

FEDERAL POTPOURRI: A VIEW FROM WASHINGTON

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The Higher Education Act was last comprehensively reauthorized by the *Higher Education Amendment of 1998* (P.L. 105-244), which expired September 30, 2003. Since the initial expiration of the authorization, there have been several temporary extensions:

September 30, 2003 *Higher Education Amendments of 1998 (P.L. 105-244)* was set to expire – Automatic first extension from September 30, 2003 to September 30, 2004.

Second Extension of the HEA, H.R. 5185, the Higher Education Extension Act of 2004 – Continuing HEA until September 30, 2005.

Third Extension of the HEA, H.R. 3784, the Higher Education Extension Act of 2005 – Continuing HEA until December 31, 2005.

Fourth Extension of the HEA, H.R. 4525, the Second Higher Education Extension Act of 2005 – Continuing HEA until March 31, 2006.

Fifth Extension of the HEA, H.R. 4911, the Higher Education Extension Act of 2006 – Continuing HEA until June 30, 2006.

Sixth Extension of the HEA, H.R. 5603, the Second Higher Education Extension Act of 2006 – Continuing HEA until September 30, 2006.

Seventh Extension of the HEA, H.R. 6138, the Third Higher Education Extension Act of 2006 – Continuing HEA until June 30, 2007.

Eighth Extension of the HEA, S. 2258, the Higher Education Extension Act of 2007 – Continuing HEA until March 31, 2008. (Note: This bill includes some technical amendments correcting drafting errors in H.R. 2669, *the College Cost Reduction and Access Act of 2007*.)

Ninth Extension of the HEA, S. 2733, the Higher Education Extension Act of 2008 – Continuing HEA until April 30, 2008.

The 108th and 109th Congresses each considered but did not complete the HEA reauthorization process.

Like the process that occurred during the 109th Congress, the first session of the 110th Congress became heavily intertwined with the budget reconciliation process, as both the HELP Committee and the House Education and Labor Committee reported reconciliation recommendations that made numerous changes to programs and provisions contained in the HEA. The *College Cost Reduction and Access Act* (CCRAA) of 2007 (P.L. 110-84) was signed into law on September 27, 2007, and the CCRAA made significant changes to the FFEL and the Direct Loan Programs, the Pell Grant Programs, and the federal need analysis formula. The CCRAA also reauthorized the Pell Grant Program through FY

2017. Earlier, the *Higher Education Reconciliation Act* (HERA), passed as part of the *Deficit Reduction Act of 2005* (P.L. 109-171), which was signed into law on February 8, 2006, which extended several provisions in the two loan programs. As a result, the current reauthorization bills are less focused on some of the larger programs.

For the 110th Congress, the *Higher Education Amendments of 2007* (S. 1642) was introduced by Senator Edward Kennedy (D-MA), Chairman of the Senate Health, Education, Labor, and Pension (HELP) Committee, on June 18, 2007, approved by the HELP Committee on July 10, 2007, and passed the Senate on July 24, 2007. On November 9, 2007, Congressman George Miller (D-CA), Chairman of the House, Education, and Labor Committee, introduced the *College Opportunity and Affordability Act of 2007* (H.R. 4137), which was approved by the Committee on November 15, 2007. On February 7, 2008, the House of Representatives approved the *College Opportunity and Affordability Act of 2007*. The staff of both the House and Senate Committees has been engaging in pre-conference discussions on the two reauthorization bills so it is possible that there could be a reauthorization bill signed into law sometime in the Spring 2008.

HIGHER EDUCATION RECONCILIATION ACT

P.L. 109-171

On February 8, 2006, President Bush signed the *Higher Education Reconciliation Act of 2005 (HERA)*, P.L. 109-171. This law produced a net savings of \$12.7 billion from making cuts to the student loan program lender and guaranty agency subsidies.

HERA made the following changes to the HEA:

- Interest rate established at a fixed interest rate of 6.8 percent for Stafford Loans; 8.5 percent for PLUS Loans and 7.9 for Direct PLUS Loans;
- Established a default fee;
- Created two new programs: ACG and National SMART Grants;
- Increased first-year loan limits from \$2,625 to \$3,500 and raising the second-year loan limits from \$3,500 to \$4,500;
- Five-year phase-out/phase down of student origination fees;
- Eliminated the 50 percent rule;
- Modified need analysis components; and
- Modified Return of Title IV requirements.

HIGHER EDUCATION AMENDMENTS OF 2007

S. 1642

On July 24, 2007, the Senate approved the *Higher Education Amendments of 2007*, S. 1642, which would reauthorize the *Higher Education Act*. The Senate-approved bill included changes made by the “manager’s amendment” introduced by Senator Edward Kennedy (D-MA), the Chairman of the Health, Education, Labor and Pensions Committee, which modified some of the bill’s provisions on accreditation and transfers of credit when the bill was debated on the floor. The amendment replaced the requirement in the HELP Committee-approved version of S. 1642 that colleges would have to publish their credit transfer policy and could not use the accrediting body of the sending institution as the sole reason for denying transfer credit. Instead, colleges would have to publish any established criteria the institution used regarding the transfer of credit earned at another institution. In addition, the manager’s amendment eliminated a section in the HELP Committee-passed version that specified what factors accrediting agencies should consider when determining whether a college was meeting standards of student achievement.

