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) –
  Second Extension of the HEA, H.R. 5185, the Higher Education Extension Act of 2004
  Third Extension of the HEA, H.R. 3784, the Higher Education Extension Act of 2005
  Fourth Extension of the HEA, H.R. 4525, the Second Higher Education Extension Act of 2005
  Fifth Extension of the HEA, H.R. 4911, the Higher Education Extension Act of 2006
  Sixth Extension of the HEA, H.R. 5603, the Second Higher Education Extension Act of 2006
  Seventh Extension of the HEA, H.R. 6138, the Third Higher Education Extension Act of 2006
  Access Act of 2007
  Ninth Extension of the HEA S. 2733  Higher Education Extension Act of 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 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
Higher Education Reconciliation Act
Deficit Reduction Act of 2005

Higher Education Amendments of 2007

College Opportunity and Affordability Act of 2007

Higher Education Act reauthorization
Higher Education Reconciliation Act of 2005 (HERA),

HERA made the following changes to the HEA:

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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.

A summary of the highlights of S. 1642 is as follows:

Title I-General Provisions

- Section 101. General Definition of Institution of Higher Education: The term also would award a degree that is acceptable for admission to a graduate or professional degree program, subject to the review and approval by the Secretary;
- Section 102. Definition of Institution of Higher Education for Purposes of Title IV Programs: “Proprietary institution of higher education” and “postsecondary vocational institution” would admit as regular students who are beyond the age of compulsory school attendance or who will be dually or concurrently enrolled in the institution and a secondary school;
- Section 114. Accreditation and Institutional Quality and Integrity Committee: Would replace the current National Advisory Committee on Institutional Quality and Integrity with a new committee that would be made up of members appointed by not only the Secretary but appointees from the Senate and the House;
- Section 132. Transparency in College Tuition for Consumers: The Secretary would annually report in a national list and in a list for each State, a ranking of institutions of higher education according to such institutions’ change in tuition and fees over the preceding 2 years to provide consumers with general information on pricing trends among institutions of higher education nationally and in each State. The list must include the applicable institution’s higher education price index known as the Higher Education Price Increase Watch Lists; the institution’s full price of tuition and fees and the net price; and where applicable, the average price of room and board. This information shall be reported on the College Opportunities On-Line (COOL).
• Section 133. Database of Student Information Prohibited:

Would prohibit the development, implementation, or maintenance of a Federal database of personally identifiable information on individuals receiving assistance under this Act, attending institutions receiving assistance under this Act, or otherwise involved in any studies or collections of data under this Act, including a student unit record system, an education bar code system, or any other system that tracks individual students over time. Nothing shall prohibit a State or a consortium of States from developing, implementing, or maintaining State-developed data bases that track students over time;

• Section 151. Lender and Institution Requirements Relating to Educational Loans:

o Disclosures by Institution:
  - Duty to disclose the name of the lender in documentation related to the loan if enters into an educational loan arrangement.

o Disclosures by lenders to students before providing a loan to a student:
  - Interest rates of the educational loans;
  - Sample educational costs disaggregated by type;
  - Types of repayment plans available by type of educational loans;

o Disclosures by lenders to the Secretary:
  - Any reasonable expenses paid to any employee who is employed in the financial aid office or who has responsibilities with respect to educational loans.

Title IV – Student Assistance

Part A – Grants to Students in Attendance at Institutions of Higher Education:

• Section 401. Federal Pell Grants:
  - Would increase the authorization amount of Pell Grants to be $5,400 in 2008-2009 up to $6,300 for 2011-2012; and
  - Would permit not more than 2 Federal Pell Grants during a single award year to permit such student to accelerate the student's progress toward a degree by attending additional sessions for students enrolled, on at least a half-time basis, for a period of more than 1 academic year in a 2-year or 4-year program for which the institution of higher education awards an associate or baccalaureate degree.

• Section 402. Academic Competitiveness Grants:
  - Would provide ACG awards to students at least half-time, instead of full-time, and progression would be based on grade level rather than academic year;
  - Students could be enrolled in certificate programs rather than only degree programs.

• Section 406. Federal Supplemental Educational Opportunity Grants:

  - Would allow increases in the FSEOG Program by eliminating a dollar-specific cap in the legislation and replacing it with "such sums as may be..."
necessary for fiscal year 2008 and each of the five succeeding fiscal years."

Part B-Federal Family Education Loan Program

- **Section 428. Federal Payments to Reduce Student Interest**
  Would provide for a lender to determine a borrower's entitlement to a school deferral based on the lender's confirmation of enrollment status through the National Student Loan Data System (NSLDS), if such confirmation is requested by the school;

- **Section 428. Lender to Provide Information on Impact of Interest Capitalization**
  Would require a lender at the time it grants a deferral on an unsubsidized Stafford loan to provide information to enable the borrower to understand the impact of interest capitalization;

- **Section 428. Lender to Provide Information on Loan Sales**
  Would require additional information be provided to borrowers in the case of a loan sale that results in a change in the identity of the party to whom borrowers must send payments;

- **Section 428. Restrictions on Guaranty Agencies on Inducements, Payments, Mailings, and Advertising**
  Would amend the current prohibited inducement provisions applicable to guarantors to specifically prohibit the offer of securities, prizes, travel, entertainment expenses, and tuition repayment if such inducements are made to secure loan applications, and to prohibit unsolicited mailings by postal or electronic means of loan application forms and the performance of any function as school is required to perform under parts B, D, or G of title IV. It would not be a prohibition to provide technical assistance to institutions of higher education provided to institutions by the Department;

- **Section 435. Restrictions on Lenders on Inducements, Payments, Mailings, and Advertising**
  Would make similar changes to the current lender prohibited inducement section, while also (i) including offering information technology equipment and additional financial aid funds as inducements that cannot be provided (if provided to secure applications), (ii) prohibiting consulting arrangements with school employees with financial aid responsibilities, (iii) prohibiting compensation to such persons for serving on lender advisory boards (though reimbursement for reasonable expenses is permitted), and (iv) prohibiting payments to a student who is acting as a lender representative;

- **Section 428. Lender to Provide Information on Capitalization of Interest During Forbearance**
  Would require a lender at the time it grants an internship, residency or hardship forbearance to provide information to enable the borrower to understand the impact of interest capitalization and, once every 180 days during the forbearance, to provide certain information to the borrower, including the amount of interest that has accrued and when it will be capitalized;

- **Section 428C. Lender to Provide Information on Perkins**
  Would require consolidation lenders to disclose certain information to borrowers of Perkins loans;

- **Section 428C. Lender to Provide Information on Interest on Consolidation Loans**
  Would require consolidation lenders upon application for a consolidation loan to...
provide the borrower with information on the total interest to be paid on the consolidation loan, and on whether consolidation will result in loss of loan benefits.

