S. 2405

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

IN THE SENATE OF THE UNITED STATES

July 31, 2019

Mr. Menendez (for himself, Mr. Booker, Ms. Warren, Mr. Brown, and Mrs. Gillibrand) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

- To establish additional protections and disclosures for students and cosigners with respect to student loans, and for other purposes.
 - 1 Be it enacted by the Senate and House of Representa-
 - 2 tives of the United States of America in Congress assembled,
 - 3 SECTION 1. SHORT TITLE; FINDINGS.
- 4 (a) Short Title.—This Act may be cited as the
- 5 "Christopher Bryski Student Loan Protection Act" or
- 6 "Christopher's Law".
- 7 (b) FINDINGS.—Congress finds the following:

1	(1) The Bureau of Consumer Financial Protec-
2	tion (referred to in this section as the "CFPB")
3	Student Loan Ombudsman stated the following:
4	(A) "The CFPB received more than 7,700
5	private student loan complaints and approxi-
6	mately 2,300 debt collection complaints related
7	to student loans between September 1, 2016
8	and August 31, 2017.".
9	(B) "cosigners complain that information
10	about discharge or alternative arrangements in
11	the case of death of the primary borrower is not
12	readily available and that decisions are made or
13	a case-by-case basis, giving cosigners little un-
14	derstanding of how the process works, or if they
15	will be successful.".
16	(C) "The complaints and input received by
17	the CFPB resemble many of the same issues
18	experienced by mortgage borrowers, such as im-
19	proper application of payments, untimeliness in
20	error resolution, and inability to contact appro-
21	priate personnel in times of hardship.".
22	(D) "The difference between Federal and
23	private student loans in periods of disability

was not well-understood.".

- 1 (2) An estimated 2,500,000 individuals sustain 2 a traumatic brain injury each year and older adoles-3 cents between 15 and 19 years of age are more likely to sustain a traumatic brain injury than individ-5 uals in other age groups.
- 6 (3) It has been estimated that the annual inci-7 dence of spinal cord injury, not including those indi-8 viduals who die at the scene of an accident, is ap-9 proximately 54 cases per 1,000,000 individuals in 10 the United States, or approximately 17,000 new cases each year. These injuries can lead to perma-12 nent disability or loss of movement and can prohibit 13 the victim from engaging in any substantial gainful 14 activity.
 - (4) According to the CFPB, more than 90 percent of new private student loans are co-signed.
- 17 (5) According to the CFPB, private student 18 loan companies provide cosigner release to less than 19 1 percent of eligible borrowers.

20 SEC. 2. ADDITIONAL STUDENT LOAN PROTECTIONS.

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

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- "(g) Additional Protections Relating to Bor-24
- ROWER OR COSIGNER OF A PRIVATE EDUCATION LOAN.—

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

"(2) Prohibition on automatic default with respect to a performing loan.—

"(A) DEATH, DISABILITY, OR BANKRUPTCY OF COSIGNER.—If a private education loan includes a cosigner, a private educational lender may not take any adverse action (including declaring a default, accelerating any loan obligation, increasing the interest rate, or altering any obligations under the private education loan in a way that is adverse to the borrower) against the borrower based on—

1	"(i) the death, disability, or inability
2	to engage in any substantial gainful activ-
3	ity of the cosigner; or
4	"(ii) the bankruptcy of the cosigner.
5	"(B) Bankruptcy of Borrower.—If a
6	private education loan includes a cosigner, a
7	private educational lender may not take any ad-
8	verse action (including declaring a default, ac-
9	celerating any loan obligation, increasing the in-
10	terest rate, or altering any obligations under
11	the private education loan in a way that is ad-
12	verse to any cosigner) against the cosigner
13	based on the bankruptcy of the borrower.
14	"(3) Borrower requirements regarding
15	DEATH OR DISABILITY OF BORROWER.—In the event
16	of the death, disability, or inability to engage in any
17	substantial gainful activity of a borrower of a private
18	education loan—
19	"(A) the borrower, the estate of the bor-
20	rower, and any cosigner of the private edu-
21	cation loan shall not be obligated to repay the
22	outstanding principal and interest on the loan;
23	and
24	"(B) the private educational lender with
25	respect to, or the servicer of, the private edu-

cation loan, as applicable, shall, upon notification of the death, disability, or inability to engage in any substantial gainful activity, discharge the liability of the borrower, estate of the borrower, and any cosigner of the private education loan.

