

FEDERAL POTPOURRI

Presented at the

NASASPS

35th Annual Conference

Presented by

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April 23, 2007*

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CONGRESSIONAL ACTIVITIES

Third Higher Education Extension of 2006 (THEEA) Signed into Law

On September 30, 2006, President Bush signed into law the *Third Higher Education Extension Act of 2006 (THEEA)*, P.L. 109-292, which extends the *Higher Education Act* until June 30, 2007. The changes made include:

- Restrictions on the use of eligible lender trustees by higher education institutions to make FFEL Loans;
- New discharge provisions for Title IV, *HEA* student loans for the survivors of eligible public servants and certain other eligible victims of the terrorist attacks on the United States on September 11, 2001;
- A technical modification to the *HEA* provision governing account maintenance fees that are paid to guaranty agencies in the FFEL Program; and
- Modifications to the requirements for an institution to receive a grant under the Hispanic-Serving Institutions Program authorized by Title V of the *HEA*.

On December 28, 2006, interim final regulations were published in the *Federal Register* reflecting the provisions of the *THEEA* that authorize the discharge of the outstanding balance of certain Perkins, FFEL, and Direct Loan Program Loans. Changes made to the *HEA* by *THEEA* were discussed in a Dear Colleague Letter of December 2006 (GEN-06-21).

President Signs Legislation to Authorize College Tuition Deduction

On December 20, 2006, President Bush signed into law, *H.R. 6111*, the *Tax Relief and Health Care Act of 2006* (P.L. 109-432). The legislation revised and retroactively extended for two years the college tuition deduction for students and families. The college tuition deduction was originally authorized in 2001 as part of the *Economic Growth and Tax Relief Reconciliation Act of 2001* (EGTRRA) and expired on December 31, 2005 but can be retroactively applied on 2006 tax returns to be filed by April 15, 2007. Specifically, the college deduction authorizes taxpayers with incomes of \$65,000 or less (\$130,000 for couples filing joint returns) to deduct \$4,000 for higher education costs. The deduction is \$2,000 for those earning up to \$80,000 (\$160,000 for couples filing joint returns).

In a speech prior to the signing of the legislation, President Bush stated:

“To keep America competitive in the world economy, we must make sure our people have the skills they need for the jobs of the 21st century. Many of those jobs are going to require college, so we’re extending the deductibility of tuition and higher education expenses to help more Americans go to college so we can compete.”

Because the extension occurred so late in the year, the already-printed tax forms do not include a line for the tuition deduction. On December 22, 2006, the Internal Revenue Service (IRS) announced new guidance to help tax filers in 2007 claim the extended tax deductions and other tax advantages in the *Tax Relief and Health Care Act of 2006*. The guidance states that taxpayers must file Form 1040 to take the deduction of up to \$4,000 of tuition and fees paid to a postsecondary education, and the deduction will be claimed on Form 1040, line 35, "Domestic production activities deduction."

More details are found at: <http://www.irs.gov/newsroom/article/0,,id=165500,00.html>

President Bush Submits FY 2008 Budget Proposal to the Congress

On February 5, 2007, President Bush submitted his FY 2008 budget blueprint to the Congress for consideration. The proposal sets funding levels for the Department of Education and other federal agencies. According to a press release issued on February 5, 2007, the FY 2008 budget would:

- Strengthen the *No Child Left Behind Act* so more students benefit from accountability and high standards;
- Help prepare high school students for success through more rigorous and advanced coursework;
- Help close the achievement gap by encouraging good teachers to serve in challenging environments and by giving states new tools to fix underperforming schools;
- Offer tutoring and choice options so parents can meet their children's educational needs; and
- Enable millions of young Americans to afford college.

The proposal states that the Department in FY 2008 will administer over \$90 billion in new grants, loans, and work study assistance to help over 11 million students and families' gain access to college. The budget proposal cites recommendations from the September 2006 report of the Secretary of Education's Commission on the Future of Higher Education, which emphasized the need for access, affordability, and accountability in higher education. In particular, the Commission's report highlighted the impact of rising college costs on the ability of low-income families to pay for postsecondary education. The President's budget addresses these concerns by "proposing substantial new investments in need-based grants that would target limited Federal resources to students most affected by the tuition increases over the last 15 years." The request is based on a three-pronged strategy to:

- Increase Federal Pell Grant investment in the Pell Grant Program. The President proposes to increase funding in the Pell Grant Program, raising the maximum grant by \$550 to \$4,600 in FY 2008;
- Make more valuable Academic Competitiveness Grants (ACG). The President proposes to increase grant levels by 50 percent for students completing challenging courses of study in high school; and

- Develop early notification efforts. The Administration is developing administrative and other proposals to make students and their families more aware of their eligibility for financial aid and how best to prepare academically and financially for college.

On March 24, 2007, Secretary of Education Margaret Spellings announced the availability of a new tool for students and parents called “FAFSA4caster.” The FAFSA4caster will help families calculate a student’s eligibility for federal student aid when students are juniors in high school or earlier by instantly calculating a student’s eligibility. The online tool, which debuted on April 1, 2007, simplifies the financial aid process by pre-populating 51 of the 102 questions on the FAFSA. FAFSA4caster can be found at: <http://www.federalstudentaid.ed.gov>.

These are the specific proposals in the President’s FY 2008 budget proposal:

Pell Grants

The FY 2008 budget would generate the largest Pell Grant funding increase in three decades by providing \$19.8 billion in new mandatory funding for the Pell Grant Program over the 2008-2017 period. The budget provisions would:

- Raise the maximum Pell Grant by \$550 to \$4,600 in FY 2008;
- Increase the maximum Pell Grant by \$200 annually from 2009-2012 to \$5,400;
- Make Pell Grants available year-round at eligible two- and four-year degree-granting institutions;
- Limit Pell Grant eligibility to the equivalent of 16 semesters; and
- Eliminate the Pell Grant award rule related to tuition sensitivity.

