FOIA Number: 2017-1069-F

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Legislative Affairs

Series/Staff Member: Jack Lew

Subseries:

OA/ID Number: 2390

FolderID:

Folder Title:
[Title V - Federal Direct Student Loan Program]

Stack:	Row:	Section:	Shelf:	Position:
S	25	7	10	1

DRAFT

APR 9 1993
2:45 pm

TITLE V--FEDERAL DIRECT STUDENT LOAN PROGRAM
AND
INCOME CONTINGENT REPAYMENT OF STUDENT LOANS

Section-by-Section Analysis

PART A--NAME OF TITLE

Section 501. Section 501 of the bill states that title V of this Act may be cited as the "Federal Direct Student Loan Program Amendments of 1993".

PART B--AMENDMENTS TO FEDERAL DIRECT LOAN DEMONSTRATION PROGRAM

Section 521. Section 521 of the bill would amend the heading for part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; hereinafter in this title referred to as "the Act") to reflect the expansion of the Federal direct loan demonstration program currently in that part to a proposed program that would, when fully implemented, provide the main Federal lending mechanism through which students, and parents of students, would be able to receive loans to pay for postsecondary education.

Section 522. Section 522 of the bill would amend the program authorities in section 451 of the Act to conform to the proposed expanded program. Under the proposed Federal Direct Student Loan Program (FDSLP), the Secretary would be required implement a direct loan program for qualified students and parents at selected institutions of higher education (IHEs) to enable the students to pursue their courses of study at the institutions during the period beginning July 1, 1994 and ending on June 30, 1998.

The proposed program would eventually replace, through an orderly transition, the Federal Family Education Loan program under part B of title IV of the Act. The purpose of a direct lending program, such as the one proposed through the FSDLP, would be to: (1) avoid the unnecessary costs and administrative complexity associated with a federally guaranteed student loan program; and (2) provide a variety of repayment options, including income contingent repayment, to borrowers so that they are afforded flexibility in managing their student loan repayment obligations, and so that student loan obligations do not foreclose community service-oriented career choices for student loan borrowers.

Section 523. Section 523 of the bill would replace the payment rules for the demonstration program in section 452 of the Act with funding provisions applicable to the proposed FDSLP. This section of the bill would require the Secretary to provide funds under proposed part D of title IV of the Act each fiscal year to an IHE with an agreement under proposed section 454(b) of the Act, on the basis of the Secretary's determination of the estimated needs of students (and parents of students) at each participating IHE, taking into consideration the demand, and the eligibility of students and parents, for loans under this proposed part.

Section 523 would also require the Secretary to pay to an participating IHE administration fees established by the Secretary. These fees would be: (1) paid by the Secretary on a per-borrower, per-year basis; (2) subject to a sliding scale that decreases the total amount of fees as loan volume increases; and (3) not exceed, for academic years 1994-1995 and 1995-1996, a program-wide average of $10 per borrower per year.

Finally, section 523 of the bill would also provide that no IHE would be deemed to have an unconditional right to participate in the FDSLP, to originate FDSLP loans, or to perform any FDSLP program function.

Section 524. Section 524 of the bill would amend section 453 of the Act, which currently governs selection of IHEs for the direct loan demonstration program. This section of the bill would focus of selection requirements for the "phase-in" portion of the FDSLP, prior to full implementation of program.

Thus, section 524 of the bill would require the Secretary to enter into agreements with IHEs to participate in the FDSLP, as well as agreements with IHEs to originate loans in the proposed program, for academic years beginning on or after July 1, 1994, but not later than June 30, 1998. In order to ensure an expeditious but orderly transition from the current loan programs under the Federal Family Education Loan program to the FDSLP, the Secretary would be required, in the exercise of his or her discretion, to determine the number of IHEs with which there would be agreements for any academic year. Agreements for the first year of the program would, to the extent feasible, be concluded not later than January 1, 1994.

Further, this section of the bill would provide that the requirements of the Cash Management Improvement Act of 1990 (P.L. 101-453), that is designed to facilitate coordination between Federal and State governments on the use of Federal funds, shall not apply to the FDSLP during the program's "phase-in" period. Without this temporary exemption, State public institutions would be under an additional burden to implement that Act, which takes

effect on July 1, 1994, at the same time that they undertake to participate in the FDSLP.

