AMENDMENT TO DIVISION A OF RULES

COMMITTEE PRINT 117-12

OFFERED BY MR. MURPHY OF NORTH CAROLINA

At the end of division A (before the short title), insert the following:

PROTECTION OF STUDENT SPEECH AND ASSOCIATION RIGHTS

Sec. 528.

Section 112(a) of the Higher Education Act of 1965 (20 U.S.C. 1011a(a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following:

“(2) It is the sense of Congress that—

“(A) every individual should be free to profess, and to maintain, the opinion of such individual in matters of religion or philosophy, and that professing or maintaining such opinion should in no way diminish, enlarge, or affect the civil liberties or rights of such individual on the campus of an institution of higher education;
“(B) no public institution of higher education directly or indirectly receiving financial assistance under this Act should limit religious expression, free expression, or any other rights provided under the First Amendment to the Constitution of the United States;

“(C) free speech zones and restrictive speech codes are inherently at odds with the freedom of speech guaranteed by the First Amendment to the Constitution of the United States;

“(D) bias reporting systems are susceptible to abuses that may put them at odds with the freedom of speech guaranteed by the First Amendment to the Constitution of the United States; and

“(E) no public institution of higher education directly or indirectly receiving financial assistance under this Act should restrict the speech of such institution’s students through improperly restrictive zones, codes, or bias reporting systems.”.

CAMPUS SPEECH POLICIES AT INSTITUTIONS OF HIGHER EDUCATION

SEC. 529.

Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et. seq.) is amended—

(1) in section 487(a), by adding at the end the following:
“(30)(A) In the case of a public institution (other than an institution described in section 494B(b)(4)), the institution will comply with the expressive activity protections described in section 494B.

“(B) In the case of a private institution (other than an institution described in section 494C(e)), the institution will comply with the expressive activity requirements described in section 494C.”; and

(2) in part G, by adding at the end the following:

“SEC. 494B. CAMPUS SPEECH POLICIES AT PUBLIC UNIVERSITIES.

“(a) DEFINITION OF EXPRESSIVE ACTIVITIES.—

“(1) IN GENERAL.—In this section, the term ‘expressive activity’ includes—

“(A) peacefully assembling, protesting, speaking, or listening;

“(B) distributing literature;

“(C) carrying a sign;

“(D) circulating a petition; or

“(E) other expressive rights guaranteed under the First Amendment to the Constitution of the United States, including religious rights.
“(2) EXCLUSIONS.—In this section, the term ‘expressive activity’ does not include unprotected speech (as defined by the precedents of the Supreme Court of the United States).

“(b) EXPRESSIVE ACTIVITIES AT AN INSTITUTION.—

“(1) IN GENERAL.—Each public institution of higher education participating in a program under this title may not prohibit, subject to paragraph (2), a person from freely engaging in noncommercial expressive activity in a generally accessible area on the institution’s campus if the person’s conduct is lawful.

“(2) RESTRICTIONS.—An institution of higher education described in paragraph (1) may not maintain or enforce time, place, or manner restrictions on an expressive activity in a generally accessible area of the institution’s campus unless the restriction—

“(A) is necessary to achieve a compelling governmental interest;

“(B) is the least restrictive means of furthering that compelling governmental interest;

“(C) is based on published, content-neutral, and viewpoint-neutral criteria;

“(D) leaves open ample alternative channels for communication; and
“(E) provides for spontaneous assembly
and distribution of literature.

“(3) APPLICATION.—The protections provided
under paragraph (1) do not apply to expressive ac-
tivity in an area on an institution’s campus that is
not a generally accessible area.

“(4) NONAPPLICATION TO SERVICE ACADE-
MIES.—This section shall not apply to an institu-
tion of higher education whose primary purpose is
the training of individuals for the military services
of the United States, or the merchant marine.

“(c) CAUSES OF ACTION.—

“(1) AUTHORIZATION.—The following persons
may bring an action in a Federal court of competent
jurisdiction to enjoin a violation of subsection (b) or
to recover compensatory damages, reasonable court
costs, or reasonable attorney fees:

“(A) The Attorney General.

