

116TH CONGRESS  
1ST SESSION

# S. 2857

To amend the Higher Education Act of 1965 to count military and veterans education benefits as Federal educational assistance, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 14, 2019

Mr. CARPER (for himself, Mr. LANKFORD, Mr. CASSIDY, and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Higher Education Act of 1965 to count military and veterans education benefits as Federal educational assistance, 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 “Protect Veterans’ Edu-  
5 cation and Taxpayer Spending Act of 2019”.

1 **SEC. 2. COUNTING MILITARY AND VETERAN EDUCATION**  
2 **BENEFITS AS FEDERAL EDUCATIONAL AS-**  
3 **SISTANCE.**

4 (a) IN GENERAL.—Section 487(a)(24) of the Higher  
5 Education Act of 1965 (20 U.S.C. 1094(a)(24)) is amend-  
6 ed to read as follows:

7 “(24)(A) In the case of a proprietary institution  
8 of higher education (as defined in section 102(b)),  
9 such institution will derive not less than ten percent  
10 of such institution’s revenues from sources other  
11 than Federal educational assistance, as calculated in  
12 accordance with subsection (d)(1), or will be subject  
13 to the sanctions described in subsection (d)(2).

14 “(B) In this paragraph, the term ‘Federal edu-  
15 cational assistance’ means financial assistance that  
16 is disbursed or delivered to an institution or on be-  
17 half of a student or to a student to be used to at-  
18 tend the institution provided under any of the fol-  
19 lowing provisions of law:

20 “(i) This title.

21 “(ii) Chapter 30, 31, 32, 33, 34, or 35 of  
22 title 38, United States Code, except that such  
23 term shall not include any monthly housing or  
24 book stipend provided under the Post-9/11 Vet-  
25 erans Educational Assistance Program under  
26 chapter 33 of title 38, United States Code.

1           “(iii) Chapter 101, 105, 106A, 1606,  
2           1607, or 1608 of title 10, United States Code.

3           “(iv) Section 1784a of title 10, United  
4           States Code.

5           “(v) Any other educational assistance pro-  
6           grams administered by the Department of Vet-  
7           erans Affairs, Department of Defense, or any  
8           other agency that directs funds to students who  
9           are members of the Armed Forces or vet-  
10          erans.”.

11          (b) EFFECTIVE DATE.—The amendment made under  
12          subsection (a) shall take effect with respect to a propri-  
13          etary institution of higher education beginning with the  
14          2022 institutional fiscal year.

15          (c) CONFORMING AMENDMENTS.—Section 487(d) of  
16          the Higher Education Act of 1965 (20 U.S.C. 1094(d))  
17          is amended—

18                 (1) in the subsection heading, by striking “NON  
19                 TITLE IV” and inserting “FEDERAL EDUCATIONAL  
20                 ASSISTANCE”; and

21                 (2) in paragraph (1)—

22                         (A) by striking subparagraph (E); and

23                         (B) by redesignating subparagraph (F) as  
24                         subparagraph (E).

1 **SEC. 3. ADMINISTRATION AND ELIGIBILITY REQUIRE-**  
 2 **MENTS.**

3 Section 487(d)(2) of the Higher Education Act of  
 4 1965 (20 U.S.C. 1094(d)(2)) is amended—

5 (1) in subparagraph (A), by adding at the end  
 6 the following: “The provisions of this subparagraph  
 7 shall apply only until the beginning of the 2022 in-  
 8 stitutional fiscal year.”;

9 (2) in subparagraph (B), by striking “In addi-  
 10 tion” and inserting “Until the beginning of the 2022  
 11 institutional fiscal year, in addition”;

12 (3) by adding at the end the following:

13 “(C) BEGINNING WITH THE 2022 INSTITU-  
 14 TIONAL FISCAL YEAR.—

15 “(i) IN GENERAL.—Notwithstanding  
 16 any other provision of this section, begin-  
 17 ning with the 2022 institutional fiscal  
 18 year, a proprietary institution of higher  
 19 education that fails to meet the require-  
 20 ment of subsection (a)(24) shall be subject  
 21 to the following:

22 “(I) If the failure to meet the re-  
 23 quirement of subsection (a)(24) is in  
 24 a year that is immediately subsequent  
 25 to a year in which the institution met  
 26 the requirement of subsection (a)(24),

1 no Federal educational assistance  
2 shall be paid by the Department of  
3 Veterans Affairs or the Department of  
4 Defense—

5 “(aa) to the institution for  
6 new enrollments; or

7 “(bb) on behalf of a student  
8 or to a student to be used to at-  
9 tend the institution if the student  
10 is a new student.