- Section 428F. Financial Literacy Programs:
  Would establish requirements for financial literacy programs:
  o One provision provides that, as determined by the school in which the borrower is enrolled, a guaranty agency shall make available financial and economic education materials for the borrower; and
  o The other provision provides for a guaranty agency working with schools it serves (and with respect to a Direct Loan school, either the school or the Department) to develop and make available a quality educational program and material in budgeting and financial management.

- Section 428I: Would repeal the exceptional performer provision;

- Section 430A. Agreements with Consumer Reporting Agencies:
  Would require guarantors and lenders to have agreements with all national consumer reporting agencies and to specifically provide that the information reported include type of loan and repayment status;

- Section 433. Borrower Information:
  Would require lenders to provide borrowers with certain information on their loan benefits, including information on the reasons a borrower may lose eligibility, examples of the impact the interest rate reductions will have on time and amount of repayment, and upon borrower request, the effect interest rate reductions will have on the payoff amount and time for repayment;

- Section 433(g). Loan Benefits Disclosures:
  Would require a lender to provide a borrower during repayment with a monthly statement disclosing, among other information, borrowed principal, current balance, interest rate, amount of interest paid, total amount of additional interest payments expected, and a description of each fee charged for the current payment period (additional disclosures are required before a loan enters repayment and during delinquency and default);

- Section 435(d). Definition of Eligible Lender:
  Would terminate the current authority of some schools to act as lenders on June 30, 2011;

- Section 435(d). Annual Audits for School Lenders and Lender Trustees:
  Would require all school lenders and lenders serving as trustees for schools to undergo an annual audit to confirm compliance with school lender requirements;

- Section 437. Discharge and Cancellation Rights in Cases of Disability:
  Would provide for the discharge of loans of persons unable to work by reason of physical or medical impairment that is expected to result in death or that has lasted for 60 months, or that can be expected to last for 60 months (the Department is authorized by regulation to resume collection on such loans in certain cases);

- Section 438(d). Loan Fees:
  Would increase by 50 basis points (to 1.0%) the lender paid origination fee on any consolidation loan made on or after July 1, 2007.
Part C - Federal Work-Study:

• Would allow increases in the FW S Program by eliminating a dollar-specific cap in the legislation and replacing it with "such sums as may be necessary for fiscal year 2008 and each of the five succeeding fiscal years."

Part D - Federal Perkins Loans:

• Would provide cancellation for certain public service positions.

Part E - Need Analysis:

• Would provide an allowance in the cost of attendance for students who live in housing located on a military base.

Part F - General Provisions Relating to Student Assistance:

• Section 432. Compliance Calendar: Secretary would be required to provide to institutions of higher education a list of all reports and disclosures required by the HEA;

• Section 483. Common Financial Aid Form Development and Processing: Would require the Secretary of Education to create an EZ FAFSA, a simplified application for certain students. Would also require a phase-out of the current paper FAFSA at a time that the Secretary determines that it is no longer cost effective to continue printing it. A full, printable copy would still be available online. Additional requirements would mandate that the reapplication process be more streamlined and easier for students returning to college. A study group would also be created within 180 days of the bill's enactment to study, evaluate, and identify ways to simplify the student aid process and alternative ways to calculate the expected family contribution. The study group would consist of the Secretary of Education, the Secretary of the Treasury, the Director of the Office of Management and Budget, the Comptroller General, and the Director of the Congressional Budget Office, as well as other designees;

• Section 484. Student Eligibility: Student would be considered to have ability-to-benefit upon satisfactory completion of 6 credit hours or the equivalent coursework that are applicable to a degree or certificate offered by the institution;

• Section 484. Student Eligibility: A student's eligibility shall be reduced if a financial aid officer determined under the discretionary authority under section 479A that distance education results in a substantially reduced cost of attendance to such student;

• Section 485. Institutional and Financial Assistance Information for Students: Institutions would have to also disclose:
  - Institutional policies and sanctions related to unauthorized distribution of copyrighted material on the institution's information technology systems;
  - Descriptions of student body;
The placement in employment of, and types of employment obtained by, graduates of institution’s degree or certificate programs; Additional information at entrance counseling; Institutional criteria for transfer of credit earned at another institution; and A fire safety report, which contains information with respect to campus fire safety practices and standards;

• Section 485B. National Student Loan Data System: Would provide guidance on the appropriate use and privacy issues associated with the NSLDS, including providing disclosures to students as part of exit counseling that informs students how they can access NSLDS;

• Section 485E. Early Awareness of Financial Aid Eligibility: The Secretary would be required to implement early intervention and outreach programs;

• Section 487. Program Participation Agreements: Institution would be required to establish, follow, and enforce a code of conduct regarding student loans that includes:

  o Prohibition from receiving anything of value from any lender in exchange for any advantage sought by lender to make educational loans;

  o Any employee who is employed in the financial aid office or who otherwise has responsibilities with respect to educational loans or other financial aid is prohibited from taking any gift or trip worth more than a nominal value from any lender;

  o Any employee who is employed in the financial aid office or who otherwise has responsibilities with respect to educational loans or other financial aid is prohibited from entering into any type of consulting arrangements or other contract to provide services to a lender;

  o Any employee who is employed in the financial aid office or who otherwise has responsibilities with respect to educational loans or other financial aid is prohibited from serving and receiving anything of value from the lender(s) except the employee may be reimbursed for reasonable expenses for serving on the advisory board;

  o The institution will not for any first-time borrower, assign, through award packaging or other methods, the borrower's loan to a particular lender; and refuse to certify, or, delay certification of, any loan based on the borrower's selection of a particular lender or guaranty agency;

  o The institution shall designate an individual who shall be responsible for signing an annual attestation on behalf of the institution agreeing to the requirements of the code of conduct;

  o The code of conduct shall be widely available to the institution's faculty members, students, and parents;

  o In the case of proprietary institution of higher education, the institution must have not less than 10 percent of its revenues from sources other than Title IV funds;

  o If an institution maintains a preferred lenders list, the institution must: Clearly and fully disclose why the institution has included each lender as a preferred lender, especially with respect to the terms
and conditions favorable to the borrowers; and that the institutions (or parents) do not have to borrow from a lender on the list; ensure that there are not less than 3 lenders on the preferred lenders named; and the list specifically indicates for each lender whether the lender is or is not an affiliate of each other lender on the list and if the lender is an affiliate of another lender on the list, describes the specifics of such affiliation; establish a process to ensure that the lenders are placed upon the preferred lender list on the basis of benefits provided to borrowers, including:

