that was approved by a State as of January 1, 1992; and

**(bb)** continues to operate a clinical training program in at least one State that is approved by that State;

**(ii)** in the case of a veterinary school located outside the United States that does not meet the requirements of section 101(a)(4), the institution’s students complete their clinical training at an approved veterinary school located in the United States; or

**(iii)** in the case of a nursing school located outside of the United States (other than a public or private nonprofit nursing school located outside of the United States that was participating in the program under part [B D](#) of title IV on August 13, 2008)—

**(I)** the nursing school has an agreement with a hospital, or accredited school of nursing (as such terms are defined in section 801 of the Public Health Service Act (42 U.S.C. 296)), located in the United States that requires the students of the nursing school to complete the students’ clinical training at such hospital or accredited school of nursing;

**(II)** the nursing school has an agreement with an accredited school of nursing located in the United States providing that the students graduating from the nursing school located outside of the United States also receive a degree from the accredited school of nursing located in the United States;

**(III)** the nursing school certifies only Federal [Direct](#) Stafford Loans under section ~~428~~ [455\(a\)\(2\)\(A\)](#), ~~Federal Direct~~ ~~U~~unsubsidized ~~Federal~~ Stafford Loans under section ~~428H~~ [455\(a\)\(2\)\(D\)](#), or Federal [Direct](#) PLUS Loans under section ~~428B~~ [455\(a\)\(2\)\(B\)](#) for students attending the institution;

**(IV)** the nursing school reimburses the Secretary for the cost of any loan defaults for current and former students included in the calculation of the institution’s cohort default rate during the previous fiscal year; and

(V) not less than 75 percent of the individuals who were students or graduates of the nursing school, and who took the National Council Licensure Examination for Registered Nurses in the year preceding the year for which the institution is certifying a Federal [Direct](#) Stafford Loan under section ~~428~~ [455\(a\)\(2\)\(A\)](#), a ~~Federal Direct~~ [Unsubsidized Federal](#) Stafford Loan under section ~~428~~ [455\(a\)\(2\)\(D\)](#), or a Federal [Direct](#) PLUS Loan under section ~~428~~ [455\(a\)\(2\)\(B\)](#), received a passing score on such examination.

**(B) ADVISORY PANEL.—**

**(i) IN GENERAL.—**For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—

- (I)** evaluate the standards of accreditation applied to applicant foreign medical schools; and
- (II)** determine the comparability of those standards to standards for accreditation applied to United States medical schools.

**(ii) SPECIAL RULE.—**If the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 101.

**(iii) REPORT.—**

**(I) IN GENERAL.—**Not later than 1 year after the date of enactment of the Higher Education Opportunity Act, the advisory panel described in clause (i) shall submit a report to the Secretary and to the authorizing committees recommending eligibility criteria for participation in the loan programs under part [B D](#) of title IV for graduate medical schools that—

- (aa)** are located outside of the United States;
- (bb)** do not meet the requirements of subparagraph (A)(i); and
- (cc)** have a clinical training program approved by a State prior to January 1, 2008.

**(II) RECOMMENDATIONS.—**In the report described in subclause (I), the advisory panel's eligibility criteria shall include recommendations regarding the appropriate levels of performance for graduate medical schools described in such subclause in the following areas:

- (aa)** Entrance requirements.
- (bb)** Retention and graduation rates.
- (cc)** Successful placement of students in United States medical residency programs.
- (dd)** Passage rate of students on the United States Medical Licensing Examination.
- (ee)** The extent to which State medical boards have assessed the quality of such school's program of instruction, including through on-site reviews.
- (ff)** The extent to which graduates of such schools would be unable to practice medicine in 1 or more States, based on the judgment of a State medical board.
- (gg)** Any areas recommended by the Comptroller General of the United States under section 1101 of the Higher Education Opportunity Act.
- (hh)** Any additional areas the Secretary may require.

**(III) MINIMUM ELIGIBILITY REQUIREMENT.—**In the recommendations described in subclause (II), the criteria described in subparagraph (A)(i)(I)(bb), as amended by section 102(b) of the Higher Education Opportunity Act, shall be a minimum eligibility requirement for a graduate medical school described in subclause (I) to participate in the loan programs under part [B D](#) of title IV.

**(IV) AUTHORITY.—**The Secretary may—

- (aa)** not earlier than 180 days after the submission of the report described in subclause (I), issue proposed regulations establishing criteria for the eligibility of graduate medical schools described in such subclause to participate in the loan programs under part [B D](#) of title IV based on the recommendations of such report; and
- (bb)** not earlier than one year after the issuance of proposed regulations under item (aa), issue final regulations establishing such criteria for eligibility.

**(C) FAILURE TO RELEASE INFORMATION.—**The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part [B D](#) of title IV.

**(D) SPECIAL RULE.—**If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under title IV, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part [B D](#) of title IV<sup>1</sup> while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.

**(3) LIMITATIONS BASED ON COURSE OF STUDY OR ENROLLMENT.**—An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—

**(A)** offers more than 50 percent of such institution's courses by correspondence (excluding courses offered by telecommunications as defined in section 484(l)(4)), unless the institution is an <sup>4</sup>So in original. Should probably be "part B of title IV".

institution that meets the definition in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act;

**(B)** enrolls 50 percent or more of the institution's students in correspondence courses (excluding courses offered by telecommunications as defined in section 484(l)(4)), unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2- or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;

**(C)** has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2- or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or

**(D)** has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2- or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.

**(4) LIMITATIONS BASED ON MANAGEMENT.**—An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—

**(A)** the institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11, United States Code, between July 1, 1998, and December 1, 1998; or

**(B)** the institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of funds under title IV, or has been judicially determined to have committed fraud involving funds under title IV.

**(5) CERTIFICATION.**—The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part H of title IV.

**(6) LOSS OF ELIGIBILITY.**—An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under title IV as a result of an action pursuant to part H of title IV.

**(b) PROPRIETARY INSTITUTION OF HIGHER EDUCATION.**—

**(1) PRINCIPAL CRITERIA.**—For the purpose of this section, the term "proprietary institution of higher education" means a school that—

**(A)(i)** provides an eligible program of training to prepare students for gainful employment in a recognized occupation; or

**(ii)(I)** provides a program leading to a baccalaureate degree in liberal arts, and has provided such a program since January 1, 2009; and

**(II)** is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier;

**(B)** meets the requirements of paragraphs (1) and (2) of section 101(a);

**(C)** does not meet the requirement of paragraph (4) of section 101(a);

**(D)** is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part H of title IV; and

**(E)** has been in existence for at least 2 years.

(2) ADDITIONAL INSTITUTIONS.—The term “proprietary institution of higher education” also includes a proprietary educational institution in any State that, in lieu of the requirement in section 101(a)(1), admits as regular students individuals—

(A) who are beyond the age of compulsory school attendance in the State in which the institution is located; or

(B) who will be dually or concurrently enrolled in the institution and a secondary school.

(c) POSTSECONDARY VOCATIONAL INSTITUTION.—

(1) PRINCIPAL CRITERIA.—For the purpose of this section, the term “postsecondary vocational institution” means a school that—

(A) provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) meets the requirements of paragraphs (1), (2), (4), and (5) of section 101(a); and

(C) has been in existence for at least 2 years.

(2) ADDITIONAL INSTITUTIONS.—The term “postsecondary vocational institution” also includes an educational institution in any State that, in lieu of the requirement in section 101(a)(1), admits as regular students individuals—

(A) who are beyond the age of compulsory school attendance in the State in which the institution is located; or

(B) who will be dually or concurrently enrolled in the institution and a secondary school.

**SEC. 103. [20 U.S.C. 1003] ADDITIONAL DEFINITIONS.**

In this Act:

- (1) **AUTHORIZING COMMITTEES.**—The term “authorizing committees” means the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives.
- (2) **COMBINATION OF INSTITUTIONS OF HIGHER EDUCATION.**—The term “combination of institutions of higher education” means a group of institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out a common objective, or a public or private nonprofit agency, organization, or institution designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on the group’s behalf.
- (3) **CRITICAL FOREIGN LANGUAGE.**—Except as otherwise provided, the term “critical foreign language” means each of the languages contained in the list of critical languages designated by the Secretary in the Federal Register on August 2, 1985 (50 Fed. Reg. 31412; promulgated under the authority of section 212(d) of the Education for Economic Security Act (repealed by section 2303 of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988)), as updated by the Secretary from time to time and published in the Federal Register, except that in the implementation of this definition with respect to a specific title, the Secretary may set priorities according to the purposes of such title and the national security, economic competitiveness, and educational needs of the United States.
- (4) **DEPARTMENT.**—The term “Department” means the Department of Education.
- (5) **DIPLOMA MILL.**—The term “diploma mill” means an entity that—
- (A)(i) offers, for a fee, degrees, diplomas, or certificates, that may be used to represent to the general public that the individual possessing such a degree, diploma, or certificate has completed a program of postsecondary education or training; and
- (ii) requires such individual to complete little or no education or coursework to obtain such degree, diploma, or certificate; and
- (B) lacks accreditation by an accrediting agency or association that is recognized as an accrediting agency or association of institutions of higher education (as such term is defined in section 102) by—
- (i) the Secretary pursuant to subpart 2 of part H of title IV; or
- (ii) a Federal agency, State government, or other organization or association that recognizes accrediting agencies or associations.
- (6) **DISABILITY.**—The term “disability” has the same meaning given that term under section 3(2) of the Americans With Disabilities Act of 1990.
- (7) **DISTANCE EDUCATION.**—
- (A) **IN GENERAL.**—Except as otherwise provided, the term “distance education” means education that uses one or more of the technologies described in subparagraph (B)—
- (i) to deliver instruction to students who are separated from the instructor; and
- (ii) to support regular and substantive interaction between the students and the instructor, synchronously or asynchronously.
- (B) **INCLUSIONS.**—For the purposes of subparagraph (A), the technologies used may include—
- (i) the Internet;
- (ii) one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;
- (iii) audio conferencing; or
- (iv) video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in clauses (i) through (iii).
- (8) **EARLY CHILDHOOD EDUCATION PROGRAM.**—The term “early childhood education program” means—
- (A) a Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 et seq.), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding;
- (B) a State licensed or regulated child care program; or
- (C) a program that—
- (i) serves children from birth through age six that addresses the children’s cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and
- (ii) is—
- (I) a State prekindergarten program;

(II) a program authorized under section 619 or part C of the Individuals with Disabilities Education Act; or

(III) a program operated by a local educational agency.

(9) **ELEMENTARY SCHOOL.**—The term “elementary school” has the same meaning given that term under section 9101 of the Elementary and Secondary Education Act of 1965.

(10) **GIFTED AND TALENTED.**—The term “gifted and talented” has the same meaning given that term under section 9101 of the Elementary and Secondary Education Act of 1965.

(11) **LOCAL EDUCATIONAL AGENCY.**—The term “local educational agency” has the same meaning given that term under section 9101 of the Elementary and Secondary Education Act of 1965.

(12) **NEW BORROWER.**—The term “new borrower” when used with respect to any date means an individual who on that date has no outstanding balance of principal or interest owing on any loan made, insured, or guaranteed under title IV.

(13) **NONPROFIT.**—The term “nonprofit” as applied to a school, agency, organization, or institution means a school, agency, organization, or institution 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.

(14) **POVERTY LINE.**—The term “poverty line” means the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) applicable to a family of the size involved.

(15) **SCHOOL OR DEPARTMENT OF DIVINITY.**—The term “school or department of divinity” means an institution, or a department or a branch of an institution, the program of instruction of which is designed for the education of students—

(A) to prepare the students to become ministers of religion or to enter upon some other religious vocation (or to provide continuing training for any such vocation); or

(B) to prepare the students to teach theological subjects.

(16) **SECONDARY SCHOOL.**—The term “secondary school” has the same meaning given that term under section 9101 of the Elementary and Secondary Education Act of 1965.

(17) **SECRETARY.**—The term “Secretary” means the Secretary of Education.

(18) **SERVICE-LEARNING.**—The term “service-learning” has the same meaning given that term under section 101(23) of the National and Community Service Act of 1990.

(19) **SPECIAL EDUCATION TEACHER.**—The term “special education teacher” means teachers who teach children with disabilities as defined in section 602 of the Individuals with Disabilities Education Act.

(20) **STATE EDUCATIONAL AGENCY.**—The term “State educational agency” has the same meaning given that term under section 9101 of the Elementary and Secondary Education Act of 1965.

(21) **STATE HIGHER EDUCATION AGENCY.**—The term “State higher education agency” means the officer or agency primarily responsible for the State supervision of higher education.

(22) **STATE; FREELY ASSOCIATED STATES.**—

(A) **STATE.**—The term “State” includes, in addition to the several States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States.

(B) **FREELY ASSOCIATED STATES.**—The term “Freely Associated States” means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(23) **UNIVERSAL DESIGN.**—The term “universal design” has the meaning given the term in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

(24) **UNIVERSAL DESIGN FOR LEARNING.**—The term “universal design for learning” means a scientifically valid framework for guiding educational practice that—

(A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and

(B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient.

**PART B—ADDITIONAL GENERAL PROVISIONS****SEC. 111. [20 U.S.C. 1011] ANTIDISCRIMINATION.**

**(a) IN GENERAL.**—Institutions of higher education receiving Federal financial assistance may not use such financial assistance, directly or indirectly, to undertake any study or project or fulfill the terms of any contract containing an express or implied provision that any person or persons of a particular race, religion, sex, or national origin be barred from performing such study, project, or contract, except that nothing in this subsection shall be construed to prohibit an institution from conducting objective studies or projects concerning the nature, effects, or prevention of discrimination, or to have the institution's curriculum restricted on the subject of discrimination.

**(b) LIMITATIONS ON STATUTORY CONSTRUCTION.**—Nothing in this Act shall be construed to limit the rights or responsibilities of any individual under the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, or any other law.

**SEC. 112. [20 U.S.C. 1011a] PROTECTION OF STUDENT SPEECH AND ASSOCIATION RIGHTS.**

**(a) PROTECTION OF RIGHTS.—(1)** It is the sense of Congress that no student attending an institution of higher education on a full- or part-time basis should, on the basis of participation in protected speech or protected association, be excluded from participation in, be denied the benefits of, or be subjected to discrimination or official sanction under any education program, activity, or division of the institution directly or indirectly receiving financial assistance under this Act, whether or not such program, activity, or division is sponsored or officially sanctioned by the institution.

**(2)** It is the sense of Congress that—

**(A)** the diversity of institutions and educational missions is one of the key strengths of American higher education;

**(B)** individual institutions of higher education have different missions and each institution should design its academic program in accordance with its educational goals;

**(C)** an institution of higher education should facilitate the free and open exchange of ideas;

**(D)** students should not be intimidated, harassed, discouraged from speaking out, or discriminated against;

**(E)** students should be treated equally and fairly; and

**(F)** nothing in this paragraph shall be construed to modify, change, or infringe upon any constitutionally protected religious liberty, freedom, expression, or association.

**(b) CONSTRUCTION.—**Nothing in this section shall be construed—

**(1)** to discourage the imposition of an official sanction on a student that has willfully participated in the disruption or attempted disruption of a lecture, class, speech, presentation, or performance made or scheduled to be made under the auspices of the institution of higher education, provided that the imposition of such sanction is done objectively and fairly; or

**(2)** to prevent an institution of higher education from taking appropriate and effective action to prevent violations of State liquor laws, to discourage binge drinking and other alcohol abuse, to protect students from sexual harassment including assault and date rape, to prevent hazing, or to regulate unsanitary or unsafe conditions in any student residence.

**(c) DEFINITIONS.—**For the purposes of this section:

**(1) OFFICIAL SANCTION.—**The term “official sanction”—

**(A)** means expulsion, suspension, probation, censure, condemnation, reprimand, or any other disciplinary, coercive, or adverse action taken by an institution of higher education or administrative unit of the institution; and

**(B)** includes an oral or written warning made by an official of an institution of higher education acting in the official capacity of the official.

**(2) PROTECTED ASSOCIATION.—**The term “protected association” means the joining, assembling, and residing with others that is protected under the first and 14th amendments to the Constitution, or would be protected if the institution of higher education involved were subject to those amendments.

**(3) PROTECTED SPEECH.—**The term “protected speech” means speech that is protected under the first and 14th amendments to the Constitution, or would be protected if the institution of higher education involved were subject to those amendments.

