

117TH CONGRESS  
2D SESSION

# S. 5065

To provide for institutional risk-sharing in the Federal student loan programs.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2022

Mr. REED (for himself, Ms. WARREN, and Mr. DURBIN) 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 provide for institutional risk-sharing in the Federal student loan programs.

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 Student Bor-  
5 rowers Act of 2022”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to protect student loan  
8 borrowers and taxpayers by requiring institutions of high-  
9 er education to assume some of the costs of default for

1 student loans under part D of title IV of the Higher Edu-  
2 cation Act of 1965 (20 U.S.C. 1087a et seq.).

3 **SEC. 3. INSTITUTIONAL REBATES TO THE DEPARTMENT OF**  
4 **EDUCATION FOR DEFAULTED LOANS.**

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

7 (1) in subsection (a)—

8 (A) in paragraph (5), by striking “and”  
9 after the semicolon;

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

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

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

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

17 “(d) INSTITUTIONAL RISK-SHARING FOR STUDENT  
18 LOAN DEFAULTS.—

19 “(1) IN GENERAL.—Subject to paragraph (3),  
20 each institution of higher education participating in  
21 the direct student loan program under this part for  
22 a fiscal year that has a rate of participation in such  
23 program for all students enrolled at that institution  
24 for such fiscal year that is 33 percent or higher or  
25 a cohort repayment rate of 50 percent or lower shall

1 remit, at such times as the Secretary may specify,  
2 a risk-sharing payment based on a percentage of the  
3 volume of student loans under this part that are in  
4 default, as determined under paragraph (2).

5 “(2) DETERMINATION OF RISK-SHARING PAY-  
6 MENTS.—Subject to paragraph (3), with respect to  
7 each fiscal year, an institution of higher education  
8 described in paragraph (1) that has a cohort default  
9 rate (as defined in section 435(m))—

10 “(A) that is 20 percent or higher for the  
11 most recent fiscal year for which data are avail-  
12 able, shall pay to the Secretary for the fiscal  
13 year an amount that is equal to 20 percent of  
14 the total amount owed on loans by borrowers  
15 from the covered cohort that are in default;

16 “(B) that is lower than 20 percent but not  
17 lower than 15 percent for the most recent fiscal  
18 year for which data are available, shall pay to  
19 the Secretary for the fiscal year an amount that  
20 is equal to 15 percent of the total amount owed  
21 on loans by borrowers from the covered cohort  
22 that are in default;

23 “(C) that is lower than 15 percent but not  
24 lower than 10 percent for the most recent fiscal  
25 year for which data are available, shall pay to

1 the Secretary for the fiscal year an amount that  
2 is equal to 10 percent of the total amount owed  
3 on loans by borrowers from the covered cohort  
4 that are in default; or

5 “(D) that is lower than 10 percent but not  
6 lower than 5 percent for the most recent fiscal  
7 year for which data are available, shall pay to  
8 the Secretary for the fiscal year an amount that  
9 is equal to 5 percent of the total amount owed  
10 on loans by borrowers from the covered cohort  
11 that are in default.

12 “(3) WAIVER AND REDUCED RISK-SHARING  
13 PAYMENTS.—

14 “(A) WAIVER.—The Secretary shall waive  
15 the risk-sharing payments described in para-  
16 graph (1) for an institution described in para-  
17 graph (2)(D) that meets the requirements of  
18 this paragraph.

19 “(B) REDUCED RISK-SHARING PAY-  
20 MENTS.—If an institution has in place a stu-  
21 dent loan management plan described in sub-  
22 paragraph (D) that is approved by the Sec-  
23 retary, the Secretary shall reduce the total an-  
24 nual amount of risk-sharing payments as fol-  
25 lows:

1           “(i) With respect to an institution  
2           with a cohort default rate described in  
3           paragraph (2)(A), the risk-sharing pay-  
4           ment shall be in an amount that is equal  
5           to 15 percent of the total amount owed on  
6           loans by borrowers from the covered cohort  
7           that are in default.

8           “(ii) With respect to an institution  
9           with a cohort default rate described in  
10          paragraph (2)(B), the risk-sharing pay-  
11          ment shall be in an amount that is equal  
12          to 10 percent of the total amount owed on  
13          loans by borrowers from the covered cohort  
14          that are in default.

