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2D SESSION

S. 5072

To amend the Higher Education Act of 1965 to provide for institutional ineligibility based on low cohort repayment rates and to require risk-sharing payments of institutions of higher education.

IN THE SENATE OF THE UNITED STATES

OCTOBER 11, 2022

Mr. KING (for Mrs. SHAHEEN (for herself 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 provide for institutional ineligibility based on low cohort repayment rates and to require risk-sharing payments of institutions of higher education.

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 “Student Protection and
5 Success Act”.

1 **SEC. 2. INSTITUTIONAL INELIGIBILITY BASED ON LOW CO-**
 2 **HORT REPAYMENT RATE.**

3 (a) IN GENERAL.—Section 455 of the Higher Edu-
 4 cation Act of 1965 (20 U.S.C. 1087e) is amended by add-
 5 ing at the end the following:

6 “(r) INELIGIBILITY DUE TO LOW COHORT REPAY-
 7 MENT RATE.—

8 “(1) IN GENERAL.—Beginning with fiscal year
 9 2025 and each succeeding fiscal year, an institution
 10 that has a cohort repayment rate that is equal to or
 11 less than 15 percent shall not be eligible to partici-
 12 pate in a program under this part for such fiscal
 13 year and for the 2 succeeding fiscal years.

14 “(2) APPEALS.—

15 “(A) IN GENERAL.—An institution may
 16 appeal the loss of eligibility under this sub-
 17 section to the Secretary within 30 days of re-
 18 ceiving notification from the Secretary of the
 19 loss of eligibility under this subsection.

20 “(B) CONTINUED PARTICIPATION.—Dur-
 21 ing an appeal under subparagraph (A), the Sec-
 22 retary may permit the institution to continue to
 23 participate in a program under this part if the
 24 institution demonstrates to the satisfaction of
 25 the Secretary that the Secretary’s calculation of
 26 its cohort repayment rate is not accurate, and

1 that recalculation would increase its cohort re-
2 payment rate to be more than 15 percent.

3 “(C) REQUIRED PAYMENT.—If an institu-
4 tion continues to participate in a program
5 under this part, and the institution’s appeal of
6 the loss of eligibility is unsuccessful, the institu-
7 tion shall be required to pay to the Secretary an
8 amount equal to the amount of loans made by
9 the Secretary under this part to borrowers at-
10 tending, or planning to attend, that institution
11 during the pendency of such appeal and the in-
12 terest, special allowance, reinsurance, and any
13 related payments made by the Secretary (or
14 which the Secretary is obligated to make) with
15 respect to such loans.

16 “(3) COHORT REPAYMENT RATE.—

17 “(A) IN GENERAL.—In this subsection, the
18 term ‘cohort repayment rate’ means, for any
19 fiscal year beginning with fiscal year 2025—

20 “(i) in the case in which 30 or more
21 borrowers at the institution enter repay-
22 ment on Federal Direct Stafford Loans,
23 Federal Direct Unsubsidized Stafford
24 Loans, Federal Direct PLUS Loans, or
25 Federal Direct Consolidation Loans, re-

1 ceived for attendance at the institution, the
2 percentage of those borrowers who are not
3 in default and who make at least a one
4 dollar reduction on their initial student
5 loan principal balance before the end of the
6 second fiscal year following the fiscal year
7 in which the borrowers entered repayment,
8 except as provided in subparagraph (B);
9 and

10 “(ii) in the case in which less than 30
11 borrowers at the institution enter repay-
12 ment on Federal Direct Stafford Loans,
13 Federal Direct Unsubsidized Stafford
14 Loans, Federal Direct PLUS Loans, or
15 Federal Direct Consolidation Loans, re-
16 ceived for attendance at the institution, the
17 percentage of those borrowers plus all of
18 the borrowers at the institution who en-
19 tered repayment on such loans (or on the
20 portion of a loan made under section 428C
21 that is used to repay any such loans) in
22 the 3 fiscal years preceding the fiscal year
23 for which the determination is made, who
24 are not in default and who make at least
25 a one dollar reduction on their initial stu-

1 dent loan principal balance before the end
2 of the second fiscal year following the year
3 in which the borrowers entered repayment,
4 except as provided in subparagraph (B).

