

115TH CONGRESS
1ST SESSION

S. 2231

To amend the Higher Education Act of 1965 to provide for institutional ineligibility based on low cohort repayment rates and to require risk sharing payments of institutions of higher education.

IN THE SENATE OF THE UNITED STATES

DECEMBER 14, 2017

Mrs. SHAHEEN (for herself and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Higher Education Act of 1965 to provide for institutional ineligibility based on low cohort repayment rates and to require risk sharing payments of institutions of higher education.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Student Protection and
5 Success Act”.

1 **SEC. 2. INSTITUTIONAL INELIGIBILITY BASED ON LOW CO-**
2 **HORT REPAYMENT RATE.**

3 (a) IN GENERAL.—Section 455 of the Higher Edu-
4 cation Act of 1965 (20 U.S.C. 1087e) is amended by add-
5 ing at the end the following:

6 “(r) INELIGIBILITY DUE TO LOW COHORT REPAY-
7 MENT RATE.—

8 “(1) IN GENERAL.—Beginning with fiscal year
9 2022 and each succeeding fiscal year, an institution
10 that has a cohort repayment rate that is equal to or
11 less than 15 percent shall not be eligible to partici-
12 pate in a program under this part for such fiscal
13 year and for the 2 succeeding fiscal years.

14 “(2) APPEALS.—

15 “(A) IN GENERAL.—An institution may
16 appeal the loss of eligibility under this sub-
17 section to the Secretary within 30 days of re-
18 ceiving notification from the Secretary of the
19 loss of eligibility under this subsection.

20 “(B) CONTINUED PARTICIPATION.—Dur-
21 ing an appeal under subparagraph (A), the Sec-
22 retary may permit the institution to continue to
23 participate in a program under this part if the
24 institution demonstrates to the satisfaction of
25 the Secretary that the Secretary’s calculation of
26 its cohort repayment rate is not accurate, and

1 that recalculation would increase its cohort re-
2 payment rate to be more than 15 percent.

3 “(C) REQUIRED PAYMENT.—If an institu-
4 tion continues to participate in a program
5 under this part, and the institution’s appeal of
6 the loss of eligibility is unsuccessful, the institu-
7 tion shall be required to pay to the Secretary an
8 amount equal to the amount of loans made by
9 the Secretary under this part to borrowers at-
10 tending, or planning to attend, that institution
11 during the pendency of such appeal and the in-
12 terest, special allowance, reinsurance, and any
13 related payments made by the Secretary (or
14 which the Secretary is obligated to make) with
15 respect to such loans.

16 “(3) COHORT REPAYMENT RATE.—

17 “(A) IN GENERAL.—In this subsection, the
18 term ‘cohort repayment rate’ means, for any
19 fiscal year beginning with fiscal year 2022—

20 “(i) in the case in which 30 or more
21 borrowers at the institution enter repay-
22 ment on Federal Direct Stafford Loans,
23 Federal Direct Unsubsidized Stafford
24 Loans, Federal Direct PLUS Loans, or
25 Federal Direct Consolidation Loans, re-

1 ceived for attendance at the institution, the
2 percentage of those borrowers who are not
3 in default and who make at least a one
4 dollar reduction on their initial student
5 loan principal balance before the end of the
6 second fiscal year following the fiscal year
7 in which the borrowers entered repayment,
8 except as provided in subparagraph (B);
9 and

10 “(ii) in the case in which less than 30
11 borrowers at the institution enter repay-
12 ment on Federal Direct Stafford Loans,
13 Federal Direct Unsubsidized Stafford
14 Loans, Federal Direct PLUS Loans, or
15 Federal Direct Consolidation Loans, re-
16 ceived for attendance at the institution, the
17 percentage of those borrowers plus all of
18 the borrowers at the institution who en-
19 tered repayment on such loans (or on the
20 portion of a loan made under section 428C
21 that is used to repay any such loans) in
22 the 3 fiscal years preceding the fiscal year
23 for which the determination is made, who
24 are not in default and who make at least
25 a one dollar reduction on their initial stu-

1 dent loan principal balance before the end
2 of the second fiscal year following the year
3 in which the borrowers entered repayment,
4 except as provided in subparagraph (B).