COLLEGE COST REDUCTION AND ACCESS ACT OF 2007

P.L. 110-84

On September 27, 2007, President Bush signed into law, the *College Cost Reduction and Access Act of 2007* (H.R. 2669), P.L. 110-84. Some of the provisions of P.L. 110-84 include the following:

- Over the next five years, Federal Pell Grant funding will increase by \$11.4 billion, allowing the maximum Pell Grant award to increase from \$4,310 in 2007 to \$5,400 by 2012. (The maximum annual award for the 2008-2009 award year will be \$4,731.)
- The Teacher Education Assistance for College and Higher Education (TEACH) Grants are established providing \$4,000 a year or \$8,000 for graduate students to be used for tuition and fees (and room and board in institutionally provided housing) for teachers agreeing to serve as a full-time teacher for at least four years at a high need school to teach math, science, foreign languages, bilingual education, special education, teaching as a reading specialist, or another field documented as high need by the Federal Government, State, or local government approved by the Department of Education.
- Gradually, the interest rate for subsidized loans will be cut in half from 6.8 percent to 3.4 percent for loans first disbursed July 1, 2011 to July 1, 2012 (On July 1, 2012, the interest rate reverts to 6.8 percent);
- Loan repayments will be limited to 15 percent of a borrower's discretionary income or 15 percent of the amount that a borrower's adjusted gross income exceeds 150 percent of the poverty line, divided by 12. Unpaid interest and principal are capitalized and any outstanding loan balance is forgiven after 25 years;
- A number of cuts are to be made to lenders and guarantors (to pay for the expenditures) including reducing the insurance paid to lenders on defaulted loans from 98 percent to 97 percent through October 1, 2012 and then it will be reduced to 95 percent and reducing the amount that guaranty agencies keep through collections on defaulted loans from 23 percent to 16 percent which would generate around \$20 billion;

Secretary of Education Margaret Spellings applauded the bill's commitment to providing increased Pell Grant funding to the neediest students; however, she noted that the bill "leaves difficult choices for future Congresses and the next Administration" because it is "diverting resources from Pell Grants to poorly targeted policies and new mandatory programs."

Senator Edward Kennedy (D-MA), Chair of the Senate Committee on Health, Education, Labor and Pensions (HELP), said that the *College Cost Reduction Act* will provide the “largest increase in student aid since the GI Bill - helping millions of students and families pay for college as no new cost to taxpayers.” Senator Mike Enzi (R-WY), Ranking Member of the HELP Committee, commended President Bush for signing H.R. 2669 into law, the “first step toward making college more affordable and acceptable. Senator Enzi stated that Congress must now focus on the reauthorization of the *Higher Education Act*.”

THE COLLEGE OPPORTUNITY AND AFFORDABILITY ACT OF 2007

H.R. 4137

On February 7, 2008, the House approved H.R. 4132, the *College Opportunity and Affordability Act of 2007*, which had been agreed to on November 15, 2007, by the House Committee on Education and Labor. The bill would reauthorize the *Higher Education Act* through FY 2012. The staff of the House and Senate members are meeting to work out the differences in the two bills. Once the conference is completed, the House and Senate will vote on the conference report and the final bill, once passed by both chambers, will be sent to the President for his signature. The quick pace is likely to continue as efforts are being made to complete the *HEA* prior to the expiration of the current extension on March 31, 2008.

According to a press release issued on the same day, Congressman Miller said that “*The College Opportunity and Affordability Act of 2007* would reform and strengthen the nation’s higher education programs to ensure that they operate in the best interests of students and families.” Congressman Howard “Buck” McKeon (R-CA), said he welcomed “the legislation that would hold colleges and universities accountable for rising tuitions.” Congressman Ric Keller (R-FL) said that that “[t]he reauthorization of the Higher Education Act is long overdue and I look forward to working closely with my colleagues to make sure that higher education is not only accessible but also affordable for all students.”

ACCREDITATION

Following the enactment of the *Higher Education Reconciliation Act of 2005* (“HERA”), the Secretary undertook negotiated rulemaking to carry out the changes in made to the *Higher Education Act* (“HEA”). Although the HERA did not make any changes to the HEA, the Secretary had decided to establish a committee to carry out negotiated rulemaking to consider recommendations proposed by the Secretary of Education’s Commission on the Future of Higher Education, which did not hold accreditation in high regard.

On June 1, 2007, the final session was held on accreditation and consensus was not reached. The three issues that were most contentious included the expansion of the role of the National Advisory Committee on Institutional Quality and Integrity (NACIQI), which provides federal recognition of accrediting agencies; the promotion of greater acceptance of transfer credit among all sectors of higher education; and the requirement to establish standards of student outcomes and performance. The Secretary planned to publish accreditation regulations even without consensus.

On May 24, 2007, Senator Lamar Alexander (R-TN) warned Secretary of Education Margaret Spellings from the Senate floor that he planned to add a provision in the soon to be introduced Higher Education reauthorization bill that would prevent the Secretary from issuing final regulations until Congress reauthorizes changes in the HEA. While Senator Alexander applauded the Secretary’s efforts to seek greater accountability in higher education, he did not like the direction the Department was taking during the negotiated rulemaking process. The Senator noted that the Department was planning to propose a “complex system of accountability to tell colleges how to accept transfer students, how to measure what students are learning, and how colleges should accredit themselves.” Two weeks later, on June 7, 2007, language to block implementation of new accreditation regulations was included in the FY 2008 appropriations bill passed by the House Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies, which passed the Subcommittee unanimously.

On June 14, 2007, 18 of the 21 members of the Senate Health, Education, Labor and Pensions (HELP) Committee sent a letter to Secretary Spellings in which they indicated their support for her “overall goal of ensuring that our accreditation system is an effective means of promoting quality in higher education.” However, they “respectively” asked her to reframe from proposing new regulations on accreditation until after the HEA is reauthorized since the HELP Committee plans to make changes to the accreditation section of the law that will strengthen the accreditation system.

On June 20, 2007, the Secretary heeded the call from Congress and sent a letter to Senator Alexander stating that “parents, students, and taxpayers deserve a system that promotes greater transparency and accountability.” She concluded her letter by saying that she agreed to not publish the accreditation regulations.