15          “(iii) With respect to an institution  
16          with a cohort default rate described in  
17          paragraph (2)(C), the risk-sharing pay-  
18          ment shall be in an amount that is equal  
19          to 5 percent of the total amount owed on  
20          loans by borrowers from the covered cohort  
21          that are in default.

22          “(C) CONTINUATION OF WAIVER OR RE-  
23          DUCED PAYMENTS.—An institution that re-  
24          ceives a waiver under subparagraph (A) or a re-  
25          duced risk-sharing payment under subpara-

1 graph (B) may receive a waiver or reduced pay-  
2 ment for a subsequent fiscal year only if the  
3 Secretary determines that the institution is  
4 making satisfactory progress in carrying out the  
5 student loan management plan described in  
6 subparagraph (D), including evidence of the ef-  
7 fectiveness of the individualized financial aid  
8 counseling for students.

9 “(D) STUDENT LOAN MANAGEMENT  
10 PLAN.—An institution that seeks a waiver or  
11 reduction of its risk-sharing payment, shall de-  
12 velop and carry out a student loan management  
13 plan that shall include an analysis of the risk  
14 factors correlated with higher student loan de-  
15 faults that are present at the institution and  
16 actions that the institution will take to address  
17 such factors. Such plan shall include individual-  
18 ized financial aid counseling for students and  
19 strategies to minimize student loan default and  
20 delinquency.

21 “(E) WAIVER OR REDUCTION FOR CER-  
22 TAIN INSTITUTIONS.—In addition to the other  
23 risk-sharing payment waivers and reductions  
24 described in this paragraph, the Secretary may  
25 waive or reduce risk-sharing payments if—

1 “(i) an institution is eligible under—

2 “(I) part A or part B of title III;

3 or

4 “(II) title V; and

5 “(ii) the Secretary determines that—

6 “(I) the institution is making

7 satisfactory progress in carrying out

8 the institution’s student loan manage-

9 ment plan described under subpara-

10 graph (D); and

11 “(II) granting a waiver or reduc-

12 tion of risk-sharing payments would

13 be in the best financial interest of stu-

14 dents at the institution.

15 “(4) PROHIBITION.—An institution of higher

16 education shall not deny admission or financial aid

17 to a student who otherwise meets the admission re-

18 quirements of the institution based on such student

19 having a risk factor associated with higher student

20 loan default rates, such as those described in section

21 456(c)(1)(C).

22 “(5) FUND FOR THE DEPOSIT OF RISK-SHAR-

23 ING PAYMENTS.—

24 “(A) IN GENERAL.—There is established in

25 the Treasury of the United States a separate

1 account for the deposit of risk-sharing pay-  
2 ments collected under this subsection for the  
3 purpose of reducing student loan debt, delin-  
4 quency, and default. The Secretary shall deposit  
5 any payments collected pursuant to this sub-  
6 section into such fund.

7 “(B) USE OF FUNDS.—Of the amounts in  
8 the fund described in subparagraph (A), for  
9 each fiscal year—

10 “(i) not more than 50 percent of such  
11 amounts shall be made available to the  
12 Secretary to enter into contracts or cooper-  
13 ative agreements for delinquency and de-  
14 fault prevention or rehabilitation under  
15 section 456(c); and

16 “(ii) the Secretary shall reserve the  
17 remainder of such amounts for a Supple-  
18 mental Federal Grant fund that shall be  
19 used to award grants to students—

20 “(I) who are eligible for a Fed-  
21 eral Pell Grant; and

22 “(II) who attend an institution—  
23 “(aa) that participates in  
24 the direct student loan program  
25 under this part;



1                   “(bb) in which not less than  
2                   33 percent of the students en-  
3                   rolled at the institution have re-  
4                   ceived a Federal Pell Grant; and

5                   “(cc) that is not subject to  
6                   the risk-sharing payments under  
7                   this subsection.

8                   “(C) SUPPLEMENTAL FEDERAL GRANT.—  
9                   Eligibility for a Federal Pell Grant, including  
10                  the duration of eligibility and the amount of a  
11                  Federal Pell Grant, shall not be affected by re-  
12                  ceipt of a Supplemental Federal Grant.

