

115TH CONGRESS
2D SESSION

S. 3294

To amend the Higher Education Act of 1965 to support innovative, evidence-based approaches that improve the effectiveness and efficiency of postsecondary education for all students, to allow pay for success initiatives, to provide additional evaluation authority, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 26, 2018

Mr. HATCH (for himself, Mr. BENNET, and Mr. YOUNG) 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 support innovative, evidence-based approaches that improve the effectiveness and efficiency of postsecondary education for all students, to allow pay for success initiatives, to provide additional evaluation authority, 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 “Fund for Innovation
5 and Success in Higher Education Act” or the “FINISH
6 Act”.

1 **SEC. 2. INNOVATION GRANTS.**

2 Part B of title VII of the Higher Education Act of
3 1965 (20 U.S.C. 1138 et seq.) is amended—

4 (1) by redesignating section 745 as section 746;

5 and

6 (2) by inserting after section 744 the following:

7 **“SEC. 745. INNOVATION GRANTS.**

8 “(a) PURPOSES.—The purposes of this section are
9 to—

10 “(1) increase access to postsecondary education
11 opportunities for high-need students;

12 “(2) identify and support the most effective
13 interventions to increase postsecondary degree at-
14 tainment of high-need students; and

15 “(3) improve the efficiency of postsecondary
16 education.

17 “(b) DEFINITIONS.—In this section:

18 “(1) ELIGIBLE ENTITY.—The term ‘eligible en-
19 tity’ means any of the following:

20 “(A) A State educational agency.

21 “(B) A public or private nonprofit institu-
22 tion of higher education.

23 “(C) The Bureau of Indian Education.

24 “(D) A consortium of any of the entities
25 described in subparagraphs (A) through (C).

1 “(E) A partnership between a State edu-
 2 cational agency or public or private nonprofit
 3 institution of higher education and one or more
 4 of the following:

5 “(i) A nonprofit organization.

6 “(ii) An intermediary organization.

7 “(iii) A business.

8 “(iv) A sponsor of a program receiv-
 9 ing assistance under the National and
 10 Community Service Act of 1990 (42
 11 U.S.C. 12501 et seq.).

12 “(v) A local educational agency.

13 “(2) HIGH-NEED STUDENT.—The term ‘high-
 14 need student’—

15 “(A) means a student, or prospective stu-
 16 dent, at an institution of higher education who
 17 is at risk of educational failure or otherwise in
 18 need of special assistance and support; and

19 “(B) may include an adult learner, work-
 20 ing student, part-time student, student from a
 21 low-income background, student of color,
 22 former foster youth, first-generation student,
 23 student with a disability, student who is deaf or
 24 blind or visually impaired, or student who is an
 25 English learner.

1 “(3) INTERMEDIARY ORGANIZATION.—The term
2 ‘intermediary organization’ means an entity—

3 “(A) with strong skills and a track record
4 of success in—

5 “(i) identifying effective interventions
6 to address State, regional, or local prob-
7 lems;

8 “(ii) managing high-quality subgrant
9 processes; and

10 “(iii) providing technical assistance
11 and support to subgrantees to ensure qual-
12 ity and improve outcomes; and

13 “(B) that utilizes an evidence-based deci-
14 sionmaking strategy when selecting high-per-
15 forming entities, on a competitive basis, to re-
16 ceive subgrants in order to validate and grow
17 effective interventions.

18 “(c) PROGRAM AUTHORIZED.—

19 “(1) IN GENERAL.—From amounts made avail-
20 able to carry out this section, the Secretary shall
21 award grants, on a competitive basis, to eligible enti-
22 ties to enable the eligible entities to create, develop,
23 implement, replicate, or scale evidence-based and
24 field-initiated innovations, including through pay for
25 success initiatives (as defined in section 124(a)), in

1 order to improve postsecondary access and comple-
2 tion for high-need students.