In addition, section 524 of the bill would require the Secretary, until the FDSLP would be fully implemented and replace the loan programs under the Federal Family Education Loan program, to enter into agreements with IHEs that are currently eligible to participate in programs under title IV of the Act and that desire to participate in the FDSLP. Each IHE desiring to participate would be required to submit an application to the Secretary containing such information and assurances as the Secretary may require.

Although the selection of participants in a "phase-in" program need not reflect the broad range of institutional participants desirable in a research-oriented demonstration program, section 524 of the bill would provide for a variety of participants prior to full implementation of the proposed program. Thus, the Secretary would select IHEs to participate in the first phase of the proposed program from among eligible institutional applicants by categorizing them according to, for example, their loan volume under the Federal Family Education Loan Program for fiscal year 1992, the length of their academic programs, and organizational control (such as public, non-profit, and proprietary institutions). The Secretary would randomly select participants from within each of these respective categories.

Further, section 524 of the bill would authorize the Secretary to enter into a supplemental agreement with a participating IHE that desires to originate FDSLP loans and meets additional selection criteria. For academic year 1994-1995, these criteria would require that the IHE: (1) made loans under the Federal Perkins Loan program in academic year 1993-1994 and did not exceed the applicable maximum default rate under section 462(g) of the Act; (2) is not on the reimbursement system of payment under the Basic Educational Opportunity Grant program, the Federal Supplemental Educational Opportunity Grant program, the Federal Work-Study program or Federal Perkins Loan program; (3) is not overdue on any financial reports and audits required under title IV of the Act; (4) is not subject to an emergency action, or a limitation, suspension, or termination under section 428(b)(1)(T), 432(h), or 487(c) of the Act; (5) has not had, in the opinion of the Secretary, severe program performance deficiencies, as demonstrated by audits and program reviews; and (6) has no delinquent debts to the Department, unless such debts are subject to a repayment arrangement satisfactory to the Secretary.

Section 524 of the bill would also provide that, for academic year 1995-1996 and subsequent academic years, the Secretary would be required to publish regulations governing the

selection of IHEs to originate loans. In the event that alternative origination services are unavailable, or the Secretary determined that certain restrictions on the flow of funds under the FDSLP to the institution were sufficient to safeguard Federal fiscal interest, the Secretary would be authorized to permit an IHE that does not meet the requirement to originate loans for academic year 1994-1995 (set forth in proposed section 453(b)(2)(B)(i)) to originate loans subject to certain restrictions.

Finally, section 524 of the bill would remove the provisions of section 453 of the Act would apply to a demonstration program and would add an authority for IHEs to apply to participate in the FDSLP, and to originate FDSLP loans for students at each of their institutions, as consortia.

Section 525. Section 525 of the bill would amend the demonstration program agreement provisions (section 454 of the Act) to provide for implementation of the FDSLP.

The participation agreement would provide for the establishment and maintenance of a direct loan program at the participating IHE under which the IHE would: (1) identify eligible students who seek student financial assistance; (2) estimate the need of each such student (as required by need analysis provisions of part F of title IV of the Act); (3) provide timely information concerning the status of student and parent borrowers to the Secretary for servicing or collecting FDSLP loans; and (4), if the IHE is not a FDSLP loan originator, provide timely information to the Secretary as needed for alternative origination, and refrain from charging administrative fees to students and parents for providing loan origination information. Under the agreement, the IHE would also: (1) provide assurances that it will comply with the requirements specified by the Secretary and similar to the provisions of section 433 of the Act, relating to student loan information, with respect to FDSLP loans; (2) provide that it accepts responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement; (3) provide that its students and their parents will not be eligible to participate in the Federal Family Education Loan program for the period during which the HIE participates in the FDSLP program; (4) provide for the implementation of a quality assurance program; and (5) include other provisions that may be necessary to protect the financial interest of the United States and to promote the purposes of the FDSLP.

