

115TH CONGRESS  
1ST SESSION

# H. R. 2300

To amend the Higher Education Act of 1965 to improve the determination of cohort default rates and provide for enhanced civil penalties, to ensure personal liability of owners, officers, and executives of institutions of higher education, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2017

Ms. MAXINE WATERS of California (for herself, Mr. AL GREEN of Texas, Mr. BLUMENAUER, Ms. LEE, Mr. ELLISON, Ms. VELÁZQUEZ, and Ms. SPEIER) introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

To amend the Higher Education Act of 1965 to improve the determination of cohort default rates and provide for enhanced civil penalties, to ensure personal liability of owners, officers, and executives of institutions of higher education, 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 “Students Before Prof-  
5 its Act of 2017”.

1 **SEC. 2. IMPROVED DETERMINATION OF COHORT DEFAULT**  
2 **RATES.**

3 Section 435 of the Higher Education Act of 1965 (20  
4 U.S.C. 1085) is amended—

5 (1) in subsection (a)(2), by adding at the end  
6 the following:

7 “(E)(i) In any case where the Secretary has de-  
8 termined that the institution has engaged in default  
9 manipulation, the Secretary—

10 “(I) shall recalculate the cohort default  
11 rate for the institution under this section using  
12 corrected data and information, for all fiscal  
13 years for which the default manipulation has  
14 occurred; and

15 “(II) using the recalculated cohort default  
16 rate, shall redetermine whether the institution  
17 is ineligible to participate in a program under  
18 this title.

19 “(ii) In this section, the term ‘default manipu-  
20 lation’ means engaging in a device or practice, such  
21 as branching, consolidation of campuses, consolida-  
22 tion or manipulation of the identification codes used  
23 by the Office of Postsecondary Education to des-  
24 ignate campuses and institutions, change of owner-  
25 ship or control, serial forbearance, or any similar de-  
26 vice or practice (as determined by the Secretary)

1 when, but for the device or practice, one or more  
 2 campuses of an institution of higher education would  
 3 be at risk of cohort default rate sanctions under this  
 4 section or student default risk sanctions under sec-  
 5 tion 489A.”; and

6 (2) in subsection (m)(3), by striking “through  
 7 the use of” and all that follows through the period  
 8 at the end and inserting “through default manipula-  
 9 tion.”.

#### 10 **SEC. 3. CIVIL PENALTIES.**

11 (a) IN GENERAL.—Part G of title IV of the Higher  
 12 Education Act of 1965 (20 U.S.C. 1088 et seq.) is amend-  
 13 ed by inserting after section 489 the following:

#### 14 **“SEC. 489A. CIVIL PENALTIES AND OTHER REMEDIES.**

15 “(a) DEFINITIONS.—In this section:

16 “(1) OFFICER OF AN INSTITUTION OF HIGHER  
 17 EDUCATION.—The term ‘officer of an institution of  
 18 higher education’ includes the president, chief execu-  
 19 tive officer, and chief financial officer of an institu-  
 20 tion of higher education or their equivalents.

21 “(2) STUDENT DEFAULT RISK.—The term ‘stu-  
 22 dent default risk’ means a risk that is reflected as  
 23 a percentage that is calculated by taking an institu-  
 24 tion’s 3-year cohort default rate, as defined in sec-  
 25 tion 435(m), for the most recent fiscal year avail-

1       able, and multiplying it by the percentage of stu-  
2       dents enrolled at such institution receiving a Federal  
3       student loan authorized under this title during the  
4       previous academic year.

5           “(3) SUBSTANTIAL MISREPRESENTATION OR  
6       OTHER SERIOUS VIOLATION.—The term ‘substantial  
7       misrepresentation or other serious violation’ means  
8       either of the following:

9           “(A) A substantial misrepresentation re-  
10       garding—

11           “(i) the nature of the educational pro-  
12       gram of an institution of higher education;

13           “(ii) the financial charges of the insti-  
14       tution;

15           “(iii) the space availability in a pro-  
16       gram of the institution for which a student  
17       is considering enrollment;

18           “(iv) the admission requirements of  
19       the institution;

20           “(v) the transferability of credits from  
21       the institution;

22           “(vi) whether a program of the insti-  
23       tution meets the necessary standards to  
24       qualify students to sit for licensing exami-  
25       nations, or obtain certification required as

1 a precondition for employment, in the  
2 State in which the students reside;

3 “(vii) the passage rates of students at  
4 the institution in obtaining certification re-  
5 quirements;

6 “(viii) the passage rates of students  
7 who sit for licensing examinations; or

8 “(ix) the employability of the grad-  
9 uates of the institution.