- Highly competitive interest rates, terms, or conditions for FFEL or Direct Loans;
- High-quality customer service for such loans; or
- Additional benefits beyond the standard terms and conditions for such loans;

Teach-Outs: If the Secretary initiates an LS&T, the institution would be required to prepare a teach-out plan for submission to its accrediting agency, which would be a written plan that provides for the equitable treatment of students if the institution ceases to operate;

Implementation of Non-Title IV Revenue: In calculating 90/10, a proprietary school must use the cash basis of accounting and count the following funds as sources of funds other than funds provided under this title:

- Funds used by students from sources other than funds received under this title to pay tuition, fees, and other institutional charges to the institution, provided the institution can reasonably demonstrate that such funds are used for such purposes;
- Funds used for matching funds for programs under this title;
- Funds used by the student from savings plans for educational expenses established by or on behalf of the student and which qualify for special tax treatment under the IRC of 1986;
- Funds paid by a student, or on behalf of a student by a party other than the institution, to the institution for an education or training program that is not eligible for funds under this title, provided that the program is approved or licensed by the appropriate State agency or accrediting agency recognized by the Secretary;
- Funds generated by the institution from institutional activities that are necessary for the education and training of the institution's students, if such activities are:
  - conducted on campus or at a facility under the control of the institution;
  - performed under the supervision of a member of the institution's faculty; and
  - required to be performed by all students in a specific educational program at the institution;
In the case of loans made by the institution, only the amount of the loan repayments received by the institution during the fiscal year for which the determination is made;

In the case of scholarships provided by the institution, only those scholarships that are:

- In the form of monetary aid based upon the academic achievements or financial need of students; and
- Disbursed during the fiscal year for which the determination is made from an established restricted account and only to the extent that the funds in that account represent designated funds from an outside source or income earned on those funds.

In the case of tuition discounts, only those tuition discounts based upon the academic achievements or financial need of students;

Sanctions:

- Failure to meet requirement for 1 year, the Secretary may impose 1 or both of the following sanctions: place the institution on provisional certification until the institution demonstrates compliance; and/or require other increased monitoring and reporting requirements as the Secretary determines necessary;
- Failure to meet requirement for 2 years, the institution is ineligible to participate in Title IV programs; and
- Public availability of information about institution failing to meet the requirements of 90/10;

Section 487A. Regulatory Relief. The Secretary shall review and evaluate the experience of institutions participating as experimental sites and shall issue a report on a biennial basis.

Part H - Program Integrity Subpart 2-Accrediting Agency Recognition:

Section 496(a). Criteria Requirements:
- Would require the accrediting agency to monitor an institution's success with regard to the student's achievement in relation to the institution's mission.

Section 496(c) Operating Procedures Required:
- Would require the accrediting agency to ensure during an on-site evaluation that the institution provides its current and prospective students with the federally-required disclosure information;
- Would require the accrediting agency to monitor the growth of programs that are experiencing significant enrollment growth;
- Would require the accrediting agency to require an institution to submit a teach-out plan if the Department or accrediting agency takes a negative action against an institution; and
Would require the accrediting agency to confirm as part of the accreditation review that the institution has a transfer of credit policy that is publicly distributed.

Subpart 3 - Eligibility and Certification Procedures:

- Section 498A. Program Review and Data:
  - Would require the Department to provide an institution an adequate opportunity to review and respond to any program review report and relevant materials related to the report before any final program review report is issued;
  - Would require the Department to take into consideration an institution's response in any final program review or audit determination and include in the report or determination a written statement addressing the institution's response; a written statement of the basis for such report or determination; and a copy of the institution's response;
  - Would require the Department to maintain at all times the confidentiality of the program review report until a final program review is issued.

- Section 499. Access to Timely Information About Loans:
  - A lender would be required to provide the borrower a bill that would provide information on the loan including the principal amount borrowed; the current balance, the interest rate, the amount paid in interest, the amount of additional interest payments, etc.
  - The lender would be required to provide a borrower specific information before commencement of repayment; during delinquency; and during default;

- Section 495. Auction Evaluation and Report:
  - If Congress enacts an Act that authorizes the Secretary of Education to carry out a pilot program under which the Secretary establishes a mechanism for an auction of PLUS Loans, then the Comptroller General would evaluate the pilot program.
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;

• The Secretary of Education is allowed to cancel the balance of any interest and principal due on any Federal Direct Loan that is not in default for borrowers who have made 120 monthly payments on a Direct Loan after October 1, 2007 based on a 10-year repayment schedule and are employed in a public service job or have been employed in a public service job during the 120 monthly payment period.

• A number of changes have been made to the Federal Methodology, which would increase the need of students;

• The Secretary is required to implement a student loan auction program for parents PLUS loans in the FFEL Program to begin on July 1, 2009;
The College Access Challenge Grant program will be established to provide a two-to-one matching grant to be spent on efforts to increase college access and success among underserved student populations.

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 aids 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.

While the Department of Education and Congress have applauded the enactment of P.L. 110-84, the legislation is causing lenders to reduce the borrower benefits that have been provided in the past and to suspend their participation in the FFEL Programs.

While it is still too early to know what impact the cuts made by the lending community will have on the student loan industry, changes will no doubt occur in the student lending environment. Clearly students will not benefit from the changes.

College Cost Reduction Act

Education Act.

Higher
Since Congress adjourned for the winter holidays on December 20, 2007, several noteworthy pieces of legislation were signed into law by the President. On December 21, 2007, President Bush signed into law S. 2371 (P.L. 110-153), a bill that makes technical corrections to the College Cost Reduction and Access Act ("CCRAA") (P.L. 110-84). The College Cost Reduction and Access Act, which was signed into law on September 27, 2007, provides more than $20 billion in financial aid for students over the next five years, the biggest increase in federal financial aid since the GI Bill. Among the provisions, P.L. 110-84 increases Pell Grant funding from $4,310 in 2007 to $5,400 in 2012 and gradually decreases the interest rate on subsidized loans from the current rate of 6.8 percent to 3.4 percent for loans first disbursed July 1, 2011 to July 1, 2012. These increases in financial aid come at the expense of subsidies in student lenders. Many are concerned that access to lenders will become limited.