Academic Competitiveness Grants (ACG)

Introduced as a new grant program beginning July 1, 2006, ACG grants currently provide up to \$750 for the first academic year of undergraduate study and up to \$1,300 for the second academic year of undergraduate study. The FY 2008 budget proposal would:

- Increase the ACG assistance amounts by 50 percent to \$1,125 and \$1,950 respectively.
- Cost \$260 million in mandatory funds for FY 2008 and \$1.0 billion from 2008 to 2012.

Combined with the proposed increase in the maximum Pell Grant award, the total grant assistance from the two programs would cover 86 percent of tuition and fees for eligible freshman and all tuition and fees for eligible sophomores at the average public four-year college. In addition, at a two-year institution, the grant combination would cover tuition and fees and provide \$3,000 in living expenses for eligible freshman and nearly \$4,000 for eligible sophomores.

FFELP and Direct Loans

The FY 2008 budget proposal would:

- Increase the annual amount of subsidized loans juniors and seniors can borrow by \$2,000 to \$7,500;
- Increase the aggregate loan limits (no details are provided); and
- Standardize the interest rate for PLUS loans at a fixed rate of 8.3 percent (the rate for Direct PLUS loans is currently 7.9 percent while the rate for FFEL PLUS loans is 8.5 percent).

Funding: The FY 2008 budget proposal notes that the grant programs and early notification programs as well as the annual loan increases would be paid for by removing duplicative programs and reducing subsidies to lenders:

- Program Elimination
 - Eliminating funding for FSEOG; and
 - Phasing-out Perkins Loan Program through recalling the federal portion of the revolving funds held by institutions, which will total \$3.2 billion over fiscal years 2008-2012.
 - Eliminating funding for the LEAP program.

The budget summary said that the programs that were specified for elimination have either “achieved their original purposes, duplicate other programs, are narrowly focused, or are unable to demonstrate effectiveness.”

- Reducing Subsidies to Lenders
 - “Recapturing excess earnings” by reducing the special allowance payment by 50 basis points (0.50 percent);
 - Increasing the lender paid origination fee on Consolidation loans by 50 basis points (from 0.5 percent to 1.0 percent);
 - Reducing lender insurance from the current 97 percent to 95 percent, as well as reducing the insurance coverage for exceptional performer serviced loans from 99 percent to 97 percent.
 - Revising the payment formula for the guaranty agency account maintenance fee; and
 - Reducing the amounts guaranty agencies may retain from collections from 23 percent to 16 percent, which is roughly the average amount paid by the Department to private collection agencies.

Two Additional Policy Items

Additional policy items included in the budget proposal would:

- Request \$25 million “for a voluntary pilot initiative that will collect and analyze student data to measure outcomes such as graduation rates. The initiative will help ensure accountability and transparency in higher education.”
- “The Department and the Internal Revenue Service intend to implement a process to verify students’ (and parents’) income, tax and certain household information appearing on their income tax return that they provided as part of their application for Federal student aid. This process is part of the ongoing efforts to ensure students receive the correct amount of Federal student aid, and is a key component of the Administration’s efforts to reduce erroneous payments government-wide.”

More information on the FY 2008 budget can be accessed on the Office of Management and Budget (OMB) website at: <http://www.whitehouse.gov/omb/>

FY 2008 Appropriations Update

Education appropriations negotiations are picking up. Both Secretary of Education Margaret Spellings and Under Secretary Sara Martinez Tucker have testified before Congress to discuss FY 2008 budget requests for the Department of Education. Under Secretary Martinez Tucker testified on March 14, 2007 before the House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies on funding allocations for student financial aid and higher education. Secretary Spellings testified on higher education funding on March 14, 2007 before the Senate Appropriations Committee on Labor, Health and Human Services, and Education and had testified before the House Appropriations Subcommittee on March 12, 2007.

The President’s proposals to slash \$760 million from programs that benefit colleges is considered dead on arrival in Congress, except for the savings derived from cuts to lenders, which are similar to that made in H.R.5, the *College Student Relief Act*.

President Signs FY 2007 Appropriations Bill into Law

On February 15, 2007, President Bush signed into law a \$463.5 billion FY 2007 appropriations bill that would fund federal agencies through September 30, 2007 (2007-2008 award year). The Revised Continuing Appropriations Resolution (P.L. 110-5) includes a \$260 increase in the maximum Pell Grant award from \$4050 to \$4,310 beginning with the 2007-2008 award year. This marks the first Pell Grant increase in the annual award amount since FY 2003.

On February 27, 2007 the Department of Education issued an electronic notice advising the community that because the President signed the Revised Continuing Appropriations

Resolution, 2007 into law, ED was able to issue the Pell Grant Program Payment and Disbursement Schedules (P-07-01) and will post the Campus-Based Final Awards by April 1, 2007. The 2007-2008 funding for Campus-Based Programs will remain at the same funding levels as that provided in the 2006-2007 award year.

The Democrats are Addressing Education Issues

The 110th Congress was sworn in on January 4, 2007. Six bills passed the House, including The *College Student Relief Act*, which passed with the largest number of yeas and the smallest number of nays! Most folks around the beltway agreed that the Democrats had a superb week and were able to deliver on their campaign promises.

With the Democrats in the majority on both sides of the aisle, there was a significant reshuffling in the committees. Congressman George Miller (D-CA) is now the Chairman of the House Committee on Education and Labor (formerly known as Committee on Education and the Workforce). Congressman Howard P. “Buck” McKeon (R-CA) is now the ranking member of the Committee on Education and Labor. The Chairman of the Subcommittee on Higher Education, Lifelong Learning, and Competitiveness (formerly the Subcommittee on 21st Century Competitiveness) is now Ruben E. Hinojosa (D-TX).

The Chairman of the Senate Committee on Health, Education, Labor and Pensions (HELP) is Senator Edward Kennedy (D-MA). The ranking member is the former Chairman of the HELP Committee, Senator Mike Enzi (R-WY).