**SEC. 113. [20 U.S.C. 1011b] TERRITORIAL WAIVER AUTHORITY.**

The Secretary is required to waive the eligibility criteria of any postsecondary education program administered by the Department where such criteria do not take into account the unique circumstances in Guam, the United States Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States.

**SEC. 114. NATIONAL ADVISORY COMMITTEE ON INSTITUTIONAL QUALITY AND INTEGRITY.**

**(a) ESTABLISHMENT.**—There is established in the Department a National Advisory Committee on Institutional Quality and Integrity (in this section referred to as the ‘Committee’) to assess the process of accreditation and the institutional eligibility and certification of institutions of higher education (as defined in section 102) under title IV.

**(b) MEMBERSHIP.**—

**(1) IN GENERAL.**—The Committee shall have 18 members, of which—

**(A)** six members shall be appointed by the Secretary;

**(B)** six members shall be appointed by the Speaker of the House of Representatives, three of whom shall be appointed on the recommendation of the majority leader of the House of Representatives, and three of whom shall be appointed on the recommendation of the minority leader of the House of Representatives; and

**(C)** six members shall be appointed by the President pro tempore of the Senate, three of whom shall be appointed on the recommendation of the majority leader of the Senate, and three of whom shall be appointed on the recommendation of the minority leader of the Senate.

**(2) QUALIFICATIONS.**—Individuals shall be appointed as members of the Committee—

**(A)** on the basis of the individuals’ experience, integrity, impartiality, and good judgment;

**(B)** from among individuals who are representatives of, or knowledgeable concerning, education and training beyond secondary education, representing all sectors and types of institutions of higher education (as defined in section 102); and

**(C)** on the basis of the individuals’ technical qualifications, professional standing, and demonstrated knowledge in the fields of accreditation and administration in higher education.

**(3) TERMS OF MEMBERS.**—Except as provided in paragraph (5), the term of office of each member of the Committee shall be for six years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member’s predecessor was appointed shall be appointed for the remainder of such term.

**(4) VACANCY.**—A vacancy on the Committee shall be filled in the same manner as the original appointment was made not later than 90 days after the vacancy occurs. If a vacancy occurs in a position to be filled by the Secretary, the Secretary shall publish a Federal Register notice soliciting nominations for the position not later than 30 days after being notified of the vacancy.

**(5) INITIAL TERMS.**—The terms of office for the initial members of the Committee shall be—

**(A)** three years for members appointed under paragraph (1)(A);

**(B)** four years for members appointed under paragraph (1)(B); and

**(C)** six years for members appointed under paragraph (1)(C).

**(6) CHAIRPERSON.**—The members of the Committee shall select a chairperson from among the members.

**(c) FUNCTIONS.**—The Committee shall—

**(1)** advise the Secretary with respect to establishment and enforcement of the standards of accrediting agencies or associations under subpart 2 of part H of title IV;

**(2)** advise the Secretary with respect to the recognition of a specific accrediting agency or association;

**(3)** advise the Secretary with respect to the preparation and publication of the list of nationally recognized accrediting agencies and associations;

**(4)** advise the Secretary with respect to the eligibility and certification process for institutions of higher education under title IV, together with recommendations for improvements in such process;

**(5)** advise the Secretary with respect to the relationship between—

**(A)** accreditation of institutions of higher education and the certification and eligibility of such institutions; and

**(B)** State licensing responsibilities with respect to such institutions; and

**(6)** carry out such other advisory functions relating to accreditation and institutional eligibility as the Secretary may prescribe by regulation.

**(d) MEETING PROCEDURES.**—

**(1) SCHEDULE.**—

**(A) BIENNIAL MEETINGS.**—The Committee shall meet not less often than twice each year, at the call of the Chairperson.

**(B) PUBLICATION OF DATE.**—The Committee shall submit the date and location of each meeting in advance to the Secretary, and the Secretary shall publish such information in the Federal Register not later than 30 days before the meeting.

**(2) AGENDA.**—

- (A) ESTABLISHMENT.—The agenda for a meeting of the Committee shall be established by the Chairperson and shall be submitted to the members of the Committee upon notification of the meeting.
- (B) OPPORTUNITY FOR PUBLIC COMMENT.—The agenda shall include, at a minimum, opportunity for public comment during the Committee's deliberations.
- (3) SECRETARY'S DESIGNEE.—The Secretary shall designate an employee of the Department to serve as the Secretary's designee to the Committee, and the Chairperson shall invite the Secretary's designee to attend all meetings of the Committee.
- (4) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the Committee, except that section 14 of such Act shall not apply.
- (e) REPORT AND NOTICE.—
- (1) NOTICE.—The Secretary shall annually publish in the Federal Register—
- (A) a list containing, for each member of the Committee—
- (i) the member's name;
  - (ii) the date of the expiration of the member's term of office; and
  - (iii) the name of the individual described in subsection (b)(1) who appointed the member; and
- (B) a solicitation of nominations for each expiring term of office on the Committee of a member appointed by the Secretary.
- (2) REPORT.—Not later than the last day of each fiscal year, the Committee shall make available an annual report to the Secretary, the authorizing committees, and the public. The annual report shall contain—
- (A) a detailed summary of the agenda and activities of, and the findings and recommendations made by, the Committee during the fiscal year preceding the fiscal year in which the report is made;
  - (B) a list of the date and location of each meeting during the fiscal year preceding the fiscal year in which the report is made;
  - (C) a list of the members of the Committee; and
  - (D) a list of the functions of the Committee, including any additional functions established by the Secretary through regulation
- (f) TERMINATION.—The Committee shall terminate on September 30, 2014.

**SEC. 115. [20 U.S.C. 1011d] STUDENT REPRESENTATION.**

The Secretary shall, in appointing individuals to any commission, committee, board, panel, or other body in connection with the administration of this Act, include individuals who are, at the time of appointment, attending an institution of higher education.

**SEC. 116. [20 U.S.C. 1011e] FINANCIAL RESPONSIBILITY OF FOREIGN STUDENTS.**

Nothing in this Act or any other Federal law shall be construed to prohibit any institution of higher education from requiring a student who is a foreign national (and not admitted to permanent residence in the United States) to guarantee the future payment of tuition and fees to such institution by—

- (1) making advance payment of such tuition and fees;
- (2) making deposits in an escrow account administered by such institution for such payments; or
- (3) obtaining a bond or other insurance that such payments will be made.

**SEC. 117. [20 U.S.C. 1011f] DISCLOSURES OF FOREIGN GIFTS.**

**(a) DISCLOSURE REPORT.**—Whenever any institution is owned or controlled by a foreign source or receives a gift from or enters into a contract with a foreign source, the value of which is \$250,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year, the institution shall file a disclosure report with the Secretary on January 31 or July 31, whichever is sooner.

**(b) CONTENTS OF REPORT.**—Each report to the Secretary required by this section shall contain the following:

**(1)** For gifts received from or contracts entered into with a foreign source other than a foreign government, the aggregate dollar amount of such gifts and contracts attributable to a particular country. The country to which a gift is attributable is the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business, for a foreign source which is a legal entity.

**(2)** For gifts received from or contracts entered into with a foreign government, the aggregate amount of such gifts and contracts received from each foreign government.

**(3)** In the case of an institution which is owned or controlled by a foreign source, the identity of the foreign source, the date on which the foreign source assumed ownership or control, and any changes in program or structure resulting from the change in ownership or control.

**(c) ADDITIONAL DISCLOSURES FOR RESTRICTED AND CONDITIONAL GIFTS.**—Notwithstanding the provisions of subsection (b), whenever any institution receives a restricted or conditional gift or contract from a foreign source, the institution shall disclose the following:

**(1)** For such gifts received from or contracts entered into with a foreign source other than a foreign government, the amount, the date, and a description of such conditions or restrictions. The report shall also disclose the country of citizenship, or if unknown, the principal residence for a foreign source which is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity.

**(2)** For gifts received from or contracts entered into with a foreign government, the amount, the date, a description of such conditions or restrictions, and the name of the foreign government.

**(d) RELATION TO OTHER REPORTING REQUIREMENTS.**—

**(1) STATE REQUIREMENTS.**—If an institution described under subsection (a) is within a State which has enacted requirements for public disclosure of gifts from or contracts with a foreign source that are substantially similar to the requirements of this section, a copy of the disclosure report filed with the State may be filed with the Secretary in lieu of a report required under subsection (a). The State in which the institution is located shall provide to the Secretary such assurances as the Secretary may require to establish that the institution has met the requirements for public disclosure under State law if the State report is filed.

**(2) USE OF OTHER FEDERAL REPORTS.**—If an institution receives a gift from, or enters into a contract with, a foreign source, where any other department, agency, or bureau of the executive branch requires a report containing requirements substantially similar to those required under this section, a copy of the report may be filed with the Secretary in lieu of a report required under subsection (a).

**(e) PUBLIC INSPECTION.**—All disclosure reports required by this section shall be public records open to inspection and copying during business hours.

**(f) ENFORCEMENT.**—

**(1) COURT ORDERS.**—Whenever it appears that an institution has failed to comply with the requirements of this section, including any rule or regulation promulgated under this section, a civil action may be brought by the Attorney General, at the request of the Secretary, in an appropriate district court of the United States, or the appropriate United States court of any territory or other place subject to the jurisdiction of the United States, to request such court to compel compliance with the requirements of this section.

**(2) COSTS.**—For knowing or willful failure to comply with the requirements of this section, including any rule or regulation promulgated thereunder, an institution shall pay to the Treasury of the United States the full costs to the United States of obtaining compliance, including all associated costs of investigation and enforcement.

**(g) REGULATIONS.**—The Secretary may promulgate regulations to carry out this section.

**(h) DEFINITIONS.**—For the purpose of this section—

**(1)** the term “contract” means any agreement for the acquisition by purchase, lease, or barter of property or services by the foreign source, for the direct benefit or use of either of the parties;

**(2)** the term “foreign source” means—

**(A)** a foreign government, including an agency of a foreign government;

- 
- (B) a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states;
  - (C) an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof; and
  - (D) an agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a foreign source;
- (3) the term “gift” means any gift of money or property;
- (4) the term “institution” means any institution, public or private, or, if a multicampus institution, any single campus of such institution, in any State, that—
- (A) is legally authorized within such State to provide a program of education beyond secondary school;
  - (B) provides a program for which the institution awards a bachelor’s degree (or provides not less than a 2-year program which is acceptable for full credit toward such a degree) or more advanced degrees; and
  - (C) is accredited by a nationally recognized accrediting agency or association and to which institution Federal financial assistance is extended (directly or indirectly through another entity or person), or which institution receives support from the extension of Federal financial assistance to any of the institution’s subunits; and
- (5) the term “restricted or conditional gift or contract” means any endowment, gift, grant, contract, award, present, or property of any kind which includes provisions regarding—
- (A) the employment, assignment, or termination of faculty;
  - (B) the establishment of departments, centers, research or lecture programs, or new faculty positions;
  - (C) the selection or admission of students; or
  - (D) the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.

**SEC. 118. [20 U.S.C. 1011g] APPLICATION OF PEER REVIEW PROCESS.**

All applications submitted under the provisions of this Act which require peer review shall be read by a panel of readers composed of individuals selected by the Secretary, which shall include outside readers who are not employees of the Federal Government. The Secretary shall ensure that no individual assigned under this section to review any application has any conflict of interest with regard to that application which might impair the impartiality with which that individual conducts the review under this section.

**SEC. 119. [20 U.S.C. 1011h] BINGE DRINKING ON COLLEGE CAMPUSES.**

**(a) SHORT TITLE.**—This section may be cited as the “Collegiate Initiative To Reduce Binge Drinking and Illegal Alcohol Consumption”.

**(b) SENSE OF CONGRESS.**—It is the sense of Congress that, in an effort to change the culture of alcohol consumption on college campuses, all institutions of higher education should carry out the following:

**(1)** The president of the institution should appoint a task force consisting of school administrators, faculty, students, Greek system representatives, and others to conduct a full examination of student and academic life at the institution. The task force should make recommendations for a broad range of policy and program changes that would serve to reduce alcohol and other drug-related problems. The institution should provide resources to assist the task force in promoting the campus policies and proposed environmental changes that have been identified.

**(2)** The institution should provide maximum opportunities for students to live in an alcohol-free environment and to engage in stimulating, alcohol-free recreational and leisure activities.

**(3)** The institution should enforce a “zero tolerance” policy on the illegal consumption of alcohol by students at the institution.

**(4)** The institution should vigorously enforce the institution’s code of disciplinary sanctions for those who violate campus alcohol policies. Students with alcohol or other drug-related problems should be referred for assistance, including on-campus counseling programs if appropriate.

**(5)** The institution should adopt a policy to discourage alcoholic beverage-related sponsorship of on-campus activities. It should adopt policies limiting the advertisement and promotion of alcoholic beverages on campus.

**(6)** The institution should work with the local community, including local businesses, in a “Town/Gown” alliance to encourage responsible policies toward alcohol consumption and to address illegal alcohol use by students.

**SEC. 120. [20 U.S.C. 1011j] DRUG AND ALCOHOL ABUSE PREVENTION.**

**(a) RESTRICTION ON ELIGIBILITY.**—Notwithstanding any other provision of law, no institution of higher education shall be eligible to receive funds or any other form of financial assistance under any Federal program, including participation in any federally funded or guaranteed student loan program, unless the institution certifies to the Secretary that the institution has adopted and has implemented a program to prevent the use of illicit drugs and the abuse of alcohol by students and employees that, at a minimum, includes—

**(1)** the annual distribution to each student and employee of—

**(A)** standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on the institution's property or as part of any of the institution's activities;

**(B)** a description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol;

**(C)** a description of the health-risks associated with the use of illicit drugs and the abuse of alcohol;

**(D)** a description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and

**(E)** a clear statement that the institution will impose sanctions on students and employees (consistent with local, State, and Federal law), and a description of those sanctions, up to and including expulsion or termination of employment and referral for prosecution, for violations of the standards of conduct required by subparagraph (A); and

**(2)** a biennial review by the institution of the institution's program to—

**(A)** determine the program's effectiveness and implement changes to the program if the changes are needed;

**(B)** determine the number of drug and alcohol-related violations and fatalities that—

**(i)** occur on the institution's campus (as defined in section 485(f)(6)), or as part of any of the institution's activities; and

**(ii)** are reported to campus officials;

**(C)** determine the number and type of sanctions described in paragraph (1)(E) that are imposed by the institution as a result of drug and alcohol-related violations and fatalities on the institution's campus or as part of any of the institution's activities; and

**(D)** ensure that the sanctions required by paragraph (1)(E) are consistently enforced.

**(b) INFORMATION AVAILABILITY.**—Each institution of higher education that provides the certification required by subsection (a) shall, upon request, make available to the Secretary and to the public a copy of each item required by subsection (a)(1) as well as the results of the biennial review required by subsection (a)(2).

**(c) REGULATIONS.**—

**(1) IN GENERAL.**—The Secretary shall publish regulations to implement and enforce the provisions of this section, including regulations that provide for—

**(A)** the periodic review of a representative sample of programs required by subsection (a); and

**(B)** a range of responses and sanctions for institutions of higher education that fail to implement their programs or to consistently enforce their sanctions, including information and technical assistance, the development of a compliance agreement, and the termination of any form of Federal financial assistance.

**(2) REHABILITATION PROGRAM.**—The sanctions required by subsection (a)(1)(E) may include the completion of an appropriate rehabilitation program.

**(d) APPEALS.**—Upon determination by the Secretary to terminate financial assistance to any institution of higher education under this section, the institution may file an appeal with an administrative law judge before the expiration of the 30-day period beginning on the date such institution is notified of the decision to terminate financial assistance under this section. Such judge shall hold a hearing with respect to such termination of assistance before the expiration of the 45-day period beginning on the date that such appeal is filed. Such judge may extend such 45-day period upon a motion by the institution concerned. The decision of the judge with respect to such termination shall be considered to be a final agency action.

