116TH CONGRESS  
1ST SESSION

H. R. _____

To amend the Higher Education Act of 1965 to make for-profit institutions ineligible for Federal student aid and to protect the integrity of nonprofit institutions of higher education.

IN THE HOUSE OF REPRESENTATIVES

Ms. JAYAPAL introduced the following bill; which was referred to the Committee on ______________________

A BILL

To amend the Higher Education Act of 1965 to make for-profit institutions ineligible for Federal student aid and to protect the integrity of nonprofit 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 “Students Not Profits
5       Act of 2019”.  

SEC. 2. DEFINITION OF INSTITUTION OF HIGHER EDUCATION.

The Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is amended—

(1) in section 101—

(A) in subsection (a), in the matter preceding paragraph (1), by striking “other than title IV,”;

(B) in subsection (b)—

(i) in the matter preceding paragraph (1), by striking “other than title IV,”;

(ii) in paragraph (1), by striking “and” after the semicolon;

(iii) in paragraph (2)(B), by striking the period at the end and inserting a semicolon;

(iv) by adding at the end the following:

“(3) a public, nonprofit postsecondary vocational institution; and

“(4) only for the purposes of part D of title IV, an institution outside the United States that is comparable to an institution of higher education, as defined in subsection (a), and that has been approved by the Secretary for the purpose of part D of title
IV, consistent with the requirements of section 452(d).”;

(C) in subsection (c), by striking “and section 102”; and

(D) by adding at the end the following:

“(d) REQUIREMENTS OF COURSES OF STUDY AND ENROLLMENT.—An institution shall be considered to meet the definition of an institution of higher education in subsection (a) or (b) only if such institution—

“(1) limits enrollment of students in distance education courses offered by the institution to not more than 50 percent of all students enrolled in the institution, unless the institution is a public or non-profit technical institution or career and technical education school, as described in section 3(3)(C) of the Carl D. Perkins Career and Technical Education Act of 2006;

“(2) limits enrollment of students who are incarcerated to not more than 25 percent of all students enrolled in the institution;

“(3) limits enrollment of students who do not have a secondary school diploma or its recognized equivalent to not more than 50 percent of all students enrolled in the institution; and
“(4) if the institution offers an education or training program that leads to a certificate, or other nondegree recognized credential and funds available under title IV for students are used for enrollment in such education or program, ensures that such education or program prepares students for gainful employment in a recognized occupation.

“(e) LIMITATIONS BASED ON MANAGEMENT.—An institution shall not be considered to meet the definition of an institution of higher education in subsection (a) or (b) if such institution—

“(1) the institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy; or

“(2) the institution, the institution’s owner, the institution’s chief executive officer, or any other executive officer of the institution—

“(A) has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under title IV;

“(B) has been determined to have committed fraud, substantial misrepresentation, or
false certification involving funds under title IV;

or

“(C) has been previously employed at an
institution receiving funds under title IV that
closed.

“(f) CERTIFICATION.—The Secretary shall certify an
institution’s qualification as an institution of higher edu-
cation in accordance with the requirements of subpart 3
of part H of title IV.

“(g) LOSS OF ELIGIBILITY.—An institution of higher
education shall not be considered to meet the definition
of an institution of higher education in subsection (a) or
(b) if such institution is removed from eligibility for funds
under title IV as a result of an action pursuant to part
H of title IV.

“(h) POSTSECONDARY VOCATIONAL INSTITUTION.—
“(1) PRINCIPAL CRITERIA.—For the purpose of
this section, the term ‘postsecondary vocational instit-
tution’ means a school that—

“(A) provides an eligible program of train-
ing to prepare students for gainful employment
in a recognized occupation;

“(B) meets the requirements of paragraphs
(1), (2), (4), and (5) of subsection (a); and
“(C) has been in existence for at least 2 years.

“(2) ADDITIONAL INSTITUTIONS.—The term ‘postsecondary vocational institution’ also includes an educational institution in any State that, in lieu of the requirement in subsection (a)(1), admits as regular students individuals—

“(A) who are beyond the age of compulsory school attendance in the State in which the institution is located; or

“(B) who will be dually or concurrently enrolled in the institution and a secondary school.