"(4) Cosigner release.—

"(A) REQUIREMENTS FOR AUTOMATIC RE-LEASE OF COSIGNER.—

"(i) Criteria established by the bureau shall establish criteria, which, if met by the borrower of a private education loan, shall require the private educational lender with respect to, or servicer of, the private education loan, as applicable, to promptly release any cosigner from the obligations of the cosigner under the loan without requiring any action on behalf of the borrower.

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

1	scribed in clause (i) if the criteria estab-
2	lished by the lender are not more restric-
3	tive with respect to the borrower or any co-
4	signer of the private education loan than
5	the criteria established under clause (i).
6	"(B) Disclosure of Criteria for Co-
7	SIGNER RELEASE.—A private educational lend-
8	er shall—
9	"(i) include in the promissory note of
10	a private education loan the criteria under
11	which a cosigner may be released from the
12	obligation of the cosigner under a private
13	education loan under this paragraph; and
14	"(ii) disclose to the borrower and any
15	cosigner at the time the private education
16	loan is consummated, clearly and conspicu-
17	ously, the criteria under which a cosigner
18	may be released from the obligation of the
19	cosigner under a private education loan.
20	"(C) Modifications to criteria.—If a
21	private education loan has a cosigner, the pri-
22	vate educational lender with respect to, or
23	servicer of, the private education loan, as appli-
24	cable, may not modify the criteria under which

the cosigner may be released from the obliga-

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

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

"(E) Modification of Evaluation of Creditworthiness, credit standing, or credit capacity of the borrower or a cosigner of the private education loan using a standard that would be more adverse to the borrower or cosigner, as applicable, than the standard the creditworthiness, credit standing, or credit education loan using a standard that would be more adverse to the borrower or cosigner, as applicable, than the standard the private educational lender used to evaluate the creditworthiness, credit standing,

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

- "(5) DESIGNATION OF INDIVIDUAL TO ACT ON BEHALF OF THE BORROWER.—In the case of any private educational lender that extends a private education loan, the lender shall provide the borrower an option to designate an individual to have the legal authority to act on behalf of the borrower with respect to the private education loan in the event of the death, disability, or inability to engage in any substantial gainful activity of the borrower.
- "(6) Counseling.—In the case of any private educational lender that extends a private education loan, the lender shall ensure that the borrower, and any cosigner, receives comprehensive information on the terms and conditions of the loan and of the responsibilities the borrower has with respect to the loan, including the information required under subparagraphs (H), (I), (K), (L), (M), and (N) of section 485(l)(2) of the Higher Education Act of 1965 (20 U.S.C. 1092(l)(2)).
- "(7) Model form.—The Bureau shall publish a model form under section 105 for describing the

- 1 obligation of a cosigner for the purposes of para-2 graph(1). 3 "(8) Definition of Death, Disability, or 4 INABILITY TO ENGAGE IN ANY SUBSTANTIAL GAIN-5 FUL ACTIVITY.—For the purposes of this subsection 6 with respect to a borrower or cosigner, the term 7 'death, disability, or inability to engage in any sub-8 stantial gainful activity'— 9 "(A) means any condition described in section 437(a) of the Higher Education Act of 10 11 1965 (20 U.S.C. 1087(a)); and 12 "(B) shall be interpreted by the Bureau in 13 such a manner as to conform with the regula-14 tions prescribed by the Secretary of Education 15 under section 437(a) of the Higher Education 16 Act of 1965 (20 U.S.C. 1087(a)) to the fullest 17 extent practicable, including safeguards to pre-18 vent fraud and abuse.". 19
- 19 (b) RULEMAKING.—Not later than 1 year after the 20 date of enactment of this Act, the Bureau of Consumer 21 Financial Protection shall issue regulations to carry out 22 subsection (g) of section 140 of the Truth in Lending Act 23 (15 U.S.C. 1650), as amended by this section.