**(e) ALCOHOL AND DRUG ABUSE PREVENTION GRANTS.**—

**(1) PROGRAM AUTHORITY.**—The Secretary may make grants to institutions of higher education or consortia of such institutions, and enter into contracts with such institutions, consortia, and other organizations, to develop, implement, operate, improve, and disseminate programs of prevention, and education (including treatment-referral) to reduce and eliminate the illegal use of drugs and alcohol and the violence associated with such use. Such grants or contracts may also be used for the support of a higher education center for alcohol and drug abuse prevention that will provide training, technical

assistance, evaluation, dissemination, and associated services and assistance to the higher education community as determined by the Secretary and institutions of higher education.

**(2) AWARDS.**—Grants and contracts shall be awarded under paragraph (1) on a competitive basis.

**(3) APPLICATIONS.**—An institution of higher education, a consortium of such institutions, or another organization that desires to receive a grant or contract under paragraph (1) shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require by regulation.

**(4) ADDITIONAL REQUIREMENTS.**—

**(A) PARTICIPATION.**—In awarding grants and contracts under this subsection the Secretary shall make every effort to ensure—

(i) the equitable participation of private and public institutions of higher education (including community and junior colleges); and

(ii) the equitable geographic participation of such institutions.

**(B) CONSIDERATION.**—In awarding grants and contracts under this subsection the Secretary shall give appropriate consideration to institutions of higher education with limited enrollment.

**(5) AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

**SEC. 121. [20 U.S.C. 1011j] PRIOR RIGHTS AND OBLIGATIONS.****(a) AUTHORIZATION OF APPROPRIATIONS.—**

**(1) PRE-1987 PARTS C AND D OF TITLE VII.—**There are authorized to be appropriated such sums as may be necessary for fiscal year 2009 and for each succeeding fiscal year to pay obligations incurred prior to 1987 under parts C and D of title VII, as such parts were in effect before the effective date of the Higher Education Amendments of 1992.

**(2) POST-1992 AND PRE-1998 PART C OF TITLE VII.—**There are authorized to be appropriated such sums as may be necessary for fiscal year 2009 and for each succeeding fiscal year to pay obligations incurred prior to the date of enactment of the Higher Education Amendments of 1998 under part C of title VII, as such part was in effect during the period—

**(A)** after the effective date of the Higher Education Amendments of 1992; and

**(B)** prior to the date of enactment of the Higher Education Amendments of 1998.

**(b) LEGAL RESPONSIBILITIES.—**

**(1) PRE-1987 TITLE VII.—**All entities with continuing obligations incurred under parts A, B, C, and D of title VII, as such parts were in effect before the effective date of the Higher Education Amendments of 1992, shall be subject to the requirements of such part as in effect before the effective date of the Higher Education Amendments of 1992.

**(2) POST-1992 AND PRE-1998 PART C OF TITLE VII.—**All entities with continuing obligations incurred under part C of title VII, as such part was in effect during the period—

**(A)** after the effective date of the Higher Education Amendments of 1992; and

**(B)** prior to the date of enactment of the Higher Education Amendments of 1998, shall be subject to the requirements of such part as such part was in effect during such period.

**SEC. 122. [20 U.S.C. 1011k] RECOVERY OF PAYMENTS.**

**(a) PUBLIC BENEFIT.**—Congress declares that, if a facility constructed with the aid of a grant under part A of title VII as such part A was in effect prior to the date of enactment of the Higher Education Amendments of 1998, or part B of such title as part B was in effect prior to the date of enactment of the Higher Education Amendments of 1992, is used as an academic facility for 20 years following completion of such construction, the public benefit accruing to the United States will equal in value the amount of the grant. The period of 20 years after completion of such construction shall therefore be deemed to be the period of Federal interest in such facility for the purposes of such title as so in effect.

**(b) RECOVERY UPON CESSATION OF PUBLIC BENEFIT.**—If, within 20 years after completion of construction of an academic facility which has been constructed, in part with a grant under part A of title VII as such part A was in effect prior to the date of enactment of the Higher Education Amendments of 1998, or part B of title VII as such part B was in effect prior to the date of enactment of the Higher Education Amendments of 1992—

**(1)** the applicant under such parts as so in effect (or the applicant's successor in title or possession) ceases or fails to be a public or nonprofit institution; or

**(2)** the facility ceases to be used as an academic facility, or the facility is used as a facility excluded from the term "academic facility" (as such term was defined under title VII, as so in effect), unless the Secretary determines that there is good cause for releasing the institution from its obligation, the United States shall be entitled to recover from such applicant (or successor) an amount which bears to the value of the facility at that time (or so much thereof as constituted an approved project or projects) the same ratio as the amount of Federal grant bore to the cost of the facility financed with the aid of such grant. The value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is situated.

**(c) PROHIBITION ON USE FOR RELIGION.**—Notwithstanding the provisions of subsections (a) and (b), no project assisted with funds under title VII (as in effect prior to the date of enactment of the Higher Education Amendments of 1998) shall ever be used for religious worship or a sectarian activity or for a school or department of divinity.

**SEC. 123. DIPLOMA MILLS**

**(a) INFORMATION TO THE PUBLIC.**—The Secretary shall maintain information and resources on the Department’s website to assist students, families, and employers in understanding what a diploma mill is and how to identify and avoid diploma mills.

**(b) COLLABORATION.**—The Secretary shall continue to collaborate with the United States Postal Service, the Federal Trade Commission, the Department of Justice (including the Federal Bureau of Investigation), the Internal Revenue Service, and the Office of Personnel Management to maximize Federal efforts to—

- (1)** prevent, identify, and prosecute diploma mills; and
- (2)** broadly disseminate to the public information about diploma mills, and resources to identify diploma mills.

**PART C—COST OF HIGHER EDUCATION****SEC. 131. [20 U.S.C. 1015] IMPROVEMENTS IN MARKET INFORMATION AND PUBLIC ACCOUNTABILITY IN HIGHER EDUCATION.****(a) IMPROVED DATA COLLECTION.—**

**(1) DEVELOPMENT OF UNIFORM METHODOLOGY.—**The Secretary shall direct the Commissioner of Education Statistics to convene a series of forums to develop nationally consistent methodologies for reporting costs incurred by postsecondary institutions in providing postsecondary education.

**(2) REDESIGN OF DATA SYSTEMS.—**On the basis of the methodologies developed pursuant to paragraph (1), the Secretary shall redesign relevant parts of the postsecondary education data systems to improve the usefulness and timeliness of the data collected by such systems.

**(3) INFORMATION TO INSTITUTIONS.—**The Commissioner of Education Statistics shall—

**(A)** develop a standard definition for the following data elements:

**(i)** tuition and fees for a full-time undergraduate student;

**(ii)** cost of attendance for a full-time undergraduate student, consistent with the provisions of section 472;

**(iii)** average amount of financial assistance received by an undergraduate student who attends an institution of higher education, including—

**(I)** each type of assistance or benefit described in section 428(a)(2)(C)(~~ii~~)(ii)<sup>4</sup>;

**(II)** fellowships; and

**(III)** institutional and other assistance; and

**(iv)** number of students receiving financial assistance described in each of subclauses (I), (II), and (III) of clause (iii);

**(B)** not later than 90 days after the date of enactment of the Higher Education Amendments of 1998, report the definitions to each institution of higher education and within a reasonable period of time thereafter inform the authorizing committees of those definitions; and

**(C)** collect information regarding the data elements described in subparagraph (A) with respect to at least all institutions of higher education participating in programs under title IV, beginning with the information from academic year 2000–2001 and annually thereafter.

**(b) DATA DISSEMINATION.—**The Secretary shall make available the data collected pursuant to subsection (a). Such data shall be available in a form that permits the review and comparison of the data submissions of individual institutions of higher education. Such data shall be presented in a form that is easily understandable and allows parents and students to make informed decisions based on the costs for typical full-time undergraduate students.

**(c) STUDY.—**

**(1) IN GENERAL.—**The Commissioner of Education Statistics shall conduct a national study of expenditures at institutions of higher education. Such study shall include information with respect to—

**(A)** the change in tuition and fees compared with the consumer price index and other appropriate measures of inflation;

**(B)** faculty salaries and benefits;

**(C)** administrative salaries, benefits and expenses;

**(D)** academic support services;

**(E)** research;

**(F)** operations and maintenance; and

**(G)** institutional expenditures for construction and technology and the potential cost of replacing instructional buildings and equipment.

**(2) EVALUATION.—**The study shall include an evaluation of—

**(A)** changes over time in the expenditures identified in paragraph (1);

**(B)** the relationship of the expenditures identified in paragraph (1) to college costs; and

**(C)** the extent to which increases in institutional financial aid and tuition discounting practices affect tuition increases, including the demographics of students receiving such discounts, the extent to which financial aid is provided to students with limited need in order to attract a student to a particular institution, and the extent to which Federal financial aid, including loan aid, has been used to offset the costs of such practices.

**(3) FINAL REPORT.—**The Commissioner of Education Statistics shall submit a report regarding the findings of the study required by paragraph (1) to the appropriate committees of Congress not later than September 30, 2002.

**(4) HIGHER EDUCATION MARKET BASKET.**—The Bureau of Labor Statistics, in consultation with the Commissioner of Education Statistics, shall develop a higher education market basket that identifies the items that comprise the costs of higher education. The Bureau of Labor Statistics shall provide a report on the market basket to the Committee on Labor and Human Resources of the Senate and the Committee on Education and the Workforce of the House of Representatives not later than September 30, 2002.

**(5) FINES.**—In addition to actions authorized in section 487(c), the Secretary may impose a fine in an amount not to exceed \$25,000 on an institution of higher education for failing to provide the information described in paragraph (1) in a timely and accurate manner, or for failing to otherwise cooperate with the National Center for Education Statistics regarding efforts to obtain data on the cost of higher education under this section and pursuant to the program participation agreement entered into under section 487.

**(d) PROMOTION OF THE DEPARTMENT OF EDUCATION FEDERAL STUDENT FINANCIAL AID WEBSITE.**—The Secretary shall display a link to the Federal student financial aid website of the Department in a prominent place on the homepage of the Department's website.

**(e) ENHANCED STUDENT FINANCIAL AID INFORMATION.**—

**(1) IMPLEMENTATION.**—The Secretary shall continue to improve the usefulness and accessibility of the information provided by the Department on college planning and student financial aid.

**(2) DISSEMINATION.**—The Secretary shall continue to make the availability of the information on the Federal student financial aid website of the Department widely known, through a major media campaign and other forms of communication.

**(3) COORDINATION.**—As a part of the efforts required under this subsection, the Secretary shall create one website accessible from the Department's website that fulfills the requirements under subsections (b), (f), and (g).

**(f) IMPROVED AVAILABILITY AND COORDINATION OF INFORMATION CONCERNING STUDENT FINANCIAL AID PROGRAMS FOR MILITARY MEMBERS AND VETERANS.**—

**(1) COORDINATION.**—The Secretary, in coordination with the Secretary of Defense and the Secretary of Veterans Affairs, shall create a searchable website that—

**(A)** contains information, in simple and understandable terms, about all Federal and State student financial assistance, readmission requirements under section 484C, and other student services, for which members of the Armed Forces (including members of the National Guard and Reserves), veterans, and the dependents of such members or veterans may be eligible; and

**(B)** is easily accessible through the website described in subsection (e)(3).

**(2) IMPLEMENTATION.**—Not later than one year after the date of enactment of the Higher Education Opportunity Act, the Secretary shall make publicly available the Armed Forces information website described in paragraph (1).

**(3) DISSEMINATION.**—The Secretary, in coordination with the Secretary of Defense and the Secretary of Veterans Affairs, shall make the availability of the Armed Forces information website described in paragraph (1) widely known to members of the Armed Forces (including members of the National Guard and Reserves), veterans, the dependents of such members or veterans, States, institutions of higher education, and the general public.

**(4) DEFINITION.**—In this subsection, the term "Federal and State student financial assistance" means any grant, loan, work assistance, tuition assistance, scholarship, fellowship, or other form of financial aid for pursuing a postsecondary education that is—

**(A)** administered, sponsored, or supported by the Department of Education, the Department of Defense, the Department of Veterans Affairs, or a State; and

**(B)** available to members of the Armed Forces (including members of the National Guard and Reserves), veterans, or the dependents of such members or veterans.

**(g) PROMOTION OF AVAILABILITY OF INFORMATION CONCERNING OTHER STUDENT FINANCIAL AID PROGRAMS.**—

**(1) DEFINITION.**—For purposes of this subsection, the term 'nondepartmental student financial assistance program' means any grant, loan, scholarship, fellowship, or other form of financial aid for students pursuing a postsecondary education that is—

**(A)** distributed directly to the student or to the student's account at an institution of higher education; and

**(B)** operated, sponsored, or supported by a Federal department or agency other than the Department of Education.

**(2) AVAILABILITY OF OTHER STUDENT FINANCIAL AID INFORMATION.**— The Secretary shall ensure that—

(A) not later than 90 days after the Secretary receives the information required under paragraph (3), the eligibility requirements, application procedures, financial terms and conditions, and other relevant information for each nondepartmental student financial assistance program are searchable and accessible through the Federal student financial aid website in a manner that is simple and understandable for students and the students' families; and

(B) the website displaying the information described in subparagraph (A) includes a link to the National Database on Financial Assistance for the Study of Science, Technology, Engineering, and Mathematics pursuant to paragraph (4), and the information on military benefits under subsection (f), once such Database and information are available.

(3) NONDEPARTMENTAL STUDENT FINANCIAL ASSISTANCE PROGRAMS.—The Secretary shall request all Federal departments and agencies to provide the information described in paragraph (2)(A), and each Federal department or agency shall—

(A) promptly respond to surveys or other requests from the Secretary for the information described in such paragraph; and

(B) identify for the Secretary any nondepartmental student financial assistance program operated, sponsored, or supported by such Federal department or agency.

(4) NATIONAL STEM DATABASE.—

(A) IN GENERAL.—The Secretary shall establish and maintain, on the website described in subsection (e)(3), a National Database on Financial Assistance for the Study of Science, Technology, Engineering, and Mathematics (in this paragraph referred to as the 'STEM Database'). The STEM Database shall consist of information on scholarships, fellowships, and other programs of Federal, State, local, and, to the maximum extent practicable, private financial assistance available for the study of science, technology, engineering, or mathematics at the postsecondary and postbaccalaureate levels.

(B) DATABASE CONTENTS.—The information maintained on the STEM Database shall be displayed on the website in the following manner:

(i) SEPARATE INFORMATION.—The STEM Database shall provide separate information for each of the fields of science, technology, engineering, and mathematics, and for postsecondary and postbaccalaureate programs of financial assistance.

(ii) INFORMATION ON TARGETED ASSISTANCE.—The STEM Database shall provide specific information on any program of financial assistance that is targeted to individuals based on financial need, merit, or student characteristics.

(iii) CONTACT AND WEBSITE INFORMATION.—The STEM Database shall provide—

(I) standard contact information that an interested person may use to contact a sponsor of any program of financial assistance included in the STEM Database; and

(II) if such sponsor maintains a public website, a link to the website.

(iv) SEARCH AND MATCH CAPABILITIES.—The STEM Database shall—

(I) have a search capability that permits an individual to search for information on the basis of each category of the information provided through the STEM Database and on the basis of combinations of categories of the information provided, including—

(aa) whether the financial assistance is need- or merit-based; and

(bb) by relevant academic majors; and

(II) have a match capability that—

(aa) searches the STEM Database for all financial assistance opportunities for which an individual may be qualified to apply, based on the student characteristics provided by such individual; and

(bb) provides information to an individual for only those opportunities for which such individual is qualified, based on the student characteristics provided by such individual.

(v) RECOMMENDATION AND DISCLAIMER.—The STEM Database shall provide, to the users of the STEM Database—

(I) a recommendation that students and families should carefully review all of the application requirements prior to applying for any aid or program of student financial assistance; and

(II) a disclaimer that the non-Federal programs of student financial assistance presented in the STEM Database are not provided or endorsed by the Department or the Federal Government.

(C) COMPILATION OF FINANCIAL ASSISTANCE INFORMATION.—In carrying out this paragraph, the Secretary shall—

(i) consult with public and private sources of scholarships, fellowships, and other programs of student financial assistance; and

(ii) make easily available a process for such entities to provide regular and updated information about the scholarships, fellowships, or other programs of student financial assistance.

(D) CONTRACT AUTHORIZED.—In carrying out the requirements of this paragraph, the Secretary is authorized to enter into a contract with a private entity with demonstrated expertise in creating and maintaining databases such as the one required under this paragraph, under which contract the entity shall furnish, and regularly update, all of the information required to be maintained on the STEM Database.