11 “(II) If the failure to meet the  
12 requirement of subsection (a)(24) is  
13 the second consecutive failure—

14 “(aa) no Federal educational  
15 assistance shall be paid by the  
16 Department of Veterans Affairs  
17 or the Department of Defense—

18 “(AA) to the institution  
19 for new enrollments; or

20 “(BB) on behalf of a  
21 student or to a student to be  
22 used to attend the institu-  
23 tion if the student is a new  
24 student; and

1                   “(bb) no Federal educational  
2 assistance shall be paid to the in-  
3 stitution or on behalf of a stu-  
4 dent or to a student to be used  
5 to attend the institution unless  
6 the enrollment total at the insti-  
7 tution for the academic year that  
8 is subsequent to the year of the  
9 second consecutive failure is  
10 equal to or less than the enroll-  
11 ment total of the previous aca-  
12 demic year.

13                   “(III) If the failure to meet the  
14 requirement of subsection (a)(24) is  
15 the third consecutive failure, the insti-  
16 tution shall be ineligible to participate  
17 in or receive funds under any program  
18 of Federal educational assistance for a  
19 period of not less than two institu-  
20 tional fiscal years.

21                   “(ii) REGAINING ELIGIBILITY.—For a  
22 proprietary institution of higher education  
23 to regain eligibility to participate in or re-  
24 ceive funds after being ineligible pursuant  
25 to a failure to meet a requirement as de-

1 scribed in clause (i), the Secretary shall  
2 certify that the institution has dem-  
3 onstrated compliance with all eligibility  
4 and certification requirements for the pro-  
5 gram.

6 “(iii) APPEAL FOR RELIEF FROM  
7 SANCTIONS.—

8 “(I) SUBMISSION OF APPEAL.—

9 “(aa) IN GENERAL.—A pro-  
10 prietary institution of higher edu-  
11 cation described in item (bb) that  
12 fails to meet the requirement of  
13 subsection (a)(24) for an institu-  
14 tional fiscal year may submit an  
15 appeal to the Secretary to remain  
16 eligible to participate in or re-  
17 ceive funds under any program of  
18 Federal educational assistance  
19 for the institutional fiscal year.  
20 In order to regain eligibility to  
21 participate in or receive funds  
22 under any program of Federal  
23 educational assistance for the  
24 succeeding institutional fiscal  
25 year, the proprietary institution

1 of higher education shall dem-  
2 onstrate compliance as described  
3 in clause (ii).

4 “(bb) ELIGIBILITY TO AP-  
5 PEAL.—In order to be eligible to  
6 submit an appeal under item  
7 (aa), proprietary institution of  
8 education shall derive not less  
9 than 10 percent of such institu-  
10 tion’s revenues from sources  
11 other than funds provided under  
12 this title.

13 “(II) 90/10 COMPLIANCE  
14 PLAN.—In the appeal under subclause  
15 (I), a proprietary institution of higher  
16 education shall submit a plan explain-  
17 ing the reasons for failure to comply  
18 with the requirement of subsection  
19 (a)(24) and describing the steps the  
20 institution will take to comply moving  
21 forward, including descriptions of any  
22 partnerships proposed or existing on  
23 the date of the appeal between the in-  
24 stitution and employers, as well as a  
25 description of the expected tuition



1 rates for the institution for the next 3  
2 institutional fiscal years.