The College Student Relief Act Passes House

On January 17, 2007, the House of Representatives approved H.R. 5, *the College Student Relief Act of 2007*, by a vote of 356 to 71. A total of 124 Republicans voted in support of the bill. Senator Richard Durbin (D-IL) introduced the companion bill, S. 282. Under the bill, the borrower interest rates on new subsidized Stafford Loans to undergraduate students under both the FFEL and Direct Loan Programs will be reduced from the current 6.8 percent to 3.4 percent, as follows:

- 6.12 percent for loans disbursed on or after July 1, 2007;
- 5.44 percent for loans disbursed on or after July 1, 2008;
- 4.76 percent for loans disbursed on or after July 1, 2009;
- 4.08 percent for loans disbursed on or after July 1, 2010; and
- 3.40 percent for loans disbursed on or after July 1, 2011 and before January 1, 2012, when it expires.

According to the Congressional Budget Office, H.R. 5 would cost the government about \$7 billion. Nearly one-third of the money needed to pay for the interest rate cut would come from savings generated by reducing the profit margin that the top 1 percent of lenders, who hold 90 percent of the loan volume. The guaranteed rate of the top lenders would be reduced by one-tenth of a percentage point. For example, the current rate that

lenders are guaranteed is 7.72 percent and under H.R. 5, the rate would be reduced to 7.62 percent. About 30 lenders would be affected, including Sallie Mae, the largest holder of loans, Citibank, Wells Fargo Bank, and Bank of America. (*HERA* of 2005 enacted February 8, 2006 included \$11.9 billion in student loan cuts.)

The legislation would cost more than \$7 billion, and consistent with the pay-as-you-go rule approved by the House, the bill includes a number of other reductions to offset the cost of the interest rate reductions:

- Reduce lender insurance from 97 percent to 95 percent for loans made on or after July 1, 2007;
- Repeal “exceptional performer” status in the FFELP program effective July 1, 2007;
- Increase the lender-paid origination fee on Stafford, PLUS and Consolidation loans from 0.5 percent to 1.0 percent for loans first disbursed on or after July 1, 2007;
- Incrementally reduce guaranty agency collection retention from the current 23 percent to 16 percent;
- Reduce the special allowance payment by 10 basis points on Stafford, PLUS, and Consolidation Loans disbursed on or after July 1, 2007.
- Increase from 1.05 percent to 1.30 percent the interest payment rebate on Consolidation Loans based on applications received on or after July 1, 2007; and
- The reduction in payment to FFELP lenders do not sunset on January 12, 2012, unlike the interest rate deduction.

Following the passage of H.R. 5, House Education and Labor Committee (former House Education and the Workforce Committee) Chairman George Miller (D-CA) stated:

“Democrats have said that we are going to take America in a new direction. We have said that we are committed to strengthening America’s middle class. Today, by voting to cut student loan interest rates in half, we have shown that we meant what we said. With this vote, the House took the first step towards guaranteeing that every student who is qualified to go to college will be able to afford to go.” He also said that passage of H.R. 5 was an important first step towards making college more affordable for students and their families.

Ranking Republican on the House Education and Labor Committee Howard “Buck” McKeon (D-CA) argued that, while the bill was “well-intentioned,” it was a bad bill that could have been made better if it were a bipartisan bill. Congressman McKeon and other Republicans complained that Democrats did not keep their campaign promise to work in a bipartisan fashion as Democrats did not hold any committee hearings on the bill or allow any amendments to the bill on the floor. Instead, the bill was written by the majority leaders without any debate. Mr. McKeon attempted to have H.R. 5 considered in the House Education and Labor Committee by filing a motion to recommit the bill to the Committee; however, this motion was defeated by a 186 to 241 vote generally along

partisan lines. Mr. McKeon also tried to have an amendment added to H.R. 5, which was his bill, H.R. 472, the *College Affordability and Transparency Act*, but he was not permitted to introduce it.

In praising the passage of H.R. 5, Senator Edward Kennedy (D-MA), Chairman of the Senate Health, Education, Labor and Pensions (HELP) Committee, took the opportunity to state his intent to reintroduce the *Student Debt Relief Act*, first introduced last June. Major proposals contained in the legislation would provide incentives for schools to switch to the Federal Direct Loan Program; halve student loan interest rates; increase the Federal Pell Grant limit from \$4,050 to \$5,100; and cap federal student loan repayment at 15 percent of a borrower's discretionary income. Senator Kennedy also announced that he will be co-sponsoring the Senate companion bill to H.R. 5.

Senator Mike Enzi (R-WY), Ranking Republican on the Senate HELP Committee, also remarked on passage of the bill and called for a comprehensive reauthorization of the higher education act.

“While I’m pleased that the House is focused on the issue of affordability and access to higher education for working families, we need to do more than simply cut rates on loans and pass the bill on to the taxpayers.”

While the higher education community, including the American Council on Education, sent letters of support for H.R. 5, they would have preferred that the \$6-7 billion in spending had have been invested in Pell Grants to help students on the front end instead of only helping college graduates on the back end.

Kennedy Introduces *Student Debt Relief Act*

On January 22, 2007, Senator Edward Kennedy (D-MA), Chairman of the Senate Health, Education, Labor and Pensions Committee, introduced S. 359, the *Student Debt Relief Act of 2007*. The bill proposes to provide the following:

- Extends until FY 2012 the authority of the Secretary to make Pell Grant funds available. The maximum Pell Grant is increased to \$5,100 for academic year 2007-2008, and is increased in steps thereafter such that the Pell Grant in academic year 2011-2012 is \$6,300;
- Establishes a Student Aid Reward (STAR) Program to encourage schools to participate in the “most cost-effective student loan program,” the Direct Loan Program. To receive the reward payment, schools need to agree to participate in the Direct Loan Program for 5 years from the date a payment is made. Schools must distribute the payment to supplement Pell Grant recipients or for need-based grants to lower- and middle-income students;
- Contains the interest rate reduction provisions set forth in H.R. 5, which passed the House on January 17, 2007. These reductions apply to subsidized Stafford

loans to undergraduate students; however, the final stepped reduction applies to loans first disbursed between July 1, 2011 and July 1, 2012 (H.R. 5 set the sunset at December 31, 2011). The offsetting reductions in payments to FFELP loan participants contained in H.R. 5 are not included;