5 “(B) EXCEPTION.—The ‘cohort repayment
6 rate’ calculation under subparagraph (A) shall
7 not include in the calculation a borrower who
8 is—

9 “(i) in deferment on repayment of a
10 loan described in subparagraph (A) due to
11 study in an approved graduate fellowship
12 program or in an approved rehabilitation
13 training program for the disabled;

14 “(ii) in deferment on repayment of a
15 loan described in subparagraph (A) during
16 a period of at least half-time enrollment in
17 college or a career school;

18 “(iii) in deferment on repayment of a
19 loan described in subparagraph (A) during
20 a period of service qualifying for loan dis-
21 charge or cancellation under part E;

22 “(iv) in deferment on repayment of a
23 loan described in subparagraph (A) due to
24 active duty military service of the borrower

1 during a war, military operation, or na-
2 tional emergency;

3 “(v) in deferment on repayment of a
4 loan described in subparagraph (A) during
5 the 13 months following the conclusion of
6 qualifying active duty military service by
7 the borrower, or until the borrower returns
8 to enrollment on at least a half-time basis,
9 whichever is earlier, if the borrower is a
10 member of the National Guard or other re-
11 serve component of the Armed Forces and
12 was called or ordered to active duty while
13 enrolled at least half-time at an eligible
14 school or within 6 months of having been
15 enrolled at least half-time;

16 “(vi) in mandatory forbearance on re-
17 payment of a loan described in subpara-
18 graph (A) for the full fiscal year; or

19 “(vii) serving as a volunteer under the
20 Peace Corps Act (22 U.S.C. 2501 et seq.)
21 or the Domestic Volunteer Service Act of
22 1973 (42 U.S.C. 4950 et seq.).

23 “(C) PUBLICATION OF REPAYMENT
24 RATES.—The Secretary shall publish the cohort

1 repayment rates for institutions determined
2 under this subsection.

3 “(4) NOTIFICATION.—Beginning with the first
4 fiscal year for which data are available after the date
5 of enactment of the Student Protection and Success
6 Act and each succeeding fiscal year until fiscal year
7 2022, the Secretary shall notify each institution that
8 has a cohort repayment rate that is equal to or less
9 than 15 percent that the institution risks losing eli-
10 gibility to participate in a program under this
11 part.”.

12 (b) INELIGIBILITY IN OTHER PROGRAMS.—

13 (1) PELL GRANTS.—Section 401(j) of the High-
14 er Education Act of 1965 (20 U.S.C. 1070a(j)) is
15 amended—

16 (A) in the heading, by striking “BASED ON
17 DEFAULT RATES”;

18 (B) in paragraph (1), by inserting “until
19 fiscal year 2022” after “succeeding fiscal year”;

20 (C) in paragraph (2), by inserting “or co-
21 hort repayment rate determination” after “de-
22 fault rate determination”; and

23 (D) by adding at the end the following:

24 “(3) INELIGIBILITY BASED ON LOW COHORT
25 REPAYMENT RATES.—No institution of higher edu-

1 cation shall be an eligible institution for purposes of
2 this subpart if such institution of higher education
3 is ineligible to participate in a program under part
4 D due to a low cohort repayment rate, as deter-
5 mined under section 455(r).”.

6 (2) STUDENT LOAN INSURANCE PROGRAM.—
7 Section 435(a) of the Higher Education Act of 1965
8 (20 U.S.C. 1085(a)) is amended—

9 (A) in paragraph (2)—

10 (i) in the heading, by striking “BASED
11 ON HIGH DEFAULT RATES”;

12 (ii) in subparagraph (A), by striking
13 “An institution” and inserting “Until fis-
14 cal year 2022, an institution”; and

15 (iii) by adding at the end the fol-
16 lowing:

17 “(E) No institution of higher education shall be
18 an eligible institution for purposes of this part if
19 such institution of higher education is ineligible to
20 participate in a program under part D due to a low
21 cohort repayment rate, as determined under section
22 455(r).”; and

23 (B) in paragraph (6)(A), by inserting “and
24 until fiscal year 2022,” after “July 1, 1999,”.

1 (3) FEDERAL PERKINS LOANS.—Section 462 of
2 the Higher Education Act of 1965 (20 U.S.C.
3 1087bb) is amended—

4 (A) in subsection (a)—

5 (i) in paragraph (1), by inserting “or
6 the institution is ineligible to participate in
7 a program under part D due to a low co-
8 hort repayment rate, as determined under
9 section 455(r)” after “subsection (f)”; and

10 (ii) in paragraph (2)(D), by inserting
11 “or the institution is ineligible to partici-
12 pate in a program under part D due to a
13 low cohort repayment rate, as determined
14 under section 455(r)” after “subsection
15 (f)”; and

16 (B) in subsection (b)—

17 (i) in paragraph (2), by inserting “or
18 the institution is ineligible to participate in
19 a program under part D due to a low co-
20 hort repayment rate, as determined under
21 section 455(r)” after “subsection (f)”; and

22 (ii) in paragraph (3), by inserting “or
23 the institution is ineligible to participate in
24 a program under part D due to a low co-

1 hort repayment rate, as determined under
2 section 455(r)” after “subsection (f)”;