10 “(B) A violation as follows that is deter-  
11 mined to constitute an unfair, deceptive, or  
12 abusive act or practice:

13 “(i) A violation of section 487(a)(20).

14 “(ii) A violation of the default manip-  
15 ulation regulations promulgated by the  
16 Secretary under section 435(m)(3).

17 “(iii) Failure to comply with the pro-  
18 gram review process described in section  
19 498A.

20 “(iv) A violation of the program integ-  
21 rity regulations promulgated by the Sec-  
22 retary under this Act.

23 “(v) A violation of this Act that the  
24 Secretary has determined, by regulation, to

1                   be a serious violation for purposes of this  
2                   section.

3           “(b) SANCTIONS FOR SUBSTANTIAL MISREPRESENTATIONS OR SERIOUS VIOLATIONS.—

4                   “(1) CIVIL PENALTIES.—

5                           “(A) IN GENERAL.—The Secretary may  
6                   impose a civil penalty upon an eligible institu-  
7                   tion upon making a determination, after reason-  
8                   able notice and opportunity for a hearing, that  
9                   an eligible institution has engaged in a substan-  
10                  tial misrepresentation or other serious violation.

11                           “(B) AMOUNT OF CIVIL PENALTIES.—A  
12                  civil penalty imposed for a violation under sub-  
13                  paragraph (A) shall be not less than \$100,000  
14                  or—

15                           “(i) in the case of a first violation, an  
16                  amount equal to the product of \$1,000,000  
17                  multiplied by the institution’s student de-  
18                  fault risk, whichever is larger;

19                           “(ii) in the case of a second violation,  
20                  an amount equal to the product of  
21                  \$2,000,000 multiplied by the institution’s  
22                  student default risk, whichever is larger;  
23                  and  
24                  and

1                   “(iii) in the case of a third or subse-  
2                   quent violation, an amount equal to the  
3                   product of \$3,000,000 multiplied by the in-  
4                   stitution’s student default risk, whichever  
5                   is larger.

6                   “(C) TREATMENT OF MULTIPLE INSTITU-  
7                   TIONS.—For the purpose of determining the  
8                   number of violations under subparagraph (B),  
9                   any violation by a particular institution will ac-  
10                  crue against all identification codes used by the  
11                  Office of Postsecondary Education to designate  
12                  campuses and institutions affiliated with the in-  
13                  stitution, and within the period of participation  
14                  for the institution, as defined in section  
15                  668.13(b) of title 34, Code of Federal Regula-  
16                  tions, or any successor regulation.

17               “(c) SANCTIONS FOR OTHER VIOLATIONS OF THIS  
18               TITLE.—Upon determination, after reasonable notice and  
19               opportunity for a hearing, that an eligible institution has  
20               engaged in a violation of any other provision of this title,  
21               including the failure to carry out any provision of this  
22               title, that is not a significant misrepresentation or other  
23               serious violation, the Secretary may impose a civil penalty  
24               upon such institution of not more than \$100,000 (subject

1 to such adjustments for inflation as may be prescribed in  
2 regulation) for each such violation.

3 “(d) CIVIL PENALTIES AND SANCTIONS FOR OFFI-  
4 CERS OF INSTITUTIONS.—Upon determination, after rea-  
5 sonable notice and an opportunity for a hearing, that an  
6 officer of an institution of higher education that partici-  
7 pates in a program under this title has knowingly and will-  
8 fully, or with gross negligence, violated a provision of this  
9 title, the Secretary may sanction the officer. Such sanc-  
10 tions may include the following:

11 “(1) Prohibiting the institution of higher edu-  
12 cation that has employed the officer of an institution  
13 of higher education and that participates in a pro-  
14 gram under this title, or any other institution of  
15 higher education that participates in a program  
16 under this title, from employing the officer, except  
17 that any such prohibition under this subsection shall  
18 not be for a period of more than 5 years from the  
19 date of the determination of the violation.

20 “(2) Assessing a civil penalty against an officer  
21 of an institution of higher education who has know-  
22 ingly and willfully, or with gross negligence, violated  
23 a provision of this title, except that any such civil  
24 penalty under this subsection shall not be greater  
25 than the amount of the officer’s compensation for



1 each year for which the violations are determined to  
2 have occurred. For purposes of this paragraph, an  
3 officer's compensation shall include proceeds of any  
4 sales of stock and any incentive-based compensation  
5 (including stock options awarded as compensation)  
6 based on information required to be reported to the  
7 Secretary or any other Federal agency during the  
8 period in which the violations are determined to have  
9 occurred.