5 “(B) EXCEPTION.—The ‘cohort repayment
6 rate’ calculation under subparagraph (A) shall
7 not include in the calculation a borrower who
8 is—

9 “(i) in deferment on repayment of a
10 loan described in subparagraph (A) due to
11 study in an approved graduate fellowship
12 program or in an approved rehabilitation
13 training program for the disabled;

14 “(ii) in deferment on repayment of a
15 loan described in subparagraph (A) during
16 a period of at least half-time enrollment in
17 college or a career school;

18 “(iii) in deferment on repayment of a
19 loan described in subparagraph (A) during
20 a period of service qualifying for loan dis-
21 charge or cancellation under part E;

22 “(iv) in deferment on repayment of a
23 loan described in subparagraph (A) due to
24 active duty military service of the borrower

1 during a war, military operation, or na-
2 tional emergency;

3 “(v) in deferment on repayment of a
4 loan described in subparagraph (A) during
5 the 13 months following the conclusion of
6 qualifying active duty military service by
7 the borrower, or until the borrower returns
8 to enrollment on at least a half-time basis,
9 whichever is earlier, if the borrower is a
10 member of the National Guard or other re-
11 serve component of the Armed Forces and
12 was called or ordered to active duty while
13 enrolled at least half-time at an eligible
14 school or within 6 months of having been
15 enrolled at least half-time;

16 “(vi) in mandatory forbearance on re-
17 payment of a loan described in subpara-
18 graph (A) for the full fiscal year; or

19 “(vii) serving as a volunteer under the
20 Peace Corps Act (22 U.S.C. 2501 et seq.)
21 or the Domestic Volunteer Service Act of
22 1973 (42 U.S.C. 4950 et seq.).

23 “(C) PUBLICATION OF REPAYMENT
24 RATES.—The Secretary shall publish the cohort

1 repayment rates for institutions determined
2 under this subsection.

3 “(4) NOTIFICATION.—Beginning with the first
4 fiscal year for which data are available after the date
5 of enactment of the Student Protection and Success
6 Act and each succeeding fiscal year until fiscal year
7 2025, the Secretary shall notify each institution that
8 has a cohort repayment rate that is equal to or less
9 than 15 percent that the institution risks losing eli-
10 gibility to participate in a program under this
11 part.”.

12 (b) INELIGIBILITY IN OTHER PROGRAMS.—

13 (1) PELL GRANTS.—The Higher Education Act
14 of 1965 (20 U.S.C. 1001 et seq.), as amended by
15 the FAFSA Simplification Act (title VII of division
16 FF of Public Law 116–260) and the FAFSA Sim-
17 plification Act Technical Corrections Act (Public
18 Law 117–103), is amended in section 401(j)—

19 (A) in the heading, by striking “BASED ON
20 DEFAULT RATES”;

21 (B) in paragraph (1), by inserting “until
22 fiscal year 2025” after “succeeding fiscal year”;

23 (C) in paragraph (2), by inserting “or co-
24 hort repayment rate determination” after “de-
25 fault rate determination”; and

1 (D) by adding at the end the following:

2 “(3) INELIGIBILITY BASED ON LOW COHORT
3 REPAYMENT RATES.—No institution of higher edu-
4 cation shall be an eligible institution for purposes of
5 this subpart if such institution of higher education
6 is ineligible to participate in a program under part
7 D due to a low cohort repayment rate, as deter-
8 mined under section 455(r).”.

9 (2) STUDENT LOAN INSURANCE PROGRAM.—
10 Section 435(a) of the Higher Education Act of 1965
11 (20 U.S.C. 1085(a)) is amended—

12 (A) in paragraph (2)—

13 (i) in the heading, by striking “BASED
14 ON HIGH DEFAULT RATES”;

15 (ii) in subparagraph (A), by striking
16 “An institution” and inserting “Until fis-
17 cal year 2025, an institution”; and

18 (iii) by adding at the end the fol-
19 lowing:

20 “(E) No institution of higher education shall be
21 an eligible institution for purposes of this part if
22 such institution of higher education is ineligible to
23 participate in a program under part D due to a low
24 cohort repayment rate, as determined under section
25 455(r).”; and

1 (B) in paragraph (6)(A), by inserting “and
 2 until fiscal year 2025,” after “July 1, 1999.”