13                  “(6) APPLICABILITY.—The Secretary shall  
14                  carry out this subsection beginning with the cohort  
15                  default rate for the 2024 cohort and the repayment  
16                  rate for the 2024 cohort. The 2024 cohort shall in-  
17                  clude current and former students who enter repay-  
18                  ment in fiscal year 2024.

19                  “(7) REPORT TO CONGRESS.—The Secretary  
20                  shall report on an annual basis to the Committee on  
21                  Health, Education, Labor, and Pensions of the Sen-  
22                  ate and the Committee on Education and Labor of  
23                  the House of Representatives the following informa-  
24                  tion:

1           “(A) A list of institutions that have been  
2 subject to risk-sharing payments in the previous  
3 year.

4           “(B) The required risk-sharing payment  
5 from such institutions.

6           “(C) The amount of risk-sharing payments  
7 collected from such institutions.

8           “(D) A list of the institutions that have re-  
9 ceived waivers from the risk-sharing payment  
10 and the reason for such waiver.

11           “(E) A list of the institutions that have re-  
12 ceived reductions in the required risk-sharing  
13 payment.

14           “(F) The use of funds deposited from risk-  
15 sharing payments, including—

16               “(i) the amount reserved for contracts  
17 or cooperative agreements for delinquency  
18 and default prevention or rehabilitation;

19               “(ii) a list of contracts or cooperative  
20 agreements entered into for delinquency  
21 and default prevention or rehabilitation;

22               “(iii) information on the performance  
23 of such contracts or cooperative agree-  
24 ments;

1           “(iv) the amount reserved for the  
2           Federal Pell Grant program; and

3           “(v) a list of institutions for which  
4           students in attendance at the institution  
5           are eligible for the increased maximum  
6           Federal Pell Grant under paragraph  
7           (5)(B)(ii) and the amount of such increase.

8           “(8) DEFINITIONS.—In this subsection:

9           “(A) COVERED COHORT.—In this para-  
10          graph, the term ‘covered cohort’ means the co-  
11          hort with respect to which the cohort default  
12          rate was calculated.

13          “(B) REPAYMENT RATE.—The term ‘re-  
14          payment rate’ means, for any fiscal year, the  
15          percentage of student and parent borrowers  
16          who have Federal student loans for attendance  
17          at the institution who entered repayment on  
18          those loans in the second preceding fiscal year  
19          who have paid at least \$1 of the principle bal-  
20          ance of the borrower’s Federal student loans re-  
21          ceived for attendance at the institution within 3  
22          years of entering repayment. In the case of a  
23          loan for a student who has attended and bor-  
24          rowed at more than one institution, the bor-  
25          rower (and such borrower’s subsequent repay-

1           ment or default) is attributed to each institu-  
 2           tion for attendance at which the borrower re-  
 3           ceived a loan that entered repayment in the fis-  
 4           cal year.”.

5 **SEC. 4. CONTRACTS AND COOPERATIVE AGREEMENTS.**

6           Section 456 of the Higher Education Act of 1965 (20  
 7 U.S.C. 1087f) is amended by adding at the end the fol-  
 8           lowing:

9           “(c) CONTRACTS AND COOPERATIVE AGREEMENTS  
 10 FOR DELINQUENCY AND DEFAULT PREVENTION AND FOR  
 11 DEFAULT REHABILITATION.—The Secretary may enter  
 12 into contracts or cooperative agreements for—

13           “(1) statewide or institutionally based programs  
 14           for the prevention of Federal student loan delin-  
 15           quency and default at institutions of higher edu-  
 16           cation that—

17           “(A) have a high cohort default rate as de-  
 18           fined under section 435(m);

19           “(B) have a low repayment rate (as de-  
 20           fined in section 454(d)); or

21           “(C) serve large numbers or percentages of  
 22           student loan borrowers who have a risk factor  
 23           associated with higher default rates on Federal  
 24           student loans under this title, such as coming  
 25           from a low-income family, being a first genera-

1           tion postsecondary education student, not hav-  
 2           ing a secondary school diploma, or having pre-  
 3           viously defaulted on, and rehabilitated, a loan  
 4           made under this title; and

5           “(2) increasing the number of borrowers who  
 6           successfully repay their loans.”.