10 “(e) LIMITATION, SUSPENSION, OR TERMINATION OF  
11 ELIGIBILITY STATUS.—

12 “(1) IN GENERAL.—Upon determination, after  
13 reasonable notice and opportunity for a hearing, that  
14 an eligible institution has engaged in a violation of  
15 any provision of this title (including the failure to  
16 carry out any provision of this title or any regulation  
17 prescribed under such provision) or a violation of  
18 any applicable special arrangement, agreement, or  
19 limitation, the Secretary may limit, suspend, or ter-  
20minate the participation in any program under this  
21title of an eligible institution, subject to the require-  
22ments of paragraph (2).

23 “(2) SUSPENSION PROCEDURES.—No period of  
24 suspension under this section shall exceed 60 days  
25 unless the institution and the Secretary agree to an

1 extension or unless limitation or termination pro-  
2 ceedings are initiated by the Secretary within that  
3 period of time.

4 “(f) EMERGENCY ACTION.—

5 “(1) IN GENERAL.—The Secretary may take an  
6 emergency action against an institution, under which  
7 the Secretary shall, effective on the date on which a  
8 notice and statement of the basis of the action is  
9 mailed to the institution (by registered mail, return  
10 receipt requested), withhold funds from the institu-  
11 tion or its students and withdraw the institution’s  
12 authority to obligate funds under any program  
13 under this title, if the Secretary—

14 “(A) receives information, determined by  
15 the Secretary to be reliable, that the institution  
16 is violating any provision of this title, any regu-  
17 lation prescribed under this title, or any appli-  
18 cable special arrangement, agreement, or limita-  
19 tion;

20 “(B) determines that immediate action is  
21 necessary to prevent misuse of Federal funds;  
22 and

23 “(C) determines that the likelihood of loss  
24 outweighs the importance of the procedures pre-

1           scribed in subsection (e) for limitation, suspen-  
2           sion, or termination.

3           “(2) TIME LIMITATION.—An emergency action  
4           described in paragraph (1) shall not exceed 30 days  
5           unless limitation, suspension, or termination pro-  
6           ceedings are initiated by the Secretary against the  
7           institution within that period of time.

8           “(3) OPPORTUNITY TO SHOW CAUSE.—The Sec-  
9           retary shall provide an institution that is the subject  
10          of an emergency action under this subsection an op-  
11          portunity to show cause, if the institution so re-  
12          quests, that the emergency action is unwarranted  
13          and should be lifted.

14          “(g) LIFTING OF SANCTIONS.—Notwithstanding any  
15          other provision of this title, an institution of higher edu-  
16          cation that has been sanctioned by the Secretary under  
17          this section or any other provision of this title may not  
18          have such sanctions lifted until the Secretary has con-  
19          ducted a subsequent program review under section 498A  
20          and has found the institution to be in compliance with this  
21          title.

22          “(h) SINGLE COURSE OF CONDUCT; COMPROMISE  
23          AUTHORITY.—

24                 “(1) SAME COURSE OF CONDUCT.—For pur-  
25          poses of this section, acts and omissions relating to

1 a single course of conduct shall be treated as a sin-  
2 gle violation.

3 “(2) COMPROMISE AUTHORITY.—Any civil pen-  
4 alty under this section may be compromised by the  
5 Secretary. In determining the amount of such pen-  
6 alty, or the amount agreed upon in compromise, the  
7 Secretary shall consider—

8 “(A) the appropriateness of the penalty to  
9 the size of the institution of higher education  
10 subject to the determination; and

11 “(B) the gravity of the violation, failure, or  
12 misrepresentation.

13 “(i) COLLECTION OF PENALTY.—The amount of any  
14 penalty under this section may be deducted from any sums  
15 owing by the United States to the institution charged.

16 “(j) DISPOSITION OF AMOUNTS RECOVERED.—

17 “(1) USE FOR STUDENT RELIEF FUND.—For  
18 each fiscal year, an amount equal to 100 percent of  
19 the amounts recovered or collected under this section  
20 shall be deposited into the Student Relief Fund es-  
21 tablished under subsection (k).

22 “(2) REPORT.—The Secretary shall regularly  
23 publish, on the Web site of the Department, a de-  
24 tailed description that includes the amount of funds

1 that were used for the Student Relief Fund under  
2 paragraph (1).