(5) DISSEMINATION OF INFORMATION.—The Secretary shall take such actions, on an ongoing basis, as may be necessary to disseminate information under this subsection and to encourage the use of the information by interested parties, including sending notices to secondary schools and institutions of higher education.

(h) NO USER FEES FOR DEPARTMENT FINANCIAL AID WEBSITES.—No fee shall be charged to any individual to access—

(1) a database or website of the Department that provides information about higher education programs or student financial assistance, including the College Navigator website (or successor website) and the websites and databases described in this section and section 132; or

(2) information about higher education programs or student financial assistance available through a database or website of the Department.

**SEC. 132. TRANSPARENCY IN COLLEGE TUITON FOR CONSUMERS.**

**(a) DEFINITIONS.**—In this section:

**(1) COLLEGE NAVIGATOR WEBSITE.**—The term ‘College Navigator website’ means the College Navigator website operated by the Department and includes any successor website.

**(2) COST OF ATTENDANCE.**—The term ‘cost of attendance’ means the average annual cost of tuition and fees, room and board, books, supplies, and transportation for an institution of higher education for a first-time, full-time undergraduate student enrolled in the institution.

**(3) NET PRICE.**—The term ‘net price’ means the average yearly price actually charged to first-time, full-time undergraduate students receiving student aid at an institution of higher education after deducting such aid, which shall be determined by calculating the difference between—

**(A)** the institution’s cost of attendance for the year for which the determination is made; and

**(B)** the quotient of—

**(i)** the total amount of need-based grant aid and merit-based grant aid, from Federal, State, and institutional sources, provided to such students enrolled in the institution for such year; and

**(ii)** the total number of such students receiving such need-based grant aid or merit-based grant aid for such year.

**(4) TUITION AND FEES.**—The term ‘tuition and fees’ means the average annual cost of tuition and fees for an institution of higher education for first-time, full-time undergraduate students enrolled in the institution.

**(b) CALCULATIONS FOR PUBLIC INSTITUTIONS.**—In making the calculations regarding cost of attendance, net price, and tuition and fees under this section with respect to a public institution of higher education, the Secretary shall calculate the cost of attendance, net price, and tuition and fees at such institution in the manner described in subsection (a), except that—

**(1)** the cost of attendance, net price, and tuition and fees shall be calculated for first-time, full-time undergraduate students enrolled in the institution who are residents of the State in which such institution is located; and

**(2)** in determining the net price, the average need-based grant aid and merit-based grant aid described in subsection (a)(3)(B) shall be calculated based on the average total amount of such aid received by first-time, full-time undergraduate students who are residents of the State in which such institution is located, divided by the total number of such resident students receiving such need-based grant aid or merit-based grant aid at such institution.

**(c) COLLEGE AFFORDABILITY AND TRANSPARENCY LISTS.**—

**(1) AVAILABILITY OF LISTS.**—Beginning July 1, 2011, the Secretary shall make publicly available on the College Navigator website, in a manner that is sortable and searchable by State, the following:

**(A)** A list of the five percent of institutions in each category described in subsection (d) that have the highest tuition and fees for the most recent academic year for which data are available.

**(B)** A list of the five percent of institutions in each such category that have the highest net price for the most recent academic year for which data are available.

**(C)** A list of the five percent of institutions in each such category that have the largest increase, expressed as a percentage change, in tuition and fees over the most recent three academic years for which data are available, using the first academic year of the three-year period as the base year to compute such percentage change.

**(D)** A list of the five percent of institutions in each such category that have the largest increase, expressed as a percentage change, in net price over the most recent three academic years for which data are available, using the first academic year of the three-year period as the base year to compute such percentage change.

**(E)** A list of the ten percent of institutions in each such category that have the lowest tuition and fees for the most recent academic year for which data are available.

**(F)** A list of the ten percent of institutions in each such category that have the lowest net price for the most recent academic year for which data are available.

**(2) ANNUAL UPDATES.**—The Secretary shall annually update the lists described in paragraph (1) on the College Navigator website.

**(d) CATEGORIES OF INSTITUTIONS.**—The lists described in subsection (c)(1) shall be compiled according to the following categories of institutions that participate in programs under title IV:

**(1)** Four-year public institutions of higher education.

**(2)** Four-year private, nonprofit institutions of higher education.

**(3)** Four-year private, for-profit institutions of higher education.

**(4)** Two-year public institutions of higher education.

**(5)** Two-year private, nonprofit institutions of higher education.

**(6)** Two-year private, for-profit institutions of higher education.

- (7) Less than two-year public institutions of higher education.
- (8) Less than two-year private, nonprofit institutions of higher education.
- (9) Less than two-year private, for-profit institutions of higher education.
- (e) REPORTS BY INSTITUTIONS.—
  - (1) REPORT TO SECRETARY.—If an institution of higher education is included on a list described in subparagraph (C) or (D) of subsection (c)(1), the institution shall submit to the Secretary a report containing the following information:
    - (A) A description of the major areas in the institution's budget with the greatest cost increases.
    - (B) An explanation of the cost increases described in subparagraph (A).
    - (C) A description of the steps the institution will take toward the goal of reducing costs in the areas described in subparagraph (A).
    - (D) In the case of an institution that is included on the same list under subparagraph (C) or (D) of subsection (c)(1) for two or more consecutive years, a description of the progress made on the steps described in subparagraph (C) of this paragraph that were included in the institution's report for the previous year.
    - (E) If the determination of any cost increase described in subparagraph (A) is not within the exclusive control of the institution—
      - (i) an explanation of the extent to which the institution participates in determining such cost increase;
      - (ii) the identification of the agency or instrumentality of State government responsible for determining such cost increase; and
      - (iii) any other information the institution considers relevant to the report.
  - (2) INFORMATION TO THE PUBLIC.—The Secretary shall—
    - (A) issue an annual report that summarizes all of the reports by institutions required under paragraph (1) to the authorizing committees; and
    - (B) publish such report on the College Navigator website.
- (f) EXEMPTIONS.—
  - (1) IN GENERAL.—An institution shall not be placed on a list described in subparagraph (C) or (D) of subsection (c)(1), and shall not be subject to the reporting required under subsection (e), if the dollar amount of the institution's increase in tuition and fees, or net price, as applicable, is less than \$600 for the three-year period described in such subparagraph.
  - (2) UPDATE.—Beginning in 2014, and every three years thereafter, the Secretary shall update the dollar amount described in paragraph (1) based on annual increases in inflation, using the Consumer Price Index for each of the three most recent preceding years.
- (g) STATE HIGHER EDUCATION SPENDING CHART.—The Secretary shall annually report on the College Navigator website, in charts for each State, comparisons of—
  - (1) the percentage change in spending by such State per full-time equivalent student at all public institutions of higher education in such State, for each of the five most recent preceding academic years;
  - (2) the percentage change in tuition and fees for such students for all public institutions of higher education in such State for each of the five most recent preceding academic years; and
  - (3) the percentage change in the total amount of need-based aid and merit-based aid provided by such State to full-time students enrolled in the public institutions of higher education in the State for each of the five most recent preceding academic years.
- (h) NET PRICE CALCULATOR.—
  - (1) DEVELOPMENT OF NET PRICE CALCULATOR.—Not later than one year after the date of enactment of the Higher Education Opportunity Act, the Secretary shall, in consultation with institutions of higher education and other appropriate experts, develop a net price calculator to help current and prospective students, families, and other consumers estimate the individual net price of an institution of higher education for a student. The calculator shall be developed in a manner that enables current and prospective students, families, and consumers to determine an estimate of a current or prospective student's individual net price at a particular institution.
  - (2) CALCULATION OF INDIVIDUAL NET PRICE.—For purposes of this subsection, an individual net price of an institution of higher education shall be calculated in the same manner as the net price of such institution is calculated under subsection (a)(3), except that the cost of attendance and the amount of need-based and merit-based aid available shall be calculated for the individual student as much as practicable.
  - (3) USE OF NET PRICE CALCULATOR BY INSTITUTIONS.—Not later than two years after the date on which the Secretary makes the calculator developed under paragraph (1) available to institutions of higher education, each institution of higher education that receives Federal funds under

title IV shall make publicly available on the institution's website a net price calculator to help current and prospective students, families, and other consumers estimate a student's individual net price at such institution of higher education. Such calculator may be a net price calculator developed—

- (A) by the Department pursuant to paragraph (1); or
- (B) by the institution of higher education, if the institution's calculator includes, at a minimum, the same data elements included in the calculator developed under paragraph (1).

(4) **DISCLAIMER.**—Estimates of an individual net price determined using a net price calculator required under paragraph (3) shall be accompanied by a clear and conspicuous notice—

- (A) stating that the estimate—
  - (i) does not represent a final determination, or actual award, of financial assistance;
  - (ii) shall not be binding on the Secretary, the institution of higher education, or the State; and
  - (iii) may change;
- (B) stating that the student must complete the Free Application for Federal Student Aid described in section 483 in order to be eligible for, and receive, an actual financial aid award that includes Federal grant, loan, or work-study assistance under title IV; and
- (C) including a link to the website of the Department that allows students to access the Free Application for Federal Student Aid described in section 483.

(i) **CONSUMER INFORMATION.**—

(1) **AVAILABILITY OF TITLE IV INSTITUTION INFORMATION.**— Not later than one year after the date of enactment of the Higher Education Opportunity Act, the Secretary shall make publicly available on the College Navigator website, in simple and understandable terms, the following information about each institution of higher education that participates in programs under title IV, for the most recent academic year for which satisfactory data are available:

- (A) A statement of the institution's mission.
- (B) The total number of undergraduate students who applied to, were admitted by, and enrolled in the institution.
- (C) For institutions that require SAT or ACT scores to be submitted, the reading, writing, mathematics, and combined scores on the SAT or ACT, as applicable, for the middle 50 percent range of the institution's freshman class.
- (D) The number of first-time, full-time, and part-time students enrolled at the institution, at the undergraduate and (if applicable) graduate levels.
- (E) The number of degree- or certificate-seeking undergraduate students enrolled at the institution who have transferred from another institution.
- (F) The percentages of male and female undergraduate students enrolled at the institution.
- (G) Of the first-time, full-time, degree- or certificate seeking undergraduate students enrolled at the institution—
  - (i) the percentage of such students who are from the State in which the institution is located;
  - (ii) the percentage of such students who are from other States; and
  - (iii) the percentage of such students who are international students.
- (H) The percentages of first-time, full-time, degree- or certificate-seeking students enrolled at the institution, disaggregated by race and ethnic background.
- (I) The percentage of undergraduate students enrolled at the institution who are formally registered with the office of disability services of the institution (or the equivalent office) as students with disabilities, except that if such percentage is three percent or less, the institution shall report 'three percent or less'.
- (J) The percentages of first-time, full-time, degree- or certificate-seeking undergraduate students enrolled at the institution who obtain a degree or certificate within—
  - (i) the normal time for completion of, or graduation from, the student's program;
  - (ii) 150 percent of the normal time for completion of, or graduation from, the student's program;
 and
  - (iii) 200 percent of the normal time for completion of, or graduation from, the student's program;
- (K) The number of certificates, associate degrees, baccalaureate degrees, master's degrees, professional degrees, and doctoral degrees awarded by the institution.
- (L) The undergraduate major areas of study at the institution with the highest number of degrees awarded.
- (M) The student-faculty ratio, the number of full-time and part-time faculty, and the number of graduate assistants with primarily instructional responsibilities, at the institution.
- (N)(i) The cost of attendance for first-time, full-time undergraduate students enrolled in the institution who live on campus;

- (ii) the cost of attendance for first-time, full-time undergraduate students enrolled in the institution who live off campus; and
- (iii) in the case of a public institution of higher education and notwithstanding subsection (b)(1), the costs described in clauses (i) and (ii), for—
  - (I) first-time, full-time students enrolled in the institution who are residents of the State in which the institution is located; and
  - (II) first-time, full-time students enrolled in the institution who are not residents of such State.
- (O) The average annual grant amount (including Federal, State, and institutional aid) awarded to a first-time, full-time undergraduate student enrolled at the institution who receives financial aid.
- (P) The average annual amount of Federal student loans provided through the institution to undergraduate students enrolled at the institution.
- (Q) The total annual grant aid awarded to undergraduate students enrolled at the institution, from the Federal Government, a State, the institution, and other sources known by the institution.
- (R) The percentage of first-time, full-time undergraduate students enrolled at the institution receiving Federal, State, and institutional grants, student loans, and any other type of student financial assistance known by the institution, provided publicly or through the institution, such as Federal work-study funds.
- (S) The number of students enrolled at the institution receiving Federal Pell Grants.
- (T) The institution's cohort default rate, as defined under section 435(m).
- (U) The information on campus safety required to be collected under section 485(i).
- (V) A link to the institution's website that provides, in an easily accessible manner, the following information:
  - (i) Student activities offered by the institution.
  - (ii) Services offered by the institution for individuals with disabilities.
  - (iii) Career and placement services offered by the institution to students during and after enrollment.
  - (iv) Policies of the institution related to transfer of credit from other institutions.
- (W) A link to the appropriate section of the Bureau of Labor Statistics website that provides information on regional data on starting salaries in all major occupations.
- (X) Information required to be submitted under paragraph (4) and a link to the institution pricing summary page described in paragraph (5).
- (Y) In the case of an institution that was required to submit a report under subsection (e)(1), a link to such report.
- (Z) The availability of alternative tuition plans, which may include guaranteed tuition plans.
- (2) ANNUAL UPDATES.—The Secretary shall annually update the information described in paragraph (1) on the College Navigator website.
- (3) CONSULTATION.—The Secretary shall regularly consult with current and prospective college students, family members of such students, institutions of higher education, and other experts to improve the usefulness and relevance of the College Navigator website, with respect to the presentation of the consumer information collected in paragraph (1).
- (4) DATA COLLECTION.—The Commissioner for Education Statistics shall continue to update and improve the Integrated Postsecondary Education Data System (referred to in this section as 'IPEDS'), including the reporting of information by institutions and the timeliness of the data collected.
- (5) INSTITUTION PRICING SUMMARY PAGE.—
  - (A) AVAILABILITY OF LIST OF PARTICIPATING INSTITUTIONS.— The Secretary shall make publicly available on the College Navigator website in a sortable and searchable format a list of all institutions of higher education that participate in programs under title IV, which list shall, for each institution, include the following:
    - (i) The tuition and fees for each of the three most recent academic years for which data are available.
    - (ii) The net price for each of the three most recent available academic years for which data are available.
    - (iii)(I) During the period beginning July 1, 2010, and ending June 30, 2013, the net price for students receiving Federal student financial aid under title IV, disaggregated by the income categories described in paragraph (6), for the most recent academic year for which data are available.
    - (II) Beginning July 1, 2013, the net price for students receiving Federal student financial aid under title IV, disaggregated by the income categories described in paragraph (6), for each of the three most recent academic years for which data are available.

(iv) The average annual percentage change and average annual dollar change in such institution's tuition and fees for each of the three most recent academic years for which data are available.

(v) The average annual percentage change and average annual dollar change in such institution's net price for each of the three most recent preceding academic years for which data are available.

(vi) A link to the webpage on the College Navigator website that provides the information described in paragraph (1) for the institution.

(B) ANNUAL UPDATES.—The Secretary shall annually update the lists described in subparagraph (A) on the College Navigator website.

(6) INCOME CATEGORIES.—

(A) IN GENERAL.—For purposes of reporting the information required under this subsection, the following income categories shall apply for students who receive Federal student financial aid under title IV:

(i) \$0–30,000.

(ii) \$30,001–48,000.

(iii) \$48,001–75,000.

(iv) \$75,001–110,000.

(v) \$110,001 and more.

(B) ADJUSTMENT.—The Secretary may adjust the income categories listed in subparagraph (A) using the Consumer Price Index if the Secretary determines such adjustment is necessary.

(j) MULTI-YEAR TUITION CALCULATOR.—

(1) DEVELOPMENT OF MULTI-YEAR TUITION CALCULATOR.— Not later than one year after the date of enactment of the Higher Education Opportunity Act, the Secretary shall, in consultation with institutions of higher education, financial planners, and other appropriate experts, develop a multi-year tuition calculator to help current and prospective students, families of such students, and other consumers estimate the amount of tuition an individual may pay to attend an institution of higher education in future years.

