112TH CONGRESS
2D SESSION

S. _____

To amend the Truth in Lending Act and the Higher Education Act of 1965 to require certain creditors to obtain certifications from institutions of higher education, and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____

Mr. DURBIN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Truth in Lending Act and the Higher Education Act of 1965 to require certain creditors to obtain certifications from institutions of higher education, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Know Before You Owe Private Student Loan Act of 2012''.

SEC. 2. AMENDMENTS TO THE TRUTH IN LENDING ACT.

(a) IN GENERAL.—Section 128(e) of the Truth in Lending Act (15 U.S.C. 1638(e)) is amended—

(1) by striking paragraph (3) and inserting the following:

"(3) INSTITUTIONAL CERTIFICATION REQUIRED.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), before a creditor may issue any funds with respect to an extension of credit described in this subsection, the creditor shall obtain from the relevant institution of higher education where such loan is to be used for a student, such institution's certification of—

"(i) the enrollment status of the student;

"(ii) the student's cost of attendance at the institution as determined by the institution under part F of title IV of the Higher Education Act of 1965; and

"(iii) the difference between—

"(I) such cost of attendance; and

"(II) the student's estimated financial assistance, including such assistance received under title IV of the Higher Education Act of 1965 and other financial assistance known to the institution, as applicable.

"(B) EXCEPTION.—Notwithstanding subparagraph (A), a creditor may issue funds with respect to an extension of credit described in this subsection without obtaining from the relevant institution of higher education such institution's certification if such institution fails to provide within 15 business days of the creditor's request for such certification—

"(i) the requested certification; or

"(ii) notification that the institution has received the request for certification and will need additional time to comply with the certification request.

"(C) LOANS DISBURSED WITHOUT CERTIFICATION.—If a creditor issues funds without obtaining a certification, as described in subparagraph (B), such creditor shall report the issuance of such funds in a manner determined by the Director of the Consumer Financial Protection Bureau.";

(2) by redesignating paragraphs (9), (10), and (11) as paragraphs (10), (11), and (12), respectively; and

(3) by inserting after paragraph (8) the following:

"(9) PROVISION OF INFORMATION.—

"(A) PROVISION OF INFORMATION TO STUDENTS.—

"(i) LOAN STATEMENT.—A creditor that issues any funds with respect to an extension of credit described in this subsection shall send loan statements, where such loan is to be used for a student, to borrowers of such funds not less than once every 3 months during the time that such student is enrolled at an institution of higher education.

"(ii) CONTENTS OF LOAN STATEMENT.—Each statement described in clause (i) shall—

"(I) report the borrower's total remaining debt to the creditor, including accrued but unpaid interest and capitalized interest;

"(II) report any debt increases since the last statement; and

"(III) list the current interest rate for each loan.

"(B) NOTIFICATION OF LOANS DISBURSED WITHOUT CERTIFICATION.—On or before the

date a creditor issues any funds with respect to an extension of credit described in this subsection, the creditor shall notify the relevant institution of higher education, in writing, of the amount of the extension of credit and the student on whose behalf credit is extended. The form of such written notification shall be subject to the regulations of the Consumer Financial Protection Bureau.

"(C) ANNUAL REPORT.—A creditor that issues funds with respect to an extension of credit described in this subsection shall prepare and submit an annual report to the Consumer Financial Protection Bureau containing the required information about private student loans to be determined by the Consumer Financial Protection Bureau, in consultation with the Secretary of Education.".

(b) DEFINITION OF PRIVATE EDUCATION LOAN.—Section 140(a)(7)(A) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)(A)) is amended—

(1) by redesignating clause (ii) as clause (iii);

(2) in clause (i), by striking "and" after the semicolon; and

(3) by adding after clause (i) the following:

"(ii) is not made, insured, or guaranteed under title VII or title VIII of the Public Health Service Act (42 U.S.C. 292 et seq. and 296 et seq.); and".

(c) REGULATIONS.—Not later than 365 days after the date of enactment of this Act, the Consumer Financial Protection Bureau shall issue regulations in final form to implement paragraphs (3) and (9) of section 128(e) of the Truth in Lending Act (15 U.S.C. 1638(e)), as amended by subsection (a). Such regulations shall become effective not later than 6 months after their date of issuance.

SEC. 3. AMENDMENT TO THE HIGHER EDUCATION ACT OF 1965.

(a) AMENDMENT TO THE HIGHER EDUCATION ACT OF 1965.—Section 487(a) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)) is amended by striking paragraph (28) and inserting the following:

"(28)(A) The institution shall—

"(i) upon the request of a private educational lender, acting in connection with an application initiated by a borrower for a private education loan in accordance with section 128(e)(3) of the Truth in Lending Act, provide certification to such private educational lender—

"(I) that the student who initiated the application for the private education loan, or on whose behalf the application was initiated, is enrolled or is scheduled to enroll at the institution;

"(II) of such student's cost of attendance at the institution as determined under part F of this title; and

"(III) of the difference between—

"(aa) the cost of attendance at the institution; and

"(bb) the student's estimated financial assistance received under this title and other assistance known to the institution, as applicable; and

"(ii) provide the certification described in clause (i), or notify the creditor that the institution has received the request for certification and will need additional time to comply with the certification request—

"(I) within 15 business days of receipt of such certification request; and

"(II) only after the institution has completed the activities described in subparagraph (B).

"(B) The institution shall, upon receipt of a certification request described in subparagraph (A)(i), and prior to providing such certification—

"(i) determine whether the student who initiated the application for the private education loan, or on whose behalf the application was initiated, has applied for and exhausted the Federal financial assistance available to such student under this title and inform the student accordingly; and

"(ii) provide the borrower whose loan application has prompted the certification request by a private education lender, as described in subparagraph (A)(i), with the following information and disclosures:

"(I) The availability of, and the borrower's potential eligibility for,

Federal financial assistance under this title, including disclosing the terms, conditions, interest rates, and repayment options and programs of Federal student loans.

"(II) The borrower's ability to select a private educational lender of the borrower's choice.

"(III) The impact of a proposed private education loan on the borrower's potential eligibility for other financial assistance, including Federal financial assistance under this title.

"(IV) The borrower's right to accept or reject a private education loan within the 30-day period following a private educational lender's approval of a borrower's application and about a borrower's 3-day right to cancel period.

"(C) For purposes of this paragraph, the terms 'private educational lender' and 'private education loan' have the meanings given such terms in section 140 of the Truth in Lending Act (15 U.S.C. 1650).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the effective date of the regulations described in section 2(c).

SEC. 4. REPORT.

Not later than 24 months after the issuance of regulations under section 2(c), the Director of the Consumer Financial Protection Bureau and the Secretary of Education shall jointly submit to Congress a report on the compliance of institutions of higher education and private educational lenders with section 128(e)(3) of the Truth in Lending Act (15 U.S.C. 1638(e)), as amended by section 2, and section 487(a)(28) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)), as amended by section 3. Such report shall include information about the degree to which specific institutions utilize certifications in effectively encouraging the exhaustion of Federal student loan eligibility and lowering student private education loan debt.