3 “(2) GRANTS.—The grants awarded under this
4 section shall, to the extent practicable based on the
5 strength of the applications, include—

6 “(A) early-phase grants to fund the devel-
7 opment, implementation, and feasibility testing
8 of a practice, program, or intervention that
9 prior research suggests has promise, for the
10 purpose of determining whether the practice,
11 program, or innovation can successfully improve
12 access to, retention in, and completion of, a
13 postsecondary program of study for high-need
14 students;

15 “(B) mid-phase grants to fund implemen-
16 tation and a rigorous evaluation of a practice,
17 program, or intervention that has been success-
18 fully implemented under an early phase grant
19 described in subparagraph (A) or another effort
20 meeting similar criteria, for the purpose of
21 measuring (using existing administrative data
22 where possible) the impact and cost-effective-
23 ness of the practice, program, or intervention;
24 and

1 “(C) expansion grants to fund implementa-
2 tion and a rigorous replication evaluation of a
3 practice, program, or intervention that has been
4 found to produce sizable, important impacts
5 under a mid-phase grant described in subpara-
6 graph (B) or another effort meeting similar cri-
7 teria, for the purposes of—

8 “(i) determining whether such impacts
9 can be successfully reproduced and sus-
10 tained over time; and

11 “(ii) identifying the conditions in
12 which the practice, program, or initiative is
13 most effective.

14 “(d) APPLICATION.—An eligible entity desiring a
15 grant under this section shall submit to the Secretary an
16 application at such time, in such manner, and containing
17 such information as the Secretary may require, including
18 a description of the outcome measures that the eligible en-
19 tity will use to evaluate the success of the grant.

20 “(e) PRIORITY.—In awarding grants under this sec-
21 tion, the Secretary shall give priority to eligible entities
22 that—

23 “(1) propose to serve the largest number of stu-
24 dents; or

1 “(2) serve a high proportion of students from
2 one or more school districts with a school district lo-
3 cale code of 31, 32, 33, 41, 42, or 43, as determined
4 by the Secretary.

5 “(f) EVALUATIONS.—Each recipient of a grant under
6 this section shall conduct, and submit to the Secretary,
7 a rigorous, independent evaluation of—

8 “(1) the effectiveness of the practice, program,
9 or initiative carried out under such grant;

10 “(2) the outcomes achieved by such grant,
11 based on the outcome measures described in the ap-
12 plication under subsection (d); and

13 “(3) the activities carried out under such grant.

14 “(g) REPORTS.—

15 “(1) IN GENERAL.—By not later than 2 years
16 after the date of enactment of the Fund for Innova-
17 tion and Success in Higher Education Act, and
18 every 2 years thereafter, the Secretary shall prepare
19 and submit to the authorizing committees a report
20 on the grants carried out under this section.

21 “(2) CONTENTS.—Each report issued under
22 this subsection shall—

23 “(A) include information from the evalua-
24 tions submitted under subsection (f) on the suc-
25 cess of the grants, based on the outcomes re-

1 ported in the evaluations under such subsection;
2 and

3 “(B) consider—

4 “(i) how the tiered-evidence grant
5 structure described in subsection (c)(2) can
6 be applied to other grant programs author-
7 ized under this Act, in order to strengthen
8 those programs; and

9 “(ii) how the evidence generated by
10 the projects, programs, and initiatives sup-
11 ported by grants under this section can in-
12 form how to carry out other grants author-
13 ized under this Act.

14 “(3) PUBLIC AVAILABILITY.—The Secretary
15 shall make each report issued under this subsection
16 available to the public through the website of the
17 Department.”.

18 **SEC. 3. OPEN EDUCATIONAL RESOURCES.**

19 Section 741(a) of the Higher Education Act of 1965
20 (20 U.S.C. 1138(a)) is amended—

21 (1) in paragraph (12), by striking “and” after
22 the semicolon;

23 (2) in paragraph (13), by striking the period
24 and inserting “; and”; and

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

1 “(14) making all forms of postsecondary in-
 2 structional content widely available, which may in-
 3 clude the use of open educational resources (defined,
 4 for purpose of this paragraph, as teaching, learning,
 5 or research resources that reside in the public do-
 6 main or have been released under a copyright license
 7 that permits their free use, reuse, modification, and
 8 sharing with others).”.