3 (3) FEDERAL PERKINS LOANS.—Section 462 of
 4 the Higher Education Act of 1965 (20 U.S.C.
 5 1087bb) is amended—

6 (A) in subsection (a)—

7 (i) in paragraph (1), by inserting “or
 8 the institution is ineligible to participate in
 9 a program under part D due to a low co-
 10 hort repayment rate, as determined under
 11 section 455(r)” after “subsection (f)”; and

12 (ii) in paragraph (2)(D), by inserting
 13 “or the institution is ineligible to partici-
 14 pate in a program under part D due to a
 15 low cohort repayment rate, as determined
 16 under section 455(r)” after “subsection
 17 (f)”; and

18 (B) in subsection (b)—

19 (i) in paragraph (2), by inserting “or
 20 the institution is ineligible to participate in
 21 a program under part D due to a low co-
 22 hort repayment rate, as determined under
 23 section 455(r)” after “subsection (f)”; and

24 (ii) in paragraph (3), by inserting “or
 25 the institution is ineligible to participate in

a program under part D due to a low cohort repayment rate, as determined under section 455(r)” after “subsection (f)”;

(C) in subsection (e)—

(i) in paragraph (2), by inserting “until fiscal year 2025,” after “succeeding fiscal year”; and

(ii) in paragraph (3)—

(I) in subparagraph (A), by inserting “until fiscal year 2025,” after “any succeeding fiscal year”; and

(II) by adding at the end the following:

“(F) LOW COHORT REPAYMENT RATES.—

An institution that is ineligible to participate in a program under part D due to a low cohort repayment rate, as determined under section 455(r), shall not be eligible to participate in a program under this part.”; and

(D) in subsection (f)(2), by inserting “until fiscal year 2025,” after “subsequent years”.

SEC. 3. COLLEGE OPPORTUNITY BONUS PROGRAM.

Subpart 1 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a et seq.) is amended by adding at the end the following:

1 **“SEC. 401B. COLLEGE OPPORTUNITY BONUS PROGRAM.**

2 “(a) PROGRAM AUTHORITY.—

3 “(1) IN GENERAL.—Beginning with fiscal year
4 2025 and each succeeding fiscal year, the Secretary
5 shall award grants to eligible institutions of higher
6 education that are distributed under a formula de-
7 termined by the Secretary under subsection (d).

8 “(2) ELIGIBLE INSTITUTION.—In this section,
9 the term ‘eligible institution of higher education’
10 means an institution of higher education that has a
11 cohort repayment rate (as defined in section
12 455(r)(3)) that is greater than 25 percent.

13 “(b) GRANTS.—The Secretary shall award grants to
14 eligible institutions of higher education that the Secretary
15 determines have a strong record of making college more
16 affordable and increasing college access and success for
17 low-income and moderate-income students.

18 “(c) USES OF FUNDS.—Each eligible institution of
19 higher education that receives a grant under this section
20 may use the grant funds to support reforms to further
21 increase college access and success for low- and moderate-
22 income students, by making key investments and adopting
23 best practices, including by considering best practices re-
24 ported under section 5 of the Student Protection and Suc-
25 cess Act, and by—

1 “(1) awarding additional need-based financial
2 aid to students enrolled at the institution who are el-
3 igible to receive a Federal Pell Grant;

4 “(2) enhancing academic and student support
5 services; and

6 “(3) establishing or expanding accelerated
7 learning opportunities.

8 “(d) AMOUNT OF GRANT FUNDS.—

9 “(1) IN GENERAL.—Each eligible institution of
10 higher education that receives a grant under this
11 section shall receive annual grant funds based on a
12 formula determined by the Secretary that equally
13 considers—

14 “(A) the number and percentage of stu-
15 dents enrolled at the institution who are eligible
16 to receive a Federal Pell Grant;

17 “(B) the cohort repayment rate (as defined
18 in section 455(r)(3)) of students enrolled at the
19 institution who are eligible to receive a Federal
20 Pell Grant; and

21 “(C) the institution’s student service ex-
22 penditures as a percentage of the institution’s
23 student service resources.