3 “(k) STUDENT RELIEF FUND.—

4 “(1) ESTABLISHMENT.—The Secretary shall es-  
5 tablish a Student Relief Fund (referred to in this  
6 subsection as the ‘Fund’) that shall be used, subject  
7 to the availability of funds, to provide financial relief  
8 to any student enrolled in an institution of higher  
9 education that—

10 “(A) has failed to comply with an eligi-  
11 bility requirement under section 101 or 102 or  
12 an obligation incurred under the terms of the  
13 program participation agreement under section  
14 487; or

15 “(B) has been sanctioned under subsection  
16 (b) or (c).

17 “(2) TREATMENT AND AVAILABILITY OF  
18 FUNDS.—

19 “(A) FUNDS THAT ARE NOT GOVERNMENT  
20 FUNDS.—Funds obtained by or transferred to  
21 the Fund shall not be construed to be Govern-  
22 ment funds or appropriated monies.

23 “(B) AMOUNTS NOT SUBJECT TO APPOR-  
24 TIONMENT.—Notwithstanding any other provi-  
25 sion of law, amounts in the Fund shall not be

1 subject to apportionment for purposes of chap-  
2 ter 15 of title 31, United States Code, or under  
3 any other authority.

4 “(C) NO FISCAL YEAR LIMITATION.—Sums  
5 deposited in the Fund shall remain in the Fund  
6 and be available for expenditure under this sub-  
7 section without fiscal year limitation.

8 “(3) INVESTMENTS.—

9 “(A) AMOUNTS IN FUND MAY BE IN-  
10 VESTED.—The Secretary of Education may re-  
11 quest the Secretary of the Treasury to invest  
12 the portion of the Fund that is not, in the dis-  
13 cretion of the Secretary of Education, required  
14 to meet the current needs of the Fund.

15 “(B) ELIGIBLE INVESTMENTS.—Invest-  
16 ments shall be made by the Secretary of the  
17 Treasury in obligations of the United States or  
18 obligations that are guaranteed as to principal  
19 and interest by the United States, with matu-  
20 rities suitable to the needs of the Fund as de-  
21 termined by the Secretary on the record.

22 “(C) INTEREST AND PROCEEDS CRED-  
23 ITED.—The interest on, and the proceeds from  
24 the sale or redemption of, any obligations held  
25 in the Fund shall be credited to the Fund.

1           “(4) REGULATIONS.—The Secretary shall pre-  
2       scribe regulations to implement the requirements of  
3       this section within 1 year after the date of enact-  
4       ment of the Students Before Profits Act of 2017.

5           “(5) AUTHORIZATION OF APPROPRIATIONS.—In  
6       addition to funds derived from financial penalties as-  
7       sessed pursuant to subsection (j), there are author-  
8       ized to be appropriated such sums as may be nec-  
9       essary to carry out this subsection for fiscal year  
10      2017 and each of the 5 succeeding fiscal years.

11      “(1) STATE ENFORCEMENT.—

12           “(1) IN GENERAL.—Any violation of subsection  
13      (b), including the regulations promulgated under  
14      such subsection, shall be a cause of action enforce-  
15      able by the State, through the attorney general (or  
16      the equivalent thereof) of the State, in any district  
17      court of the United States in that State or in a  
18      State court that is located in that State and that  
19      has jurisdiction over the defendant. The State may  
20      seek any relief provided under paragraph (4)(B) for  
21      such violation, or any remedies otherwise provided  
22      under law.

23           “(2) NOTICE REQUIRED.—

24           “(A) IN GENERAL.—Before initiating any  
25      action in a court or other administrative or reg-

1           ulatory proceeding against any institution of  
2           higher education as authorized by paragraph  
3           (1) to enforce any provision of this subsection,  
4           including any regulation promulgated by the  
5           Secretary under this subsection, a State attor-  
6           ney general shall timely provide a copy of the  
7           complete complaint to be filed and written no-  
8           tice describing such action or proceeding to the  
9           Secretary, except as provided in subparagraph  
10          (B).

11                 “(B) EMERGENCY ACTION.—If prior notice  
12           is not practicable, the State attorney general  
13           shall provide a copy of the complete complaint  
14           and the notice to the Secretary immediately  
15           upon instituting the action or proceeding.