“(B) A person claiming that the person’s
expressive activity rights, as described in sub-
section (b)(1), were violated.

“(2) ACTIONS.—Notwithstanding any other
provision of law, in an action brought under this sec-
tion, the Federal court shall decide de novo all rel-
evant questions of fact and law, including the inter-
pretation of constitutional, statutory, and regulatory provisions, unless the parties stipulate otherwise. In an action brought under this subsection, if the court finds a violation of subsection (b), the court—

“(A) shall—

“(i) enjoin the violation; and

“(ii) if a person whose expressive activity rights were violated brought the action, award the person—

“(I) not less than $500 for an initial violation; and

“(II) if the person notifies the institution of the violation, $50 for each day the violation continues after the notification if the institution did not act to discontinue the cause of the violation; and

“(B) may award a prevailing plaintiff—

“(i) compensatory damages;

“(ii) reasonable court costs; or

“(iii) reasonable attorney fees.

“(3) BASIS FOR ENACTMENT.—This subsection is enacted as an exercise of the enforcement power of the Congress under section 5 of the Fourteenth
Amendment to the Constitution to protect expressive activities.

“(d) STATUTE OF LIMITATIONS.—

“(1) IN GENERAL.—Except as provided in paragraph (3), an action under subsection (c) may not be brought later than 1 year after the date of the violation.

“(2) CONTINUING VIOLATION.—Each day that a violation of subsection (b) continues after an initial violation of subsection (b), and each day that an institution’s policy in violation of subsection (b) remains in effect, shall constitute a continuing violation of subsection (b).

“(3) EXTENSION.—For a continuing violation described in paragraph (2), the limitation described in paragraph (1) shall extend to 1 year after the date on which the most recent violation occurs.

“(e) FEDERAL REVIEW OF SPEECH POLICIES.—

“(1) NO ELIGIBILITY FOR FUNDS.—

“(A) IN GENERAL.—No public institution of higher education shall be eligible to receive funds under this Act, including participation in any program under this title, if the Secretary determines that the institution—
“(i) maintains a policy that infringes upon the expressive rights of students under the First Amendment to the Constitution of the United States; or

“(ii) maintains or enforces time, place, or manner restrictions on an expressive activity in a generally accessible area of the institution’s campus that do not comply with subparagraphs (A) through (E) of subsection (b)(2).

“(B) PROHIBITION.—The Secretary may not conduct an investigation for purposes of making a determination under subparagraph (A) with respect to an institution of higher education, unless such an investigation is conducted under paragraph (4) with respect to a complaint received under paragraph (2).

“(C) COURT REVIEW.—Notwithstanding any other provision of law, the Secretary’s determinations under this subsection shall be reviewed de novo with respect to all relevant questions of fact and law, including the interpretation of constitutional, statutory, and regulatory provisions, unless the parties stipulate otherwise.
“(2) Designation of an Employee to Receive Complaints.—The Secretary shall designate an employee in the Office of Postsecondary Education of the Department to receive complaints (whether electronically or by mail) from students or student organizations at a given public institution of higher education, or from any other person or organization, regarding policies at the institution that meet the description of clause (i) or (ii) of paragraph (1)(A).

“(3) Complaint.—A complaint submitted under subparagraph (2)—

“(A) shall include the provision of the institution’s policy the complainant believes meets the description of clause (i) or (ii) of paragraph (1)(A), along with any evidence regarding the operation and enforcement of such policy the complainant deems relevant; and

“(B) may include an argument and any other supplemental information as to why the policy in question meets such description.

“(4) System of Review.—

“(A) First Stage Review.—

“(i) Request for Response.—Not later than 7 days after the date of receipt
of a complaint under paragraph (2), the Secretary shall review the complaint and request a response to the complaint from the institution.