3 “(III) DETERMINATION OF RE-  
4 LIEF.—

5 “(aa) IN GENERAL.—Not  
6 later than 30 days after the date  
7 the Secretary receives an appeal  
8 submitted under subclause (I),  
9 the Secretary shall determine  
10 whether the appeal should be  
11 granted. Such determination  
12 shall be based only on the insti-  
13 tution meeting all of the fol-  
14 lowing conditions:

15 “(AA) The institution  
16 has had no final adverse ac-  
17 tion taken by the institu-  
18 tion’s accrediting agency or  
19 association in the 5-year pe-  
20 riod preceding the date of  
21 the determination.

22 “(BB) The institution  
23 has not been found to be in  
24 violation or noncompliance  
25 with any provision in this

1 title in the 5-year period  
2 preceding the date of the de-  
3 termination.

4 “(CC) The institution  
5 has not been found to be in  
6 violation or noncompliance  
7 with the Department of De-  
8 fense Voluntary Education  
9 Partnership Memorandum of  
10 Understanding (MOU) in  
11 the 5-year period preceding  
12 the date of the determina-  
13 tion.

14 “(DD) The institution  
15 has not been found by the  
16 Department of Veterans Af-  
17 fairs or the relevant State  
18 approving agency to be in  
19 violation or noncompliance  
20 with the Principles of Excel-  
21 lence program established  
22 under Executive Order  
23 13607 (77 Fed. Reg. 25861;  
24 relating to establishing prin-  
25 ciples of excellence for edu-

1           cational institutions serving  
2           service members, veterans,  
3           spouses, and other family  
4           members) in the 5-year pe-  
5           riod preceding the date of  
6           the determination.

7           “(EE) The institution  
8           has not been found in a final  
9           order by the Federal Trade  
10          Commission to have engaged  
11          in unfair or deceptive acts or  
12          practices in the 5-year pe-  
13          riod preceding the date of  
14          the determination.

15          “(FF) The institution  
16          offers high-quality academic  
17          or job-training programs,  
18          and positions veterans and  
19          service members after grad-  
20          uation for success in the  
21          workforce.

22          “(bb) LIMITATION ON AP-  
23          PEALS; NONCOMPLIANCE.—

24          “(AA) IN GENERAL.—A  
25          proprietary institution of

1 higher education may sub-  
2 mit not more than 3 con-  
3 secutive appeals and not  
4 more than 5 appeals in 10  
5 years under subclause (I).

6 “(BB) COMPLIANCE.—  
7 If the Secretary grants an  
8 appeal under this clause and  
9 subsequently determines  
10 that the proprietary institu-  
11 tion of higher education is  
12 not in compliance with the  
13 plan described in subclause  
14 (II), the Secretary shall im-  
15 pose the sanction for which  
16 the appeal was granted. If  
17 the Secretary grants con-  
18 secutive appeals under this  
19 clause and subsequently de-  
20 termines that the propri-  
21 etary institution of higher  
22 education is not in compli-  
23 ance with the plan described  
24 in subclause (II), the Sec-  
25 retary shall impose the cu-

1 mulative sanctions for the  
2 consecutive years for which  
3 the appeals were granted.

4 “(IV) SUBMISSION TO VA, DOD,  
5 SAA, ACCREDITING AGENCY OR ASSO-  
6 CIATION, AND CONGRESS.—The Sec-  
7 retary shall submit a copy of each de-  
8 termination under subclause (III) to  
9 the Secretary of Veterans Affairs, the  
10 Secretary of Defense, the relevant  
11 State approving agency, the relevant  
12 accrediting agency or association, and  
13 the authorizing committees.

14 “(iv) ADDITIONAL ENFORCEMENT.—  
15 In addition to such other means of enforce-  
16 ing the requirements of this subparagraph  
17 as may be available to the Secretary, if a  
18 proprietary institution of higher education  
19 fails to meet a requirement of subsection  
20 (a)(24) for any institutional fiscal year,  
21 then the institution’s eligibility to partici-  
22 pate in the programs authorized by this  
23 title becomes provisional for the two insti-  
24 tutional fiscal years after the institutional  
25 fiscal year in which the institution failed to

1 meet the requirement of subsection  
2 (a)(24), except that such provisional eligi-  
3 bility shall terminate—

4 “(I) on the expiration date of the  
5 institution’s program participation  
6 agreement under this subsection that  
7 is in effect on the date the Secretary  
8 determines that the institution failed  
9 to meet the requirement of subsection  
10 (a)(24); or

11 “(II) in the case that the Sec-  
12 retary determines that the institution  
13 failed to meet a requirement of sub-  
14 section (a)(24) for three consecutive  
15 institutional fiscal years, on the date  
16 the institution is determined ineligible  
17 in accordance with this subparagraph.