The technical corrections included in P.L. 110-153 expand the definition of excludable untaxed income and benefits; stipulate how the Secretary should calculate repayment amounts in the new income-based repayment plan for married borrowers filing separately; and modify the TEACH Grant program in several places.

- Untaxed Income and Benefits excluded from the definition of "total income" in the need analysis as defined in Section 480 of the Higher Education Act are:
  - The amount of additional child tax credit claimed for Federal income tax purposes;
  - Welfare benefits, including assistance under a State program funded under part A of Title IV of the Social Security Act and aid to dependent students;
  - The amount of earned income credit claimed for Federal income tax purposes;
  - The amount of credit for Federal tax on special fuels claimed for Federal income tax purposes;
  - The amount of foreign income excluded for purposes of Federal income taxes; or
  - Untaxed Social Security benefits.

This correction will go into effect on July 1, 2009.

- Income-Based Repayment for Married Borrowers Filing Separately was included as a correction to address the calculation of repayment amounts for married borrowers who file their taxes separately and would like to participate in the income-based repayment plan created by the College Cost Reduction and Access Act. Under the income-based repayment plan, the Secretary forgives

College Cost Reduction and Access Act

College Cost Reduction and Access Act

Higher Education Act

College Cost Reduction and Access Act
any outstanding loan balance after 25 years of repayment. The correction will require the Secretary to only use the borrower's student loan debt and adjustable gross income to calculate the amount of the borrower's income-based repayment. This correction goes into effect on July 1, 2009.

The TEACH Grant amendment replaces the word "financially sound" with "financially responsible" to describe one of the requirements to be met by an institution that wishes to participate in the program. Other changes made to the TEACH Grant program are minor.

The corrections bill also clarifies that members of the National Guard who are serving full-time are considered "active duty" for purposes of student loan deferments.
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 "the 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."

A summary of the highlights of H.R. 4137 is as follows:

Title I-General Provisions

• Section 101. Definition of Institution of Higher Education: The term also would include institutions that award a degree that is acceptable for admission to a graduate or professional degree program, subject to the review and approval by the Secretary. Added to the requirement that an institution must only admit students who are beyond the age of compulsory school attendance in the State, if the students do not have a high school diploma or equivalent, is the authorization to admit students who will be dually or concurrently enrolled in the institution and a secondary school.

• Section 102. Definitions of Proprietary Institution of Higher Education and Postsecondary Vocational Institution: Added to the requirement that an institution must only admit students who are beyond the age of compulsory school attendance in the State, if the students do not have a high school diploma or equivalent, is the authorization to admit students who will be dually or concurrently enrolled in the institution and a secondary school.

• Section 103. Definition of Distance Education: The definition states that it uses one or more technologies which are described to deliver instruction to students...
who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, synchronously or asynchronously. The technologies used may include:

- the Internet;
- one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;
- audio conferencing; or
- video cassette, DVDs, and CD-ROMs, if the cassette, DVDs, and CD-ROMs are used in conjunction with the technologies listed above.

• Section 111. Database of Student Information Prohibited: The creation of a federal unit record database to track individual postsecondary education students is prohibited.

• Section 114. National Advisory Committee on Institutional Quality and Integrity: The bill would replace the current National Advisory Committee on Institutional Quality and Integrity with a new committee that would be made up of members appointed not only by the Secretary but by appointees from the Senate and the House.

• Section 120. Drug and Alcohol Abuse Prevention: Institutions would be required to determine the number of drug- and alcohol-related incidents and fatalities that occur on the institution's property or as part of the institution's activities and are reported to the institution.

• Section 131. Improved Information Concerning the Federal Student Financial Aid Website: The Secretary shall display a link to the Federal aid website of the Department of Education to advertise and promote the availability of the Federal student financial aid website.

• Section 132. State Commitment to Affordable College Education: A State shall provide for public institutions of higher education in such state beginning on or after July 1, 2008, an amount which is equal to or greater than the average amount provided by the State to such institutions during the 5 most recent preceding academic years for which satisfactory data are available or equal to or greater than the amount provided by such State to such institutions during the preceding year. The Secretary shall withhold funding from any State that violates the maintenance of effort requirement, unless there are exceptional or uncontrollable circumstances.

• Section 133. Transparency in College Tuition for Consumers: For purposes of this section, “net price” means the average yearly tuition and fees paid by a full-time undergraduate student at an institution of higher
The section on college costs that was in the earlier version was replaced with a new section. The amendment to the provision includes:

- The creation of a sort-able list of all institutions in the country to provide information on tuition and fees, average price after grant aid, recent price increases, and change in per-student spending.
- Renaming the “Higher Education Price Index” (HEPI) to the “Postsecondary Education Price Index” (PEPI).

The earlier House bill had a section on the Higher Education Watch List, which the Secretary would annually update and make public the full price of tuition and fees and the net price for institutions that increase their tuition and fees at a higher rate than HEPI. Institutions that increase tuition and fees at a rate less than or equal to HEPI would receive federal grants to be used for need-based grants. The version that passed the House rewrote the Higher Education Watch List section to create the Cost Affordability and Transparency lists. The bill requires the Secretary, effective July 1, 2011, to publish 3 transparency lists, by type of institution:

1. The 5% most expensive institutions in the country.
2. The 5% least expensive institutions in the country.
3. The 5% of institutions that had the largest percentage increase over the last three years.

The bill would require institutions with the largest percentage increases (the third list) to report to the Secretary on reasons for tuition increases. Further, the bill would require schools to create a Quality Efficiency Task Force, which would examine the institution’s operating costs as compared to other similarly situated institutions and make recommendations on how the institution could create more efficiencies to help it hold down costs. Institutions would be exempt if their tuition is in the lowest quartile for their sector or if the dollar increase over the 3-year period was less than $500.
Part E – Lender and Institution Requirements Relating to Educational Loans

Section 151. Definitions:

- **Covered Institutions**: Any educational institution that receives federal funds.
- **Educational Loans**: Any Title IV loan and private loan that is made, insured, or guaranteed under Title IV and is issued by a lender expressly for postsecondary educational expenses to a student or parent of a student regardless of whether the loan involves enrollment certification.
- **Preferred Lender Arrangement**: An arrangement or agreement under which a lender provides or issues educational loans to students attending a covered institution or parents of students and the arrangement or agreement relates to the covered institution recommending, promoting, or endorsing the educational loan product of the lender.

