

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2280

To amend the Truth in Lending Act and the Higher Education Act of 1965 to require certain creditors to obtain certifications from institutions of higher education, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 29, 2012

Mr. DURBIN (for himself and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the Truth in Lending Act and the Higher Education Act of 1965 to require certain creditors to obtain certifications from institutions of higher education, and for other purposes.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Know Before You Owe  
5       Private Student Loan Act of 2012”.

6       **SEC. 2. AMENDMENTS TO THE TRUTH IN LENDING ACT.**

7       (a) IN GENERAL.—Section 128(e) of the Truth in  
8       Lending Act (15 U.S.C. 1638(e)) is amended—

1           (1) by striking paragraph (3) and inserting the  
2 following:

3           “(3) INSTITUTIONAL CERTIFICATION RE-  
4 QUIRED.—

5           “(A) IN GENERAL.—Except as provided in  
6 subparagraph (B), before a creditor may issue  
7 any funds with respect to an extension of credit  
8 described in this subsection, the creditor shall  
9 obtain from the relevant institution of higher  
10 education where such loan is to be used for a  
11 student, such institution’s certification of—

12                   “(i) the enrollment status of the stu-  
13 dent;

14                   “(ii) the student’s cost of attendance  
15 at the institution as determined by the in-  
16 stitution under part F of title IV of the  
17 Higher Education Act of 1965; and

18                   “(iii) the difference between—

19                           “(I) such cost of attendance; and

20                           “(II) the student’s estimated fi-  
21 nancial assistance, including such as-  
22 sistance received under title IV of the  
23 Higher Education Act of 1965 and  
24 other financial assistance known to  
25 the institution, as applicable.

1           “(B) EXCEPTION.—Notwithstanding sub-  
 2           paragraph (A), a creditor may issue funds with  
 3           respect to an extension of credit described in  
 4           this subsection without obtaining from the rel-  
 5           evant institution of higher education such insti-  
 6           tution’s certification if such institution fails to  
 7           provide within 15 business days of the credi-  
 8           tor’s request for such certification—

9                   “(i) the requested certification; or

10                   “(ii) notification that the institution  
 11                   has received the request for certification  
 12                   and will need additional time to comply  
 13                   with the certification request.

14           “(C) LOANS DISBURSED WITHOUT CER-  
 15           TIFICATION.—If a creditor issues funds without  
 16           obtaining a certification, as described in sub-  
 17           paragraph (B), such creditor shall report the  
 18           issuance of such funds in a manner determined  
 19           by the Director of the Consumer Financial Pro-  
 20           tection Bureau.”;

21           (2) by redesignating paragraphs (9), (10), and  
 22           (11) as paragraphs (10), (11), and (12), respec-  
 23           tively; and

24           (3) by inserting after paragraph (8) the fol-  
 25           lowing:

1 “(9) PROVISION OF INFORMATION.—

2 “(A) PROVISION OF INFORMATION TO STU-  
3 DENTS.—

4 “(i) LOAN STATEMENT.—A creditor  
5 that issues any funds with respect to an  
6 extension of credit described in this sub-  
7 section shall send loan statements, where  
8 such loan is to be used for a student, to  
9 borrowers of such funds not less than once  
10 every 3 months during the time that such  
11 student is enrolled at an institution of  
12 higher education.

13 “(ii) CONTENTS OF LOAN STATE-  
14 MENT.—Each statement described in  
15 clause (i) shall—

16 “(I) report the borrower’s total  
17 remaining debt to the creditor, includ-  
18 ing accrued but unpaid interest and  
19 capitalized interest;

20 “(II) report any debt increases  
21 since the last statement; and

22 “(III) list the current interest  
23 rate for each loan.

24 “(B) NOTIFICATION OF LOANS DISBURSED  
25 WITHOUT CERTIFICATION.—On or before the

1 date a creditor issues any funds with respect to  
2 an extension of credit described in this sub-  
3 section, the creditor shall notify the relevant in-  
4 stitution of higher education, in writing, of the  
5 amount of the extension of credit and the stu-  
6 dent on whose behalf credit is extended. The  
7 form of such written notification shall be sub-  
8 ject to the regulations of the Consumer Finan-  
9 cial Protection Bureau.

10 “(C) ANNUAL REPORT.—A creditor that  
11 issues funds with respect to an extension of  
12 credit described in this subsection shall prepare  
13 and submit an annual report to the Consumer  
14 Financial Protection Bureau containing the re-  
15 quired information about private student loans  
16 to be determined by the Consumer Financial  
17 Protection Bureau, in consultation with the  
18 Secretary of Education.”.