9 **SEC. 4. PAY FOR SUCCESS INITIATIVES.**

10 Part B of title I of the Higher Education Act of 1965
 11 (20 U.S.C. 1011 et seq.) is amended by adding at the end
 12 the following:

13 **“SEC. 124. PAY FOR SUCCESS INITIATIVES.**

14 “(a) DEFINITIONS.—In this section:

15 “(1) ELIGIBLE ENTITY.—The term ‘eligible en-
 16 tity’ means a partnership between—

17 “(A) a private entity (which may include a
 18 private nonprofit entity); and

19 “(B) an institution of higher education, a
 20 Federal, State, or local public entity, or a Trib-
 21 al entity.

22 “(2) PAY FOR SUCCESS INITIATIVE.—

23 “(A) IN GENERAL.—The term ‘pay for
 24 success initiative’ means a performance-based
 25 grant, contract, or other agreement—

1 “(i) between an eligible entity and the
2 Secretary or a grant recipient, as author-
3 ized under subsection (b)(1);

4 “(ii) in which—

5 “(I) a commitment is made to
6 pay the eligible entity for improved
7 outcomes that result in increased pub-
8 lic value and social benefit to students
9 and the public sector, such as in-
10 creased effectiveness in improving out-
11 comes, direct cost savings or cost
12 avoidance, or increased public rev-
13 enue; and

14 “(II) the person providing the
15 funds under the grant, contract, or
16 agreement imposes minimal adminis-
17 trative requirements to allow for max-
18 imum flexibility to achieve increased
19 public value and social benefit;

20 “(iii) that requires—

21 “(I) a feasibility study describing
22 how the proposed intervention is
23 based on evidence of effectiveness,
24 which may be a feasibility study not

1 exclusively developed for the specific
2 grant, contract, or other agreement;

3 “(II) a rigorous, third-party eval-
4 uation that uses experimental or
5 quasi-experimental design or other re-
6 search methodologies that allow for
7 the strongest possible causal infer-
8 ences to determine whether the initia-
9 tive has met its proposed outcomes;

10 “(III) an annual, publicly avail-
11 able report on the progress of the ini-
12 tiative; and

13 “(IV) that payments be made to
14 the recipient of the grant, contract, or
15 agreement only when agreed-upon
16 outcomes are achieved, except as pro-
17 vided under paragraph (2) or (3) of
18 subsection (b).

19 “(B) EXCLUSION.—The term ‘pay for suc-
20 cess initiative’ does not include any initiative
21 that—

22 “(i) reduces the benefits to a student
23 or the obligations of an entity under this
24 Act, the Rehabilitation Act of 1973 (29
25 U.S.C. 701 et seq.), the Americans with

1 Disabilities Act of 1990 (42 U.S.C. 12101
2 et seq.), the Individuals with Disabilities
3 Education Act (20 U.S.C. 1400 et seq.), or
4 any other law; or

5 “(ii) reduces services that an indi-
6 vidual is entitled to receive under Federal,
7 State, or local law.

8 “(b) PAY FOR SUCCESS INITIATIVE AUTHORITY.—

9 “(1) IN GENERAL.—Notwithstanding any other
10 provision of this Act and except as provided under
11 subsection (c)—

12 “(A)(i) any recipient of a grant under this
13 Act may request to use grant funds to carry out
14 a pay for success initiative that accomplishes
15 the objectives of the grant and meets all re-
16 quirements of the grant (except to the extent a
17 requirement is specifically modified by the pay
18 for success initiative), if such use is proposed in
19 the application or plan submitted for such
20 grant; and

21 “(ii) the Secretary may approve not more
22 than 5 pilot demonstrations each fiscal year
23 from the grant applications or plans that con-
24 tain a request to carry out a pay for success
25 initiative;

1 “(B) if the Secretary has any funds re-
2 served for the Secretary under this Act remain-
3 ing after the Secretary has met the applicable
4 requirements for such funds, the Secretary
5 may, through a competitive process, use the re-
6 maining funds to carry out additional pilot
7 demonstrations of pay for success initiatives
8 that accomplishes the objectives of this Act.

9 “(2) USE OF FUNDS FOR FEASIBILITY STUDIES
10 AND RIGOROUS THIRD-PARTY EVALUATION.—If the
11 Secretary, or a grant recipient, is authorized to
12 carry out a pay for success initiative under para-
13 graph (1), the Secretary or grant recipient may use
14 funds available for the pay for success initiative—

15 “(A) to conduct the feasibility study re-
16 quired under subsection (a)(2)(A)(iii)(I) or the
17 rigorous third-party evaluation required under
18 subsection (a)(2)(A)(iii)(II); or

19 “(B) to provide funds to the entity car-
20 rying out the pay for success initiative for the
21 costs of the initial costs associated with starting
22 the initiative.