- Directs the Secretary to forgive any Direct Loan to a borrower who has made 120 payments under income contingent repayment and who is employed full-time during such 10-year period in certain public service jobs (including any job in government);
- Contains a “fair payment assurance,” a concept that generally tracks the proposals offered last year by The Project on Student Debt. Specifically:
 - A new “partial financial hardship” deferment is created for Stafford Loans and GradPLUS Loans under which a borrower in the FFELP or Direct Loans can elect to have his/her monthly payment limited to 15% of the monthly amount by which adjusted gross income exceeds 150% of the poverty line applicable to the borrower’s family size. To the extent this amount does not equal interest due on subsidized Stafford Loans, the interest is paid by the Secretary;
 - The Secretary is directed to repay or cancel a FFELP or a Direct Loan that is, for a total of 25 years, in an economic hardship deferment, a partial economic hardship, standard payment and/or the Direct Loan income contingent repayment plan;
- In-school consolidation is reinstated;
- Current limitations on reconsolidation are deleted;
- The stepped reduction in origination fees under the Direct Loan is further reduced by 1% for each step (there are no reductions for FFELP fees). Further, the mandatory nature of the fee is dropped;
- The college tuition deduction is increased from the current \$4,000 to \$8,000 in 2007 and \$12,000 thereafter. New income limits are created, and the maximum deduction is indexed to inflation; and
- The tax deduction for student loan interest is turned into a tax credit. New income limits are created and the maximum tax credit is indexed to inflation. The tax credit is also limited to interest paid during the first five years of repayment.

In his floor statement, Senator Kennedy remarked:

“Mr. President, today I rise to introduce the Student Debt Relief Act of 2007. It’s long past time for Congress to take action to address the crisis in college affordability. The cost of college has more than tripled in the last 20 years...”

“It’s obvious we need to act immediately to make both college costs and student debt more manageable – and that is what this bill is all about. The Student Debt Relief Act will help lift the financial yoke that burdens our students and families as they try to pay for college.”

The bill is co-sponsored by Senators: Richard Durbin (D-IL), Joseph Lieberman (D-CT), Barbara Mikulski (D-MD), Barack Obama (D-IL), and Charles Schumer (D-NY). The outlook for the bill, which largely resembles a bill Senator Kennedy introduced last year, is unclear because its costs have not been projected.

Senators Kennedy and Durbin Introduce *Student Loan Sunshine Act*

On February 1, 2007, Senators Edward Kennedy (D-MA) and Richard Durbin (D-IL) introduced the *Student Loan Sunshine Act* (S. 486) to “protect students and parents from exploitation by private lenders and lenders who offer gifts to colleges as a way to secure loan business.” According to a press release issued by Senator Kennedy, the bill was introduced in response to recent reports about questionable tactics used by lenders with colleges to increase their private loan volume. According to a press release issued by Senator Durbin, “We need to shine a bright light on the incentive-based relationships that exist between some universities and lenders. We want college officials to look out for the interests of their students instead of looking forward to the next gift or all-expenses paid exotic vacation. The first obligation of any college or university is to help its students, not the lenders.”

The *Student Loan Sunshine Act* would:

- Require full disclosure of special arrangements that lenders and institutions of higher education have to offer loan products at the institution;
- Ban lenders from offering gifts worth more than \$10 to college employees, including travel, lodging, entertainment, and in-kind services that lenders provide to college financial aid offices;
- Require full disclosure of the reasons why an institution of higher education has selected a lender for its “preferred lender” list, including any special arrangements the lender has with the school; and
- Encourage borrowers to maximize their borrowing through the government’s loan programs before taking out alternative loans and direct-to-consumer loans with higher interest rates.

On February 7, 2007, Congressman George Miller (D-CA), Chairman of the House Education and Labor Committee, introduced a companion bill, H.R. 890, the *Student Loan Sunshine Act*, a bill that seeks “to put a stop to unethical measures taken by lenders to curry favor with colleges and universities.”

NY Attorney General Cuomo Conducts Inquiry into the Student Loan Industry

New York State’s Attorney General, Andrew Cuomo, following in the steps of now Governor, Eliot Spitzer, announced in February that he was conducting a broad inquiry into possible conflicts of interest in the student loan industry. He sent letters to 60 colleges and universities, in New York and 16 other states, seeking information about their financial arrangements with lenders, how they make up lists of “preferred lenders,” and other matters.

On March 15, 2007, Mr. Cuomo issued the results of his investigation revealing “deceptive” practices in the college loan industry:

- Establishment of so-called “preferred lender” lists without disclosing the basis for selection or the specific benefits associated with these preferred lenders;
- Revenue sharing and other financial arrangements between schools and lenders;
- Denials or impediments to a student’s or parent’s choice of lender based on the borrower’s selection of a particular lender; and
- Impediments to competition in the lending industry that stifle better loan terms for students and parents.

Mr. Cuomo announced at his press conference of March 15, 2007, that he had sent the results of his investigation to over 400 colleges and universities throughout the country. Mr. Cuomo’s letter recommended that college officials take many of the steps suggested by Senator Edward Kennedy (D-MA) in the “sunshine” legislation that he is promoting and by the U.S. Department of Education in the regulatory language that ED is proposing during negotiated rulemaking.

On March 21, 2007, Attorney General Cuomo announced the first legal action as a result of his probe into the student loan industry. Mr. Cuomo sent a notice to the San Francisco student loan provider, Education Finance Partners, Inc. (“EFP”) that he intends to file a civil lawsuit in state court in New York over revenue sharing arrangements to steer loan applications to EFP. In response, EFP announced that it is fully prepared to defend its business practices. EFP provides funds to schools to help students who have greatest needs.

On April 2, 2007, Attorney General Cuomo announced that his office has signed settlements with 36 major universities and Citibank concerning student loan arrangements between the schools and lender. The settlements require schools to reimburse students money that the colleges were paid by lenders for loan business and to adopt a College Code of Conduct. At the same time, Citibank agreed to voluntarily adopt

practices in the Attorney General's College Code of Conduct and agreed to commit \$2 million to a newly created national fund administered by the Attorney General's Office to educate college bound students and their parents about student loans.