On December 18, 2007, Secretary Spellings addressed the members of NACIQI and used the forum to emphasize the importance of transparency across higher education and to stress the need to supply valuable information about colleges and universities to parents and students so they could make informed decisions. Secretary Spellings said: “By law, student learning is a core part of accreditation...Unfortunately, students are often the least informed and the last to be considered. Accreditation remains one of the least publicized, least transparent parts of higher education, even compared to our Byzantine and bewildering financial aid system. Most students don’t know that different types of accreditation exist until they encounter hurdles. Every year, millions repeat coursework because their credentials don’t transfer.” In calling for changes, the Secretary emphasized that she would never work to undermine the diversity or excellence of America’s system of higher education. “But, on behalf of consumers – be they students, families, or institutions – we have the right and the responsibility to ask for more and better information.”

The Senate has passed their version of the reauthorization of the *HEA* on July 24, 2007 and the House has passed their version of the reauthorization of the *HEA*. Both bills address a number of topics related to accreditation.

Student Performance Outcomes: The House-passed bill is now similar to the Senate bill and both contain language that would provide institutional discretion to set student achievement standards and performance measures based on its own mission. Accreditors have been concerned that colleges would have too much authority and make it difficult for them to eliminate poor performers.

Transfer of Credit: The language in the House and Senate bills are similar, which would require accrediting agencies to confirm that institutions have a transfer of credit policy, which is published and that the policy includes the criteria used in considering transfer of credit from another institution.

Both bills require that institutions disclose their transfer of credit policy. Neither bill would prohibit an institution from denying transfer credit based on the accrediting agency of the sending institution. Those in traditional higher education insist that there is no problem with current transfer of credit policies.

Public Information: The disclosure requirements are similar in both the House and Senate bills. These provisions call for accreditors to make public award of accreditation, reaffirmation of accreditation and adverse actions. Both bills require, in contrast to current law, that accreditors make public the official comments of an affected institution.

Due Process: The House bill is similar to the Senate bill, except that the House bill does not include an appeal for probation. The remaining language in both bills requires accreditors to establish and apply review procedures throughout the accrediting process, including evaluation and withdrawal proceedings which comply with due process procedures.

Distance Learning: The House and Senate bills are identical. The language would permit accrediting agencies to address the quality of an institution's distance education offerings without a requirement to establish separate standards, procedures or policies for the evaluation of distance education. Accreditors would have to require that institutions establish that the student who registers for a distance education course or program is the student who participates in and completes the program and receives the academic credit.

Federally-Required Disclosures: The House bill does not obligate the accrediting agencies to review all federally required information that an institution must provide as part of an on-site evaluation. The Senate bill would require accrediting agencies to review all federally required information.

National Advisory Committee on Institutional Quality and Integrity (NACIQI): The House bill retains the Committee while the Senate bill would create a new Advisory Committee. Both bills would call for some of the members to be named by Congress.

Monitoring Enrollment Growth: Both bills would require accrediting agencies to monitor growth in institutions that experience significant increases in enrollment.

Rule of Construction and Other Requirements: The House bill places limitations on the authority of the Secretary to issue regulations on student achievement as does the Senate bill. The House bill also calls for nonfederal participants in rulemaking to be individuals with recognized legitimacy as representatives of major constituencies in higher education. In addition, the House bill calls for a study of institutional articulation agreements by the Secretary and by 2010 make these agreements publicly available.

REPORTING REQUIREMENTS

Of particular interest to the higher education community is the large number of new reporting requirements in both bills. In the House bill, a minimum of 189 new requirements address such topics as college costs, student loans, file sharing and textbook pricing.

In the area of college costs, H.R. 4137 creates a “Postsecondary Education Price Index” that will reflect annual changes in tuition and fees at individual institutions by sector. Schools whose tuition and fee increases exceed the index would be required to convene a “quality-efficiency task force” to review their operating costs as compared to similar institutions. The results of the task force review would be published on the Department of Education’s College Navigator web site.

Colleges would also be required to publish net price information by income in all application materials. In order to meet this requirement, institutions would be required to adopt the Department’s net price calculator or develop their own.

In response to the recent scrutiny regarding student loans, the bill includes several new requirements for institutional disclosure regarding financial aid. Colleges and universities must compile an annual report for each lender with which they have education loan arrangements and include details of the lender disclosure form provided to students and an explanation of why the terms and conditions of each type of loan under the agreement are beneficial to students and parents. Institutions with preferred lender agreements must provide a list of such agreements and relevant details, including why the lender was selected.

The bill also requires institutions to provide policies and procedures related to illegal downloading or peer-to-peer file sharing to students and staff, as well as to develop plans for alternatives to illegal downloading and “technology-based” deterrents to prevent such activity.

Other reporting requirements include reports on retail prices for required and recommended texts and related materials for all course offered, expansion of crime reporting categories, fire safety disclosures and logs, and the identification of the names and addresses of any entities or individuals who contribute \$1 million or more under Title VI to any institution.

Last summer, Senator Lamar Alexander (R-TN) tried to convince his colleagues on the HELP Committee that the proposed regulations were overburdening colleges and universities. He suggested that if Congress wanted to increase the number of regulations, it should at least recommend eliminating outdated regulations. His recommendations fell on deaf ears and the Senate passed S. 1642, which included at least 152 new reporting requirements. The House bill includes at least 189 new reporting requirements.

Colleges and universities assert that the new reporting requirements, including those designed to discourage institutions from increasing tuition and fees, may result in increased tuition costs. College lobbyists and associations that represent state legislatures are urging congressmen to omit some of the disclosure provisions, particularly those regarding the establishment of an annual “higher education price index.” In response to the concerns of the Governors on the House-Committee passed bill, the maintenance of effort requirements for states were modified and the House-passed version clarified that state higher education loans are not considered to be private loans.