“(ii) INSTITUTION RESPONSE.—Not later than 30 days after the date the Secretary requests a response under clause (i), the institution shall—

“(I) certify to the Secretary that the institution has entirely withdrawn the policy that occasioned the complaint;

“(II) submit a revised policy for review by the Secretary; or

“(III) submit a defense of the policy that occasioned the complaint.

“(iii) AVAILABILITY TO COMPLAINANT.—

“(I) IN GENERAL.—Not later than 7 days after the date of receipt of a revised policy or defense of the original policy as submitted by the institution pursuant to clause (ii), the Secretary shall make available to the
complainant a copy of such revised
policy or defense.

“(II) Response by complain-
ant.—Not later than 60 days after
the date of receipt of a revised policy
or defense of the original policy under
subclause (I), the complainant may
submit to the Secretary a response to
the revised policy or defense of the
original policy.

“(III) Submission to the in-
stitution of response.—Not later
than 7 days after the date of receipt
of a response under subclause (II),
the Secretary shall submit to the in-
stitution a copy of such response.

“(iv) Determinations.—If the insti-
tution declines to entirely withdraw the
policy that occasioned the complaint and
either submits a revised policy for review
or submits a defense of the policy that oc-
casioned the complaint, the Secretary shall,
not later than 60 days after the date of the
deadline for a response by the complaint as
described in clause (iii)(II), make one of the following determinations:

“(I) Determine that the complaint in question has insufficient merit to proceed to Second Stage Review described in subparagraph (B).

“(II) Determine that the complaint in question has sufficient merit to proceed to Second Stage Review described in subparagraph (B).

“(v) NOTIFICATION.—Not later than 7 days after the date the Secretary makes a determination under clause (iv), the Secretary shall notify the institution and the complainant of such determination.

“(vi) END.—The determination under clause (iv) shall constitute the end of First Stage Review.

“(B) SECOND STAGE REVIEW.—

“(i) IN GENERAL.—In a Second Stage Review, the Secretary shall notify the institution and the complainant of the commencement of the Second Stage Review, and shall give the institution the option of entirely withdrawing the policy that occa-
sioned the complaint or submitting a revised policy for review within 30 days of the commencement of the Second Stage Review. In such notification submitted to the institution and complainant, the Secretary shall indicate the relevant sections of the institution’s policy in question and explain why these sections may be out of compliance.

“(ii) DETERMINATION.—Not later than 90 days from the commencement of the Second Stage Review, the Secretary shall determine whether the policy that occasioned the complaint, or the revised policy submitted during the First Stage Review, or the revised policy submitted within the first 30 days of the Second Stage Review, is in violation of student rights under the First Amendment to the Constitution of the United States or of the restrictions on the regulation of speech by time, place, and manner set forth in this section, thereby ending Second Stage Review.

“(iii) INVESTIGATION.—During Second Stage Review, the Secretary may con-
duct an investigation in which further information may be sought or requested from the complainant, the institution, or any other pertinent source.

“(iv) Certification of Withdrawal.—At any point during the Second Stage Review, the institution in question may certify to the Secretary that it has entirely withdrawn the policy that occasioned the complaint, thereby ending the Second Stage Review.

“(v) Notification and Justification.—If the Secretary determines by the conclusion of Second Stage Review that the policy that occasioned the complaint or the revised policy submitted for review during First Stage Review or Second Stage Review is consistent with the expressive rights of students under the First Amendment to the Constitution of the United States and the restrictions on the regulation of speech by time, place, and manner set forth in this Act—

“(I) the Secretary shall notify the complainant and the institution of
such determination not more than 7
days after the date of the determina-
tion; and

“(II) the Secretary shall explain
and justify such determination in a
written decision citing relevant legal
precedent, copies of which shall be
sent to the complainant, the institu-
tion, the authorizing committees, and
made available for public inspection,
including for online reading by the
public.