3 (C) in subsection (e)—

4 (i) in paragraph (2), by inserting
5 “until fiscal year 2022,” after “succeeding
6 fiscal year”; and

7 (ii) in paragraph (3)—

8 (I) in subparagraph (A), by in-
9 serting “until fiscal year 2022,” after
10 “any succeeding fiscal year”; and

11 (II) by adding at the end the fol-
12 lowing:

13 “(F) LOW COHORT REPAYMENT RATES.—
14 An institution that is ineligible to participate in
15 a program under part D due to a low cohort re-
16 payment rate, as determined under section
17 455(r), shall not be eligible to participate in a
18 program under this part.”; and

19 (D) in subsection (f)(2), by inserting “until
20 fiscal year 2022,” after “subsequent years”.

21 **SEC. 3. COLLEGE OPPORTUNITY BONUS PROGRAM.**

22 Subpart 1 of part A of title IV of the Higher Edu-
23 cation Act of 1965 (20 U.S.C. 1070a et seq.) is amended
24 by adding at the end the following:

1 **“SEC. 401B. COLLEGE OPPORTUNITY BONUS PROGRAM.**

2 “(a) PROGRAM AUTHORITY.—

3 “(1) IN GENERAL.—Beginning with fiscal year
4 2022 and each succeeding fiscal year, the Secretary
5 shall award grants to eligible institutions of higher
6 education that are distributed under a formula de-
7 termined by the Secretary under subsection (d).

8 “(2) ELIGIBLE INSTITUTION.—In this section,
9 the term ‘eligible institution of higher education’
10 means an institution of higher education that has a
11 cohort repayment rate (as defined in section
12 455(r)(3)) that is greater than 25 percent.

13 “(b) GRANTS.—The Secretary shall award grants to
14 eligible institutions of higher education that the Secretary
15 determines have a strong record of making college more
16 affordable and increasing college access and success for
17 low-income and moderate-income students.

18 “(c) USES OF FUNDS.—Each eligible institution of
19 higher education that receives a grant under this section
20 may use the grant funds to support reforms to further
21 increase college access and success for low- and moderate-
22 income students, by making key investments and adopting
23 best practices, including by considering best practices re-
24 ported under section 5 of the Student Protection and Suc-
25 cess Act, and by—

1 “(1) awarding additional need-based financial
2 aid to students enrolled at the institution who are el-
3 ible to receive a Federal Pell Grant;

4 “(2) enhancing academic and student support
5 services; and

6 “(3) establishing or expanding accelerated
7 learning opportunities.

8 “(d) AMOUNT OF GRANT FUNDS.—Each eligible in-
9 stitution of higher education that receives a grant under
10 this section shall receive annual grant funds based on a
11 formula determined by the Secretary that equally con-
12 siderers—

13 “(1) the number of students enrolled at the in-
14 stitution who are eligible to receive a Federal Pell
15 Grant;

16 “(2) the percentage of all students enrolled at
17 the institution who are eligible to receive a Federal
18 Pell Grant; and

19 “(3) the cohort repayment rate (as defined in
20 section 455(r)(3)) of students enrolled at the institu-
21 tion who are eligible to receive a Federal Pell Grant.

22 “(e) SUPPLEMENT NOT SUPPLANT.—Funds made
23 available under this section shall be used to supplement,
24 and not supplant—

1 “(1) other State funds that States would other-
2 wise expend to carry out activities under this section
3 to improve college affordability and graduate addi-
4 tional low- and moderate-income students; and

5 “(2) institutional funds that eligible institutions
6 of higher education receiving a grant under this sec-
7 tion would otherwise expend to carry out activities
8 under this section to improve college affordability
9 and graduate additional low- and moderate-income
10 students.

11 “(f) FUNDING.—The grant program under this sec-
12 tion shall be funded only with risk-sharing payments re-
13 ceived by the Secretary under section 454(d).”.

14 **SEC. 4. RISK-SHARING PAYMENTS.**

15 Section 454 of the Higher Education Act of 1964 (20
16 U.S.C. 1087d) is amended—

17 (1) in subsection (a)—

18 (A) in paragraph (5), by striking “and”;

19 (B) in paragraph (6), by striking the pe-
20 riod at the end and inserting “; and”; and

21 (C) by adding at the end the following:

22 “(7) provide that the institution accepts the in-
23 stitutional risk-sharing requirements under sub-
24 section (d), if applicable.”; and

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

1 “(d) INSTITUTIONAL RISK-SHARING BASED ON CO-
2 HORT NONREPAYMENT LOAN BALANCES.—

3 “(1) IN GENERAL.—Beginning with fiscal year
4 2022 and each succeeding fiscal year, each institu-
5 tion of higher education participating in the direct
6 student loan program under this part shall remit to
7 the Secretary, at such times as the Secretary may
8 specify, a risk-sharing payment based on the cohort
9 nonrepayment loan balance of the institution, as de-
10 termined under paragraph (2).