COHORT DEFAULT RATES

While the House and Senate are in conference to work out their differences in their versions of the reauthorization bills, there is one amendment worth paying attention to. An amendment included in H.R. 4137 sponsored by Congressmen Raul Grijalva (D-AZ) and Timothy Bishop (D-NY), commonly known as the “Grijalva/Bishop Amendment,” would increase the cohort default rates for all sectors of education. The amendment would modify the definition of cohort default rate by adding one year to the existing two year definition. The Department of Education uses the cohort default rate to identify and sanction schools with high default rates (i.e., over 40 percent in 1 year or over 25 percent in each of 3 consecutive years) and encourage default rate prevention among the student loan participants (i.e., colleges, lenders, guaranty agencies).

The House-version of the bill has modified the cohort default rate provision to allow for a transition period before the sanctions are imposed and modified the sanctions to be less onerous. The House-passed version also amended the provisions to increase the thresholds used to provide benefits to institutions that keep their cohort default rate down from 10% to 15%. (The benefits are that schools do not have to delay the first disbursement of a loan to a first-time student and the school would not have to make multiple disbursements of a loan when the student has a remaining term that is less than an academic year.)

The thresholds related to the cohort default rate which are used to sanction institutions that meet or exceed the rate for three years in a row would be increased from 25% to 30%. An appeal process would be instituted to ensure that institutions are provided technical assistance early on if they are in danger of exceeding the thresholds. There would be a transition period and an effective date of 2012 for the new provisions to take effect.

A number of traditional higher education associations are supporting this amendment. The American Council of Education sent a letter of support on January 29, 2008. However, they may not fully understand the long term impact of the modified calculation of the cohort default rates on community colleges or HBCUs.

Based on data available from previous studies and data available from the Department of Education, a number of institutions will see a significant increase in their cohort default rates. By adding a third year to the time period in which cohort default rates are tracked, colleges could expect an increase in their cohort default rates by an average of 60 percent or more, which would put more institutions at risk of being penalized. If cohort default rates rise to these levels, hundreds of institution could fact the lose FFELP eligibility and institutions may lose their benefits of having defaults rates of under 10 percent.

90/10

Both the House and Senate bills move the 90/10 requirements to the Program Participation Agreement section of the *HEA* from institutional eligibility, making 90/10 an administrative capability issue, rather than an institutional eligibility issue. The move takes the requirement from a near death experience to a long illness. However, the House-passed version provides some relief with respect to institutional loans. The Senate bill is more beneficial. Current law states that if a college does not meet the 90/10 formula (more than 10 percent of an institution's revenue must be derived from non-title IV sources), the school is barred from participating in Title IV programs for at least two consecutive years.

Both bills describe and expand which funds can be counted towards the non-Title IV revenue. There are differences in the two bills with the Senate provisions being more helpful. And while both bills would prevent the near-death experience that could result from current law, neither bill is as expansive as it could be.

HOW DID WE GET INTO THIS STUDENT LOAN CRISIS?

In response to criticism from New York Attorney General Andrew Cuomo, the Congress, and the General Accountability Office, the Department of Education increased the oversight of colleges and lenders during the latter half of 2007. In July 2007, the Federal Student Aid (FSA) sent letters to 921 colleges whose student loan volume was almost entirely, if not entirely, with one lender. The letters were intended to remind the colleges of the requirements to provide borrowers with a choice of lenders. Then on October 24, 2007, FSA sent letters to 55 of those colleges, as well as 23 lenders that held loans with one or more of the originally identified 921 colleges, requesting information and documents that could indicate the existence of improper inducements in violation of the *HEA*, and its regulations.

The Department published new regulations on November 1, 2007 that changed its interpretation of the *HEA*'s anti-inducement provisions. The regulations, which become effective on July 1, 2008, eliminate the requirement of a *quid pro quo* and replaced it with a standard that will prohibit virtually all business-development activities between colleges and lenders, which include providing entrance and exit counseling and good will.

As a result of the subprime mortgage crisis, funding seems to be drying up for student loans. At the same time, with the enactment of the *College Cost Reduction and Access Act of 2007* (H.R. 2669), federal payments to lenders and guaranty agencies are being cut by \$21 billion over a five-year period. On April 2, 2008, Bloomberg.com reported that sales of bonds backed by student loans have dropped 65 percent this year compared with the first quarter of 2007 as lenders exit the market. "Investor demand for student loan bonds has dried up, making it more costly for lenders to sell them."

On February 27, 2008, the Pennsylvania Higher Education Assistance Agency (PHEAA) announced that it would suspend making federal student loans starting early March because it lacks the capital to make new student loans. In response, Sara Martinez Tucker, Under Secretary of Education, told the *Chronicle of Higher Education* that Secretary of Education Margaret Spellings is not convinced that there is a student loan crisis and the Secretary is planning on sending letters to college presidents to reassure them that student loan funds will continue to be available, which she did right after PHEAA's announcement, on February 27, 2008.

PHEAA's move followed those taken by other lenders, such as the College Loan Corporation, Nelnet, and Sallie Mae, to leave the Federal Family Education Loan Program ("FFEL") or reduce the types of loans they offer to students. Sallie Mae plans to make more private loans to creditworthy students at more traditional colleges. The Missouri Higher Education Loan Authority ("MOHELA") announced on February 22, 2008 that it has suspended its loan consolidation and private lending services as the market for auction-rate securities backed by student loan debt continues to dry up. On February 13, 2008, the Michigan Higher Education Student Loan Authority announced

that because of insufficient capital, it will temporarily suspend one of its student loan programs, the Michigan Alternative Student Loan Program (“MI-LOANS”).

On March 18, 2008, M&T Bank, HSBC Bank USA, and TCF Financial announced that they were suspending FFELP loans. The three banks were among the 50 largest providers of FFELP loans providing more than \$560 million of the \$119.2 billion in loans made during the FY 2006 fiscal year. On March 24, 2008, Brazos Higher Education Service Corp., the fourth largest holder of guaranteed student loans, stopped making new FFELP Loans. On March 26, 2008, Zion Bank, the largest bank in Utah announced that it would suspend making FFELP Loans. The result is that borrowers’ opportunities are becoming greatly reduced. On April 3, 2008, NorthStar Education Finance Inc., a lender that ranks 13th among lenders participating in the FFEL Program, announced that it will suspend lending immediately because it has no access to lending capital.