“(C) Determination that institution
is out of compliance.—

“(i) In general.—If, upon comple-
tion of the Second Stage Review, the Sec-
retary determines that the policy that oc-
sioned the complaint, or the revised policy
submitted for review during the First
Stage Review or Second Stage Review, vio-
lates the First Amendment to the Con-
stitution of the United States or the re-
strictions on the regulation of speech set
forth in this section, the Secretary shall
notify the complainant and the institution
not more than 7 days after the date of completion of Second Stage Review that the institution is out of compliance with the requirements for receiving funds under this Act, including participation in any program under this title, but will be granted a grace period of 120 days to return to compliance before being formally stripped of eligibility.

“(ii) POSTING; EXPLANATION; FINAL REVIEW.—As part of the notification under clause (i), the Secretary shall—

“(I) require the institution to post the determination of the Secretary on the website of the institution within 2 clicks of the homepage, without a paywall, email login, or other restriction to access;

“(II) explain and justify the determination of the Secretary in a written decision citing relevant legal precedent, copies of which shall be sent to the complainant, the institution, the authorizing committees, and made available for public inspection,
including for online reading by the public; and

“(III) inform the institution that Final Review has begun and that the institution must either certify to the Secretary that it has entirely withdrawn the policy that occasioned the complaint, or submit a revised policy for review to the Secretary not later than 60 days after the date of receipt of notice of the conclusion of Second Stage Review.

“(D) FINAL REVIEW.—

“(i) IN GENERAL.—If an institution submits a revised policy for review as described in subparagraph (C)(ii)(III), the Secretary shall review such revised policy and determine not later than 120 days after the date of commencement of Final Review whether the revised policy is consistent with the expressive rights of students under the First Amendment to the Constitution of the United States and with the restrictions on the regulation of speech
by time, place, and manner set forth in
this section.

“(ii) Determination of Compliance.—If the Secretary determines, as de-
scribed in clause (i), that the revised policy
is consistent with the expressive rights of
students under the First Amendment to
the Constitution of the United States and
with the restrictions on the regulation of
speech by time, place, and manner set
forth in this section, the Secretary shall
notify the complainant and the institution
of such determination not more than 7
days after the date the determination is
made, thereby ending the final Stage Re-
view.

“(iii) Determination of Violation.—If the Secretary determines, as de-
scribed in clause (i), that the revised policy
violates the expressive rights of students
under the First Amendment to the Con-
stitution of the United States or the re-
strictions on the regulation of speech by
time, place, and manner set forth in this
section, the Secretary shall—
“(I) notify the complainant and the institution of such determination not more than 7 days after the date the determination is made, thereby ending the final Stage Review; and

“(II) explain and justify the determination in a written decision citing relevant legal precedent, copies of which shall be sent to the complainant, the institution, and made available for public inspection, including for online reading by the public.

“(E) LOSS OF ELIGIBILITY.—

“(i) IN GENERAL.—If the Secretary determines, during the Final Stage Review, that the institution’s policy in question violates the expressive rights of students under the First Amendment to the Constitution of the United States or the restrictions on the regulation of speech by time, place, and manner set forth in this section, the Secretary shall—

“(I) notify the complainant and the institution not more than 7 days after the date of the determination
that the institution will lose eligibility
to receive funds under this Act, in-
cluding participation in any program
under this title, in accordance with
this subparagraph;

“(II) notify the institution that
the loss of eligibility shall take effect
beginning with any student notified of
acceptance for admission to the insti-
tution during the award year subse-
quent to the award year during which
the determination is made, and that
no restoration of eligibility for ineli-
gible students in subsequent award
years will occur prior to the beginning
of the third award year subsequent to
the award year during which the de-
termination is made;

“(III) explain and justify the de-
termination in a written decision cit-
ing relevant legal precedent, copies of
which shall be sent to the complain-
ant, the institution, the authorizing
committees, and made available for
public inspection, including for online
reading by the public; and

“(IV) require the institution to
post the determination of the Secre-
try on the website of the institu-
tion, within two clicks of the home-
page, without a paywall, email login,
or other restriction to access.