(2) CALCULATION OF MULTI-YEAR TUITION.—The multi-year tuition calculator described in paragraph (1) shall—

(A) allow an individual to select an institution of higher education for which the calculation shall be made;

(B) calculate an estimate of tuition and fees for each year of the normal duration of the program of study at such institution by—

(i) using the tuition and fees for such institution, as reported under subsection (i)(5)(A)(i), for the most recent academic year for which such data are reported; and

(ii) determining an estimated annual percentage change for each year for which the calculation is made, based on the annual percentage change in such institution's tuition and fees, as reported under subsection (i)(5)(A)(iv), for the most recent three-year period for which such data are reported;

(C) calculate an estimate of the total amount of tuition and fees to complete a program of study at such institution, based on the normal duration of such program, using the estimate calculated under subparagraph (B) for each year of the program of study;

(D) provide the individual with the option to replace the estimated annual percentage change described in subparagraph (B)(ii) with an alternative annual percentage change specified by the individual, and calculate an estimate of tuition and fees for each year and an estimate of the total amount of tuition and fees using the alternative percentage change;

(E) in the case of an institution that offers a multi-year tuition guarantee program, allow the individual to have the estimates of tuition and fees described in subparagraphs (B) and (C) calculated based on the provisions of such guarantee program for the tuition and fees charged to a student, or cohort of students, enrolled for the duration of the program of study; and

(F) include any other features or information determined to be appropriate by the Secretary.

(3) AVAILABILITY AND COMPARISON.—The multi-year tuition calculator described in paragraph (1) shall be available on the College Navigator website and shall allow current and prospective students, families of such students, and consumers to compare information and estimates under this subsection for multiple institutions of higher education.

(4) DISCLAIMER.—Each calculation of estimated tuition and fees made using the multi-year tuition calculator described in paragraph (1) shall be accompanied by a clear and conspicuous notice—

(A) stating that the calculation—

(i) is only an estimate and not a guarantee of the actual amount the student may be charged;

- (ii) is not binding on the Secretary, the institution of higher education, or the State; and
  - (iii) may change, subject to the availability of financial assistance, State appropriations, and other factors;
  - (B) stating that the student must complete the Free Application for Federal Student Aid described in section 483 in order to be eligible for, and receive, an actual financial aid award that includes Federal grant, loan, or work-study assistance under title IV; and
  - (C) including a link to the website of the Department that allows students to access the Free Application for Federal Student Aid described in section 483.
- (k) **STUDENT AID RECIPIENT SURVEY.**—
  - (1) **SURVEY REQUIRED.**—The Secretary, acting through the Commissioner for Education Statistics, shall conduct, on a State-by-State basis, a survey of recipients of Federal student financial aid under title IV—
    - (A) to identify the population of students receiving such Federal student financial aid;
    - (B) to describe the income distribution and other socioeconomic characteristics of recipients of such Federal student financial aid;
    - (C) to describe the combinations of aid from Federal, State, and private sources received by such recipients from all income categories;
    - (D) to describe the—
      - (i) debt burden of such loan recipients, and their capacity to repay their education debts; and
      - (ii) the impact of such debt burden on the recipients' course of study and post-graduation plans;
    - (E) to describe the impact of the cost of attendance of postsecondary education in the determination by students of what institution of higher education to attend; and
    - (F) to describe how the costs of textbooks and other instructional materials affect the costs of postsecondary education for students.
  - (2) **FREQUENCY.**—The survey shall be conducted on a regular cycle and not less often than once every four years.
  - (3) **SURVEY DESIGN.**—The survey shall be representative of students from all types of institutions, including full-time and part-time students, undergraduate, graduate, and professional students, and current and former students.
  - (4) **DISSEMINATION.**—The Commissioner for Education Statistics shall disseminate to the public, in printed and electronic form, the information resulting from the survey.
  - (l) **REGULATIONS.**—The Secretary is authorized to issue such regulations as may be necessary to carry out this section.

**SEC. 133. TEXTBOOK INFORMATION.**

**(a) PURPOSE AND INTENT.**—The purpose of this section is to ensure that students have access to affordable course materials by decreasing costs to students and enhancing transparency and disclosure with respect to the selection, purchase, sale, and use of course materials. It is the intent of this section to encourage all of the involved parties, including faculty, students, administrators, institutions of higher education, bookstores, distributors, and publishers, to work together to identify ways to decrease the cost of college textbooks and supplemental materials for students while supporting the academic freedom of faculty members to select high quality course materials for students.

**(b) DEFINITIONS.**—In this section:

**(1) BUNDLE.**—The term ‘bundle’ means one or more college textbooks or other supplemental materials that may be packaged together to be sold as course materials for one price.

**(2) COLLEGE TEXTBOOK.**—The term ‘college textbook’ means a textbook or a set of textbooks, used for, or in conjunction with, a course in postsecondary education at an institution of higher education.

**(3) COURSE SCHEDULE.**—The term ‘course schedule’ means a listing of the courses or classes offered by an institution of higher education for an academic period, as defined by the institution.

**(4) CUSTOM TEXTBOOK.**—The term ‘custom textbook’—

**(A)** means a college textbook that is compiled by a publisher at the direction of a faculty member or other person or adopting entity in charge of selecting course materials at an institution of higher education; and

**(B)** may include, alone or in combination, items such as selections from original instructor materials, previously copyrighted publisher materials, copyrighted third-party works, and elements unique to a specific institution, such as commemorative editions.

**(5) INSTITUTION OF HIGHER EDUCATION.**—The term ‘institution of higher education’ has the meaning given the term in section 102.

**(6) INTEGRATED TEXTBOOK.**—The term ‘integrated textbook’ means a college textbook that is—

**(A)** combined with materials developed by a third party and that, by third-party contractual agreement, may not be offered by publishers separately from the college textbook with which the materials are combined; or

**(B)** combined with other materials that are so interrelated with the content of the college textbook that the separation of the college textbook from the other materials would render the college textbook unusable for its intended purpose.

**(7) PUBLISHER.**—The term ‘publisher’ means a publisher of college textbooks or supplemental materials involved in or affecting interstate commerce.

**(8) SUBSTANTIAL CONTENT.**—The term ‘substantial content’ means parts of a college textbook such as new chapters, new material covering additional eras of time, new themes, or new subject matter.

**(9) SUPPLEMENTAL MATERIAL.**—The term ‘supplemental material’ means educational material developed to accompany a college textbook that—

**(A)** may include printed materials, computer disks, website access, and electronically distributed materials; and

**(B)** is not being used as a component of an integrated textbook.

**(c) PUBLISHER REQUIREMENTS.**—

**(1) COLLEGE TEXTBOOK PRICING INFORMATION.**—When a publisher provides a faculty member or other person or adopting entity in charge of selecting course materials at an institution of higher education receiving Federal financial assistance with information regarding a college textbook or supplemental material, the publisher shall include, with any such information and in writing (which may include electronic communications), the following:

**(A)** The price at which the publisher would make the college textbook or supplemental material available to the bookstore on the campus of, or otherwise associated with, such institution of higher education and, if available, the price at which the publisher makes the college textbook or supplemental material available to the public.

**(B)** The copyright dates of the three previous editions of such college textbook, if any.

**(C)** A description of the substantial content revisions made between the current edition of the college textbook or supplemental material and the previous edition, if any.

**(D)(i)** Whether the college textbook or supplemental material is available in any other format, including paperback and unbound; and

**(ii)** for each other format of the college textbook or supplemental material, the price at which the publisher would make the college textbook or supplemental material in the other format available to the bookstore on the campus of, or otherwise associated with, such institution of higher

education and, if available, the price at which the publisher makes such other format of the college textbook or supplemental material available to the public.

**(2) UNBUNDLING OF COLLEGE TEXTBOOKS FROM SUPPLEMENTAL MATERIALS.**—A publisher that sells a college textbook and any supplemental material accompanying such college textbook as a single bundle shall also make available the college textbook and each supplemental material as separate and unbundled items, each separately priced.

**(3) CUSTOM TEXTBOOKS.**—To the maximum extent practicable, a publisher shall provide the information required under this subsection with respect to the development and provision of custom textbooks.

**(d) PROVISION OF ISBN COLLEGE TEXTBOOK INFORMATION IN COURSE SCHEDULES.**—To the maximum extent practicable, each institution of higher education receiving Federal financial assistance shall—

**(1)** disclose, on the institution's Internet course schedule and in a manner of the institution's choosing, the International Standard Book Number and retail price information of required and recommended college textbooks and supplemental materials for each course listed in the institution's course schedule used for preregistration and registration purposes, except that—

**(A)** if the International Standard Book Number is not available for such college textbook or supplemental material, then the institution shall include in the Internet course schedule the author, title, publisher, and copyright date for such college textbook or supplemental material; and

**(B)** if the institution determines that the disclosure of the information described in this subsection is not practicable for a college textbook or supplemental material, then the institution shall so indicate by placing the designation 'To Be Determined' in lieu of the information required under this subsection; and

**(2)** if applicable, include on the institution's written course schedule a notice that textbook information is available on the institution's Internet course schedule, and the Internet address for such schedule.

**(e) AVAILABILITY OF INFORMATION FOR COLLEGE BOOKSTORES.**— An institution of higher education receiving Federal financial assistance shall make available to a college bookstore that is operated by, or in a contractual relationship or otherwise affiliated with, the institution, as soon as is practicable upon the request of such college bookstore, the most accurate information available regarding—

**(1)** the institution's course schedule for the subsequent academic period; and

**(2)** for each course or class offered by the institution for the subsequent academic period—

**(A)** the information required by subsection (d)(1) for each college textbook or supplemental material required or recommended for such course or class;

**(B)** the number of students enrolled in such course or class; and

**(C)** the maximum student enrollment for such course or class.

**(f) ADDITIONAL INFORMATION.**—An institution disclosing the information required by subsection (d)(1) is encouraged to disseminate to students information regarding—

**(1)** available institutional programs for renting textbooks or for purchasing used textbooks;

**(2)** available institutional guaranteed textbook buy-back programs;

**(3)** available institutional alternative content delivery programs; or

**(4)** other available institutional cost-saving strategies.

**(g) GAO REPORT.**—Not later than July 1, 2013, the Comptroller General of the United States shall report to the authorizing committees on the implementation of this section by institutions of higher education, college bookstores, and publishers. The report shall particularly examine—

**(1)** the availability of college textbook information on course schedules;

**(2)** the provision of pricing information to faculty of institutions of higher education by publishers;

**(3)** the use of bundled and unbundled material in the college textbook marketplace, including the adoption of unbundled materials by faculty and the use of integrated textbooks by publishers; and

**(4)** the implementation of this section by institutions of higher education, including the costs and benefits to such institutions and to students.

**(h) RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to supercede the institutional autonomy or academic freedom of instructors involved in the selection of college textbooks, supplemental materials, and other classroom materials.

**(i) NO REGULATORY AUTHORITY.**—The Secretary shall not promulgate regulations with respect to this section.

**SEC. 134. DATABASE OF STUDENT INFORMATION PROHIBITED.**

**(a) PROHIBITION.**—Except as described in subsection (b), nothing in this Act shall be construed to authorize the development, implementation, or maintenance of a Federal database of personally identifiable information on individuals receiving assistance under this Act, attending institutions receiving assistance under this Act, or otherwise involved in any studies or other collections of data under this Act, including a student unit record system, an education bar code system, or any other system that tracks individual students over time.

**(b) EXCEPTION.**—The provisions of subsection (a) shall not apply to a system (or a successor system) that—

**(1)** is necessary for the operation of programs authorized by title II, IV, or VII; and

**(2)** was in use by the Secretary, directly or through a contractor, as of the day before the date of enactment of the Higher Education Opportunity Act.

**(c) STATE DATABASES.**—Nothing in this Act shall prohibit a State or a consortium of States from developing, implementing, or maintaining State-developed databases that track individuals over time, including student unit record systems that contain information related to enrollment, attendance, graduation and retention rates, student financial assistance, and graduate employment outcomes.

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**SEC. 135. IN-STATE TUITION RATES FOR MEMBERS OF THE ARMED FORCES ON ACTIVE DUTY, SPOUSES, AND DEPENDENT CHILDREN.**

**(a) REQUIREMENT.**—In the case of a member of the armed forces who is on active duty for a period of more than 30 days and whose domicile or permanent duty station is in a State that receives assistance under this Act, such State shall not charge such member (or the spouse or dependent child of such member) tuition for attendance at a public institution of higher education in the State at a rate that is greater than the rate charged for residents of the State.

**(b) CONTINUATION.**—If a member of the armed forces (or the spouse or dependent child of a member) pays tuition at a public institution of higher education in a State at a rate determined by subsection (a), the provisions of subsection (a) shall continue to apply to such member, spouse, or dependent while continuously enrolled at that institution, notwithstanding a subsequent change in the permanent duty station of the member to a location outside the State.

**(c) EFFECTIVE DATE.**—This section shall take effect at each public institution of higher education in a State that receives assistance under this Act for the first period of enrollment at such institution that begins after July 1, 2009.

**(d) DEFINITIONS.**—In this section, the terms “armed forces” and “active duty for a period of more than 30 days” have the meanings given those terms in section 101 of title 10, United States Code.

**SEC. 136. STATE HIGHER EDUCATION INFORMATION SYSTEM PILOT PROGRAM.**

**(a) PURPOSE.**—It is the purpose of this section to carry out a pilot program to assist not more than five States to develop State-level postsecondary student data systems to—

- (1)** improve the capacity of States and institutions of higher education to generate more comprehensive and comparable data, in order to develop better-informed educational policy at the State level and to evaluate the effectiveness of institutional performance while protecting the confidentiality of students' personally identifiable information; and
- (2)** identify how to best minimize the data-reporting burden placed on institutions of higher education, particularly smaller institutions, and to maximize and improve the information institutions receive from the data systems, in order to assist institutions in improving educational practice and postsecondary outcomes.

**(b) DEFINITION OF ELIGIBLE ENTITY.**—In this section, the term 'eligible entity' means—

- (1)** a State higher education system; or
- (2)** a consortium of State higher education systems, or a consortium of individual institutions of higher education, that is broadly representative of institutions in different sectors and geographic locations.

**(c) COMPETITIVE GRANTS.**—

**(1) GRANTS AUTHORIZED.**—The Secretary shall award grants, on a competitive basis, to not more than five eligible entities to enable the eligible entities to—

- (A)** design, test, and implement systems of postsecondary student data that provide the maximum benefits to States, institutions of higher education, and State policymakers; and
- (B)** examine the costs and burdens involved in implementing a State-level postsecondary student data system.

**(2) DURATION.**—A grant awarded under this section shall be for a period of not more than three years.

**(d) APPLICATION REQUIREMENTS.**—An eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require, including a description of—

- (1)** how the eligible entity will ensure that student privacy is protected and that individually identifiable information about students, the students' achievements, and the students' families remains confidential in accordance with section 444 of the General Education Provisions Act (commonly known as the 'Family Educational Rights and Privacy Act of 1974') (20 U.S.C. 1232g); and
- (2)** how the activities funded by the grant will be supported after the three-year grant period.

**(e) USE OF FUNDS.**—A grant awarded under this section shall be used to—

- (1)** design, develop, and implement the components of a comprehensive postsecondary student data system with the capacity to transmit student information within a State;
- (2)** improve the capacity of institutions of higher education to analyze and use student data;
- (3)** select and define common data elements, data quality, and other elements that will enable the data system to—
  - (A)** serve the needs of institutions of higher education for institutional research and improvement;
  - (B)** provide students and the students' families with useful information for decision-making about postsecondary education; and
  - (C)** provide State policymakers with improved information to monitor and guide efforts to improve student outcomes and success in higher education;
- (4)** estimate costs and burdens at the institutional level for the reporting system for different types of institutions; and
- (5)** test the feasibility of protocols and standards for maintaining data privacy and data access.

**(f) EVALUATION; REPORTS.**—Not later than six months after the end of the projects funded by grants awarded under this section, the Secretary shall—

- (1)** conduct a comprehensive evaluation of the pilot program authorized by this section; and
- (2)** report the Secretary's findings, as well as recommendations regarding the implementation of State-level postsecondary student data systems, to the authorizing committees.