19 (b) DEFINITION OF PRIVATE EDUCATION LOAN.—  
20 Section 140(a)(7)(A) of the Truth in Lending Act (15  
21 U.S.C. 1650(a)(7)(A)) is amended—

22 (1) by redesignating clause (ii) as clause (iii);

23 (2) in clause (i), by striking “and” after the  
24 semicolon; and

25 (3) by adding after clause (i) the following:

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

5           (c) REGULATIONS.—Not later than 365 days after  
 6 the date of enactment of this Act, the Consumer Financial  
 7 Protection Bureau shall issue regulations in final form to  
 8 implement paragraphs (3) and (9) of section 128(e) of the  
 9 Truth in Lending Act (15 U.S.C. 1638(e)), as amended  
 10 by subsection (a). Such regulations shall become effective  
 11 not later than 6 months after their date of issuance.

12 **SEC. 3. AMENDMENT TO THE HIGHER EDUCATION ACT OF**  
 13 **1965.**

14           (a) AMENDMENT TO THE HIGHER EDUCATION ACT  
 15 OF 1965.—Section 487(a) of the Higher Education Act  
 16 of 1965 (20 U.S.C. 1094(a)) is amended by striking para-  
 17 graph (28) and inserting the following:

18                   “(28)(A) The institution shall—

19                           “(i) upon the request of a private edu-  
 20                           cational lender, acting in connection with  
 21                           an application initiated by a borrower for  
 22                           a private education loan in accordance with  
 23                           section 128(e)(3) of the Truth in Lending  
 24                           Act, provide certification to such private  
 25                           educational lender—

1           “(I) that the student who initi-  
2           ated the application for the private  
3           education loan, or on whose behalf the  
4           application was initiated, is enrolled  
5           or is scheduled to enroll at the institu-  
6           tion;

7           “(II) of such student’s cost of at-  
8           tendance at the institution as deter-  
9           mined under part F of this title; and

10           “(III) of the difference be-  
11           tween—

12                   “(aa) the cost of attendance  
13                   at the institution; and

14                   “(bb) the student’s esti-  
15                   mated financial assistance re-  
16                   ceived under this title and other  
17                   assistance known to the institu-  
18                   tion, as applicable; and

19           “(ii) provide the certification de-  
20           scribed in clause (i), or notify the creditor  
21           that the institution has received the re-  
22           quest for certification and will need addi-  
23           tional time to comply with the certification  
24           request—

1                   “(I) within 15 business days of  
2                   receipt of such certification request;  
3                   and

4                   “(II) only after the institution  
5                   has completed the activities described  
6                   in subparagraph (B).

7                   “(B) The institution shall, upon receipt of  
8                   a certification request described in subpara-  
9                   graph (A)(i), and prior to providing such cer-  
10                  tification—

11                  “(i) determine whether the student  
12                  who initiated the application for the pri-  
13                  vate education loan, or on whose behalf the  
14                  application was initiated, has applied for  
15                  and exhausted the Federal financial assist-  
16                  ance available to such student under this  
17                  title and inform the student accordingly;  
18                  and

19                  “(ii) provide the borrower whose loan  
20                  application has prompted the certification  
21                  request by a private education lender, as  
22                  described in subparagraph (A)(i), with the  
23                  following information and disclosures:

24                                 “(I) The availability of, and the  
25                                 borrower’s potential eligibility for,



1 Federal financial assistance under this  
2 title, including disclosing the terms,  
3 conditions, interest rates, and repay-  
4 ment options and programs of Federal  
5 student loans.

6 “(II) The borrower’s ability to  
7 select a private educational lender of  
8 the borrower’s choice.

9 “(III) The impact of a proposed  
10 private education loan on the bor-  
11 rower’s potential eligibility for other  
12 financial assistance, including Federal  
13 financial assistance under this title.

14 “(IV) The borrower’s right to ac-  
15 cept or reject a private education loan  
16 within the 30-day period following a  
17 private educational lender’s approval  
18 of a borrower’s application and about  
19 a borrower’s 3-day right to cancel pe-  
20 riod.

21 “(C) For purposes of this paragraph, the  
22 terms ‘private educational lender’ and ‘private  
23 education loan’ have the meanings given such  
24 terms in section 140 of the Truth in Lending  
25 Act (15 U.S.C. 1650).”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall take effect on the effective date of the  
3 regulations described in section 2(c).

4 **SEC. 4. REPORT.**

5 Not later than 24 months after the issuance of regu-  
6 lations under section 2(c), the Director of the Consumer  
7 Financial Protection Bureau and the Secretary of Edu-  
8 cation shall jointly submit to Congress a report on the  
9 compliance of institutions of higher education and private  
10 educational lenders with section 128(e)(3) of the Truth  
11 in Lending Act (15 U.S.C. 1638(e)), as amended by sec-  
12 tion 2, and section 487(a)(28) of the Higher Education  
13 Act of 1965 (20 U.S.C. 1094(a)), as amended by section  
14 3. Such report shall include information about the degree  
15 to which specific institutions utilize certifications in effec-  
16 tively encouraging the exhaustion of Federal student loan  
17 eligibility and lowering student private education loan  
18 debt.

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