Section 152. Requirements for Lenders and Institutions Participating in Preferred Lender Arrangements:

- Annually, a lender that participates in a preferred lender arrangement must certify its compliance with the requirements of the HEA to the auditor of such lender.
- A lender may not provide a private educational loan to a student at a covered institution until the covered institution has informed student/parent of their remaining options for borrowing under Title IV, including terms and conditions.
- A covered institution that has entered into an agreement regarding a private educational loan shall not agree to the lender’s use of the institution’s name, emblem, mascot, or logo or other words, pictures or symbols identified with the institution in the marketing of the private loan.

Section 153. Interest Rate Report for Institutions and Lenders Participating in Preferred Lender Arrangements:

Not later than 180 days after enactment, the Secretary shall prepare a report on the adequacy of the information provided to students and parents about educational loans. Also the Secretary shall develop and prescribe in regulations a model disclosure form to be used by lenders and covered institutions that will provide information on Title IV and private educational loans.

The version which passed the House changes the date from August to March 1 as to when lenders are required to provide institutions of higher education information about the terms, conditions and benefits of the educational loans to be provided by the lender to the borrowers who are attending the institution. The House-passed version clarifies and expands the types of financial literacy activities that lenders, guaranty agencies, or servicers of educational loans may
provide to institutions of higher education without violating the ban on gifts given to institutions.

The House-passed version also provides that, in addition to LS&T action against a lender, the Secretary may impose a civil penalty of $27,500 for violations of lender requirements relating to educational loans.

- Requirement for institutions to develop and publish a code of conduct, administer and enforce it, and provide annual training on the code.
  - Prohibits gifts from lenders and other entities in the student loan industry to financial aid administrators or other institution employees that deal with student loans. Gifts allowed include standard information related to loans or financial literacy, food, refreshments, training or informational material furnished as part of training, favorable terms and conditions, borrower benefits on educational loans,exit counseling services to meet an institution's requirements, and philanthropic contributions that are unrelated to educational loans, provided that the contribution is disclosed.
  - An employee of the financial aid office cannot accept from any lender or affiliate of a lender any fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation for consulting.
  - Revenue sharing arrangements are banned.
  - A lender shall not provide any assistance with call center staffing or financial aid staffing, except for providing professional development training for financial aid administrators, providing educational counseling materials, providing financial literacy materials, or providing debt management materials to borrowers if the identification of the lender is given. Staffing may be provided on a short-term, non-recurring basis to assist the institutions during emergencies, including natural disasters.
  - A covered institution shall not request or accept from any lender any offer of funds, including opportunity pools, to be used for private educational loans to students in exchange for the covered institution providing concessions or promises to the lender with respect to a specified number of loans or loan volume.
  - An officer, employee or agent employed in the financial aid office shall not serve on advisory councils. Lenders may seek advice in order to improve products or services for borrowers, including through telephone or electronic means or a meeting, provided there are no gifts or compensation. Exceptions are made for an officer, employee or agent who is not employed in the financial aid office and does not otherwise have responsibilities with respect to educational loans.
Section 156. Compliance and Enforcement:
The Secretary may impose a fine of up to $25,000 on a covered institution for violations, and in the case of lenders, L,S,&T the lender's participation.

Section 157. Student Loan Counseling:
Lenders and the Department of Education are required to provide students with financial literacy education.

Title IV-Title IV Amendments
Part A – Part A Amendments

Section 401. Federal Pell Grants:
The Pell Grant Program is authorized through fiscal year 2014; the authorized Pell Grant annual maximum is increased to $9,000 (the actual amount of Pell is set annually through appropriations); and Year-round Pell Grants are available beginning July 1, 2009 for students enrolled in a baccalaureate degree, associate's degree, or certificate program. An amendment prohibits convicted sex-offenders who remain involuntarily confined from receiving Pell Grants. An absolute maximum of 18 semesters or 27 quarters limit on the time that students may be Pell Grant eligible is established.

Section 401A. ACG/National SMART Grants:
Allows less than full-time students to be eligible for ACG/National SMART Grants along with other changes to make the programs more workable.

Section 413A. Federal Supplemental Educational Opportunity Grants.
The SEOG Program is authorized through fiscal year 2014 (as is true for FWS and Perkins Loans); increases SEOG, FWS, and Perkins allowances for books and supplies to $600, from $450. (See Section 441 College Work-Study and Section 462(c)(4)(D) Perkins Loans.)

Part B-Federal Family Education Loans

Section 112. Feasibility Study for National Electronic Student Loan Marketplace:
Authorizes a study of the feasibility of developing a National Electronic Student Loan Marketplace for federal and private loans. The proposed marketplace would require lenders to provide advertised rates to borrowers and allow financial aid administrators and borrowers to comment about the quality of lenders' products and services. This marketplace would be similar to current student loan tools developed by private companies and would match students with loan products.
• Section 428 (k). Student Loan Information: Requires lenders and other lending entities to provide loan information about former students to institutions to prevent student loan default. (NOTE: Lenders are concerned that this requirement could result in data breaches and the language in the bill preempts all other federal laws intended to protect borrowers against the accidental release of personal information.)

• Section 428C(b) Consolidation Loan Disclosures: Requires consolidation loan providers to show how and why borrowers may lose certain loan benefits (e.g., subsidized interest, loan cancellation) by consolidating.

• Section 428K. Loan Forgiveness for Service in Areas of National Need: Provides $2,000 per year for five years in loan forgiveness to those with careers in areas of national need. Members of Congress are excluded from the definition of public service jobs for public service loan forgiveness (Section 455(m)(3)(B)). Public Service Job Definition.

• Section 428L. Loan Repayment for Civil Legal Assistance Attorneys: The Secretary is authorized to carry out a program to make loan repayments (up to $6,000) per year on behalf of civil legal assistance attorneys.

• Section 432(b) Settlement of Claims: The Secretary shall not enter into any settlement of any claim that exceeds $1,000,000 unless the Secretary has asked the Attorney General to review the settlement agreement.

• Section 433A. Delinquency Prevention, Default Aversion, and Consumer Education Information Programs: Guaranty agencies are required to develop programs designed to prevent delinquencies and avert defaults and to develop and make available financial literacy materials.