While some lenders are remaining in the FFEL Program, some large lenders, such as Citigroup Inc. and Wells Fargo & Co., may be reluctant or may be unable to pick up the slack because they are already stretched by the credit crisis. One lender that is reported to be seeking more business is JPMorganChase. In fact, Chase hired 140 employees from Nelnet and announced that it plans to cut borrower rates and eliminate the origination fee on all FFEL loans. Chase, like other banks, does not have to finance its lending with outside investors because of its other bank assets.

On March 10, 2008, the Consumer Bankers Association (CBA) sent a letter to financial aid administrators to inform them that despite a series of negative developments that have increased lender costs and reduced profits, banks will continue to make FFELP and private loans in the 2008-2009 academic year. The letter explains that the cuts in lender subsidies as a result of the *College Cost Reduction and Access Act (CCRAA)* combined with problems in the financial markets have made it impossible for some non-bank lenders to continue lending to students. The letter explains that because banks have access to capital through their deposits, they have not faced the same level of difficulty in making student loans and stressed that “the banks that have made a commitment to student lending have invested in their loan programs.”

Notwithstanding the assurance from the CBA, members of Congress have asked the Treasury and Education Departments to monitor whether it is harder for students to borrow student loans and to begin preparing should loan funds from private lenders not be available to students. On February 15, 2008, Congressman Paul Kanjorski (D-PA), Chairman of the House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, and 20 other Democrats, sent a letter to Treasury Secretary Henry Paulson and Education Secretary Margaret Spellings urging them to mount a federal effort to maintain liquidity and stability in the \$77 billion student loan market. The letter asked them to work with the Federal Reserve and other agencies to set up a plan, including an emergency system, to get federal money directly to students if private lenders abandon the market.

On February 28, 2008, Congressman George Miller (D-CA), Chairman of the House Education and Labor Committee, and Senator Edward Kennedy (D-MA), Chairman of the Senate Health, Education, Labor and Pensions Committee, sent a letter to Secretary of Education Spellings urging her to have plans in place to “ensure that all stakeholders, including institutions and the federal government, can respond to any potential loan access problems with the least possible delay for students, families, and schools.” The letter stated that ED needs to be prepared to use the tools that Congress has provided to the Department, including:

- Updating plans to implement a lender-of-last resort program;
- Advancing federal funds to guaranty agencies to provide them with loan capital if needed; and
- Ensuring that the Direct Loan program is fully prepared to respond to an increase in demand for the program.

Let us not forget New York State Attorney General Andrew Cuomo. Mr. Cuomo is widening his investigation into student loan “kickbacks.” His office announced that for several months, attorneys have been investigating the relationships between businesses and schools, and attending conferences of college officials sponsored by companies trying to get close to financial aid officers. The investigations have involved banking, health insurance, textbook, food-service, and credit card companies that have business relationships with colleges. According to an article in the February 28, 2008 *Newsday*, the investigation has found that “college campuses were becoming a place where big business was realizing it could basically pay its way to get a captive audience.” Since Mr. Cuomo has begun his investigation, his office has settled with 13 lenders, including the six largest student loan entities, and 25 colleges and universities.

On March 4, 2008, Secretary of Education Margaret Spellings mailed a letter to the Chief Executive Officer of each postsecondary educational institution that participates in the FFEL Program. The letter discusses the recent uncertainty in credit markets and its impact on the continued availability of student loans.

“I want to reassure you that federal financial aid - grants, loans through both the Federal Family Education Loan (FFEL) and Direct Loan Programs, and work-study - will continue to be available to your students and their families.” There are more than 2,000 lenders that originate loans in the FFEL Program. While a few lenders have chosen or may choose to reevaluate their continued participation in this program, we expect other lenders will actively compete for this loan volume and ensure that a competitive, efficient, and comprehensive FFEL Program continues to provide a variety of lending options, foster innovation, and improve customer service.

“To assist the Department with its monitoring of the situation, I have asked my staff to contact your financial aid administrator in the coming days and inquire about any lenders that plan to reduce, suspend, or discontinue making student loans to students at your institution.”

Congressman Paul Kanjorski (D-PA), Chairman of the House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, issued a press release on March 4, 2008, that emphasized the need for the administration to take swift action to ensure the continued availability and affordability of student loans. Mr. Kanjorski suggested several options:

“They include having the Federal Financing Bank purchase federal student loans, modifying the rules of the Federal Home Loan Banks to permit the use as eligible collateral of federally guaranteed student loans and securities pools of such loans, or permitting FFELP lenders to access funding through the Federal Reserve.”

“Chairman Kanjorski also believes that the U.S. Department of Education should prepare to implement the lender-of-last resort program should the problems in the student loan market worsen.”

“Many Members of the House Financial Services Committee in the letter that I previously sent on February 15, and now Chairman Miller and Chairman Kennedy, have reached out to the administration to urge action on this issue that will greatly affect the lives of students throughout the country. American students cannot afford to lose their financial aid. These officials must act soon.”

On March 12, 2008, a bipartisan group of 20 Senators sent a letter to the Secretary of Education Margaret Spellings and Treasury Secretary Henry Paulson about the need for them to respond to disruptions in the student loan market. It states that the FFELP, “which initiates 80 percent of our nation’s student loans relies heavily on the market; and the severe liquidity problems therein have created a credit vacuum directly impacting students in our respective states.” They urged the Secretaries to use the authorities of their departments to provide a solution that will ensure access to student loans and keep the cost of education as low as possible.