24 “(2) CAP.—Each eligible institution of higher
25 education that receives a grant under this section

1 shall receive grant funds for a fiscal year in an
2 amount that is not more than 2.5 percent of the
3 amount equal to the eligible institution's total an-
4 nual revenues and investment returns less auxiliary
5 enterprise revenues and hospital revenues, as defined
6 in the IPEDS Finance Survey, for the most recent
7 fiscal year upon which the eligible institution's au-
8 dited financial reports are available.

9 “(e) SUPPLEMENT NOT SUPPLANT.—Funds made
10 available under this section shall be used to supplement,
11 and not supplant—

12 “(1) other State funds that States would other-
13 wise expend to carry out activities under this section
14 to improve college affordability and graduate addi-
15 tional low- and moderate-income students; and

16 “(2) institutional funds that eligible institutions
17 of higher education receiving a grant under this sec-
18 tion would otherwise expend to carry out activities
19 under this section to improve college affordability
20 and graduate additional low- and moderate-income
21 students.

22 “(f) FUNDING.—The grant program under this sec-
23 tion shall be funded only with risk-sharing payments re-
24 ceived by the Secretary under section 454(d).”.

1 **SEC. 4. RISK-SHARING PAYMENTS.**

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

4 (1) in subsection (a)—

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

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

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

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

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

14 “(d) INSTITUTIONAL RISK-SHARING BASED ON CO-
15 HORT NONREPAYMENT LOAN BALANCES.—

16 “(1) IN GENERAL.—Beginning with fiscal year
17 2025 and each succeeding fiscal year, each institu-
18 tion of higher education participating in the direct
19 student loan program under this part shall remit to
20 the Secretary, at such times as the Secretary may
21 specify, a risk-sharing payment based on the cohort
22 nonrepayment loan balance of the institution, as de-
23 termined under paragraph (2).

24 “(2) DETERMINATION OF RISK-SHARING PAY-
25 MENTS.—

1 “(A) DETERMINATION OF COHORT LOAN
 2 BALANCE.—The cohort loan balance of an insti-
 3 tution for a fiscal year equals the total principal
 4 amount of all loans made under this part to at-
 5 tend such institution for the cohort of bor-
 6 rowers who entered repayment, deferment, or
 7 forbearance on such loans in the third pre-
 8 ceding fiscal year for which the determination is
 9 made.

10 “(B) DETERMINATION OF COHORT NON-
 11 REPAYMENT LOAN BALANCE.—

12 “(i) IN GENERAL.—The cohort non-
 13 repayment loan balance of an institution
 14 for a fiscal year equals, from the total
 15 amount of the loans described in subpara-
 16 graph (A), the total loan balance of those
 17 borrowers who have not made at least a 1
 18 dollar reduction in their principal balance
 19 in the 3 consecutive fiscal years since their
 20 loans entered repayment, deferment, or
 21 forbearance.

22 “(ii) EXCEPTION.—The cohort non-
 23 repayment loan balance calculation under
 24 clause (i) shall not take into consideration
 25 a borrower who was—

1 “(I) in deferment on repayment
2 of a loan described in subparagraph
3 (A) in the 3 consecutive fiscal years
4 described in clause (i) due to study in
5 an approved graduate fellowship pro-
6 gram or in an approved rehabilitation
7 training program for the disabled;

8 “(II) in deferment on repayment
9 of a loan described in subparagraph
10 (A) in the 3 consecutive fiscal years
11 described in clause (i) during which
12 time the borrower was in a period of
13 at least half-time enrollment in college
14 or a career school;

15 “(III) in deferment on repayment
16 of a loan described in subparagraph
17 (A) in the 3 consecutive fiscal years
18 described in clause (i) during which
19 time the borrower was in a period of
20 service qualifying for loan discharge
21 or cancellation under part E;

22 “(IV) in deferment on repayment
23 of a loan described in subparagraph
24 (A) in the 3 consecutive fiscal years
25 described in clause (i) during which

1 time the borrower was on active duty
2 military service during a war, military
3 operation, or national emergency;

4 “(V) in mandatory forbearance
5 on repayment of a loan described in
6 subparagraph (A) for the full fiscal
7 year; or

8 “(VI) serving as a volunteer
9 under the Peace Corps Act (22 U.S.C.
10 2501 et seq.) or the Domestic Volun-
11 teer Service Act of 1973 (42 U.S.C.
12 4950 et seq.), during the 3 consecu-
13 tive fiscal years described in clause
14 (i).