16                 “(C) CONTENTS OF NOTICE.—The notifi-  
17           cation required under this paragraph shall, at a  
18           minimum, describe—

19                         “(i) the identity of the parties;

20                         “(ii) the alleged facts underlying the  
21                         proceeding; and

22                         “(iii) whether there may be a need to  
23                         coordinate the prosecution of the pro-  
24                         ceeding so as not to interfere with any ac-  
25                         tion, including any rulemaking, undertaken



1 by the Secretary or another Federal agen-  
2 cy.

3 “(3) REGULATIONS.—The Secretary shall pre-  
4 scribe regulations to implement the requirements of  
5 this subsection and periodically provide guidance in  
6 order to further coordinate actions with the State at-  
7 torneys general.

8 “(4) PRESERVATION OF STATE AUTHORITY.—

9 “(A) STATE CLAIMS.—Nothing in this sub-  
10 section shall be construed as altering, limiting,  
11 or affecting the authority of a State attorney  
12 general or any other regulatory or enforcement  
13 agency or authority to bring an action or other  
14 regulatory proceeding arising solely under the  
15 law in effect in that State.

16 “(B) RELIEF.—

17 “(i) IN GENERAL.—Relief under this  
18 subsection may include, without limita-  
19 tion—

20 “(I) rescission or reformation of  
21 contracts;

22 “(II) refund of moneys or return  
23 of real property;

24 “(III) restitution;

1 “(IV) disgorgement or compensa-  
2 tion for unjust enrichment;

3 “(V) payment of damages or  
4 other monetary relief;

5 “(VI) public notification regard-  
6 ing the violation, including the costs  
7 of notification; and

8 “(VII) limits on the activities or  
9 functions of the person.

10 “(ii) EXCLUSION.—Relief under this  
11 subsection shall not include the ability to  
12 suspend or terminate the eligibility status  
13 of an institution of higher education for  
14 programs under this title.”.

15 (b) PROGRAM REVIEW AND DATA.—Section  
16 498A(b)(8) of the Higher Education Act of 1965 (20  
17 U.S.C. 1099c–1(b)(8)) is amended by inserting “and to  
18 the applicable State Attorney General if the institution is  
19 found to have not complied with the program review proc-  
20 ess under this section” after “under review”.

21 **SEC. 4. PERSONAL LIABILITY FOR OFFICERS OF INSTITU-**  
22 **TIONS.**

23 Section 498(e) of the Higher Education Act of 1965  
24 (20 U.S.C. 1099c(e)) is amended—

1           (1) in paragraph (4), by striking “The Sec-  
 2       retary” and inserting “Except as provided in para-  
 3       graph (7), the Secretary”; and

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

5       “(7) Notwithstanding paragraph (4), if the Secretary  
 6       has taken an enforcement action against a proprietary in-  
 7       stitution of higher education (as defined in section  
 8       102(b)), (which may include heightened oversight activi-  
 9       ties such as heightened cash monitoring, provisional cer-  
 10      tification, or requirements to obtain approval for new edu-  
 11      cational programs and locations), the Secretary may hold  
 12      an executive officer of the institution personally liable for  
 13      financial losses related to such action to the Federal Gov-  
 14      ernment, student assistance recipients, and other program  
 15      participants for funds under this title.”.

16   **SEC. 5. GOVERNMENT CLAIMS FOR DISCHARGE.**

17       (a) FFEL AND DIRECT LOAN PROGRAMS.—Section  
 18       437(c)(1) of the Higher Education Act of 1965 (20 U.S.C.  
 19       1087(c)(1)) is amended in the first sentence by striking  
 20       “against the institution and its affiliates and principals”  
 21       and inserting “against the institution, its affiliates and  
 22       principals, and any executive officer or board member of  
 23       the institution”.

24       (b) FEDERAL PERKINS LOANS.—Section 464(g)(1)  
 25       of the Higher Education Act of 1965 (20 U.S.C.

1 1087dd(g)(1)) is amended by striking “against the institu-  
2 tion and the institution’s affiliates and principals” and in-  
3 serting “against the institution, the institution’s affiliates  
4 and principals, and any executive officer or board member  
5 of the institution”.

6 **SEC. 6. PROGRAM PARTICIPATION AGREEMENT.**

7 Section 487(a) of the Higher Education Act of 1965  
8 (20 U.S.C. 1094(a)) is amended by adding at the end the  
9 following:

10 “(30) In the case of a proprietary institution of  
11 higher education (as defined in section 102(b)), such  
12 institution will prohibit any individual who has been  
13 found guilty of defrauding students from being a  
14 member of the board of directors, the chief executive  
15 officer, or other executive officer of the institution.”.

○