On March 14, 2008, the House Education and Labor Committee held a hearing titled, “Ensuring the Availability of Federal Student Loans,” that addressed the effects of the credit market conditions on student loans and focused on starting a dialog to ensure that students and families have an uninterrupted source of federal funding to attend college. Chairman of the Committee George Miller (D-CA) opened the hearing by reviewing the current state of the student loan market. Mr. Miller spoke of the recent liquidity problems that failed short-term bonds are creating for non-bank lenders and how some student loan participants have had to modify their Federal Family Education Loan portfolios or exit the program as a result of insufficient capital. Ranking Member Howard “Buck” McKeon (R-CA) described the recent round of \$18 billion subsidy cuts by student loan participants, which coupled with the credit crunch, contributed to the current instability in student loan liquidity. Both Congressmen Miller and McKeon said that it is the hope of the Committee that the private sector loan program remains viable to sustain borrower choice.

The featured panelist was Secretary of Education Margaret Spellings who discussed what the Department of Education is doing to ensure that students and families can access and afford higher education. Secretary Spellings stated that she shared the Committee's concerns regarding student loan access and said that the Department has been monitoring the market conditions, talking to guaranty agencies and school representatives and would continue to do so. When asked about the number of lenders who had stopped originating loans, Secretary Spellings responded that other lenders have stepped in to meet student needs and no students have been denied funding. Secretary Spellings discussed four steps that the agency would be taking to monitor the student loan market:

1. The Department of Education will continue to monitor market conditions and specifically will track the volume of loan originations for both the FFEL and the Direct Loan Programs against prior years. She asserted that if the origination trends shift, ED will be prepared to act.
2. The Department will strive to help families, students, and other stakeholders understand all of their options. She indicated that she had just sent a letter to college presidents and financial aid officers to assure them of the continued availability of federal loans and to ask their help tracking developments.
3. Officials will review the options and tools available under law should the situation warrant their use, including the Lender of Last Resort (LLR) program.
4. Since many students who use private loans have not exhausted their federal aid, the Department has created materials on how to apply for and receive federal aid.

Following Secretary Spellings' testimony, Committee members asked her about the LLR provision, particularly, whether the Department had contacted guaranty agencies to obtain information on implementation plans they currently have in place. Larry Warder, Chief Financial Officer at the Department, said that agency officials have been in touch with guaranty agencies regarding their LLR plans and that guidance would be issued shortly. Chairman Miller was critical of the Department's action thus far on LLR implementation plans and urged officials to ramp-up discussions with guaranty agencies so an operation plan can be implemented if needed. Congressman David Price (D-NC) asked Secretary Spellings how quickly the Direct Loan Program could be ready to handle additional loan volume. She responded that they could likely double the Direct Loan volume from 20 to 40 percent. Ranking Member McKeon charged that this hearing should be a wake-up call for all agencies that oversee student loans, as they "must make sure there is sufficient funding in the pipeline through FFEL and Direct Loan programs."

Terry Muilenburg, Senior Vice President, USA Funds, spoke of the role that guaranty agencies play in helping students pursue their postsecondary aspirations and discussed the Lender of Last Resort program, which she said is a safety net to assure uninterrupted access to needed loan funds to students. She stressed that guaranty agencies would be ready to fill the role as the LLR if the need occurs. Charlie Sanders, President and CEO, South Carolina Student Loan Corporation, discussed how non-profit secondary markets are being affected by the student loan crunch and how auction rate security failures are

causing most lenders to experience a negative return on their loans due to high interest rates. He urged the Department to take swift action to ensure trust in the market.

On March 17, 2008, Senator Edward Kennedy (D-MA) chaired a Senate field hearing at Northeastern University on college access and the impact of the credit crunch on student loan availability. Senator Kennedy said that “We need to be certain we’re doing everything we can to give students the strongest possible options for college loans, especially in today’s troubled economy. The ability of young Americans to pay the high cost of college should not be determined by the quarterly earnings of the banks. We urge the Secretary of Education to make sure the programs that exist to protect students from market disruptions are ready in case they need to take up the slack. We must be prepared to act to ensure students continue to have access to the assistance they need to afford a college degree.”

The hearing featured testimony from the Department of Education Under Secretary Sara Tucker Martinez, who said that disruptions in the private lending market have not affected federal loan programs and that safeguards are in place to ensure that student loans remain available if economic conditions worsen. “Rest assured, the federal government will not allow any disruption of the loan program.”

Many private and nonprofit lenders have announced that they will no longer provide student loans and are tightening eligibility because of a growing credit shortage, which has created concern among students and parents who rely on federal loans. Senator Kennedy urged Under Secretary Tucker to take steps to strengthen the system in case more commercial lenders stop providing student loans. “We learned today that many of our nation’s major financial institutions are nearing collapse,” Senator Kennedy said referring to the Bear Stearns collapse, and “We must prevent this from happening to student loans.”

On March 18, 2008, Congressman Paul E. Kanjorski (D-PA), the Chairman of the House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, and 31 other Members of Congress, released a letter in which they urged Federal Reserve Chairman Ben S. Bernanke to take action to help restore stability in the student loan program and ensure continued access to student loans. “The increasing volatility in the financial markets could disrupt access for the estimated 6.7 million students and families expected to apply for Federal Family Education Loan Program loans in the coming months...We need to ensure that students can continue to obtain the loans they need to access higher education opportunities.” He asked Chairman Bernanke to take two additional actions. The letter suggests that the Federal Reserve’s authority in “unusual and exigent circumstances” under Section 13 of the Federal Reserve Act be utilized to provide immediate assistance to non-bank lenders that issue AAA-rated asset-backed securities in the FFEL Program and the Federal Reserve should permit primary dealers and issuers to use student loan asset-backed securities as collateral to borrow from the newly created Term Securities Lending Facility.