11 “(2) DETERMINATION OF RISK-SHARING PAY-
12 MENTS.—

13 “(A) DETERMINATION OF COHORT LOAN
14 BALANCE.—The cohort loan balance of an insti-
15 tution for a fiscal year equals the total principal
16 amount of all loans made under this part to at-
17 tend such institution for the cohort of bor-
18 rowers who entered repayment, deferment, or
19 forbearance on such loans in the third pre-
20 ceeding fiscal year for which the determination is
21 made.

22 “(B) DETERMINATION OF COHORT NON-
23 REPAYMENT LOAN BALANCE.—

24 “(i) IN GENERAL.—The cohort non-
25 repayment loan balance of an institution

1 for a fiscal year equals, from the total
2 amount of the loans described in subpara-
3 graph (A), the total loan balance of those
4 borrowers who have not made at least a 1
5 dollar reduction in their principal balance
6 in the 3 consecutive fiscal years since their
7 loans entered repayment, deferment, or
8 forbearance.

9 “(ii) EXCEPTION.—The cohort non-
10 repayment loan balance calculation under
11 clause (i) shall not take into consideration
12 a borrower who was—

13 “(I) in deferment on repayment
14 of a loan described in subparagraph
15 (A) in the 3 consecutive fiscal years
16 described in clause (i) due to study in
17 an approved graduate fellowship pro-
18 gram or in an approved rehabilitation
19 training program for the disabled;

20 “(II) in deferment on repayment
21 of a loan described in subparagraph
22 (A) in the 3 consecutive fiscal years
23 described in clause (i) during which
24 time the borrower was in a period of

1 at least half-time enrollment in college
2 or a career school;

3 “(III) in deferment on repayment
4 of a loan described in subparagraph
5 (A) in the 3 consecutive fiscal years
6 described in clause (i) during which
7 time the borrower was in a period of
8 service qualifying for loan discharge
9 or cancellation under part E;

10 “(IV) in deferment on repayment
11 of a loan described in subparagraph
12 (A) in the 3 consecutive fiscal years
13 described in clause (i) during which
14 time the borrower was on active duty
15 military service during a war, military
16 operation, or national emergency;

17 “(V) in mandatory forbearance
18 on repayment of a loan described in
19 subparagraph (A) for the full fiscal
20 year; or

21 “(VI) serving as a volunteer
22 under the Peace Corps Act (22 U.S.C.
23 2501 et seq.) or the Domestic Volun-
24 teer Service Act of 1973 (42 U.S.C.
25 4950 et seq.), during the 3 consecu-

1 tive fiscal years described in clause
2 (i).

3 “(C) DETERMINATION OF PAYMENT.—

4 “(i) IN GENERAL.—The risk-sharing
5 payment of an institution for a fiscal year
6 equals 5 percent of the amount determined
7 under clause (ii).

8 “(ii) AMOUNT BASED ON COHORT
9 NONREPAYMENT LOAN BALANCE AND UN-
10 EMPLOYMENT RATE.—

11 “(I) IN GENERAL.—The amount
12 under this clause is determined by
13 subtracting the amount determined
14 under subclause (II) from the cohort
15 nonrepayment loan balance deter-
16 mined under subparagraph (B).

17 “(II) AMOUNT BASED ON UNEM-
18 PLOYMENT RATE.—The amount under
19 this subclause is determined by multi-
20 plying the average national unemploy-
21 ment rate, as defined by the Bureau
22 of Labor Statistics, for the 3 previous
23 fiscal years from the date of the de-
24 termination by the cohort loan balance
25 determined under subparagraph (A).

1 “(3) NOTIFICATION.—Beginning with the first
2 fiscal year for which data are available after the date
3 of enactment of the Student Protection and Success
4 Act and each succeeding fiscal year until fiscal year
5 2022, the Secretary shall notify each institution of
6 higher education participating in the direct student
7 loan program under this part of what the risk-shar-
8 ing payment based on the cohort nonrepayment loan
9 balance of the institution, as determined under para-
10 graph (2), would be for such institution if such pro-
11 vision were in effect.”.

12 **SEC. 5. REPORT.**

13 Not later than 6 months after the date of enactment
14 of the Student Protection and Success Act, the Secretary
15 of Education shall submit to Congress a report—

16 (1) on best practices for institutions of higher
17 education to improve repayment rates; and

18 (2) that makes recommendations on how insti-
19 tutions of higher education can improve repayment
20 rates, with a particular emphasis on institutions that
21 serve a high proportion of low-income students.

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