“(ii) CONTINUED ELIGIBILITY.—Each
student enrolled at the institution during
the award year in which eligibility is lost
as described in this subparagraph, and
each student notified of acceptance for ad-
mission to the institution during the award
year in which eligibility is lost as described
in this subparagraph, shall continue to be
eligible to participate, through the institu-
tion, in programs funded under this Act
during the 3-year period after the date of
the loss of eligibility.

“(F) RESTORATION OF ELIGIBILITY.—
“(i) IN GENERAL.—Not later than 7
days after the loss of eligibility under sub-
paragraph (E), the Secretary shall inform
the institution that the institution may re-
store eligibility, either by certifying to the Secretary that the institution has entirely withdrawn the policy that precipitated loss of eligibility, or by submitting a revised policy for review at any time following the failure of the Final Review.

“(ii) REVIEW OF REVISED POLICY.—

The Secretary shall review a revised policy submitted for review after the loss of eligibility and determine not later than 120 days after the date the revised policy is submitted whether such policy is consistent with the expressive rights of students under the First Amendment to the Constitution of the United States and with the restrictions on the regulation of speech by time, place, and manner set forth in this Act.

“(iii) INVESTIGATION.—While conducting a review to restore eligibility under this subparagraph, the Secretary may conduct an investigation in which further information may be sought or requested from the institution, or any other source the Secretary determines pertinent.
“(iv) WRITTEN DECISION.—In making a determination of whether a revised policy submitted for review after the loss of eligibility is either consistent or inconsistent with the expressive rights of students under the First Amendment to the Constitution of the United States and with the restrictions on the regulation of speech by time, place, and manner set forth in this Act, the Secretary shall explain and justify the determination in a written decision citing relevant legal precedent, copies of which shall be sent to the complainant, the institution, the authorizing committees, and made available for public inspection, including for online reading by the public.

“(v) LIMIT ON REVIEW.—The Secretary may conduct not more than 1 review to restore eligibility for a single institution in any given award year.

“(vi) RESTORATION.—If an institution certifies to the Secretary that the policy that precipitated the loss of eligibility has been entirely withdrawn, or if Secretary determines that the revised policy
submitted for review is consistent with the expressive rights of students under the First Amendment to the Constitution of the United States and with the restrictions on the regulation of speech by time, place, and manner set forth in this section, the institution’s eligibility to receive funds under this Act, including participation in any program under this title, shall be restored not earlier than the beginning of the third award year following the year in which notification of loss of eligibility was received.

“(G) GOOD FAITH REPRESENTATION.—

“(i) IN GENERAL.—The Secretary shall inform any institution undergoing review of its campus speech policies that it expects the institution to represent its policies, along with any proposed revisions in such policies, in good faith.

“(ii) MISREPRESENTATION.—

“(I) COMPLAINTS.—A student, student organization, or any other person or organization may file, with the employee in the Office of Postsec-
ondary Education of the Department designated by the Secretary under paragraph (2) to receive complaints, a complaint that an institution has substantially misrepresented its speech policies, or withheld information requested by the Secretary during an investigation, or attempted to circumvent the review process by reinstating a policy under review in a substantially similar form without informing the Secretary.

“(II) LOSS OF ELIGIBILITY.—If the Secretary determines upon investigation, or after receiving a complaint under subclause (I), that an institution has substantially misrepresented its speech policies, or withheld information requested by the Secretary during an investigation, or attempted to circumvent the review process by reinstating a policy under review in a substantially similar form without informing the Secretary, the institution shall lose eligibility to receive
funds under this Act, including participation in any program under this title.

“(iii) LOSS OF ELIGIBILITY.—If an institution loses eligibility under clause (ii), the Secretary shall notify the institution, not later than 7 days after the determination, that the loss of eligibility shall take effect beginning with any student notified of acceptance for admission to the institution during the award year subsequent to the award year during which the determination is made, and that no restoration of eligibility for students admitted in subsequent award years will occur prior to the beginning of the third award year subsequent to the award year during which the determination is made.

“(f) RETALIATION PROHIBITED.—

“(1) IN GENERAL.—No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this section.
'(2) SPECIFIC CIRCUMSTANCES.—

‘‘(A) EXERCISE OF FIRST AMENDMENT RIGHTS.—The exercise of rights protected under the First Amendment to the Constitution of the United States does not constitute retaliation prohibited under paragraph (1).