• Section 435(m). Cohort Default Rates: The definition of cohort default rate is revised to expand the default window by two years. The Secretary is directed to annually publish cohort default and life of cohort default data, by school type. The Committee-passed version modified the definition of cohort default rate by expanding the default window to an additional year. (Studies have shown that the cohort default rates of all institutions will increase by 60%.)

    The House-passed version 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 schools do not have to delay the first disbursement of a loan to a first-time student and the school would not have to multiply disburse a loan if there is a remaining term that is less than an academic year.)
The thresholds related to the cohort default rate 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.

Finally, the participation index is amended to determine which institutions are deemed “low loan volume” schools as it applies to the cohort default rate.

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Part F - Need Analysis

- Section 472. Cost of Attendance: Modifies definition for students living in military housing or receiving a basic housing allowance to exclude the cost of room (not board) from the allowance, effective July 1, 2009.

Part G - General Provisions

- Section 482. Compliance Calendar: Adds a compliance calendar to the master calendar provisions to cover any required reports or disclosures.
- Section 483. Improvements to Paper and Electronic Forms and Processes:
  - Mandates FAFSA4caster and requires the development of a two-page EZ FAFSA.
  - Requires the Department to report on the adequacy of financial aid award letters and to prepare a model format for such financial aid award letters.
- Section 484. Sense of the Congress; Report: Requires the Secretary to work with the Secretary of Treasury to develop a process by which ED, with the applicant’s permission, draws information from the IRS for completing the FAFSAs.
- Section 486. Assessment of Costs and Other Charges: Closes a loophole regarding the defense of infancy and Perkins Loans.
- Section 485(a)(1) Institutional and Financial Assistance Information for Students:
  - Institutions would be required to annually disclose to students that the distribution of copyrighted material, including peer-to-peer file sharing, may be subject to civil and criminal liabilities.
  - Criminal offenses to be reported under the Crime Report are expanded to include destruction, damage, or vandalism of property and intimidation. In addition, institutions must disclose emergency response and evacuation procedures.
  - Transfer of Credit: Institutions would be required to disclose the transfer of credit policies established by the institution which shall include a statement regarding the transfer of credit earned at another institution and a list of institutions with which the institution has established an articulation agreement. Neither the Secretary nor the Advisory Committee on Institutional Quality and Integrity can require a particular policy nor can the Department exercise any direction, supervision or control over the curriculum, administration, or personnel of an institution of higher education.
  - Institutions that maintain on-campus housing facilities must publish, on an annual basis, a fire safety report, which contains information on first safety standards and practices.
- Section 486A. Articulation Agreements: Establishes a program to encourage articulation agreements, including a variety of strategies such as common course numbering and general education core curricula.
Section 487. Program Participation Agreements

- Permits the dissemination of voter registration information by e-mail;
- Establishes a variety of requirements concerning preferred lender lists including:
  - Requires disclosure of why the institution chose each lender on the list, including the disclosure of the method and criteria used to select lenders on the list;
  - Requires disclosure that students (and parents) are not required to borrow from a lender on the list;
  - Requires a minimum of 3 unaffiliated lenders on a federal education loan preferred lender list and a minimum of 2 unaffiliated lenders on a private education loan preferred lender list;
  - Requires disclosure of the affiliate relationships between lenders included on the preferred lender list;
  - Requires that preferred lender lists be compiled for the sole benefit of the students (and their parents) attending the college;
  - Bans unnecessary delays in loan certification for lenders that are not recommended, promoted, or endorsed by the institution;
  - Gives ED the broad regulatory authority concerning preferred lender lists; and
  - Requires ED to maintain a list of lender affiliations and provide this information to colleges. Affiliation is defined in terms of ownership and control.

- Requires institutions to submit to the Secretary annually the number and percentage of students taking classes in whole or in part on-line or through distance education; and number and percentage of courses offered by the institution on-line or through distance education.

- Enforcing 90/10: Proprietary institutions of higher education will not have less than 10 percent of its revenues from non-Title IV sources:
  - Calculation:
    - Use of the cash basis of accounting;
    - Considers revenue from funds generated from tuition, fees, and other institutional charges for students enrolled in eligible programs and activities conducted by the institution that are necessary for the education or training of its students if such activities are conducted on campus or at a facility under the control of the institution; performed under the supervision of a member of the institution's faculty; and required to be performed by all students in a specific program;
    - Considers funds paid by a student, or on behalf of a student by a party other than the institution, for an education or training program that is not eligible for Title IV, provided that the program is approved or licensed by the appropriate State agency and is accredited by an agency recognized by the Secretary;
Presumes that any Title IV program funds disbursed to or on behalf of a student will be used to pay the student’s tuition, fees, or other institutional charges, regardless of whether the institution credits those funds to the student’s account or pays them directly to the student, except if satisfied by:

1. Grant funds provided by non-Federal public agencies or private sources independent of the institution;
2. Funds provided under a contractual arrangement with Federal, State, or local government agencies for the purpose of providing job training to low-income individuals; or
3. Funds used by a student from savings plans for educational expenses and which qualify for special tax treatment under the IRS Code;

Includes institutional aid as revenue to the school:

1. The House-passed bill amended the 90/10 requirement for purposes of complying with the requirement that a proprietary institution of higher education have not less than 10 percent of its revenues from sources other than funds provided under Title IV. Such an institution may include institutional loans, calculated on the basis of the accrual method of accounting, rather than on a cash basis of accounting, in demonstrating compliance with the requirement for an institution’s fiscal years 2009-2012. The institution may include “the principal amount of loans made by the institution, based on the expected interest earned less the estimated amount to account for future defaults and loan forgiveness accounted for on the accrual basis...if the loans are bona fide as evidenced by enforceable promissory notes, are issued at intervals related to the institution’s enrollment periods, and are subject to regular loan repayments and collections.”

Excludes from revenues:

1. Amount of FW S funds unless the funds were used for institutional charges;
2. Amount of LEAP funds;
3. Amount of matching funds for Title IV programs;
Amount charged for books, supplies and equipment unless included as institutional charges.

Sanctions:

Institution fails to meet requirements for 2 years will be ineligible to participate in Title IV. Must show compliance for 3 fiscal years following the fiscal year the institution became ineligible;

Secretary can impose sanctions on any year institution fails to comply by placing the institution on provisional status, requiring evidence of financial responsibility, or requiring increased monitoring and reporting.

Secretary shall publicly disclose identity of any institution not meeting requirements and submit report to Congress.

Computer Disposal:

Must establish a policy on the disposal or disposition of all technology assets which may contain personal and sensitive data of students.