23 “(3) USE OF REMAINING FUNDS.—Notwith-
24 standing any other provision of law, if the Secretary
25 or a grant recipient is authorized to carry out a pay

1 for success initiative under paragraph (1), the Sec-
2 retary or grant recipient may use any funds remain-
3 ing at the conclusion of the pay for success initiative
4 to enter into an additional agreement with the eligi-
5 ble entity to expand capacity under the pay for suc-
6 cess initiative, if the initiative has met or exceeded
7 its proposed outcomes.

8 “(c) STUDENT PROTECTIONS.—

9 “(1) NO NEGATIVE IMPACT ON STUDENT AID.—

10 A pay for success initiative shall not be supported
11 with funds under this Act if the pay for success ini-
12 tiative would adversely affect the funding of, or stu-
13 dent access to, individual student aid awards made
14 under section 401 or any other program supported
15 under this Act.

16 “(2) NONINCLUSION IN DETERMINATION OF

17 NEED.—A grant or aid provided directly to a stu-
18 dent under a pay for success initiative supported
19 with funds under this Act shall not be considered in
20 determining that student’s need for grant, loan, or
21 work assistance under title IV of this Act, except
22 that in no case shall the total amount of student fi-
23 nancial assistance awarded to a student through a
24 pay for success initiative and under title IV exceed

1 that student's cost of attendance, as defined in sec-
2 tion 472.

3 “(d) AVAILABILITY OF FUNDS.—Notwithstanding
4 any other provision of this Act, any funds made available
5 for a fiscal year to an entity for a pay for success initiative
6 authorized under this section shall remain available until
7 expended.”.

8 **SEC. 5. EVALUATION.**

9 Part B of title I of the Higher Education Act of 1965
10 (20 U.S.C. 1011 et seq.), as amended by section 4, is fur-
11 ther amended by adding at the end the following:

12 **“SEC. 125. EVALUATION AUTHORITY.**

13 “(a) EVALUATION RESERVATION.—

14 “(1) IN GENERAL.—Notwithstanding any other
15 provision of this Act, the Secretary, in consultation
16 with the Director of the Institute of Education
17 Sciences, may, for each fiscal year, reserve not more
18 than 1 percent of the amount appropriated for each
19 program authorized under this Act (except for the
20 Federal Pell Grant program under section 401) in
21 order to rigorously and independently evaluate the
22 effectiveness and efficiency of the outcomes of all
23 programs authorized under this Act.

24 “(2) EFFECT ON OTHER REQUIREMENTS.—The
25 amount reserved under paragraph (1) shall be in ad-

1 dition to any other amounts reserved for evaluation
2 under this Act.

3 “(b) EVALUATION PLAN.—On a biennial basis, the
4 Director of the Institute of Education Sciences shall de-
5 velop, submit to the authorizing committees, and make
6 publicly available on the website of the Department, an
7 evaluation plan for the next 2 fiscal years that—

8 “(1) describes the specific activities that will be
9 carried out under subsection (a) for the 2-year pe-
10 riod applicable to the plan, and the timelines of such
11 activities;

12 “(2) contains the results of the activities car-
13 ried out under subsection (a) for the most recent 2-
14 year period; and

15 “(3) describes how programs authorized under
16 this Act will be regularly evaluated, including the
17 outcome measures to be used to evaluate each pro-
18 gram.

19 “(c) POOLING AUTHORITY.—Notwithstanding any
20 other provision of this Act, the Secretary, in consultation
21 with the Director of the Institute of Education Sciences—

22 “(1) may consolidate the funds reserved under
23 subsection (a) for purposes of carrying out the ac-
24 tivities described in subsection (b); and

1 “(2) shall not be required to evaluate each pro-
2 gram authorized under this Act each year.

3 “(d) RULE OF CONSTRUCTION.—Nothing in this sec-
4 tion shall be construed to conflict with or supercede any
5 other evaluation requirement for a specific program or ac-
6 tivity authorized under this Act.”.

○