‘‘(B) CODE OF CONDUCT VIOLATION FOR MATERIALLY FALSE STATEMENT.—Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this section does not constitute retaliation prohibited under paragraph (1). A determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

‘‘(g) JUDICIAL REVIEW.—A public institution of higher education participating in a program under this title may seek judicial review of an agency action under this section in accordance with chapter 7 of title 5, United States Code.
“SEC. 494C. CAMPUS SPEECH POLICIES AT PRIVATE UNIVERSITIES.

“(a) IN GENERAL.—Each private institution of higher education eligible to receive funds under this Act, including any program under this title, shall—

“(1) post in one place on the website of the institution all policies that pertain to the protection and regulation of the expressive rights of students, including the right to submit a complaint under this section, within 2 clicks of the homepage, without a paywall, email login, or other restriction to access; and

“(2) include a copy of such policies in a handbook distributed to new students.

“(b) RESPONSIBILITY FOR FULL POLICY DISCLOSURE.—Each private institution of higher education described in subsection (a) shall include with the copy of the policies described in subsection (a)—

“(1) a statement affirming that all policies pertinent to the protection and regulation of the expressive rights of students have been disclosed in the manner required by this section; and

“(2) a statement affirming that publication of such policies as required by this section and instructions for students on how to contact the employee designated in the Office of Postsecondary Education...
in the Department under subsection (d)(1) to file a complaint.

“(c) CAUSE OF ACTION.—

“(1) AUTHORIZATION.—A student claiming that a private institution of higher education in which the student is enrolled has violated published policy regarding expressive rights imposed by this section may bring an action in a Federal court of competent jurisdiction to enjoin such violation or to recover compensatory damages, reasonable court costs, or reasonable attorney fees.

“(2) ACTIONS.—Notwithstanding any other provision of law, in an action brought under this subsection, the Federal court shall decide de novo all relevant questions of fact and law, including the interpretation of constitutional, statutory, and regulatory provisions, unless the parties stipulate otherwise. In an action brought under this subsection, if the court finds a violation of subsection (b), the court—

“(A) shall—

“(i) enjoin the violation; and

“(ii) award the student—

“(I) not less than $500 for an initial violation; and
“(II) if the student notifies the institution of the violation, $50 for each day the violation continues after the notification if the institution did not act to discontinue the cause of the violation; and

“(B) may award a prevailing plaintiff—

“(i) compensatory damages;

“(ii) reasonable court costs; or

“(iii) reasonable attorney fees.

“(d) SECRETARIAL REQUIREMENTS.—

“(1) DESIGNATION OF AN EMPLOYEE.—The Secretary shall designate an employee in the Office of Postsecondary Education in the Department who shall—

“(A) receive copies of all complaints pertaining to the protection and regulation of the expressive rights of students at private institutions of higher education that receive funds under this section, including any programs under this title;

“(B) preserve all records of such policies for a period of not less than 10 years;

“(C) receive complaints from students, student organizations, or from any other person or
organization, that believes a private institution
of higher education has not disclosed a policy
pertaining to the protection and regulation of
the expressive rights of students as required by
this section, is enforcing a policy pertaining to
the expressive rights of students that has not
been disclosed as required by this section, or
has failed to make a full policy disclosure, for
the enforcement of speech policies, as required
by this section;

“(D) not more than 7 days after the date
of receipt of a complaint under subparagraph
(C), review the complaint and request a re-
response from the institution;

“(E) undertake an investigation, in re-
response to a complaint under subparagraph (C),
to determine whether a private institution of
higher education has failed to disclose a policy
pertaining to the protection and regulation of
the expressive rights of students as required by
this section or is enforcing a policy pertaining
to the expressive rights of students that has not
been disclosed as required by this section; and

“(F) determine, not later than 120 days
after the date of receipt of a complaint, whether
the private institution of higher education in question has failed to disclose a policy pertaining to the protection and regulation of the expressive rights of students as required by this section or is enforcing a policy pertaining to the expressive rights of students that has not been disclosed as required by this section.