18 “(v) FEDERAL EDUCATIONAL ASSIST-  
19 ANCE.—In this subparagraph, the term  
20 ‘Federal educational assistance’ has the  
21 meaning given the term in subsection  
22 (a)(24)(B).”.

1 **SEC. 4. UPDATING 90/10 DISCLOSURE AND DATA REPORT-**  
2 **ING REQUIREMENTS.**

3 Section 487(d) of the Higher Education Act of 1965  
4 (20 U.S.C. 1094(d)) is amended by striking paragraphs  
5 (3) and (4) and inserting the following:

6 “(3) PUBLICATION ON WEBSITES.—

7 “(A) PUBLICATION ON COLLEGE NAVI-  
8 GATOR WEBSITE.—The Secretary shall publicly  
9 disclose on the College Navigator, or its suc-  
10 cessor, website—

11 “(i) the name of any proprietary insti-  
12 tution of higher education that fails to  
13 meet the requirement of subsection  
14 (a)(24); and

15 “(ii) the applicable sanction on such  
16 institution that failed to meet such require-  
17 ment.

18 “(B) PUBLICATION ON GI BILL COMPARI-  
19 SON TOOL WEBSITE.—The Secretary of Vet-  
20 erans Affairs shall—

21 “(i) publicly disclose on the GI Bill  
22 Comparison Tool website, or its successor,  
23 the name of any proprietary institution of  
24 higher education that fails to meet the re-  
25 quirement of subsection (a)(24);

1           “(ii) publicly disclose the applicable  
2           sanction on such institution that failed to  
3           meet such requirement, and include a cau-  
4           tion flag with such disclosure; and

5           “(iii) remove a caution flag included  
6           under clause (ii) after the Secretary of  
7           Education certifies that such institution  
8           has demonstrated compliance with the eli-  
9           gibility requirements of subsection (a)(24).

10           “(4) REPORT TO CONGRESS.—Not later than  
11           July 1, 2020, and July 1 of each succeeding year,  
12           the Secretary shall submit to the authorizing com-  
13           mittees a report that contains, for each proprietary  
14           institution of higher education that receives Federal  
15           educational assistance (as defined in subsection  
16           (a)(24)(B)), as provided in the audited financial  
17           statements submitted to the Secretary by each insti-  
18           tution pursuant to the requirements of subsection  
19           (a)(24)—

20           “(A) the amount and percentage of such  
21           institution’s revenues received from Federal  
22           educational assistance (as defined in subsection  
23           (a)(24)(B)), disaggregated by the source of the  
24           assistance; and



1           “(B) the amount and percentage of such  
2           institution’s revenues received from other  
3           sources.”.

4 **SEC. 5. CONVERSIONS TO NONPROFIT OR PUBLIC INSTITU-**  
5 **TIONS OF HIGHER EDUCATION.**

6           Section 498(i) of the Higher Education Act of 1965  
7 (20 U.S.C. 1099c(i)) is amended by adding at the end the  
8 following:

9           “(5) Notwithstanding any other provision of this Act,  
10 in the case of a proprietary institution of higher education  
11 approved for conversion to a nonprofit or public institution  
12 of higher education, such institution shall be subject to  
13 the requirement provided under section 487(a)(24), for  
14 the 2-year period after the date of conversion.”.

15 **SEC. 6. NOTIFICATION.**

16           Not later than 90 days after the date of enactment  
17 of this Act, the Secretary of Education shall notify, in  
18 writing, proprietary institutions of higher education of the  
19 new requirements provided under the amendments made  
20 by this Act.

○