“(i) INSTITUTION OUTSIDE THE UNITED STATES.—

“(1) IN GENERAL.—For the purpose of qualifying as an institution under subsection (b)(4), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education, as defined in subsection 101(a) (except that a graduate medical school, nursing school, or a veterinary school, located outside the United States shall not be required to meet the requirements of subsection (a)(4)). Such criteria shall include a requirement that a student attending such school out-
side the United States is ineligible for loans made under part D of title IV unless—

“(A) in the case of a graduate medical school located outside the United States—

“(i) at least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 484(a)(5) in the year preceding the year for which a student is seeking a loan under part D of title IV; and

“(ii) at least 75 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part D of title IV;

“(B) in the case of a veterinary school located outside the United States that does not
meet the requirements of subsection (a)(4), the
institution’s students complete their clinical
training at an approved veterinary school lo-
cated in the United States; or

“(C) in the case of a nursing school lo-
cated outside of the United States—

“(i) the nursing school has an agree-
ment with a hospital, or accredited school
of nursing (as such terms are defined in
section 801 of the Public Health Service
Act (42 U.S.C. 296)), located in the
United States that requires the students of
the nursing school to complete the stu-
dents’ clinical training at such hospital or
accredited school of nursing;

“(ii) the nursing school has an agree-
ment with an accredited school of nursing
located in the United States providing that
the students graduating from the nursing
school located outside of the United States
also receive a degree from the accredited
school of nursing located in the United
States;

“(iii) the nursing school certifies only
Federal Direct Stafford Loans under sec-
tion 455(a)(2)(A), Federal Direct Unsubsidized Stafford Loans under section 455(a)(2)(D), or Federal Direct PLUS Loans under section 455(a)(2)(B) for students attending the institution;

“(iv) the nursing school reimburses the Secretary for the cost of any loan defaults for current and former students included in the calculation of the institution’s cohort default rate during the previous fiscal year; and

“(v) not less than 75 percent of the individuals who were students or graduates of the nursing school, and who took the National Council Licensure Examination for Registered Nurses in the year preceding the year for which the institution is certifying a Federal Direct Stafford Loan under section 455(a)(2)(A), a Federal Direct Unsubsidized Stafford Loan under section 455(a)(2)(D), or a Federal Direct PLUS Loan under section 455(a)(2)(B), received a passing score on such examination.
“(2) **Failure to release information.**—

The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by paragraph (1) shall render such institution ineligible for the purpose of part D of title IV.

“(3) **Special rule.**—If, pursuant to this subsection, an institution loses eligibility to participate in the programs under title IV, then a student enrolled in such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part D of title IV while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.”;

(2) by striking section 102; and

(3) by redesignating section 103 as section 102.

**SEC. 3. REPEAL OF EXISTING REFERENCES TO PROPRIETARY INSTITUTIONS.**

Section 487 of the Higher Education Act of 1965 (20 U.S.C. 1094) is amended—

(1) in subsection (a)—

(A) by striking paragraph (24);
(B) by redesignating paragraphs (25) through (29) as paragraphs (24) through (28), respectively;

(C) in paragraph (24)(A)(ii) (as redesignated by subparagraph (B)), by striking “subsection (e)” and inserting “subsection (d)”; and

(D) in paragraph (26) (as redesignated by subparagraph (B)), by striking “subsection (h)” and inserting “subsection (g)”;

(2) by striking subsection (d);

(3) by redesignating subsections (e) through (j) as subsections (d) through (i), respectively;

(4) in subsection (f)(1) (as redesignated by paragraph (3)), by striking “subsection (e)(2)” and inserting “subsection (d)(2)”; and

(5) in subsection (g)(1) (as redesignated by paragraph (3)), by striking “subsection (a)(27)” in the matter preceding subparagraph (A) and inserting “subsection (a)(26)”.

SEC. 4. CONFORMING AMENDMENTS.

The Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is amended—

(1) in section 102, as redesignated by subsection (a)(3), in paragraph (5)(B), by striking “(as such term is defined in section 102)”;

(2) by striking subsection (d);

(3) by redesignating subsections (e) through (j) as subsections (d) through (i), respectively;

(4) in subsection (f)(1) (as redesignated by paragraph (3)), by striking “subsection (e)(2)” and inserting “subsection (d)(2)”; and

(5) in subsection (g)(1) (as redesignated by paragraph (3)), by striking “subsection (a)(27)” in the matter preceding subparagraph (A) and inserting “subsection (a)(26)”.

SEC. 4. CONFORMING AMENDMENTS.
(2) in section 114—

(A) in subsection (a), by striking “(as defined in section 102)”; and

(B) in subsection (b)(2)(B), by striking “(as defined in section 102)”; 

(3) in section 133(b)—

(A) by striking paragraph (5); and

(B) by redesignating paragraphs (6) through (9) as paragraphs (5) through (8), respectively;

(4) in section 151(2), by striking “, as such term in defined in section 102,”;

(5) in section 152—

(A) in subsection (a)(1)(A), by striking “subsections (a)(27) and (h) of section 487” and inserting “subsections (a)(26) and (g) of section 487”; and

(B) in subsection (b)(1)(B)(i)(I), by striking “section 487(e)” and inserting “section 487(d)”;

(6) in section 153(c)(3), by striking “section 487(a)(25)” each place the term appears and inserting “section 487(a)(24)”;

(7) in section 420L(1), by striking “, as defined in section 102,”;
(8) in section 435(a)(1), by striking “as defined in section 102,”;

(9) section 486(b)—

(A) in paragraph (2), by striking “sections 102(a)(3)(A), 102(a)(3)(B)”;

(B) in paragraph (3)(B), by striking “section 102(a)(1)(C)” and inserting “section 101(b)(4)”;

(C) in paragraph (3)(C), by striking “an institution of higher education that meets the requirements of subsection (a) of section 102, other than the requirement of paragraph (3)(A) or (3)(B) of such subsection,” and inserting “an institution of higher education that meets the requirements of section 101, other than the requirement of section 101(e)(1)(A),”;

(10) in section 487—

(A) in subsection (c)(1)(A)(iii), by striking “section 102(a)(1)(C)” and inserting “section 101(b)(4)”;

(B) in subsection (i)—

(i) by striking paragraph (4); and

(ii) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively;
(11) in section 491(l)(2)(A), by striking “section 102(a)(1)(C)” and inserting “section 101(b)(4)”;

(12) in section 496—

(A) in subsection (c)(3)(A), by striking “section 487(f)” and inserting “section 487(e)”;

(B) in subsection (j), by striking “section 102” and inserting “section 101”; and

(C) in subsection (k), by striking “section 102” and inserting “section 101”;

(13) in section 498—

(A) in subsection (g)(3), by striking “section 102(a)(1)(C)” and inserting “section 101(b)(4)”;

(B) in subsection (i), by striking “section 102” and inserting “section 101”;  

(C) in subsection (j), by striking “sections 102(b)(1)(E) and 102(c)(1)(C)” and inserting “section 101(i)(1)(C)”;

and

(D) in subsection (k)—

(i) in paragraph (1), by striking “section 487(f)” and inserting “section 487(e)”;

and
(ii) in paragraph (2)(A), by striking “sections 102(b)(1)(E) and 102(c)(1)(C)” and inserting “section 101(i)(1)(C)”;

(14) in section 498B(b), by striking “section 102(a)(1)(C)” and inserting “section 101(b)(4)”;

(15) in section 741(f)(2), by striking “section 102” and inserting “section 101”; and

(16) in section 807(d)(1), by striking subparagraph (A) and inserting the following:

“(A) intend to pursue a career in instruction at an institution of higher education in the United States; and”.

SEC. 5. INTEGRITY OF NONPROFIT INSTITUTIONS OF HIGHER EDUCATION.

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

“SEC. 124. INTEGRITY OF NONPROFIT INSTITUTIONS OF HIGHER EDUCATION.