**(g) AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

**SEC. 137. STATE COMMITMENT TO AFFORDABLE COLLEGE EDUCATION**

**(a) MAINTENANCE OF EFFORT REQUIRED.**—A State shall provide—

**(1)** for public institutions of higher education in such State for any academic year beginning on or after July 1, 2008, an amount which is equal to or greater than the average amount provided for non-capital and non-direct research and development expenses or costs by such State to such institutions of higher education during the five most recent preceding academic years for which satisfactory data are available; and

**(2)** for private institutions of higher education in such State for any academic year beginning on or after July 1, 2008, an amount which is equal to or greater than the average amount provided for student financial aid for paying costs associated with postsecondary education by such State to such institutions during the five most recent preceding academic years for which satisfactory data are available.

**(b) ADJUSTMENTS FOR BIENNIAL APPROPRIATIONS.**—The Secretary shall take into consideration any adjustments to the calculations under subsection (a) that may be required to accurately reflect funding levels for postsecondary education in States with biennial appropriation cycles.

**(c) WAIVER.**—The Secretary shall waive the requirements of subsection (a), if the Secretary determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of a State or State educational agency, as appropriate.

**(d) VIOLATION OF MAINTENANCE OF EFFORT.**—Notwithstanding any other provision of law, the Secretary shall withhold from any State that violates subsection (a) and does not receive a waiver pursuant to subsection (c) any amount that would otherwise be available to the State under section 781 until such State has made significant efforts to correct such violation.

## PART D—ADMINISTRATIVE PROVISIONS FOR DELIVERY OF STUDENT FINANCIAL ASSISTANCE

### SEC. 141. [20 U.S.C. 1018] PERFORMANCE-BASED ORGANIZATION FOR THE DELIVERY OF FEDERAL STUDENT FINANCIAL ASSISTANCE.

**(a) ESTABLISHMENT AND PURPOSE.—**

**(1) ESTABLISHMENT.—**There is established in the Department a Performance-Based Organization (hereafter referred to as the “PBO”) which shall be a discrete management unit responsible for managing the administrative and oversight functions supporting the programs authorized under title IV of this Act, as specified in subsection (b).

**(2) PURPOSES.—**The purposes of the PBO are—

**(A)** to improve service to students and other participants in the student financial assistance programs authorized under title IV, including making those programs more understandable to students and their parents;

**(B)** to reduce the costs of administering those programs;

**(C)** to increase the accountability of the officials responsible for administering the operational aspects of these programs;

**(D)** to provide greater flexibility in the management and administration of the Federal student financial assistance programs;

**(E)** to integrate the information systems supporting the Federal student financial assistance programs;

**(F)** to implement an open, common, integrated system for the delivery of student financial assistance under title IV; and

**(G)** to develop and maintain a student financial assistance system that contains complete, accurate, and timely data to ensure program integrity.

**(b) GENERAL AUTHORITY.—**

**(1) AUTHORITY OF SECRETARY.—**Notwithstanding any other provision of this part, the Secretary shall maintain responsibility for the development and promulgation of policy and regulations relating to the programs of student financial assistance under title IV. In the exercise of its functions, the PBO shall be subject to the direction of the Secretary. The Secretary shall—

**(A)** request the advice of, and work in cooperation with, the Chief Operating Officer in developing regulations, policies, administrative guidance, or procedures affecting the Federal student financial assistance programs authorized under title IV;

**(B)** request cost estimates from the Chief Operating Officer for system changes required by specific policies proposed by the Secretary; and

**(C)** assist the Chief Operating Officer in identifying goals for—

**(i)** the administration of the systems used to administer the Federal student financial assistance programs authorized under title IV; and

**(ii)** the updating of such systems to current technology.

**(2) PBO FUNCTIONS.—**Subject to paragraph (1), the PBO shall be responsible for the administration of Federal student financial assistance programs authorized under title IV, excluding the development of policy relating to such programs but including the following:

**(A)** The administrative, accounting, and financial management functions for the Federal student financial assistance programs authorized under title IV, including—

**(i)** the collection, processing, and transmission of data to students, institutions, lenders, State agencies, and other authorized parties;

**(ii)** the design and technical specifications for software development and procurement for systems supporting the Federal student financial assistance programs authorized under title IV;

**(iii)** all software and hardware acquisitions and all information technology contracts related to the administration and management of student financial assistance under title IV;

**(iv)** all aspects of contracting for the information and financial systems supporting the Federal student financial assistance programs authorized under title IV;

**(v)** providing all customer service, training, and user support related to the administration of the Federal student financial assistance programs authorized under title IV; and

**(vi)** ensuring the integrity of the Federal student financial assistance programs authorized under title IV.

**(B)** Annual development of a budget for the activities and functions of the PBO, in consultation with the Secretary, and for consideration and inclusion in the Department’s annual budget submission.

**(3) ADDITIONAL FUNCTIONS.**—The Secretary may allocate to the PBO such additional functions as the Secretary and the Chief Operating Officer determine are necessary or appropriate to achieve the purposes of the PBO.

**(4) INDEPENDENCE.**—Subject to paragraph (1), in carrying out its functions, the PBO shall exercise independent control of its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions.

**(5) AUDITS AND REVIEW.**—The PBO shall be subject to the usual and customary Federal audit procedures and to review by the Inspector General of the Department.

**(6) CHANGES.**—

**(A) IN GENERAL.**—The Secretary and the Chief Operating Officer shall consult concerning the effects of policy, market, or other changes on the ability of the PBO to achieve the goals and objectives established in the performance plan described in subsection (c).

**(B) REVISIONS TO AGREEMENT.**—The Secretary and the Chief Operating Officer may revise the annual performance agreement described in subsection (d)(4) in light of policy, market, or other changes that occur after the Secretary and the Chief Operating Officer enter into the agreement.

**(c) PERFORMANCE PLAN, REPORT, AND BRIEFING.**—

**(1) PERFORMANCE PLAN.**—

**(A) IN GENERAL.**—Each year, the Secretary and Chief Operating Officer shall agree on, and make available to the public, a performance plan for the PBO for the succeeding 5 years that establishes measurable goals and objectives for the organization.

**(B) CONSULTATION.**—In developing the 5-year performance plan and any revision to the plan, the Secretary and the Chief Operating Officer shall consult with students, institutions of higher education, Congress, lenders, the Advisory Committee on Student Financial Assistance, and other interested parties not less than 30 days prior to the implementation of the performance plan or revision.

**(C) AREAS.**—The plan shall include a concise statement of the goals for a modernized system for the delivery of student financial assistance under title IV and identify action steps necessary to achieve such goals. The plan shall address the PBO's responsibilities in the following areas:

**(i) IMPROVING SERVICE.**—Improving service to students and other participants in student financial aid programs authorized under title IV, including making those programs more understandable to students and their parents.

**(ii) REDUCING COSTS.**—Reducing the costs of administering those programs.

**(iii) IMPROVEMENT AND INTEGRATION OF SUPPORT SYSTEMS.**—Improving and integrating the systems that support those programs.

**(iv) DELIVERY AND INFORMATION SYSTEM.**—Developing open, common, and integrated systems for programs authorized under title IV.

**(v) OTHER AREAS.**—Any other areas identified by the Secretary.

**(2) ANNUAL REPORT.**—Each year, the Chief Operating Officer shall prepare and submit to Congress, through the Secretary, an annual report on the performance of the PBO, including an evaluation of the extent to which the PBO met the goals and objectives contained in the 5-year performance plan described in paragraph (1) for the preceding year. The annual report shall include the following:

**(A)** An independent financial audit of the expenditures of both the PBO and the programs administered by the PBO.

**(B)** Financial and performance requirements applicable to the PBO under the Chief Financial Officers Act of 1990 and the Government Performance and Results Act of 1993.

**(C)** The results achieved by the PBO during the year relative to the goals established in the organization's performance plan.

**(D)** The evaluation rating of the performance of the Chief Operating Officer and senior managers under subsections (d)(4) and (e)(2), including the amounts of bonus compensation awarded to these individuals.

**(E)** Recommendations for legislative and regulatory changes to improve service to students and their families, and to improve program efficiency and integrity.

**(F)** Other such information as the Director of the Office of Management and Budget shall prescribe for performance based organizations.

**(3) CONSULTATION WITH STAKEHOLDERS.**—The Chief Operating Officer, in preparing the report described in paragraph (2), shall establish appropriate means to consult with students, borrowers, institutions, lenders, guaranty agencies, secondary markets, and others involved in the delivery system of student aid under title IV—

**(A)** regarding the degree of satisfaction with the delivery system; and

(B) to seek suggestions on means to improve the delivery system.

(4) BRIEFING ON ENFORCEMENT OF STUDENT LOAN PROVISIONS.— The Secretary shall, upon request, provide a briefing to the members of the authorizing committees on the steps the Department has taken to ensure—

(A) the integrity of the student loan programs; and

(B) that lenders and guaranty agencies are adhering to the requirements of title IV.

(d) CHIEF OPERATING OFFICER.—

(1) APPOINTMENT.—The management of the PBO shall be vested in a Chief Operating Officer who shall be appointed by the Secretary to a term of not less than 3 and not more than 5 years, and compensated without regard to chapters 33, 51, and 53 of title 5, United States Code. The appointment shall be made on the basis of demonstrated management ability and expertise in information technology, including experience with financial systems, and without regard to political affiliation or activity.

(2) REAPPOINTMENT.—The Secretary may reappoint the Chief Operating Officer to subsequent terms of not less than 3 and not more than 5 years, so long as the performance of the Chief Operating Officer, as set forth in the performance agreement described in paragraph (4), is satisfactory.

(3) REMOVAL.—The Chief Operating Officer may be removed by—

(A) the President; or

(B) the Secretary, for misconduct or failure to meet performance goals set forth in the performance agreement in paragraph (4). The President or Secretary shall communicate the reasons for any such removal to the authorizing committees of Congress.

(4) PERFORMANCE AGREEMENT.—

(A) IN GENERAL.—Each year, the Secretary and the Chief Operating Officer shall enter into an annual performance agreement, that shall set forth measurable organization and individual goals for the Chief Operating Officer.

(B) TRANSMITTAL.—The final agreement, and any revision to the final agreement, shall be transmitted to the authorizing committees, and made publicly available.

(5) COMPENSATION.—

(A) IN GENERAL.—The Chief Operating Officer is authorized to be paid at an annual rate of basic pay not to exceed the maximum rate of basic pay for the Senior Executive Service under section 5382 of title 5, United States Code, including any applicable locality-based comparability payment that may be authorized under section 5304(h)(2)(B) of such title. The compensation of the Chief Operating Officer shall be considered for purposes of section 207(c)(2)(A) of title 18, United States Code, to be the equivalent of that described under clause (ii) of section 207(c)(2)(A) of such title.

(B) BONUS.—In addition, the Chief Operating Officer may receive a bonus in an amount that does not exceed 50 percent of such annual rate of basic pay, based upon the Secretary's evaluation of the Chief Operating Officer's performance in relation to the goals set forth in the performance agreement described in paragraph (4).

(C) PAYMENT.—Payment of a bonus under subparagraph (B) may be made to the Chief Operating Officer only to the extent that such payment does not cause the Chief Operating Officer's total aggregate compensation in a calendar year to equal or exceed the amount of the President's salary under section 102 of title 3, United States Code.

(e) SENIOR MANAGEMENT.—

(1) APPOINTMENT.—

(A) IN GENERAL.—The Chief Operating Officer may appoint such senior managers as that officer determines necessary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

(B) COMPENSATION.—The senior managers described in subparagraph (A) may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(2) PERFORMANCE AGREEMENT.—Each year, the Chief Operating Officer and each senior manager appointed under this subsection shall enter into an annual performance agreement that sets forth measurable organization and individual goals. The agreement shall be subject to review and renegotiation at the end of each term.

(3) COMPENSATION.—

(A) IN GENERAL.—A senior manager appointed under this subsection may be paid at an annual rate of basic pay of not more than the maximum rate of basic pay for the Senior Executive Service under section 5382 of title 5, United States Code, including any applicable locality-based comparability payment that may be authorized under section 5304(h)(2)(C) of such title. The compensation of a senior manager shall be considered for purposes of section 207(c)(2)(A) of title

18, United States Code, to be the equivalent of that described under clause (ii) of section 207(c)(2)(A) of such title.

**(B) BONUS.**—In addition, a senior manager may receive a bonus in an amount such that the manager's total annual compensation does not exceed 125 percent of the maximum rate of basic pay for the Senior Executive Service, including any applicable locality-based comparability payment, based upon the Chief Operating Officer's evaluation of the manager's performance in relation to the goals set forth in the performance agreement described in paragraph (2).

**(4) REMOVAL.**—A senior manager shall be removable by the Chief Operating Officer, or by the Secretary if the position of Chief Operating Officer is vacant.

**(f) STUDENT LOAN OMBUDSMAN.**—

**(1) APPOINTMENT.**—The Chief Operating Officer, in consultation with the Secretary, shall appoint a Student Loan Ombudsman to provide timely assistance to borrowers of loans made, insured, or guaranteed under title IV by performing the functions described in paragraph (3).

**(2) PUBLIC INFORMATION.**—The Chief Operating Officer shall disseminate information about the availability and functions of the Ombudsman to students, borrowers and potential borrowers, as well as institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in those student loan programs.

**(3) FUNCTIONS OF OMBUDSMAN.**—The Ombudsman shall—

**(A)** in accordance with regulations of the Secretary, receive, review, and attempt to resolve informally complaints from borrowers of loans described in paragraph (1), including, as appropriate, attempts to resolve such complaints within the Department of Education and with institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in the loan programs described in paragraph (1); and

**(B)** compile and analyze data on borrower complaints and make appropriate recommendations.

**(4) REPORT.**—Each year, the Ombudsman shall submit a report to the Chief Operating Officer, for inclusion in the annual report under subsection (c)(2), that describes the activities, and evaluates the effectiveness of the Ombudsman during the preceding year.

**(g) PERSONNEL FLEXIBILITY.**—

**(1) PERSONNEL CEILINGS.**—The PBO shall not be subject to any ceiling relating to the number or grade of employees.

**(2) ADMINISTRATIVE FLEXIBILITY.**—The Chief Operating Officer shall work with the Office of Personnel Management to develop and implement personnel flexibilities in staffing, classification, and pay that meet the needs of the PBO, subject to compliance with title 5, United States Code.

**(3) EXCEPTED SERVICE.**—The Chief Operating Officer may appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, ~~not more than 25~~ technical and professional employees to administer the functions of the PBO. These employees may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

**(h) ESTABLISHMENT OF A FAIR AND EQUITABLE SYSTEM FOR MEASURING STAFF PERFORMANCE.**—The PBO shall establish an annual performance management system, subject to compliance with title 5, United States Code and consistent with applicable provisions of law and regulations, which strengthens the effectiveness of the PBO by providing for establishing goals or objectives for individual, group, or organizational performance (or any combination thereof), consistent with the performance plan of the PBO and its performance planning procedures, including those established under the Government Performance and Results Act of 1993, and communicating such goals or objectives to employees.

**(i) AUTHORIZATION OF APPROPRIATIONS.**—The Secretary shall allocate from funds made available under section 458 such funds as are appropriate to the functions assumed by the PBO. In addition, there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this part.

**SEC. 142. [20 U.S.C. 1018a] PROCUREMENT FLEXIBILITY.**

**(a) PROCUREMENT AUTHORITY.**—Subject to the authority of the Secretary, the Chief Operating Officer of a PBO may exercise the authority of the Secretary to procure property and services in the performance of functions managed by the PBO. For the purposes of this section, the term “PBO” includes the Chief Operating Officer of the PBO and any employee of the PBO exercising procurement authority under the preceding sentence.

**(b) IN GENERAL.**—Except as provided in this section, the PBO shall abide by all applicable Federal procurement laws and regulations when procuring property and services. The PBO shall—

- (1)** enter into contracts to carry out the functions set forth in section 141(b)(2);
- (2)** obtain the services of experts and consultants without regard to section 3109 of title 5, United States Code and set pay in accordance with such section; and
- (3)** through the Chief Operating Officer—
  - (A)** to the maximum extent practicable, utilize procurement systems that streamline operations, improve internal controls, and enhance management; and
  - (B)** assess the efficiency of such systems and assess such systems’ ability to meet PBO requirements.