Following the letter from the 32 members of Congress to the Federal Reserve Chairman, the President of the National Association of Student Financial Aid Administrators (NASFAA) sent a letter to Senator Edward Kennedy (D-MA) and Congressman George Miller (D-Ca) applauding their efforts to intervene in the student loan crisis. President Philip Day said that an estimated 6.7 million students expected to apply for FFEL Program Loans this fall and the lack of liquidity in the student loan capital markets could threaten the availability of student loans. Dr. Day called on the federal government to put three “safety nets” in place to ensure loan accessibility to all students:

- Modifying the Lender of Last Resort program to allow institutions, rather than students, to demonstrate that there is a loan access problem;
- Ensuring schools that wish to participate in the Direct Loan Program to be able to do so with a minimal amount of administrative and financial burden; and
- Providing an infusion of liquidity to the student loan market so that non-bank lenders will be able to provide student loans.

Congressman Kanjorski expressed concerns about a letter he received from the Secretary of Education Margaret Spellings and Secretary of the Treasury Henry Paulson, a letter that responds to his letter of inquiry urging the Administration to take action to address capital access problems in the student loan marketplace in order to ensure continued availability of student loans. “While I appreciate Secretary Paulson and Secretary Spellings’ response that they understand the scope of the problems affecting the student loan industry and that they are closely monitoring the situation, I find it unfortunate that the Administration is not taking great action at this time to fix the problem. How many lenders must drop out of the Federal Family Education Loan Program before the Administration will take action? Students and their families preparing to go to college this fall need to know that they will have access to affordable higher education loans.”

In their letter to the Congressman, Secretary Paulson and Secretary Spellings stated:

“The Departments of Treasury and Education, together with other federal agencies, are closely monitoring the situation and have met with members of the lending community and other stakeholders to assess how broader market conditions affect credit availability of student loans. While we too are concerned about the recent auction market failures in the student loan sector, we believe they reflect general stress in the credit markets rather than specific concerns about the underlying student loan collateral.”

Adding to the list of congressmen calling for action on student loans is Senators Max Baucus (D-MT) and Jon Tester (D-MT) along with 18 of their colleagues who sent a letter on April 1, 2008 to the Administration demanding a preemptive fix to protect student loans. They demanded that the Secretary of Education and the Treasury Secretary should "make full and immediate use of your existing authorities to help steer us away from the impending crisis."

On April 4, 2008, Secretary of Education Spellings sent a letter to Chairman George Miller (D-CA) as a follow-up to Mr. Miller's request for an update on several items discussed at the House Education and Labor Committee hearing held on March 14, 2008. Secretary Spellings indicated that she met with Treasury Secretary Henry Paulson to discuss the impact of the tight credit market on the availability of student loan capital on March 20, 2008 and they agreed to continue to meet on a regular basis. They also discussed Secretary of Education's authority to make advances to guaranty agencies under the Lender of Last Resort Program and they agreed that no appropriation would be required. Secretary Spellings also advised Congressman Miller that she planned on meeting with guaranty agencies on April 11, 2008. Other conference calls and meetings have taken place with the guaranty agency community. She reaffirmed that "maintaining competitive FFEL and Direct Loan Programs serves our students best," but she said the Department would increase the capacity of its Direct Loan Servicing System and that the agency is developing a process that would allow Direct Loan schools to submit origination records using the "Common Line" record format used currently by FFEL schools.

On April 8, 2008, Congressman Paul Kanjorski (D-PA), the Chairman of the House Financial Services Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, introduced H.R. 5723, the *Emergency Student Loan Market Liquidity Act*. The emergency legislation would provide a temporary source of liquidity in the student loan marketplace, help prevent more originators from departing the industry, and maintain stability in the existing student loan distribution system. Student loan liquidity would be provided through the availability of funding from the Federal Home Loan Bank.

On April 3, 2008, Senator Edward Kennedy introduced the *Strengthening Student Aid for All Act of 2008*, which would make significant changes to the Federal student financial aid programs, and was introduced in the same week that the 11th and 12th largest student loan originators terminated their participation in the FFEL Program.

In response to Senator Kennedy's bill, on April 8, 2008, House Education Committee Chairman George Miller (D-CA) and Ruben Hinojosa (D-TX) introduced *The Ensuring Continued Access to Student Loans Act of 2008*, H.R. 5715, a bill to ensure that the tightening of the credit markets does not prevent students or families from accessing funding they need to pay for college. On April 9, 2008, the House Education and Labor Committee unanimously agreed to report out of Committee, H.R. 5715. The bill's provisions are as follows:

Increases Unsubsidized Stafford Loan Limits

- Increases the annual federal loan limits for unsubsidized Stafford loans for graduate and professional students by \$4,000, from 10,000 to \$14,000.
- In the case of graduate students enrolled in a program leading to a degree or certificate or those enrolled in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an

elementary or secondary school in that State, it increases the loan limit by \$3,000, from \$4,000 to \$7,000.

- Raises annual federal loan limits for unsubsidized Stafford loans for dependent undergraduate students, or students whose parents can't obtain federal parent loans because of poor credit, by \$2,000. (Kennedy's bill was \$1,000 for dependent students and \$2000 for independent students.)
- Currently, this amount is set at the subsidized Stafford limit. It would increase the aggregate amount an undergraduate dependent student may borrow under the unsubsidized Stafford loan program to \$31,000 (Kennedy's bill increased it to \$29,500).
- Increases the annual federal loan limits for unsubsidized Stafford loans for independent undergraduate first and second year students, or students whose parents can't obtain federal parent loans because of poor credit, by \$2,000, from \$4,000 to \$6,000.
- Increases the maximum annual amount for undergraduate independent students who have completed two years of study from \$5000 to \$7000.
- The aggregate amount of unsubsidized Stafford loans for an undergraduate independent student would be increased to \$57,500.