On March 21, 2007, Senator Edward Kennedy (D-MA) sent a letter to 16 student loan lenders seeking documents and information about the company's financial dealings with institutions. Senator Kennedy is concerned that these companies may be providing inappropriate compensation, favors, or benefits to schools in exchange for preferential treatment, including placement on preferred lender lists. On March 29, 2007, Congressman George Miller (D-CA) followed suit by issuing a letter to the top five college loan providers, requesting information on the company's relationships with college financial aid offices.

On March 23, 2007, Minnesota Attorney General Lori Swanson announced a series of inquiries exploring the factors an institution considers when creating a preferred lender list. Ms. Swanson sent a letter to Minnesota colleges and universities asking presidents to evaluate their school's student loan practices and disclosures. She also sent a subpoena to leading lenders asking them to disclose any financial arrangements with institutions.

Attorney General Cuomo has stepped up his investigation into the student loan industry by investigating stock held in private loan companies by financial aid officials at three large universities. He also investigated the large consulting fees paid by private lending companies to financial aid administrators from three other large universities, including a for-profit online institution. After Mr. Cuomo expanded his investigation, it was uncovered that the General Manager in the Office of Federal Student Aid at the Department of Education had sold more than \$100,000 in shares in a student loan company, even as he provided oversight to lenders. The General Manager was suspended on April 5, 2007.

No one knows where the investigations will ultimately lead but the scandals could lead to more congressional efforts to continue to cut subsidies in the student loan program.

House and Senate Lawmakers Introduce the *STAR Act*

On February 13, 2007, a group of bipartisan lawmakers introduced the *Student Aid Reward (STAR) Act* (S. 572, H.R. 1010), legislation that proposes to "boost college scholarships without costing taxpayers a dime." House and Senate Education Committee Chairman Edward Kennedy (D-MA) and George Miller (D-CA), along with Senator Gordon Smith (R-OR) and Congressman Tom Petri (R-WI) were part of the gathering at the Capitol to introduce the bill. Congressman Miller stated that provisions of the bill are "essentially" the same as previous measures introduced by Congressman Petri in March 2005 (H.R. 1425) and Senator Kennedy in April 2005 (S. 754).

The *STAR Act* calls upon the Secretary of Education to determine which program is more efficient. Schools would then be rewarded with additional scholarship funds for utilizing the more efficient of the two student loan programs. Speakers at the press conference

repeatedly criticized the FFEL Program for directing too much in subsidies to lenders and touted the Direct Loan Program as being the more efficient program.

At the press conference, Senator Kennedy stated:

“Higher education prices are shutting more students than ever out of a college education, yet billions of dollars are wasted every year in taxpayer subsidies that line the pockets of the student lending world-for doing a job that could be done much more efficiently without the middlemen.”

According to a press release issued by Senator Kennedy, the Congressional Budget Office has estimated that the legislation would generate a savings of \$13 billion by encouraging schools to switch to the Federal Direct Loan Program. Of these funds, a total of \$10 billion would be reinvested toward additional Pell Grant funding and graduate fellowships.

Regarding a timeline for the bill, Senator Kennedy indicated that the Senate would likely consider the measure around late April or early May, after discussions on the *No Child Left Behind* reauthorization bill.

Although the legislation includes two Republican co-sponsors, it does not have the backing of either Senate HELP ranking member Mike Enzi (R-NY) or House Education and Labor ranking member Howard P. “Buck” McKeon (R-CA). Democrats have pledged to remove a decade’s worth of Republican policies that gave lenders a big share of the student loan market, and Under Secretary of Education Sara Martinez Tucker remarked at an American Council on Education (ACE) conference that some lenders are “milking profits from the Federal system.” However, private lenders contend it is “risky to tinker” with the student loan system. Lenders claim that more cuts could unintentionally hurt student by prompting banks to cut back on perks, such as loans with no origination fees, low interest rates, 24-hour service and debt counseling.

To add to the complexity of the situation, a Minnesota chiropractor filed a class action lawsuit in Washington, D.C. on March 19, 2007 against the Department of Education alleging that the Department has made a “systematic practice” of imposing financial penalties on borrowers even though the payments on their consolidation loans were made on time. The Department is disputing the claim.

Senator Clinton Reintroduces the *Student Borrower Bill of Rights Act*

On February 7, 2007, Senator Hillary Clinton (D-NY) introduced S. 511, the *Student Borrower Bill of Rights Act of 2007*, which is similar to S. 3255, the bill she introduced on May 26, 2006. S. 511 includes some of the following provisions:

- Requires loan participants to report loan information to each national credit bureau. The information to be reported must include a reference to the fact that the loan is a student loan;

- Allows FFELP consolidation borrowers to reconsolidate their Consolidation Loans if the borrower or the consolidation lender pays a 1% fee. Direct Loan consolidation borrowers can also refinance their loans (no fee is required);
- Requires a lender to provide the borrower of a Federal student loan (excludes PLUS Loans, including GRAD PLUS Loans), with a monthly bill that includes a list of information, including principal borrowed, current balance, interest level, interest payments paid, interest expected to be paid in the future, total payments (including allocation thereof), fees charged, the monthly payment amount set by the Secretary, and the allocation of the next payment;
- Provides that certain information must be provided to delinquent or defaulted borrowers, including information on how the borrower can appeal, to the Department, a decision made by the lender;
- Expands the information to be provided to borrowers when their loan is transferred to a new servicer;
- Beginning one year after a student ceases to be a half-time student, directs the Secretary to limit total monthly payments on Federal students loans to the sum of 10% of the borrower's monthly adjusted gross income for the previous year which is between 100% and 200% of the poverty line and 20% of monthly adjusted gross income above 200% of the poverty line. Though not stated, the presumption is that borrowers below the poverty line would not need to make payments.
- Directs the Secretary to set the monthly payment limit for each borrower based on information provided by the borrower. Borrowers need to update the information annually or authorize the Secretary to obtain the information from the IRS. Borrowers need to certify that they are working full time or seeking fulltime work;
- Allows the Secretary in his discretion, if the payment amount is less than interest accrual, to pay the difference as an interest subsidy (it's unclear what happens to principal that would be paid under a standard amortization schedule, or to interest and principal shortfalls for unsubsidized loans);
- Provides that the discharge of remaining loan balance at the end of an income contingent repayment plan in the Direct Loan Program shall not be treated as income to the borrower;
- Limits the current bankruptcy protection for education loans made, insured or guaranteed by a governmental unit or made under any program funded in whole or in part by a governmental unit or non profit to the first 7 years of repayment. Revised to make some debts easier to discharge and others more difficult. Debt on loans that are made after the date of enactment and come due more than 7 years before the filing of the bankruptcy petition do not have to meet the "undue hardship" test to be discharged;
- Requires certain schools to publish job placement information; and
- Adds a prohibition against an institution's causing any unnecessary loan processing delay for a borrower who uses a lender other than one preferred by the institution.