15 “(C) DETERMINATION OF PAYMENT.—

16 “(i) IN GENERAL.—

17 “(I) IN GENERAL.—Except as
18 provided in subclause (II), the risk-
19 sharing payment of an institution for
20 a fiscal year equals 2 percent of the
21 amount determined under clause (ii).

22 “(II) CAP.—The risk-sharing
23 payment of an institution for a fiscal
24 year shall not be more than 2.5 per-
25 cent of the amount equal to the insti-

1 tution’s total annual revenues and in-
 2 vestment returns less auxiliary enter-
 3 prise revenues and hospital revenues,
 4 as defined in the IPEDS Finance
 5 Survey, for the most recent fiscal year
 6 upon which the institution’s audited
 7 financial reports are available.

8 “(ii) AMOUNT BASED ON COHORT
 9 NONREPAYMENT LOAN BALANCE AND UN-
 10 EMPLOYMENT RATE.—

11 “(I) IN GENERAL.—The amount
 12 under this clause is determined by
 13 subtracting the amount determined
 14 under subclause (II) from the cohort
 15 nonrepayment loan balance deter-
 16 mined under subparagraph (B).

17 “(II) AMOUNT BASED ON UNEM-
 18 PLOYMENT RATE.—The amount under
 19 this subclause is determined by multi-
 20 plying the average national unemploy-
 21 ment rate, as defined by the Bureau
 22 of Labor Statistics, for the 3 previous
 23 fiscal years from the date of the de-
 24 termination by the cohort loan balance
 25 determined under subparagraph (A).

1 “(3) NOTIFICATION.—Beginning with the first
2 fiscal year for which data are available after the date
3 of enactment of the Student Protection and Success
4 Act and each succeeding fiscal year until fiscal year
5 2025, the Secretary shall notify each institution of
6 higher education participating in the direct student
7 loan program under this part of what the risk-shar-
8 ing payment based on the cohort nonrepayment loan
9 balance of the institution, as determined under para-
10 graph (2), would be for such institution if such pro-
11 vision were in effect.”.

12 **SEC. 5. REPORT.**

13 Not later than 6 months after the date of enactment
14 of the Student Protection and Success Act, the Secretary
15 of Education shall submit to Congress a report—

16 (1) on best practices for institutions of higher
17 education to improve repayment rates; and

18 (2) that makes recommendations on how insti-
19 tutions of higher education can improve repayment
20 rates, with a particular emphasis on institutions that
21 serve a high proportion of low-income students.

1 **SEC. 6. STUDENT SERVICE EXPENDITURES AND RE-**
2 **SOURCES.**

3 Section 153(a)(1)(I) of the Education Sciences Re-
4 form Act of 2002 (20 U.S.C. 9543(a)(1)(I)) is amended
5 to read as follows:

6 “(I) the financing and management of edu-
7 cation, including data on revenues and expendi-
8 tures, and information regarding—

9 “(i) student service expenditures,
10 that—

11 “(I) includes instruction, infor-
12 mation technology, and other activities
13 whose primary purpose is to con-
14 tribute to students’ emotional and
15 physical well-being and to their intel-
16 lectual, cultural, and social develop-
17 ment inside and outside the context of
18 the formal instructional program; and

19 “(II) does not include expendi-
20 tures on marketing, recruitment, or
21 intercollegiate athletic programs;

22 “(ii) student service resources, which
23 is a measure of an institution’s resources
24 that could reasonably be allocated towards
25 student service expenditures, including net
26 tuition revenues, State and local appropria-

1 tions, endowment income, and revenues re-
2 lated to student housing and food services
3 less expenditures on student housing, food
4 services, and the operations and mainte-
5 nance of a plant; and
6 “(iii) recruitment and marketing ex-
7 penditures;”.

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