S. 2405

To establish additional protections and disclosures for students and cosigners with respect to student loans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2019

Mr. Menendez (for himself, Mr. Booker, Ms. Warren, Mr. Brown, and Mrs. Gillibrand) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To establish additional protections and disclosures for students and cosigners with respect to student loans, 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; FINDINGS.

(a) Short Title.—This Act may be cited as the “Christopher Bryski Student Loan Protection Act” or “Christopher’s Law”.

(b) Findings.—Congress finds the following:
(1) The Bureau of Consumer Financial Protection (referred to in this section as the “CFPB”) Student Loan Ombudsman stated the following:

(A) “The CFPB received more than 7,700 private student loan complaints and approximately 2,300 debt collection complaints related to student loans between September 1, 2016, and August 31, 2017.”.

(B) “Cosigners complain that information about discharge or alternative arrangements in the case of death of the primary borrower is not readily available and that decisions are made on a case-by-case basis, giving cosigners little understanding of how the process works, or if they will be successful.”.

(C) “The complaints and input received by the CFPB resemble many of the same issues experienced by mortgage borrowers, such as improper application of payments, untimeliness in error resolution, and inability to contact appropriate personnel in times of hardship.”.

(D) “The difference between Federal and private student loans in periods of disability was not well-understood.”.
(2) An estimated 2,500,000 individuals sustain a traumatic brain injury each year and older adolescents between 15 and 19 years of age are more likely to sustain a traumatic brain injury than individuals in other age groups.

(3) It has been estimated that the annual incidence of spinal cord injury, not including those individuals who die at the scene of an accident, is approximately 54 cases per 1,000,000 individuals in the United States, or approximately 17,000 new cases each year. These injuries can lead to permanent disability or loss of movement and can prohibit the victim from engaging in any substantial gainful activity.

(4) According to the CFPB, more than 90 percent of new private student loans are co-signed.

(5) According to the CFPB, private student loan companies provide cosigner release to less than 1 percent of eligible borrowers.

SEC. 2. ADDITIONAL STUDENT LOAN PROTECTIONS.

(a) In general.—Section 140(g) of the Truth in Lending Act (15 U.S.C. 1650(g)) is amended to read as follows:

“(g) ADDITIONAL PROTECTIONS RELATING TO BORROWER OR COSIGNER OF A PRIVATE EDUCATION LOAN.—
“(1) Clear and conspicuous description of obligation of borrower and cosigner.—In the case of any private educational lender that provides a private education loan, the lender shall clearly and conspicuously describe, in writing, the obligations of a cosigner with respect to the loan, including the effect that the death, disability, or inability to engage in any substantial gainful activity of the borrower or any cosigner would have on any such obligation, in language that the Bureau determines would give a reasonable person a reasonable understanding of the obligation being assumed by becoming a cosigner for the loan.

“(2) Prohibition on automatic default with respect to a performing loan.—

“(A) Death, disability, or bankruptcy of cosigner.—If a private education loan includes a cosigner, a private educational lender may not take any adverse action (including declaring a default, accelerating any loan obligation, increasing the interest rate, or altering any obligations under the private education loan in a way that is adverse to the borrower) against the borrower based on—
“(i) the death, disability, or inability
to engage in any substantial gainful activ-
ity of the cosigner; or
“(ii) the bankruptcy of the cosigner.
“(B) Bankruptcy of Borrower.—If a
private education loan includes a cosigner, a
private educational lender may not take any ad-
verse action (including declaring a default, ac-
celerating any loan obligation, increasing the in-
terest rate, or altering any obligations under
the private education loan in a way that is ad-
verse to any cosigner) against the cosigner
based on the bankruptcy of the borrower.
“(3) Borrower Requirements Regarding
Death or Disability of Borrower.—In the event
of the death, disability, or inability to engage in any
substantial gainful activity of a borrower of a private
education loan—
“(A) the borrower, the estate of the bor-
rower, and any cosigner of the private edu-
cation loan shall not be obligated to repay the
outstanding principal and interest on the loan;
and
“(B) the private educational lender with
respect to, or the servicer of, the private edu-
cation loan, as applicable, shall, upon notification of the death, disability, or inability to engage in any substantial gainful activity, discharge the liability of the borrower, estate of the borrower, and any cosigner of the private education loan.