Senate Committee Holds Hearing on Student Aid

On February 16, 2007, the Senate Committee on Health, Education, Labor and Pensions (HELP) Committee held its first hearing of the year on the topic of “Higher Education, Higher Cost and Higher Debt: Paying for College in the Future.” The purpose of the hearing was to “explore how to increase college access and affordability in the United States and set the stage for reauthorization of the *Higher Education Act* in the 110th Congress.” Witnesses included Sandy Baum, Senior Policy Analyst at The College Board and Professor of Economics at Skidmore College; John H. Oberg, a former researcher for the Department of Education; Tamara Draut, Director of the Economic Opportunity Program DEMOS; and personal finance expert and author, Suze Orman. Ms. Baum and Ms. Draut both made a compelling case for investments in Pell Grants and other Federal grant assistance, saying that student aid is the best vehicle to increase college aid and affordability. Mr. Oberg challenged the current student loan system and called for a rethinking of loan subsidies. Ms. Orman seconded many of his ideas and also suggested that students are not financially sophisticated enough to negotiate the very complex student aid system and understand the consequences of taking on loan debt.

At the hearing, Senator Mike Enzi (R-WY), ranking member of the HELP Committee, outlined “the need for a broad Higher Education Act reauthorization bill to expand access to higher education, give American students the tools they need to complete college and acquire the knowledge and skills needed to be successful in the 21st century global economy.”

The Pell Grant Equity Act Passes House by Voice Vote; Introduced in Senate

On February 27, 2007, the House approved by voice vote H.R. 990, the *Pell Grant Equity Act* which had been introduced on February 13, 2007 by House Education and Labor Chairman George Miller (D-CA) and Ranking Member Howard “Buck” McKeon (R-CA). H.R. 990 would repeal the “tuition sensitivity” federal rule that reduces the annual maximum Pell Grant for students attending institutions with low tuition and fees.

In introducing the bill, Congressman Miller stated that:

“Students should not be financially penalized for attending a low-cost school, and colleges and universities should not be punished for reducing their tuition costs.”

On February 13, 2007, Congressman McKeon stated that:

“A student should not be forced to sacrifice grant aid because of their choice of one institution over another.”

According to the Congressional Research Service (CRS), H.R. 990 would benefit around 96,000 students in the 2007-2008 academic year and would provide an average grant increase of \$108 per student. The bill would provide a one-year fix beginning July 1,

2007 in order to provide immediate relief. Both Congressmen Miller and McKeon said that the fix would be made permanent when the Education and Labor Committee reauthorized the *HEA*.

On February 28, 2007, Senators Barbara Boxer (D-CA) and Dianne Feinstein (D-CA) introduced S. 707, the *Pell Grant Equity Act*, a companion bill to H.R. 990. Both Senators stated that the “tuition sensitivity” provision unfairly penalizes students, particularly “thousands in California” who attend community colleges. To date, the tuition sensitivity provision has only affected California Community College Pell Grant recipients, but college students in other states could become affected if the provision is not repealed.

Both the House and Senate bills assume that this bill would be paid for through the reduction in the guaranty agency collection rate from 23 percent to 22 percent for one year beginning October 1, 2007 and ending September 30, 2008. When Congressman Miller was asked how the guaranty agency rate cut can be used to fund the removal of the tuition sensitivity provision at the same time it is expected to fund reduced interest rates, he responded that nothing is a done deal and “everything is in play.”

Miller and Emanuel Introduce Bill to Reduce Items on FAFSA

On March 20, 2007, Chairman of the House Education and Labor Committee George Miller (D-CA) and Congressman Rahm Emanuel (D-IL) introduced *The College Aid Made Easy Act*, a bill that would reduce the items on the FAFSA in half by encouraging the Internal Revenue Service (IRS) to provide financial data directly to the Department of Education, at the student’s request. This would result in a two-page “FAFSA-EZ” form. The longer FAFSA would be available for families who do not file taxes or who do not wish to release the IRS’ information to the Department. On March 22, 2007, Senator Jack Reed (D-RI) introduced the *Financial Aid Form Simplification and Access (FAFSA) Act*, a bill similar to the House bill. Republican members of both the Senate and House education committees reported to have agreed with the basic goals of simplifying the FAFSA. The Department discussed simplifying the FAFSA at the Summit held in March of 2007.

HEA Reauthorization in 2007? Maybe!

The *Higher Education Act (HEA)* was last reauthorized in 1998 and Congress has attempted to reauthorize the *HEA* for more than three years. Since the Democrats took control of the House and Senate, the Democratic leadership has vowed to pass such legislation, and there are some signs that they may actually mean it.

On March 8, 2007, the House Education and Labor Subcommittee on Higher Education, Lifelong Learning and Competitiveness held the first of what will virtually be every other week hearings between now and late spring as part of the full Education and Labor Committee review of the *HEA*. Congressional aides have said that the Committee

planned to draft a bill to reauthorize the *HEA* by July, with the goal of passing it in September after Congress returns from its summer recess.

The Subcommittee plans to focus most of its discussions around issues of student access and affordability. The full Committee is expected to emphasize high impact issues, such as the behavior of student lenders and teacher education, which are particularly important to Chairman George Miller (D-CA).