“(a) DETERMINATION.—On determining that an institution of higher education meets the requirements under subsection (b), the Secretary shall approve the conversion of an institution of higher education to a nonprofit institution of higher education.
“(b) APPLICATION.—To be eligible to convert under this section and participate as a nonprofit institution of higher education under this Act, an institution of higher education shall submit an application to the Secretary that demonstrates each of the following:

“(1) That such institution of higher education is a nonprofit institution of higher education.

“(2) That the assets or services acquired from former owners of such institution of higher education were not acquired for more than the value of such assets or services.

“(3) That no member of the governing board of such institution of higher education (other than ex officio members serving at the pleasure of the remainder of the governing board and receiving a fixed salary), or any person with the power to appoint or remove members of such governing board or any immediate family member of such a member of the board or such a person with power of appointment, receives any substantial direct or indirect economic benefit (including a lease, promissory note, or other contract) from such institution of higher education.

“(4) That such institution of higher education is an organization described in section 501(c)(3) of
the Internal Revenue Code of 1986 and is exempt
from taxation under section 501(a) of such Code.

“(5) Subject to subsection (c), that none of the
core functions of the institution of higher education
are under the control of, or subject to significant di-
rection from, an entity that is not a public institu-
tion of higher education or other nonprofit entity.

“(c) Presumption of Significant Direction.—
For purposes of subsection (b)(5), in the case of an insti-
tution, there shall be a conclusive presumption that an en-
tity (other than such institution) exercises significant di-
rection over such institution if one or more of the employ-
ees or owners of the entity serves as an officer, member
of the board, or person holding similar authority for such
institution.

“(d) Transition Period.—In the case of an institu-
tion of higher education approved for conversion under
subsection (a), such institution shall be subject to any
rules and regulations that apply to proprietary institutions
of higher education, as defined in section 102(b), for a
minimum of 5 years.

“(e) Value.—The term ‘value’, with respect to an
acquisition under subsection (b)(2)—
“(1) includes the value of any ongoing relationship (including any contract, agreement, lease or other arrangement);

“(2) subject to paragraph (3), may be demonstrated through—

“(A) a third-party appraisal based on comparable assets acquired by, or goods or services procured by, nonprofit corporations in similar market conditions;

“(B) an independent financing of the acquisition based upon the assets acquired; or

“(C) a full and open competition in the acquisition of services or assets, as such term is defined in section 2.101(b) of title 48, Code of Federal Regulations, as in effect on the date of the enactment of this section; and

“(3) shall be subject to such other demonstration process determined appropriate by the Secretary in a case in which the Secretary does not accept a demonstration process described in paragraph (2).

“(f) PUBLICATION.—

“(1) APPLICATION.—Before the Secretary may approve the conversion of an institution of higher education under subsection (a), the application of such institution submitted to the Secretary under
subsection (b) shall be published in the Federal Register with an appropriate notice and comment period.

“(2) Determination.—The Secretary shall publish each determination under this section, and the reasons for such determination, under the Federal Register.

“(g) Public Representation and Marketing of Nonprofit Status.—An institution of higher education shall not promote or market itself, in any manner, as a nonprofit institution of higher education unless—

“(1) in the case of an institution of higher education that seeks to convert to a nonprofit institution of higher education under this section—

“(A) the Secretary has given final approval of the conversion of the institution to a nonprofit institution of higher education under this section;

“(B) an accrediting agency or association recognized by the Secretary pursuant to section 496 has approved the nonprofit status of the institution; and

“(C) the State has given final approval to the institution as a nonprofit institution of higher education, as applicable; and
“(2) the Commissioner of Internal Revenue has approved the institution as tax exempt for purposes of the Internal Revenue Code of 1986.

“(h) OFFICE TO MONITOR NONPROFIT INTEGRITY.—Not later than 1 year after the date of enactment of the Students Not Profits Act of 2019, the Secretary shall establish an office within the Department with the expertise necessary to carry out this section.

“SEC. 125. REVIEW OF GOVERNANCE.

“The Secretary shall review the governance of an institution of higher education when such institution has engaged in transactions or arrangements determined by the Secretary as potential indicators of private inurement, in order to promote the highest standards of nonprofit integrity.”.