“(2) LOSS OF ELIGIBILITY.—

“(A) IN GENERAL.—If the Secretary determines that a private institution of higher education has failed to disclose a policy pertaining to the protection and regulation of the expressive rights of students as required by this section or is enforcing a policy pertaining to the expressive rights of students that has not been disclosed as required by this section, the Secretary shall notify the institution and the complainant, not more than 7 days after the date of such determination, that the institution is out of compliance with the requirements for receiving funds under this Act, including participation in any program under this title, but will be granted a grace period of 60 days to return to compliance before formally losing eligibility
for receiving funds under this Act, including participation in any program under this title.

“(B) Specifications in notification.—

As part of the notification under subparagraph (A), the Secretary shall specify which policies need to be disclosed and published in order for eligibility to be restored.

“(C) Notification of loss of eligibility.—

“(i) In general.—If the Secretary determines that, 60 days after being notified that the institution is out of compliance as described in subparagraph (A), the institution has failed to return to compliance by making the appropriate speech policy disclosures, the Secretary shall notify the institution and the complainant, not more than 7 days after the date of such determination—

“(I) that the institution will lose eligibility to receive funds under this Act, including participation in any program under this title;

“(II) that the loss of eligibility shall take effect beginning with any
student notified of acceptance for admission to the institution during the award year subsequent to the award year during which the determination is made, and that no restoration of eligibility for ineligible students in subsequent years will occur prior to the beginning of the third award year subsequent to the award year during which the determination is made; and

“(III) that the institution shall post the determination of the Secretary on the website of the institution, within two clicks of the homepage, without a paywall, email login, or other restriction to access.

“(ii) CONTINUED ELIGIBILITY.—Each student enrolled at the institution during the award year in which eligibility is lost as described in this subparagraph, and each student notified of acceptance for admission to the institution during the award year in which eligibility is lost as described in this subparagraph, shall continue to be eligible to participate, through the institu-
tion, in programs funded under this Act
during the 3-year period after the date of
the loss of eligibility.

“(3) RESTORATION OF ELIGIBILITY.—

“(A) IN GENERAL.—Not later than 7 days
after the loss of eligibility under paragraph (2),
the Secretary shall inform the institution that
the institution may restore eligibility by making
the appropriate speech policy disclosures, as di-
rected by the Secretary in conformity with this
section.

“(B) REVIEW.—The Secretary shall review
any policy disclosures and determine whether
the policy disclosures are sufficient to restore
eligibility for receiving funds under this Act, in-
cluding participation in any program under this
title, not later than 120 days after the date of
receipt of such disclosures or statement.

“(C) INVESTIGATION.—While conducting a
review to restore eligibility under this para-
graph, the Secretary may conduct an investiga-
tion in which further information may be
sought or requested from the institution, or
other source pertinent to the case.
“(D) RESTORATION.—If the Secretary determines that the institution under review to restore eligibility under this paragraph has made the policy disclosures as required by this section, the institution’s eligibility to receive funds under this Act, including participation in any program under this title, shall be restored not earlier than the beginning of the third award year following the year in which notification of loss of eligibility was received.

“(E) LIMIT ON REVIEW.—The Secretary may conduct not more than 1 review to restore eligibility for a single institution in any given award year.

“(4) PROHIBITION.—The Secretary may not conduct an investigation under this subsection for purposes of making a determination under paragraph (2)(A) with respect to an institution of higher education, unless such an investigation is conducted with respect to a complaint received under paragraph (1).

“(e) NONAPPLICATION TO CERTAIN INSTITUTIONS.—This section shall not apply to an institution of higher education that is controlled by a religious organization.
“(f) JUDICIAL REVIEW.—A private institution of higher education participating in a program under this title may seek judicial review of an agency action under this section in accordance with chapter 7 of title 5, United States Code.”.