**(c) SERVICE CONTRACTS.**—

**(1) PERFORMANCE-BASED SERVICING CONTRACTS.**—The Chief Operating Officer shall, to the extent practicable, maximize the use of performance-based servicing contracts, consistent with guidelines for such contracts published by the Office of Federal Procurement Policy, to achieve cost savings and improve service.

**(2) FEE FOR SERVICE ARRANGEMENTS.**—The Chief Operating Officer shall, when appropriate and consistent with the purposes of the PBO, acquire services related to the functions set forth in section 141(b)(2) from any entity that has the capability and capacity to meet the requirements set by the PBO. The Chief Operating Officer is authorized to pay fees that are equivalent to those paid by other entities to an organization that provides services that meet the requirements of the PBO, as determined by the Chief Operating Officer.

**(d) TWO-PHASE SOURCE-SELECTION PROCEDURES.**—

**(1) IN GENERAL.**—The PBO may use a two-phase process for selecting a source for a procurement of property or services.

**(2) FIRST PHASE.**—The procedures for the first phase of the process for a procurement are as follows:

**(A) PUBLICATION OF NOTICE.**—The contracting officer for the procurement shall publish a notice of the procurement in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and subsections (e), (f), and (g) of section 8 of the Small Business Act (15 U.S.C. 637), except that the notice shall include only the following:

**(i)** A general description of the scope or purpose of the procurement that provides sufficient information on the scope or purpose for sources to make informed business decisions regarding whether to participate in the procurement.

**(ii)** A description of the basis on which potential sources are to be selected to submit offers in the second phase.

**(iii)** A description of the information that is to be required under subparagraph (B).

**(iv)** Any additional information that the contracting officer determines appropriate.

**(B) INFORMATION SUBMITTED BY OFFERORS.**—Each offeror for the procurement shall submit basic information, such as information on the offeror’s qualifications, the proposed conceptual approach, costs likely to be associated with the proposed conceptual approach, and past performance of the offeror, together with any additional information that is requested by the contracting officer.

**(C) SELECTION FOR SECOND PHASE.**—The contracting officer shall select the offerors that are to be eligible to participate in the second phase of the process. The contracting officer shall limit the number of the selected offerors to the number of sources that the contracting officer determines is appropriate and in the best interests of the Federal Government.

**(3) SECOND PHASE.**—

**(A) IN GENERAL.**—The contracting officer shall conduct the second phase of the source selection process in accordance with sections 303A and 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a and 253b).

**(B) ELIGIBLE PARTICIPANTS.**—Only the sources selected in the first phase of the process shall be eligible to participate in the second phase.

**(C) SINGLE OR MULTIPLE PROCUREMENTS.**—The second phase may include a single procurement or multiple procurements within the scope, or for the purpose, described in the notice pursuant to paragraph (2)(A).

**(4) PROCEDURES CONSIDERED COMPETITIVE.**—The procedures used for selecting a source for a procurement under this subsection shall be considered competitive procedures for all purposes.

**(e) USE OF SIMPLIFIED PROCEDURES FOR COMMERCIAL ITEMS.**—Whenever the PBO anticipates that commercial items will be offered for a procurement, the PBO may use (consistent with the special rules for commercial items) the special simplified procedures for the procurement without regard to—

**(1)** any dollar limitation otherwise applicable to the use of those procedures; and

**(2)** the expiration of the authority to use special simplified procedures under section 4202(e) of the Clinger-Cohen Act of 1996 (110 Stat. 654; 10 U.S.C. 2304 note).

**(f) FLEXIBLE WAIT PERIODS AND DEADLINES FOR SUBMISSION OF OFFERS OF NONCOMMERCIAL ITEMS.**—

**(1) AUTHORITY.**—In carrying out a procurement, the PBO may—

**(A)** apply a shorter waiting period for the issuance of a solicitation after the publication of a notice under section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) than is required under subsection (a)(3)(A) of such section; and

**(B)** notwithstanding subsection (a)(3) of such section, establish any deadline for the submission of bids or proposals that affords potential offerors a reasonable opportunity to respond to the solicitation.

**(2) INAPPLICABILITY TO COMMERCIAL ITEMS.**—Paragraph (1) does not apply to a procurement of a commercial item.

**(3) CONSISTENCY WITH APPLICABLE INTERNATIONAL AGREEMENTS.**—If an international agreement is applicable to the procurement, any exercise of authority under paragraph (1) shall be consistent with the international agreement.

**(g) MODULAR CONTRACTING.**—

**(1) IN GENERAL.**—The PBO may satisfy the requirements of the PBO for a system incrementally by carrying out successive procurements of modules of the system. In doing so, the PBO may use procedures authorized under this subsection to procure any such module after the first module.

**(2) UTILITY REQUIREMENT.**—A module may not be procured for a system under this subsection unless the module is useful independently of the other modules or useful in combination with another module previously procured for the system.

**(3) CONDITIONS FOR USE OF AUTHORITY.**—The PBO may use procedures authorized under paragraph (4) for the procurement of an additional module for a system if—

**(A)** competitive procedures were used for awarding the contract for the procurement of the first module for the system; and

**(B)** the solicitation for the first module included—

**(i)** a general description of the entire system that was sufficient to provide potential offerors with reasonable notice of the general scope of future modules;

**(ii)** other information sufficient for potential offerors to make informed business judgments regarding whether to submit offers for the contract for the first module; and

**(iii)** a statement that procedures authorized under this subsection could be used for awarding subsequent contracts for the procurement of additional modules for the system.

**(4) PROCEDURES.**—If the procurement of the first module for a system meets the requirements set forth in paragraph (3), the PBO may award a contract for the procurement of an additional module for the system using any of the following procedures:

**(A) SINGLE-SOURCE BASIS.**—Award of the contract on a single-source basis to a contractor who was awarded a contract for a module previously procured for the system under competitive procedures or procedures authorized under subparagraph (B).

**(B) ADEQUATE COMPETITION.**—Award of the contract on the basis of offers made by—

**(i)** a contractor who was awarded a contract for a module previously procured for the system after having been selected for award of the contract under this subparagraph or other competitive procedures; and

**(ii)** at least one other offeror that submitted an offer for a module previously procured for the system and is expected, on the basis of the offer for the previously procured module, to submit a competitive offer for the additional module.

**(C) OTHER.**—Award of the contract under any other procedure authorized by law.

**(5) NOTICE REQUIREMENT.**—

**(A) PUBLICATION.**—Not less than 30 days before issuing a solicitation for offers for a contract for a module for a system under procedures authorized under subparagraph (A) or (B) of paragraph (4), the PBO shall publish in the Commerce Business Daily a notice of the intent to use such procedures to enter into the contract.

**(B) EXCEPTION.**—Publication of a notice is not required under this paragraph with respect to a use of procedures authorized under paragraph (4) if the contractor referred to in that subparagraph (who is to be solicited to submit an offer) has previously provided a module for the system under a contract that contained cost, schedule, and performance goals and the contractor met those goals.

**(C) CONTENT OF NOTICE.**—A notice published under subparagraph (A) with respect to a use of procedures described in paragraph (4) shall contain the information required under section 18(b) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(b)), other than paragraph (4) of such section, and shall invite the submission of any assertion that the use of the procedures for the procurement involved is not in the best interest of the Federal Government together with information supporting the assertion.

**(6) DOCUMENTATION.**—The basis for an award of a contract under this subsection shall be documented. However, a justification pursuant to section 303(f) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)) or section 8(h) of the Small Business Act (15 U.S.C. 637(h)) is not required.

**(7) SIMPLIFIED SOURCE-SELECTION PROCEDURES.**—The PBO may award a contract under any other simplified procedures prescribed by the PBO for the selection of sources for the procurement of modules for a system, after the first module, that are not to be procured under a contract awarded on a single-source basis.

**(h) USE OF SIMPLIFIED PROCEDURES FOR SMALL BUSINESS SETASIDES FOR SERVICES OTHER THAN COMMERCIAL ITEMS.**—

**(1) AUTHORITY.**—The PBO may use special simplified procedures for a procurement of services that are not commercial items if—

**(A)** the procurement is in an amount not greater than \$1,000,000;

**(B)** the procurement is conducted as a small business set-aside pursuant to section 15(a) of the Small Business Act (15 U.S.C. 644(a)); and

**(C)** the price charged for supplies associated with the services procured are items of supply expected to be less than 20 percent of the total contract price.

**(2) INAPPLICABILITY TO CERTAIN PROCUREMENTS.**—The authority set forth in paragraph (1) may not be used for—

**(A)** an award of a contract on a single-source basis; or

**(B)** a contract for construction.

**(i) GUIDANCE FOR USE OF AUTHORITY.**—

**(1) ISSUANCE BY PBO.**—The Chief Operating Officer of the PBO, in consultation with the Administrator for Federal Procurement Policy, shall issue guidance for the use by PBO personnel of the authority provided in this section.

**(2) GUIDANCE FROM OFPP.**—As part of the consultation required under paragraph (1), the Administrator for Federal Procurement Policy shall provide the PBO with guidance that is designed to ensure, to the maximum extent practicable, that the authority under this section is exercised by the PBO in a manner that is consistent with the exercise of the authority by the heads of the other performance-based organizations.

**(3) COMPLIANCE WITH OFPP GUIDANCE.**—The head of the PBO shall ensure that the procurements of the PBO under this section are carried out in a manner that is consistent with the guidance provided for the PBO under paragraph (2).

**(j) LIMITATION ON MULTIAGENCY CONTRACTING.**—No department or agency of the Federal Government may purchase property or services under contracts entered into or administered by a PBO under this section unless the purchase is approved in advance by the senior procurement official of that department or agency who is responsible for purchasing by the department or agency.

**(k) LAWS NOT AFFECTED.**—Nothing in this section shall be construed to waive laws for the enforcement of civil rights or for the establishment and enforcement of labor standards that are applicable to contracts of the Federal Government.

**(l) DEFINITIONS.**—In this section:

**(1) COMMERCIAL ITEM.**—The term “commercial item” has the meaning given the term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

**(2) COMPETITIVE PROCEDURES.**—The term “competitive procedures” has the meaning given the term in section 309(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(b)).

**(3) SINGLE-SOURCE BASIS.**—The term “single-source basis”, with respect to an award of a contract, means that the contract is awarded to a source after soliciting an offer or offers from, and negotiating with, only such source (although such source is not the only source in the marketplace capable of meeting the need) because such source is the most advantageous source for purposes of the award.

**(4) SPECIAL RULES FOR COMMERCIAL ITEMS.**—The term “special rules for commercial items” means the regulations set forth in the Federal Acquisition Regulation pursuant to section 303(g)(1) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)) and section 31 of the Office of Federal Procurement Policy Act (41 U.S.C. 427).

**(5) SPECIAL SIMPLIFIED PROCEDURES.**—The term “special simplified procedures” means the procedures applicable to purchases of property and services for amounts not greater than the simplified acquisition threshold that are set forth in the Federal Acquisition Regulation pursuant to section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(A)) and section 31(a)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(1)).

**SEC. 143. [20 U.S.C. 1018b] ADMINISTRATIVE SIMPLIFICATION OF STUDENT AID DELIVERY.**

**(a) IN GENERAL.**—In order to improve the efficiency and effectiveness of the student aid delivery system, the Secretary and the Chief Operating Officer shall encourage and participate in the establishment of voluntary consensus standards and requirements for the electronic transmission of information necessary for the administration of programs under title IV.

**(b) PARTICIPATION IN STANDARD SETTING ORGANIZATIONS.**—

**(1)** The Chief Operating Officer shall participate in the activities of standard setting organizations in carrying out the provisions of this section.

**(2)** The Chief Operating Officer shall encourage higher education groups seeking to develop common forms, standards, and procedures in support of the delivery of Federal student financial assistance to conduct these activities within a standard setting organization.

**(3)** The Chief Operating Officer may pay necessary dues and fees associated with participating in standard setting organizations pursuant to this subsection.

**(c) ADOPTION OF VOLUNTARY CONSENSUS STANDARDS.**—Except with respect to the common financial reporting form under section 483(a), the Secretary shall consider adopting voluntary consensus standards agreed to by the organization described in subsection (b) for transactions required under title IV, and common data elements for such transactions, to enable information to be exchanged electronically between systems administered by the Department and among participants in the Federal student aid delivery system.

**(d) USE OF CLEARINGHOUSES.**—Nothing in this section shall restrict the ability of participating institutions and lenders from using a clearinghouse or servicer to comply with the standards for the exchange of information established under this section.

**(e) DATA SECURITY.**—Any entity that maintains or transmits information under a transaction covered by this section shall maintain reasonable and appropriate administrative, technical, and physical safeguards—

**(1)** to ensure the integrity and confidentiality of the information; and

**(2)** to protect against any reasonably anticipated security threats, or unauthorized uses or disclosures of the information.

**(f) DEFINITIONS.**—

**(1) CLEARINGHOUSE.**—The term “clearinghouse” means a public or private entity that processes or facilitates the processing of nonstandard data elements into data elements conforming to standards adopted under this section.

**(2) STANDARD SETTING ORGANIZATION.**—The term “standard setting organization” means an organization that—

**(A)** is accredited by the American National Standards Institute;

**(B)** develops standards for information transactions, data elements, or any other standard that is necessary to, or will facilitate, the implementation of this section; and

**(C)** is open to the participation of the various entities engaged in the delivery of Federal student financial assistance.

**(3) VOLUNTARY CONSENSUS STANDARD.**—The term “voluntary consensus standard” means a standard developed or used by a standard setting organization described in paragraph (2).

## PART E—LENDER AND INSTITUTION REQUIREMENTS RELATING TO EDUCATION LOANS

### SEC. 151. DEFINITIONS.

In this part:

- (1) AGENT.—The term “agent” means an officer or employee of a covered institution or an institution-affiliated organization.
- (2) COVERED INSTITUTION.—The term “covered institution” means any institution of higher education, as such term is defined in section 102, that receives any Federal funding or assistance.
- (3) EDUCATION LOAN.—The term “education loan” (except when used as part of the term “private education loan”) means—
  - (A) any loan made, insured, or guaranteed under part B of title IV;
  - (B) any loan made under part D of title IV; or
  - (C) a private education loan.
- (4) ELIGIBLE LENDER.—The term “eligible lender” has the meaning given such term in section 435(d).
- (5) INSTITUTION-AFFILIATED ORGANIZATION.—The term “institution-affiliated organization”—
  - (A) means any organization that—
    - (i) is directly or indirectly related to a covered institution; and
    - (ii) is engaged in the practice of recommending, promoting, or endorsing education loans for students attending such covered institution or the families of such students;
  - (B) may include an alumni organization, athletic organization, foundation, or social, academic, or professional organization, of a covered institution; and
  - (C) notwithstanding subparagraphs (A) and (B), does not include any lender with respect to any education loan secured, made, or extended by such lender.
- (6) LENDER.—The term “lender” (except when used as part of the terms “eligible lender” and “private educational lender”)—
  - (A) means—
    - (i) in the case of a loan made, insured, or guaranteed under part B of title IV, an eligible lender;
    - (ii) in the case of any loan issued or provided to a student under part D of title IV, the Secretary;and
    - (iii) in the case of a private education loan, a private educational lender as defined in section 140 of the Truth in Lending Act; and
  - (B) includes any other person engaged in the business of securing, making, or extending education loans on behalf of the lender.
- (7) OFFICER.—The term “officer” includes a director or trustee of a covered institution or institution-affiliated organization, if such individual is treated as an employee of such covered institution or institution-affiliated organization, respectively.
- (8) PREFERRED LENDER ARRANGEMENT.—The term “preferred lender arrangement”—
  - (A) means an arrangement or agreement between a lender and a covered institution or an institution-affiliated organization of such covered institution—
    - (i) under which a lender provides or otherwise issues education loans to the students attending such covered institution or the families of such students; and
    - (ii) that relates to such covered institution or such institution-affiliated organization recommending, promoting, or endorsing the education loan products of the lender; and
  - (B) does not include—
    - (i) arrangements or agreements with respect to loans under part D of title IV; or
    - (ii) arrangements or agreements with respect to loans that originate through the auction pilot program under section 499(b).
- (9) PRIVATE EDUCATION LOAN.—The term “private education loan” has the meaning given the term in section 140 of the Truth in Lending Act.