1 SEC. 3. FEDERAL STUDENT LOANS.

2	(a) Counseling Information.—Section 485(l)(2)
3	of the Higher Education Act of 1965 (20 U.S.C.
4	1092(l)(2)) is amended by adding at the end the following:
5	"(L) Information regarding the conditions
6	required to discharge the loan due to the death,
7	disability, or inability to engage in any substan-
8	tial gainful activity of the borrower in accord-
9	ance with section 437(a).
10	"(M) Any repayment, refinance, deferment,
11	forbearance, or forgiveness opportunities avail-
12	able to the borrower or cosigner in the event of
13	the death, disability, or inability to engage in
14	any substantial gainful activity of the borrower
15	or cosigner.
16	"(N) The effect that the death, disability,
17	or inability to engage in any substantial gainful
18	activity of the borrower would have on the obli-
19	gations of the borrower and any cosigner of the
20	loan.''.
21	(b) Designation of Individual To Act on Be-
22	HALF OF THE BORROWER.—Section 484 of the Higher
23	Education Act of 1965 (20 U.S.C. 1091) is amended—
24	(1) in subsection (a), by striking paragraph (4)
25	and inserting the following:

1	"(4) file with the Secretary, as part of the
2	original financial aid application process, a certifi-
3	cation, which need not be notarized, but which—
4	"(A) shall include—
5	"(i) a statement of educational pur-
6	pose stating that the money attributable to
7	such grant, loan, or loan guarantee will be
8	used solely for expenses related to attend-
9	ance or continued attendance at such insti-
10	tution; and
11	"(ii) such student's social security
12	number; and
13	"(B) may include a designation by such
14	student of an individual who shall have the
15	legal authority to act on behalf of the student
16	with respect to any loan to the student under
17	this title in the event of the student's death,
18	disability, or inability to engage in any substan-
19	tial gainful activity;"; and
20	(2) by adding at the end the following:
21	"(u) Option To Designate Individual To Act on
22	BEHALF OF THE BORROWER IN CLEAR AND CON-
23	SPICUOUS MANNER.—The option for a student to make
24	a designation described in subsection (a)(4)(B) shall be

- 1 provided in a clear and conspicuous manner to the stu-
- 2 dent.".
- 3 (c) Cancellation of Loans for Parent Bor-
- 4 ROWERS IN CASE OF DISABILITY OF A STUDENT.—Sec-
- 5 tion 437(d) of the Higher Education Act of 1965 (20
- 6 U.S.C. 1087(d)) is amended by inserting "becomes perma-
- 7 nently and totally disabled, or is unable to engage in any
- 8 substantial gainful activity, as determined for purposes of
- 9 subsection (a)(1)," after "dies,".

10 SEC. 4. RULE OF CONSTRUCTION.

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

19 SEC. 5. APPLICABILITY.

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

- 1 borrower before, on, or after the date of enactment of this
- 2 Act.
- 3 (b) Federal Loans.—The amendment made by sec-
- 4 tion 3(c) of this Act shall apply to any outstanding loan
- 5 received by a parent before, on, or after the date of enact-
- 6 ment of this Act.
- 7 (c) Date of Onset.—The provisions described in
- 8 subsections (a) and (b) shall apply without regard to the
- 9 date of the onset of any disability or impairment, the date
- 10 of death, or the date of bankruptcy filing.

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