The first hearing held by the Subcommittee titled, “The State of Higher Education: How Students Access and Finance a Higher Education,” included witnesses from think tanks who generally agreed that the country needs to do more to help low-income students afford college and that need-based aid is the best way to expand college access. These views were generally supported by the Republican members of the Subcommittee but the Republicans believed that the witnesses “liberal” slant ignored the supply side of the access and affordability question, namely, college prices and failure to control them. Congressman Ric Keller (R-FL) said he favored legislation giving families more information about college pricing and financial aid options. Earlier this year, Congressman Keller and Ranking Member Howard P. “Buck” McKeon (R-CA) introduced the *College Affordability & Transparency Act*, H.R. 472, which aims to provide students and parents with more user-friendly information about comparative college costs. House Democrats have failed to consider H.R. 472, pushing instead for more federal aid.

On March 8, 2007, leaders of the House Education and Labor Committee sent a letter to the higher education community to solicit input in preparation for drafting the House bill to reauthorize the *HEA* later this year. Stakeholders were asked to submit recommendations and proposed legislative language and a description of the change from current law by April 13, 2007 to HigherEdRecs@mail.house.gov

As the House Committee begins its review of the *HEA*, the Senate Health, Education, Labor and Pensions Committee is pursuing a more aggressive schedule. The Democratic and Republican aides are reportedly updating S. 1614, the *Higher Education Act* bill that the Senate Committee passed in the 109th Congress. The Senate is planning to use the 2006 legislation, with one fairly large exception, as the foundation for a bill that it hopes to bring to a Committee vote in early April. The exception is Title IV, which is the section of the *HEA* containing all of the student aid and student loan provisions and is the most complicated part of the *HEA*. It is also the section of the law that is likely to produce the kind of partisan fighting that occurred during the House hearing. Some of the partisan issues include enhancing need-based grant programs by cutting lender subsidies, encouraging colleges to shift to the Direct Loan Program, and controlling college costs. Partisan fighting and the need to reauthorize the *No Child Left Behind Act* make some members of the higher education committee skeptical about the likelihood of reauthorizing the *HEA* this year, especially when the Senate is not including Title IV in its 110th session version of S. 1614.

DEPARTMENT OF EDUCATION UPDATES

Secretary Spellings' Commission on the Future of Higher Education Releases Report and Secretary Responds

On September 19, 2006, the Commission on the Future of Higher Education submitted its final report of the Commission's recommendations for higher education to Secretary of Education Margaret Spellings. The report titled, *A Test of Leadership: Charting the Future of U.S. Higher Education*, is available at:

<http://www.ed.gov/about/bdscomm/list/hiedfuture/reports/pre-pub-report.pdf>

The Commission offered a number of recommendations to improve access to higher education, to make it more affordable, to strengthen quality and encourage innovation, and to bring much needed transparency and accountability to colleges and universities. In response to the Commission's report, Secretary Spellings issued an Action Plan on September 26, 2006. The most unpopular of the Secretary's planned actions would be the creation of a federal database to track academic, enrollment, and financial aid information for individual students, a concept which has been opposed by private colleges and conservatives who believe that it would violate privacy laws. In fact, a provision in *H.R. 609*, the House bill that would have reauthorized the *Higher Education Act*, prohibited the Department from adopting such a data system. Secretary Spellings stated at the press conference where she unveiled her plans that the database would rely on individual identification numbers rather than Social Security numbers, and the system would be "privately protected" and would not identify individual students.

Secretary Spellings Addresses Accreditation at Washington Forum

At an accreditation forum held on November 29, 2006, in Washington, D.C., Secretary of Education Margaret Spellings discussed strategies for making higher education more accessible, affordable, and accountable with key representatives from accreditation agencies, colleges, universities, state leadership, private sector and higher education organizations. The forum served as a discussion to explore ways to implement the recommendations of Secretary Spellings' Commission on the Future of Higher Education. Participants were asked to look at ways to streamline and improve the accreditation process to support innovation, promote consistency in accreditation standards, increase accountability, and become transparent to the public. According to the Secretary:

"For more than a hundred years, accreditation has been the main tool we've used to assure high education quality to the people. Now is the time to take a hard look at the system and see how we can improve it to better meet the new demands of American families in the 21st century."

Secretary Spellings also said that she would seek federal funds for a new grant program that would reward colleges, states, and consortia that report student learning outcomes, but she offered few details on her plans. She suggested, however, that the National Advisory Committee on Institutional Quality and Integrity, the Committee that recognizes accrediting agencies, could play a role in reforming the system. When asked about the Committee's role, she said that she liked the idea of creating a uniform "template" that accreditors could use to publicly report information about colleges' "inputs," such as curricula, faculty qualifications, and library holdings, "outputs," such as measures of what students actually have learned, and "student-learning outcomes." She did emphasize that she did not believe in a "one-size-fits-all" approach to measuring student outcomes.

The Secretary has decided to make changes to accreditation standards through rulemaking and has established a negotiated rulemaking committee on accreditation issues.

ED Conducts Negotiated Rulemaking

On August 18, 2006, the Department of Education announced in the *Federal Register* its intent to establish up to four negotiated rulemaking committees to prepare regulations under Title IV of the *Higher Education Act (HEA)*. The notice also announced a series of four regional hearings where interested parties could suggest issues for consideration. The Department held four field hearings on September 19, 2006, October 5, 2006, November 2, 2006, and November 8, 2006. Witnesses articulated a number of overarching themes at the hearings including the need to revisit a number of unworkable rules governing the Academic Competitiveness Grant (ACG) and the National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) programs, the value of the current accreditation process particularly as it relates to improving student outcomes, and the need to address the rising levels of student debt through increased student aid and improved repayment options.

As a result of the comments and recommendations, on December 8, 2006, the Department of Education announced in the *Federal Register* the establishment of negotiated rulemaking committees to develop rules for the federal student loan programs (including the FFEL, Direct Loan, and Perkins Loan Programs); to address issues related the ACG and the National SMART Grant Programs; to address accreditation issues; and to address issues related to other Title IV programmatic, institutional eligibility and general provisions issues.