PLUS Loans

- Gives parent borrower more time to begin repaying off federal PLUS loans. Under current *HEA*, parent borrowers must begin repayment 60 days after disbursement of the loan. Under H.R. 5715, parents would be able to defer repayment until six months after their children fails to carry at least one-half the normal full-time workload.
- Under current *HEA*, parents with an adverse credit history are ineligible to receive a parent PLUS loan, except under extenuating circumstances. H.R. 5715 would create a special rule for extenuating circumstances for loans made between July 1, 2008 and June 30, 2009 if the borrower is 180 or fewer days delinquent on their home mortgage payments as described in regulations to be promulgated by the Secretary.

Lender of Last Resort

- Requires the Secretary of Education to designate guaranty agencies as "lenders of last resort" on an institution-wide basis, rather than on a student-by-student basis, and clarifies that it would cover not only subsidized Stafford loans, but also unsubsidized Stafford loans and PLUS loans. The bill specifically excludes consolidation loans.

Mandatory Advances

- Clarifies that existing law gives the Secretary of Education the authority to advance federal funds to guaranty agencies in the event that they do not have sufficient capital to originate new loans and appropriates such sums as may be

necessary for carrying out the requirements of lender of last resort. Under the *HEA*, guaranty agencies are obligated to serve as lenders of last resort if requested to do so by the Education Secretary.

Temporary Authority to Purchase Student Loans

- Gives the Secretary of Education the temporary authority to purchase loans under Part D from lenders in FFELP, clearly making the purchased loans Direct Loans.
- The Department of Education would be authorized to purchase only those loans that do not carry a net cost for the federal government, and the proceeds from the sale must be used in a manner consistent with ensuring continued participation of such lender in FFELP.

Sense of Congress

- Contains a sense of Congress statement that the Federal financial institutions should consider, in consultation with the Secretaries of Treasury and Education, using available authorities in a timely manner to assist in ensuring access to student loans for academic year 2008-2009, and the subsequent academic year if need be, in a manner that results in no increased costs to the taxpayer.

What is the Current Status of FFELP Lending?

As of April 10, 2008, nearly 50 student lenders, representing 12 percent of the loan volume, have suspended FFELP lending activities. On April 7, 2008, the Education Resources Institute (“TERI”), the oldest and largest nonprofit guarantor of private education loans in the U.S. announced that filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code. TERI is linked to First Marblehead Corp., a Boston bank that had been a leading player in private loans. The TERI guaranteed loans are generally the riskiest, loans made by private lenders directly to student and their families, instead of through the financial aid offices.

What is the Department of Education Doing to Ensure Loan Access?

The Department issued a Dear Colleague letter (DCL) on March 26, 2008, to make sure that guaranty agencies are able to implement Lender of Last Resort (LLR) programs. The DCL provides guidance to guaranty agencies on LLR services in the FFELP, by providing preliminary information on the implementation of the LLR program by a guaranty agency and requiring agencies to submit their updated LLR rules and operating procedures to the Department for review and approval no later than April 25, 2008 (GEN-08-03). Guaranty agencies are also ordered to find private lenders willing to serve as lenders of last resort and that can commit to specific periods and loan volumes.

Concerning loan liquidity, Secretary Spellings said on April 4, 2008 in an interview with Associated Press, that her Department has concluded that it has the authority to quickly

free up money from the Treasury to finance student loans if the nationwide credit crunch makes it difficult for students to find financing elsewhere. She said that money would be available so that guaranty agencies can offer loans in a pinch. Her announcement came a day after Senate Health, Education, Labor and Pensions Chairman Edward Kennedy (D-MA) introduced legislation, *Strengthening Student Aid for All Act of 2008*, to ensure that students would have money to pay for college and 5 days before the House Education and Labor Committee reported out its bill, H.R. 5175, *The Ensuring Continued Access to Student Loans Act of 2008*.

What about Direct Loans as an Alternative?

Currently, almost 1,200 colleges participate in the Direct Loan Program as compared to almost 6,000 colleges in the FFEL program. A small number of institutions have begun to switch to the Direct Loan Program. Mercyhurst College has joined Pennsylvania State University and Northeastern University in announcing their shift to the Direct Loan Program. But does this represent a trend? Can we expect a flood of educational institutions seeking eligibility in the Direct Loan Program? The Department has reported that since January 1, 2008, 59 colleges have sought eligibility for the Direct Loan Program, but 17 of these colleges are new to the federal student aid program and 42 have been participating in the FFEL Program. However, it is not known how many of these FFELP institutions will actually participate in the Direct Loan Program. While there does not appear to be a stampede to participate in the Direct Loan Program, the Department asserts that they are prepared should the number of institutions who participate double. While the Republicans who generally favor private lending and the Democrats say that ED can do a better job of delivering loans less expensively, both Republicans and the Democrats generally agree that having both programs is good to ensure competition.

What is the Outlook?

- Two surveys that were just released suggest some reduction in access to private student loans. While neither report conducted by the National Association of Independent Colleges and Universities (NAICU) or the Career College Association (CCA) found that students were unable to obtain FFEL Loans, both found that some lenders are cutting borrower benefits, tightening credit requirements for private loans, and discontinuing some types of loans, such as private loans.
- While thousands of lenders continue to participate in the FFELP, some lenders are reducing or eliminating discounts. Lenders will not be waiving fees or offering interest rate discounts for on-time payments.
- Some lenders are no longer offering private loans, loans which are not guaranteed by the government and are usually more expensive. Some lenders, like Sallie Mae, are going to be more selective. Sallie Mae announced that it will be offering private loans on a more selective basis to schools with high graduation rates. The student with good credit or who has a co-signer should be able to secure private loans.

- Many for-profit institutions face a financing gap between what federal student aid will cover and tuition costs.
- Some believe that the credit crunch may affect mostly students attending for-profit colleges, which may encourage students to attend community colleges. Although the Historically Black Colleges and Universities (HBCUs) and the independent colleges do not seem to be protesting, the unavailability of private loans is also a problem for HBCUs and private non-profit institutions.

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