“(4) Cosigner release.—

“(A) Requirements for automatic release of cosigner.—

“(i) Criteria established by the bureau.—Not later than 180 days after the date of enactment of this subsection, the Bureau shall establish criteria, which, if met by the borrower of a private education loan, shall require the private educational lender with respect to, or servicer of, the private education loan, as applicable, to promptly release any cosigner from the obligations of the cosigner under the loan without requiring any action on behalf of the borrower.

“(ii) Criteria established by lender.—A private educational lender may establish criteria for automatic release that are different from the criteria de-
scribed in clause (i) if the criteria established by the lender are not more restrictive with respect to the borrower or any co-signer of the private education loan than the criteria established under clause (i).

“(B) Disclosure of Criteria for Co-signer Release.—A private educational lender shall—

“(i) include in the promissory note of a private education loan the criteria under which a cosigner may be released from the obligation of the cosigner under a private education loan under this paragraph; and

“(ii) disclose to the borrower and any cosigner at the time the private education loan is consummated, clearly and conspicuously, the criteria under which a cosigner may be released from the obligation of the cosigner under a private education loan.

“(C) Modifications to Criteria.—If a private education loan has a cosigner, the private educational lender with respect to, or servicer of, the private education loan, as applicable, may not modify the criteria under which the cosigner may be released from the obliga-
tion of the cosigner under the private education
loan without the consent of the borrower and
the cosigner if the modification would be ad-
verse to the borrower.

“(D) NOTIFICATION ON RELEASE.—A pri-
vote educational lender with respect to, or
servicer of, a private education loan, as applica-
ble, shall promptly notify the borrower and any
cosigners for the private education loan if a co-
signer is released from the obligations of the co-
signer under the private education loan under
this paragraph.

“(E) MODIFICATION OF EVALUATION OF
CREDITWORTHINESS, CREDIT STANDING, OR
CREDIT CAPACITY.—In determining whether the
criteria for a cosigner release are met, a private
educational lender with respect to, or servicer
of, a private education loan, as applicable, may
not evaluate the creditworthiness, credit stand-
ing, or credit capacity of the borrower or a co-
signer of the private education loan using a
standard that would be more adverse to the
borrower or cosigner, as applicable, than the
standard the private educational lender used to
evaluate the creditworthiness, credit standing,
or credit capacity of the borrower or cosigner on the date on which the private education loan was consummated.

“(5) Designation of Individual to Act on Behalf of the Borrower.—In the case of any private educational lender that extends a private education loan, the lender shall provide the borrower an option to designate an individual to have the legal authority to act on behalf of the borrower with respect to the private education loan in the event of the death, disability, or inability to engage in any substantial gainful activity of the borrower.

“(6) Counseling.—In the case of any private educational lender that extends a private education loan, the lender shall ensure that the borrower, and any cosigner, receives comprehensive information on the terms and conditions of the loan and of the responsibilities the borrower has with respect to the loan, including the information required under subparagraphs (H), (I), (K), (L), (M), and (N) of section 485(l)(2) of the Higher Education Act of 1965 (20 U.S.C. 1092(l)(2)).

“(7) Model Form.—The Bureau shall publish a model form under section 105 for describing the
obligation of a cosigner for the purposes of para-

graph (1).

“(8) DEFINITION OF DEATH, DISABILITY, OR
INABILITY TO ENGAGE IN ANY SUBSTANTIAL GAIN-FUL ACTIVITY.—For the purposes of this subsection
with respect to a borrower or cosigner, the term
‘death, disability, or inability to engage in any sub-
stantial gainful activity’—

“(A) means any condition described in sec-
tion 437(a) of the Higher Education Act of
1965 (20 U.S.C. 1087(a)); and

“(B) shall be interpreted by the Bureau in
such a manner as to conform with the regula-
tions prescribed by the Secretary of Education
under section 437(a) of the Higher Education
Act of 1965 (20 U.S.C. 1087(a)) to the fullest
extent practicable, including safeguards to pre-
vent fraud and abuse.”.