Section 492. Negotiated Rulemaking:

- Individuals selected as negotiators for negotiated rulemaking must have "national legitimacy as designated representatives of major stockholders, sectors, and constituencies in the higher education community.

Section 494. Campus-Based Digital Theft Prevention:

- Each institution must publicly make available to their students and employees the policies and procedures related to the illegal downloading and distribution of copyrighted materials.

Part H-Program Integrity

- Section 496. Recognition of Accrediting Agency or Association:
  - If an agency wishes to include within its scope distance education, agency must demonstrate that the agency’s standards effectively address the quality of an institution’s distance education, except that the agency does not have to have separate standards;
  - The agency must require the institution that offers distance education to establish that the student who registers in a distance education program or course is the same student who completes the program and receives academic credit;

The House-passed version amends current law to clarify the role of accreditors, institutions and the Secretary. Accrediting agencies are expected to determine the success of its institutions “with respect to student achievement in relation to the institution’s mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of
State licensing examinations, consideration of course completion, and job placement rates."

The House bill also specifies that nothing shall “restrict the authority of the accrediting agency or association to set, with the involvement of its members, and to apply accreditation standards to institutions or programs that seek review by the agency or association; or an institution to develop and use institutional standards to show its success with respect to student achievement, which shall be considered as part of any accreditation review.”

- Adequate specification of requirements and deficiencies at the institution or program examined;
- An opportunity for a written response by the institution prior to final action;
- Upon the written request of an institution, an opportunity to appeal any adverse action;
- The agency shall make available to the public and the State licensing agency and submit to the Secretary a summary of agency actions, including the award of accreditation; final denials, withdrawals, suspensions, or terminations, and any other adverse action;
- Confirms as part of the agency's review for accreditation that the institution has transfer of credit policies that are publicly disclosed and include a statement of the criteria used by the institution regarding the transfer of credit;
- Monitors the growth of programs at the institution that are experiencing significant enrollment growth; and
- Requires an institution to submit a teach-out plan for approval if ED or the accrediting agency takes an action against the school or the school ceases operations.

Section 497. Accreditation Ombudsman: ED shall appoint an accreditation ombudsman to provide timely assistance to institutions, accrediting agencies, and other participants in the accreditation process.

Section 498. Program Review and Data: Allows institutions adequate opportunity to review and respond to any program review. The institution's response must be taken into account in any final program review or audit determination.

Section 499. Competitive Loan Auction Pilot Program Evaluation: Requires an evaluation of the loan auction pilot program.

Section 810. GAO Study of Education Related Indebtedness of Medical School Graduates: The Government Accountability Office (GAO) is required to conduct a study and report on the student indebtedness for medical school graduates. The report is due in one year after the date of enactment.
Section 810. Readmission Requirements for Service Members

Individuals serving in the National Guard and Reserves who are called to serve and must interrupt their postsecondary education must be considered as "reenrolled" rather than "readmitted" when they return to continue their education unless the school can provide some justification for requiring the student to apply for readmission.

Section 810. Identity Fraud Protection:
ED Direct Loan monthly statements and other publications from ED do not contain more than four numbers of an individual's Social Security number.

Title X-Private Student Loan Transparency and Improvement

Section 1001. A new title is established to be the "Private Student Loan Transparency and Improvement Act of 2007."

Section 1002. Definitions: Establishes requirements for private educational loans issued expressly for postsecondary education expenses (COA), including both school-certified and non-school-certified loans, but excluding home equity loans or other loans secured by real property or a dwelling.

Sections 1003 and 1004: The Federal Reserve Board is directed to issue implementing regulations not later than 180 days following enactment.

Subtitle A-Preventing Unfair and Deceptive Private Educational Lending Practices and Eliminating Conflicts of Interest

Section 140. Preventing unfair and deceptive private educational lending practices and eliminating conflicts of interest.

A private educational lender may not directly or indirectly offer a gift to a school or school employee (nor may a school or school employee receive a gift) in exchange for any advantage or consideration related to private educational loan activities. A gift is defined as anything having a monetary value more than a de minimus amount.

A private educational lender may not use the name, emblem, mascot, or logo of a school in marketing of private educational loans in a way that implies endorsement by the school.

There is a ban on advisory council participation by any officer, employee or agent employed in the financial aid office or who otherwise has responsibility with respect to private educational loans.

Subtitle B-Improved Disclosures for Private Educational Loans

Section 1021. Private Educational Loan Disclosures: Amends Section 128 of the Truth-in-Lending Act to make the Truth-in-Lending Act apply to all private educational loans and adds a variety of required disclosures.

de minimus
Establishes a 30-calendar day lock on interest rates and fees and a 3 business day borrower's remorse period;

- Requires private educational lenders to notify the borrower about a private educational loan before disbursing funds (e.g., potential range of rates of interest, potential finance charges, etc.), requiring a written confirmation.

- Requires private educational lenders to notify the relevant institution before issuing a private educational loan equal to more than $1,000, which will cause such loans to be included in estimated financial assistance and cause amounts exceeding the EFC to be treated as a resource, therefore reducing need-based eligibility.

- Additional disclosures are required at the time of loan consummation according to rules prescribed by the Federal Reserve Board.

- The civil liability provision of the Truth-in-Lending Act includes failure to comply with these requirements.

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**Subtitle C-Financial Literacy**

- **Section 1031. Coordinated Education Efforts:**
  The Secretary of the Treasury, in coordination with the Secretaries of Education and Agriculture, and any other agency that is a member of the Financial Literacy and Education Commission shall seek to enhance financial literacy among students of higher education.

- **Section 1041. Study and Report on Nonindividual Information:**
  The Comptroller General of the U.S. shall study the impact on borrowers of the consideration of nonindividual factors (e.g., cohort default rate, accreditation, graduation) in underwriting private education loans. The focus of the study is on whether such factors increase access or result in less favorable rates for borrowers based on the lack of credit history, gender, race, income level, and college.

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**Part D. Grants for Training Incarcerated Individuals:**

- A new discretionary program for postsecondary education opportunities for incarcerated individuals serving time in state prisons or those operated by the Federal Bureau of Prisons would be established. State prison authorities and the Federal Bureau of Prisons would be able to apply for funding from ED for prison-based programs to provide educational services to inmates.

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**Part Q. Business Workforce Partnerships:**

- This amendment creates a business/workforce partnership grant program to help colleges train students and the workforce in areas of need.