**SEC. 152. RESPONSIBILITIES OF COVERED INSTITUTIONS, INSTITUTION-AFFILIATED ORGANIZATIONS, AND LENDERS.****(a) RESPONSIBILITIES OF COVERED INSTITUTIONS AND INSTITUTION-AFFILIATED ORGANIZATIONS.—****(1) DISCLOSURES BY COVERED INSTITUTIONS AND INSTITUTION-AFFILIATED ORGANIZATIONS.—**

**(A) PREFERRED LENDER ARRANGEMENT DISCLOSURES.—**In addition to the disclosures required by subsections (a)(27) and (h) of section 487 (if applicable), a covered institution, or an institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement shall disclose—

**(i)** on such covered institution's or institution-affiliated organization's website and in all informational materials described in subparagraph (C) that describe or discuss education loans—

**(I)** the maximum amount of Federal grant and loan aid under title IV available to students, in an easy to understand format;

**(II)** the information required to be disclosed pursuant to section 153(a)(2)(A)(i), for each type of loan described in section 151(3)(A) that is offered pursuant to a preferred lender arrangement of the institution or organization to students of the institution or the families of such students; and

**(III)** a statement that such institution is required to process the documents required to obtain a loan under part B of title IV from any eligible lender the student selects; and

**(ii)** on such covered institution's or institution-affiliated organization's website and in all informational materials described in subparagraph (C) that describe or discuss private education loans—

**(I)** in the case of a covered institution, the information that the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(11) of the Truth in Lending Act (15 U.S.C. 1638(e)(11)), for each type of private education loan offered pursuant to a preferred lender arrangement of the institution to students of the institution or the families of such students; and

**(II)** in the case of an institution-affiliated organization of a covered institution, the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)), for each type of private education loan offered pursuant to a preferred lender arrangement of the organization to students of such institution or the families of such students.

**(B) PRIVATE EDUCATION LOAN DISCLOSURES.—**A covered institution, or an institution-affiliated organization of such covered institution, that provides information regarding a private education loan from a lender to a prospective borrower shall—

**(i)** provide the prospective borrower with the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)) for such loan;

**(ii)** inform the prospective borrower that—

**(I)** the prospective borrower may qualify for loans or other assistance under title IV; and

**(II)** the terms and conditions of loans made, insured, or guaranteed under title IV may be more favorable than the provisions of private education loans; and

**(iii)** ensure that information regarding private education loans is presented in such a manner as to be distinct from information regarding loans that are made, insured, or guaranteed under title IV.

**(C) INFORMATIONAL MATERIALS.—**The informational materials described in this subparagraph are publications, mailings, or electronic messages or materials that—

**(i)** are distributed to prospective or current students of a covered institution and families of such students; and

**(ii)** describe or discuss the financial aid opportunities available to students at an institution of higher education.

**(2) USE OF INSTITUTION NAME.—**A covered institution, or an institution-affiliated organization of such covered institution, that enters into a preferred lender arrangement with a lender regarding private education loans shall not agree to the lender's use of the name, emblem, mascot, or logo of such institution or organization, or other words, pictures, or symbols readily identified with such institution or organization, in the marketing of private education loans to students attending such institution in any way that implies that the loan is offered or made by such institution or organization instead of the lender.

**(3) USE OF LENDER NAME.**—A covered institution, or an institution-affiliated organization of such covered institution, that enters into a preferred lender arrangement with a lender regarding private education loans shall ensure that the name of the lender is displayed in all information and documentation related to such loans.

**(b) LENDER RESPONSIBILITIES.**—

**(1) DISCLOSURES BY LENDERS.**—

**(A) DISCLOSURES TO BORROWERS.**—

**(i) FEDERAL EDUCATION LOANS.**—For each education loan that is made, insured, or guaranteed under part B or D of title IV (other than a loan made under section 428C or a Federal Direct Consolidation Loan), at or prior to the time the lender disburses such loan, the lender shall provide the prospective borrower or borrower, in writing (including through electronic means), with the disclosures described in subsections (a) and (c) of section 433.

**(ii) PRIVATE EDUCATION LOANS.**—For each of a lender's private education loans, the lender shall comply with the disclosure requirements under section 128(e) of the Truth in Lending Act (15 U.S.C. 1638(e)).

**(B) DISCLOSURES TO THE SECRETARY.**—

**(i) IN GENERAL.**—Each lender of a loan made, insured, or guaranteed under part B of title IV shall, on an annual basis, report to the Secretary—

**(I)** any reasonable expenses paid or provided under section 435(d)(5)(D) or paragraph (3)(B) or (7) of section 487(e) to any agent of a covered institution who—

**(aa)** is employed in the financial aid office of a covered institution; or

**(bb)** otherwise has responsibilities with respect to education loans or other financial aid of the institution; and

**(II)** any similar expenses paid or provided to any agent of an institution-affiliated organization who is involved in the practice of recommending, promoting, or endorsing education loans.

**(ii) CONTENTS OF REPORTS.**—Each report described in clause (i) shall include—

**(I)** the amount for each specific instance in which the lender provided such expenses;

**(II)** the name of any agent described in clause (i) to whom the expenses were paid or provided;

**(III)** the dates of the activity for which the expenses were paid or provided; and

**(IV)** a brief description of the activity for which the expenses were paid or provided.

**(iii) REPORT TO CONGRESS.**—The Secretary shall summarize the information received from the lenders under this subparagraph in a report and transmit such report annually to the authorizing committees.

**(2) CERTIFICATION BY LENDERS.**—Not later than 18 months after the date of enactment of the Higher Education Opportunity Act—

**(A)** in addition to any other disclosure required under Federal law, each lender of a loan made, insured, or guaranteed under part B of title IV that participates in one or more preferred lender arrangements shall annually certify the lender's compliance with the requirements of this Act; and

**(B)** if an audit of a lender is required pursuant to section 428(b)(1)(U)(iii), the lender's compliance with the requirements under this section shall be reported on and attested to annually by the auditor of such lender.

**SEC. 153. LOAN INFORMATION TO BE DISCLOSED AND MODEL DISCLOSURE FORM FOR COVERED INSTITUTIONS, INSTITUTION-AFFILIATED ORGANIZATIONS, AND LENDERS PARTICIPATING IN PREFERRED LENDER ARRANGEMENTS.****(a) DUTIES OF THE SECRETARY.—****(1) DETERMINATION OF MINIMUM DISCLOSURES.—**

**(A) IN GENERAL.**—Not later than 18 months after the date of enactment of the Higher Education Opportunity Act, the Secretary, in coordination with the Board of Governors of the Federal Reserve System, shall determine the minimum information that lenders, covered institutions, and institution-affiliated organizations of such covered institutions participating in preferred lender arrangements shall make available regarding education loans described in section 151(3)(A) that are offered to students and the families of such students.

**(B) CONSULTATION AND CONTENT OF MINIMUM DISCLOSURES.**— In carrying out subparagraph (A), the Secretary shall—

**(i)** consult with students, the families of such students, representatives of covered institutions (including financial aid administrators, admission officers, and business officers), representatives of institution-affiliated organizations, secondary school guidance counselors, lenders, loan servicers, and guaranty agencies;

**(ii)** include, in the minimum information under subparagraph (A) that is required to be made available, the information that the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)), modified as necessary to apply to such loans; and

**(iii)** consider the merits of requiring each covered institution, and each institution-affiliated organization of such covered institution, with a preferred lender arrangement to provide to prospective borrowers and the families of such borrowers the following information for each type of education loan offered pursuant to such preferred lender arrangement:

**(I)** The interest rate and terms and conditions of the loan for the next award year, including loan forgiveness and deferment.

**(II)** Information on any charges, such as origination and Federal default fees, that are payable on the loan, and whether those charges will be—

**(aa)** collected by the lender at or prior to the disbursement of the loan, including whether the charges will be deducted from the proceeds of the loan or paid separately by the borrower; or

**(bb)** paid in whole or in part by the lender.

**(III)** The annual and aggregate maximum amounts that may be borrowed.

**(IV)** The average amount borrowed from the lender by students who graduated from such institution in the preceding year with certificates, undergraduate degrees, graduate degrees, and professional degrees, as applicable, and who obtained loans of such type from the lender for the preceding year.

**(V)** The amount the borrower may pay in interest, based on a standard repayment plan and the average amount borrowed from the lender by students who graduated from such institution in the preceding year and who obtained loans of such type from the lender for the preceding year, for—

**(aa)** borrowers of loans made under section 428;

**(bb)** borrowers of loans made under section 428B or 428H, who pay the interest while in school; and

**(cc)** borrowers of loans made under section 428B or 428H, who do not pay the interest while in school.

**(VI)** The consequences for the borrower of defaulting on a loan, including limitations on the discharge of an education loan in bankruptcy.

**(VII)** Contact information for the lender.

**(VIII)** Other information suggested by the persons and entities with whom the Secretary has consulted under clause (i).

**(2) REQUIRED DISCLOSURES.**—After making the determinations under paragraph (1), the Secretary, in coordination with the Board of Governors of the Federal Reserve System and after consultation with the public, shall—

**(A)(i)** provide that the information determined under paragraph (1) shall be disclosed by covered institutions, and institution-affiliated organizations of such covered institutions, with preferred lender arrangements to prospective borrowers and the families of such borrowers regarding the education

loans described in section 151(3)(A) that are offered pursuant to such preferred lender arrangements; and

(ii) make clear that such covered institutions and institution-affiliated organizations may provide the required information on a form designed by the institution or organization instead of the model disclosure form described in subparagraph (B);

(B) develop a model disclosure form that may be used by covered institutions, institution-affiliated organizations, and preferred lenders that includes all of the information required under subparagraph (A)(i) in a format that—

(i) is easily usable by students, families, institutions, institution-affiliated organizations, lenders, loan servicers, and guaranty agencies; and

(ii) is similar in format to the form developed by the Board of Governors of the Federal Reserve System under paragraphs (1) and (5)(A) of section 128(e), in order to permit students and the families of students to easily compare private education loans and education loans described in section 151(3)(A); and

(C) update such model disclosure form periodically, as necessary.

(b) DUTIES OF LENDERS.—Each lender that has a preferred lender arrangement with a covered institution, or an institution-affiliated organization of such covered institution, with respect to education loans described in section 151(3)(A) shall annually, by a date determined by the Secretary, provide to such covered institution or such institution-affiliated organization, and to the Secretary, the information the Secretary requires pursuant to subsection (a)(2)(A)(i) for each type of education loan described in section 151(3)(A) that the lender plans to offer pursuant to such preferred lender arrangement to students attending such covered institution, or to the families of such students, for the next award year.

(c) DUTIES OF COVERED INSTITUTIONS AND INSTITUTION-AFFILIATED ORGANIZATIONS.—

(1) PROVIDING INFORMATION TO STUDENTS AND FAMILIES.—

(A) IN GENERAL.—Each covered institution, and each institution-affiliated organization of such covered institution, that has a preferred lender arrangement shall provide the following information to students attending such institution, or the families of such students, as applicable:

(i) The information the Secretary requires pursuant to subsection (a)(2)(A)(i), for each type of education loan described in section 151(3)(A) offered pursuant to a preferred lender arrangement to students of such institution or the families of such students.

(ii)(I) In the case of a covered institution, the information that the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(11) of the Truth in Lending Act (15 U.S.C. 1638(e)(11)) to the covered institution, for each type of private education loan offered pursuant to such preferred lender arrangement to students of such institution or the families of such students.

(II) In the case of an institution-affiliated organization, the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)), for each type of private education loan offered pursuant to such preferred lender arrangement to students of the institution with which such organization is affiliated or the families of such students.

(B) TIMELY PROVISION OF INFORMATION.—The information described in subparagraph (A) shall be provided in a manner that allows for the students or the families to take such information into account before selecting a lender or applying for an education loan.

(2) ANNUAL REPORT.—Each covered institution, and each institution-affiliated organization of such covered institution, that has a preferred lender arrangement, shall—

(A) prepare and submit to the Secretary an annual report, by a date determined by the Secretary, that includes, for each lender that has a preferred lender arrangement with such covered institution or organization—

(i) the information described in clauses (i) and (ii) of paragraph (1)(A); and

(ii) a detailed explanation of why such covered institution or institution-affiliated organization entered into a preferred lender arrangement with the lender, including why the terms, conditions, and provisions of each type of education loan provided pursuant to the preferred lender arrangement are beneficial for students attending such institution, or the families of such students, as applicable; and

(B) ensure that the report required under subparagraph (A) is made available to the public and provided to students attending or planning to attend such covered institution and the families of such students.

(3) CODE OF CONDUCT.—

**(A) IN GENERAL.**—Each covered institution, and each institution-affiliated organization of such covered institution, that has a preferred lender arrangement, shall comply with the code of conduct requirements of subparagraphs (A) through (C) of section 487(a)(25).

**(B) APPLICABLE CODE OF CONDUCT.**—For purposes of subparagraph (A), an institution-affiliated organization of a covered institution shall—

**(i)** comply with the code of conduct developed and published by such covered institution under subparagraphs (A) and (B) of section 487(a)(25);

**(ii)** if such institution-affiliated organization has a website, publish such code of conduct prominently on the website; and

**(iii)** administer and enforce such code of conduct by, at a minimum, requiring that all of such organization's agents with responsibilities with respect to education loans be annually informed of the provisions of such code of conduct.

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**SEC. 154. LOAN INFORMATION TO BE DISCLOSED AND MODEL DISCLOSURE FORM FOR INSTITUTIONS PARTICIPATING IN THE WILLIAM. D. FORD FEDERAL DIRECT LOAN PROGRAM.**

**(a) PROVISION OF DISCLOSURES TO INSTITUTIONS BY THE SECRETARY.**— Not later than 180 days after the development of the model disclosure form under section 153(a)(2)(B), the Secretary shall provide each institution of higher education participating in the William D. Ford Direct Loan Program under part D of title IV with a completed model disclosure form including the same information for Federal Direct Stafford Loans, Federal Direct Unsubsidized Stafford Loans, and Federal Direct PLUS loans made to, or on behalf of, students attending each such institution as is required on such form for loans described in section 151(3)(A).

**(b) DUTIES OF INSTITUTIONS.**—

**(1) IN GENERAL.**—Each institution of higher education participating in the William D. Ford Direct Loan Program under part D of title IV shall—

**(A)** make the information the Secretary provides to the institution under subsection (a) available to students attending or planning to attend the institution, or the families of such students, as applicable; and

**(B)** if the institution provides information regarding a private education loan to a prospective borrower, concurrently provide such borrower with the information the Secretary provides to the institution under subsection (a).

**(2) CHOICE OF FORMS.**—In providing the information required under paragraph (1), an institution of higher education may use a comparable form designed by the institution instead of the model disclosure form developed under section 153(a)(2)(B).

**SEC 155. SELF-CERTIFICATION FORM FOR PRIVATE EDUCATION LOANS.**

**(a) IN GENERAL.**—The Secretary, in consultation with the Board of Governors of the Federal Reserve System, shall develop the self-certification form for private education loans that shall be used to satisfy the requirements of section 128(e)(3) of the Truth in Lending Act. Such form shall—

- (1)** be developed in a standardized format;
  - (2)** be made available to the applicant by the relevant institution of higher education, in written or electronic form, upon request of the applicant;
  - (3)** contain only disclosures that—
    - (A)** the applicant may qualify for Federal student financial assistance through a program under title IV of this Act, or State or institutional student financial assistance, in place of, or in addition to, a private education loan;
    - (B)** the applicant is encouraged to discuss the availability of Federal, State, and institutional student financial assistance with financial aid officials at the applicant's institution of higher education;
    - (C)** a private education loan may affect the applicant's eligibility for free or low-cost Federal, State or institutional student financial assistance; and
    - (D)** the information that the applicant is required to provide on the form is available from officials at the financial aid office of the institution of higher education;
  - (4)** include a place to provide information on—
    - (A)** the applicant's cost of attendance at the institution of higher education, as determined by the institution under Part F of title IV;
    - (B)** the applicant's estimated financial assistance, including amounts of financial assistance used to replace the expected family contribution, as determined by the institution, in accordance with title IV, for students who have completed the Free Application for Federal Student Aid; and
    - (C)** the difference between the amounts under subparagraphs (A) and (B), as applicable; and
  - (5)** include a place for the applicant's signature, in written or electronic form.
- (b) LIMIT ON LIABILITY.**—Nothing in this section shall be construed to create a private right of action against an institution of higher education with respect to the form developed under subsection (a).