The Department of Education is required to undertake negotiated rulemaking to carry out changes made by the passage of an amendment to the *HEA*. In this case, the Department was required to enter into negotiated rulemaking to carry out the changes made to the grant and loan programs by the enactment of the *Higher Education Reconciliation Act of 2005 (HERA)*. Although the *HERA* did not enact any changes in accreditation, the Department decided to establish a committee to carry out the negotiated rulemaking process for accreditation issues. The Department is also using the negotiated rulemaking

process to consider recommendations proposed by Secretary Spelling's Commission on the Future of Higher Education, which did not hold accreditation in high regard during its deliberations. Congress is reportedly looking closely at the Department's efforts to make regulatory changes to the accreditation regulations to make sure that some changes would be more appropriately made through legislation.

Over several meetings, the negotiators, including Department of Education officials, will attempt to reach consensus about how the federal rules might be changed. Only proposals on which every negotiator agrees get forwarded to the Secretary of Education for possible inclusion in proposed regulations. But if the negotiators fail to reach agreement, the Department has the latitude to propose its own rules. The process has the tendency to put pressure on negotiators to reach agreement on a proposal they can live with out of concern for what the Secretary will propose if agreement is not reached. The pressure to reach agreement is seen particularly in the discussion on accreditation issues.

When the sessions are completed, the Department will issue notices of proposed rulemaking. Final regulations for any changes must be published by November 1, 2007 for implementation July 1, 2008. Information on negotiated rulemaking can be found at: <http://www.ed.gov/policy/highered/reg/heardulemaking/2007/nr.html>.

Secretary Holds Summit to Discuss the Recommendations of the Commission on the Future of Higher Education

A summit was held on March 22, 2007, to discuss ways to carry out the recommendations made by the Commission on the Future of Higher Education. Sara Martinez Tucker, the Under Secretary of Education said that the summit is designed to "focus on galvanizing action and distributing leadership and accountability across all sectors." Five key priorities were discussed: "Aligning K-12 and higher education expectations; increasing need-based aid; using accreditation to support and emphasize student learning outcomes; serving adults and other non-traditional students; and expanding affordability through increased transparency of costs." The summit, held in Washington, DC, brought together 250 participants from academia, business, philanthropy, and secondary education who crafted a list of 25 action items, but provided no plan for how to put them into practice. After the summit, the Department will hold a series of regional meetings in Atlanta, Boston, Kansas City, Phoenix, and Seattle to describe the best practices that are occurring in those cities and to introduce attendees to other states.

In order to move on the Secretary's action plan, the Department has also met with a group of students and financial aid administrators on how to streamline the federal student aid system and make it easier for students to apply for financial aid. In addition, as part of the President's FY 2008 budget proposal, the Department is seeking \$25 million for a pilot project to test a unit-record data-base, a plan that has caused much controversy. Many representatives of the higher education community are concerned about the possible invasion of students' privacy should a unit-record database be implemented.

Department Seeks Comments on Expanding IPEDS

On January 24, 2007, the Department published an announcement in the *Federal Register* inviting comments on its annual proposal to revise and expand what it collects from colleges through the postsecondary database system, the Integrated Postsecondary Education Data System (IPEDS). The proposal appears to be a result of the recommendations made by the Secretary's Commission on the Future of Higher Education.

The data collection plan asks institutions to post their transfer of credit policies online and to provide a link. It also asks them to report how many full- and part-time students are enrolled exclusively in online programs.

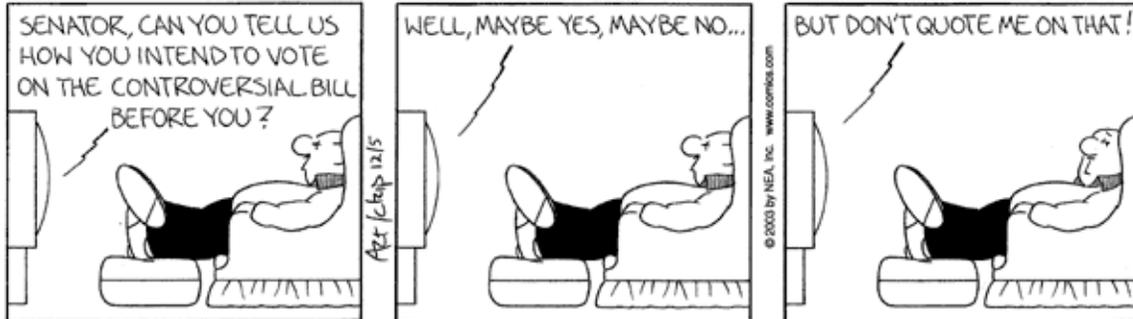
The most controversial new categories are "a new accountability part" and an expanded section of information about financial aid. Under the accountability part, colleges would be asked a set of four questions, including whether or not institutions have online "fact books" and if they post information on their Web sites about assessment or student learning outcomes, along with requests for links to those pages, which the Department would add to the Department's web-based College Opportunities Online Locator (COOL). The financial aid category would ask for more information about the kind of financial aid their students receive (from four categories to seven). The additional financial aid information would appear to meet its goal of reporting information related to colleges' net price rather than sticker price.

Prior to the comment due date of March 26, 2007 the Department of Education announced in a *Federal Register* notice of March 8, 2007, that it would be scaling back its proposed expansion of the IPEDS survey. Grover J. Whitehurst, Director of the Department's Institute of Education Sciences said that this notice was designed to "lessen the anxiety" that the first notice had created in the higher education community. Mr. Whitehurst said that the Department would very likely eliminate one of the most controversial of the proposed additions – a question asking colleges whether they used any of several student learning assessments, and if so, to provide links to the website where results were posted. ED would then link to those sites on the COOL. Mr. Whitehurst did not indicate whether the Department will remove the proposed questions that would require colleges to report more detailed information on the cost of instructing undergraduates or the amount of student aid awarded to first-time, full-time students.

Identity Theft Tops List of FTC Consumer Complaints

In its annual report on "Consumer Fraud and Identity Theft Complaint Data," the Federal Trade Commission (FTC) found that for the seventh year in a row, identity theft topped the list of consumer complaints. For the first time, complaint data was broken down by metropolitan statistical areas with populations greater than 100,000. Breakdown data for more than 350 metropolitan areas can be found at:

<http://www.ftc.gov/opa/2007/02/topcomplaints.htm>.



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April 23, 2007