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**Title IX, Part C, Section 945. Establishment of Assistant Secretary for International and Foreign Language Education:**

- Creates a new Assistant Secretary position to coordinate international education activities in the global economy.
ACCREDITATION

Higher Education Reconciliation Act of 2005 (“HERA”)

Higher Education Act (“HEA”).

HEA
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.

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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.

1. 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 compared to similar institutions. The results of the task force review would be published on the Department of Education’s College Navigator web site. The Senate bill has a similar proposal but calls for the creation of a Higher Education Index. Both bills would require colleges to be compared against an index, to determine how significant their tuition increases are as compared to other institutions.

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.

2. 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.

3. 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.

4. Other reporting requirements include reports on retail prices for required and recommended texts and related materials for all courses offered. Colleges will have to provide all their students with the International Student Book Number as well as the retail prices of books.

5. In addition, there will be an 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.
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 institutions could face the lose FFELP eligibility and institutions may lose their benefits of having defaults rates of under 10 percent.
Both the House and Senate bills move the 90/10 requirements to the 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.

90/10

HEA
So you need a student loan.

To go to college.

To get a job.

In an economy that's collapsing.

Due to our lending practices.

Sounds like a good plan to me. But we're out of money.

But we still have repayment plans.

Reproduced from April 14, 2008 Washington Post.
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 goodwill.

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." Investors have grown weary of bundled student loans just like they have grown weary about mortgages.

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 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 be cause 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.

It appeared as though some lenders were going to remain in the FFEL Program, including some large lenders, such as Citigroup Inc. and Wells Fargo & Co. One lender that was reported to be seeking more business was JPMorganChase. In February, 2008, 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. However, more recently, these lenders are opting out of the FFELP.

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)*
On February 28, 2008, Congressmen 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.

The AG is expected to come out with a report as a result of its investigating into banks that are co-branding credit cards with 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 securities 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 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 Congress member 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.

What is the House and Senate Doing?

In response to Congressman Kanjorski’s request to the Federal Reserve to inject cash into the student market in his letter of March 18, 2007, Federal Reserve Chairman Ben Bernanke responded that since the “shaky” student loan market does not threaten the financial system, it is not the Federal Reserve’s job to “steady it.”

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 market, 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. The Kanjorski bill would permit the 12 regional banks that make up the Federal Home Loan Bank System to invest their surplus funds in securities backed by student loans and to accept such securities as collateral. The banks would also be able to make money available to the banks and thrifts in their regions for student loans. On April 8, 2008, Senator John Kerry (D-MA) introduced S. 284, the Emergency Student Loan Market Liquidity Act of 2008, as a companion bill to H.R. 5723.

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. Senator Kennedy expressed concern that 40% to 60% of students who borrow nonfederal private loans are
not taking advantage of all federal grants and loans for which they are eligible. Kennedy also urged colleges to register to participate in the Direct Loan 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. Because the bill was considered and voted on so quickly, there was no benefit of a cost estimate, normally a pre-requisite for committee consideration. These estimates are necessary to establish that the bill is deficit-neutral in order to clear the way for consideration by the full House.

On April 15, 2008, the Congressional Budget Office (CBO) concluded that H.R. 5715 would have no impact on revenues but would cost $320 million over the 2008-2013 period, and $390 million over the 2008-2018 period.

On April 16, 2008, the Bush Administration issued a Statement of Administrative Policy (SAP) on H.R. 5715, The Ensuring Continued Access to Student Loans Act of 2008. According to the memo, "the Administration is in continuous communication with institutions of higher education, lenders, and guaranty agencies to stay abreast of current conditions and offer assistance as needed." It states the Department of Education is taking "several prudent actions" to ready the Direct Loan and the Lender-of-Last-Resort (LLR) programs, in the event these federal backstops are needed.

Concerning provisions of the bill, the Administration, while supportive of language to increase student loan limits, also expressed concern that these increases may make it more difficult for some institutions to keep their Federal student-aid funds under the "90-10" institutional eligibility requirement. In addition, the Administration notes that the bill includes some changes that appear to be duplicative of existing law and would have little impact on preserving access to Federal student loans.

On a vote of 383 to 27, the House approved H.R. 5715. All 27 dissenting votes were members of the Republican party. The House now awaits action on the Senate companion bill, S. 2815, the Strengthening Student Aid for All Act of 2008.

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.

- **Strengthening Student Aid for All Act of 2008**
• 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 $2,000 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 $5,000 to $7,000.

• 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,


College Cost Reduction and Access Act of 2007
On April 21, 2007, Senator Chris Dodd (D-CT), senior member of the Senate Health, Education, Labor, and Pensions Committee, along with a group of other Senators, introduced S. 2985, the PLUS Loan Borrower Protection Act, to ensure that parents can qualify for PLUS loans in the event they have had trouble making their mortgage payments. Under current law, a borrower would be ineligible for a PLUS loan if he/she was delinquent on mortgage payments for more than 90 days or if the borrower has gone through foreclosure in the previous five years. S. 2985 would keep parents and students from being disqualified from receiving PLUS loans if they have been delinquent on payments or have experienced foreclosures on their primary residence during the recent mortgage crisis.

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 non-profit 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.

On April 14, 2008, Sallie Mae announced that it will stop offering Consolidation Loans. On April 15, 2008, Michigan Higher Education Student Loan Authority (MHESCA) announced that it is forced to suspend its participation in the FFELP on April 21, 2008. On April 16, 2008, the Massachusetts Educational Financing Authority announced it will stop offering federal student loans on July 3, 2008. On April 15, 2008, Chase announced that it would no longer make federal loans to students who attend certain high-risk institutions and will no longer lend to students attending institutions that do not meet Chase's profitability standards (seventh largest organization). On April 16, 2008, Citibank followed suit and said it would no longer make federal loans at institutions where lending is less profitable. Citibank (second largest organization) would suspend lending to institutions with small loan balances and shorter interest-earning periods which result in unsatisfactory financial returns.

As the exodus of lenders from the FFELP continues, Senator Kennedy is urging colleges to sign up for the Direct Loan Program as backup. However, schools may lack the administrative resources to switch to the Direct Loan Program and ED may not be able to handle an onslaught of new participants.

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, the 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, the 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 would 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.

There are challenges facing parents and students. Sallie Mae, the largest lender, announced it would be cutting back on private loans to students attending colleges that have a lesser chance of graduating. To make matters worse, home prices are sinking making it harder to tap into home equity to pay tuition bills.

Last year, there was too much access and, this year, access is disappearing. What a difference a year makes!

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