7   **SEC. 5. FINANCIAL RESPONSIBILITY.**

8           Section 498(e)(1) of the Higher Education Act of  
 9   1965 (20 U.S.C. 1099e(e)(1)) is amended by striking sub-  
 10 paragraph (C) and inserting the following:

11                   “(C) to meet all of its financial obligations,  
 12           including institutional risk-sharing payments,  
 13           refunds of institutional charges, and repay-  
 14           ments to the Secretary for liabilities and debts  
 15           incurred in programs administered by the Sec-  
 16           retary.”.

17   **SEC. 6. COHORT DEFAULT RATE, REPAYMENT RATE, AND**  
 18                   **OTHER AMENDMENTS.**

19           (a) REQUIREMENTS FOR DISBURSEMENT OF STU-  
 20   DENT LOANS.—Section 428G of the Higher Education  
 21   Act of 1965 (20 U.S.C. 1078–7) is amended—

22                   (1) in subsection (a), by striking paragraph (4)  
 23           and inserting the following:

24                   “(4) AMENDMENTS TO THE SPECIAL RULE.—

1           “(A) PRIOR TO FISCAL YEAR 2024.—Begin-  
2           ning on October 1, 2011, and ending on Sep-  
3           tember 30, 2023, the special rule under para-  
4           graph (3) shall be applied by substituting ‘15  
5           percent’ for ‘10 percent’.

6           “(B) BEGINNING FOR FISCAL YEAR 2024.—  
7           Beginning on October 1, 2023, the special rule  
8           under paragraph (3) shall be applied by sub-  
9           stituting ‘5 percent’ for ‘10 percent.’; and  
10          (2) in subsection (b), by striking paragraph (3)  
11          and inserting the following:

12          “(3) AMENDMENT TO COHORT DEFAULT RATE  
13          EXEMPTION.—

14               “(A) PRIOR TO FISCAL YEAR 2024.—Begin-  
15               ning on October 1, 2011, and ending on Sep-  
16               tember 30, 2023, the exemption to the require-  
17               ments of paragraph (1) in the second sentence  
18               of such paragraph shall be applied by sub-  
19               stituting ‘15 percent’ for ‘10 percent’.

20               “(B) BEGINNING FOR FISCAL YEAR 2024.—  
21               Beginning on October 1, 2023, the exemption  
22               to the requirements of paragraph (1) in the sec-  
23               ond sentence of such paragraph shall be applied  
24               by substituting ‘5 percent’ for ‘10 percent.’.”

1 (b) DEFAULT MANAGEMENT PLAN FOR PROGRAM  
 2 PARTICIPATION AGREEMENTS.—Section 487(a)(14)(C) of  
 3 the Higher Education Act of 1965 (20 U.S.C.  
 4 1094(a)(14)(C)) is amended by striking “10 percent” and  
 5 inserting “5 percent” each place the term appears.

6 (c) PROGRAM REVIEW AND DATA.—Section  
 7 498A(a)(2)(A) of the Higher Education Act of 1965 (20  
 8 U.S.C. 1099c–1(a)(2)(A)) is amended by striking “in ex-  
 9 cess of 25 percent” and inserting “in excess of 20 per-  
 10 cent”.

11 (d) DEFINITIONS FOR STUDENT LOAN INSURANCE  
 12 PROGRAM.—Section 435 of the Higher Education Act of  
 13 1965 (20 U.S.C. 1085) is amended—

14 (1) in subsection (a)(2)(B)—

15 (A) in clause (iii), by striking “and” after  
 16 the semicolon;

17 (B) in clause (iv), by striking “and any  
 18 succeeding fiscal year.” and inserting “through  
 19 fiscal year 2023; and”; and

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

21 “(v) 20 percent for fiscal year 2024  
 22 and any succeeding fiscal year.”; and

23 (2) in subsection (m)(1)—

24 (A) in subparagraph (A), in the first sen-  
 25 tence, by inserting “and beginning for the co-

1           hort that enters repayment in 2024, including  
2           borrowers who enter repayment on Federal Di-  
3           rect PLUS Loans (including for student and  
4           parent borrowers) received for attendance at  
5           the institution” after “loans under section 428,  
6           428A, or 428H, received for attendance at the  
7           institution,”; and

8                       (B) by adding at the end the following:

9                       “(D) Beginning for the cohort that enters  
10                      repayment in 2024, references in this sub-  
11                      section to a student or former student shall be  
12                      considered to include a parent who is a bor-  
13                      rower of a Federal Direct PLUS Loan.”.

○