(b) RULEMAKING.—Not later than 1 year after the
date of enactment of this Act, the Bureau of Consumer
Financial Protection shall issue regulations to carry out
subsection (g) of section 140 of the Truth in Lending Act
(15 U.S.C. 1650), as amended by this section.
SEC. 3. FEDERAL STUDENT LOANS.

(a) COUNSELING INFORMATION.—Section 485(l)(2) of the Higher Education Act of 1965 (20 U.S.C. 1092(l)(2)) is amended by adding at the end the following:

“(L) Information regarding the conditions required to discharge the loan due to the death, disability, or inability to engage in any substantial gainful activity of the borrower in accordance with section 437(a).

“(M) Any repayment, refinance, deferment, forbearance, or forgiveness opportunities available to the borrower or cosigner in the event of the death, disability, or inability to engage in any substantial gainful activity of the borrower or cosigner.

“(N) The effect that the death, disability, or inability to engage in any substantial gainful activity of the borrower would have on the obligations of the borrower and any cosigner of the loan.”.

(b) DESIGNATION OF INDIVIDUAL TO ACT ON BEHALF OF THE BORROWER.—Section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091) is amended—

(1) in subsection (a), by striking paragraph (4) and inserting the following:
“(4) file with the Secretary, as part of the original financial aid application process, a certification, which need not be notarized, but which—

“(A) shall include—

“(i) a statement of educational purpose stating that the money attributable to such grant, loan, or loan guarantee will be used solely for expenses related to attendance or continued attendance at such institution; and

“(ii) such student’s social security number; and

“(B) may include a designation by such student of an individual who shall have the legal authority to act on behalf of the student with respect to any loan to the student under this title in the event of the student’s death, disability, or inability to engage in any substantial gainful activity;”; and

(2) by adding at the end the following:

“(u) OPTION TO DESIGNATE INDIVIDUAL TO ACT ON BEHALF OF THE BORROWER IN CLEAR AND CONSPICUOUS MANNER.—The option for a student to make a designation described in subsection (a)(4)(B) shall be
provided in a clear and conspicuous manner to the student.”.

(c) CANCELLATION OF LOANS FOR PARENT BORROWERS IN CASE OF DISABILITY OF A STUDENT.—Section 437(d) of the Higher Education Act of 1965 (20 U.S.C. 1087(d)) is amended by inserting “becomes permanently and totally disabled, or is unable to engage in any substantial gainful activity, as determined for purposes of subsection (a)(1),” after “dies,”.

SEC. 4. RULE OF CONSTRUCTION.

Nothing in this Act, or any amendment made by this Act, may be construed to adversely affect the eligibility of a student to receive any grant, loan, or work assistance under part C or part G of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087–51 et seq. and 20 U.S.C. 1088 et seq.) based on a designation, or the lack of a designation, under section 484(a)(4)(B) of that Act (20 U.S.C. 1091(a)(4)(B)), as added by section 3(b)(1).

SEC. 5. APPLICABILITY.

(a) PRIVATE EDUCATIONAL LOANS.—Paragraphs (2), (3), and subparagraphs (A), (C), (D) and (E) of section 140(g)(4) of the Truth in Lending Act (15 U.S.C. 1650(g)), as amended by section 2 of this Act, shall apply to any outstanding private educational loan received by a
borrower before, on, or after the date of enactment of this Act.

(b) FEDERAL LOANS.—The amendment made by section 3(c) of this Act shall apply to any outstanding loan received by a parent before, on, or after the date of enactment of this Act.

c DATE OF ONSET.—The provisions described in subsections (a) and (b) shall apply without regard to the date of the onset of any disability or impairment, the date of death, or the date of bankruptcy filing.