Section 525 of the bill would also set forth requirements for origination agreements under the FDSLP. An origination agreement would supplement the participation agreement and include provisions with respect to the origination of loans by the IHE that are similar to, or are incorporated by reference in,

the provisions described in that agreement. In addition, the origination agreement would provide that: (1) the IHE will originate loans to eligible students and parents in accordance with FDSLP provisions and will not charge any administrative fees to its students or their parents for these origination activities; and (2) the note or evidence of obligation on the loan shall be the property of the Secretary and the IHE will act as the agent of the Secretary for the purpose of making FDSLP loans.

Section 526. Section 526 of the bill would amend section 456 of the Act to provide new terms for the FDSLP. In general, unless otherwise specified in proposed part D of title IV of the Act, loans made to borrowers under the FDSLP would have the same terms, conditions, and benefits as loans made to borrowers for federally subsidized Stafford Loans, Federal Supplemental Loans for Students,Federal PLUS Loans, and unsubsidized Stafford Loans for Middle-Income Borrowers.

Section 526 of the bill would provide that section 427A(a) of the Act, regarding interest rates, would not apply to FDSLP loans. For FDSLP loans made for academic year 1994-1995 and the two succeeding academic years, the interest rate determined under section 427A of the Act would apply. For loans made for academic year 1997-1998, [?] the applicable interest rate determined under section 427A of the Act would be calculated by adding 2.5 percent to the appropriate bond equivalent rate specified in that section.

Proposed section 456(c) of the Act would provide that the Secretary may charge the borrower of a FDSLP loan a loan fee of not to exceed 6.5? 8? percent of the principal amount of the loan, to be deducted proportionately from each installment payment of the proceeds of the loan prior to payment to the borrower. However, an IHE would not be allowed to charge the borrower any origination fee or insurance premium on any FDSLP loan.

In keeping with the purposes of a direct loan program, proposed section 456(d) of the Act would require the Secretary to offer a variety of plans for repayment of FDSLP loans. The borrower would be able to choose from four different repayment plans the plan that best addresses the borrower's needs. These repayment plans would be: (1) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time (similar to the current federally subsidized Stafford Loan repayment provisions); (2) an extended repayment plan, with a fixed annual repayment amount paid over an extended but fixed period of time, provided that the borrower annually repays a minimum amount determined by the Secretary; (3) a graduated repayment plan, with varying annual repayment amounts paid over a fixed period of time (provided that the borrower's level of

Income Contingent Loans not available outside of direct loan program.

graduated repayment shall be not less than 50 percent, nor more than 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan); and (4) an income contingent repayment plan, with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time, not to exceed a maximum length of time determined by the Secretary.

This proposed section of the Act would also provide that if a borrower of a FDSLP loan does not select a repayment plan the Secretary may provide the borrower with the standard repayment plan. However, the borrower of a FDSLP loan may change his or her selection of a repayment plan, or the Secretary's selection of a plan for the borrower, as the case may be, under terms and conditions established by the Secretary. The Secretary is also authorized to provide an alternative repayment plan to a borrower of a FDSLP who demonstrates to the satisfaction of the Secretary that the terms and conditions of the other four repayment plans are not adequate to accommodate the borrower's exceptional circumstances. The Secretary would also be authorized to place in income contingent repayment status any borrower who has defaulted on a FDSLP loan.

Proposed section 456(d) of the Act would require the Secretary to obtain such information as is necessary regarding the income of a borrower of a FDSLP loan that is, or may be, subject to an income contingent repayment plan for the purpose of determining the amount of the borrower's annual repayment obligation. The Secretary would be required to establish procedures to effectively implement an income contingency repayment plan, including procedures for determining the borrower's repayment obligations and notifying the borrower of these obligations.

Further, this proposed section of the Act would require that an income contingent repayment schedule for a FDSLP loan would be based on the discretionary income of the borrower or, if the borrower is married and filing jointly or is a dependent, on the discretionary income of the borrower's family. For purposes of this provision of the bill, the term "discretionary income" would mean adjusted gross income, as identified on the most recent available tax return, minus an amount based on the applicable poverty level, as determined by the Secretary utilizing criteria of poverty used by the Bureau of the Census in compiling the most recent decennial census. A borrower who chooses or is required to repay a FDSLP loan through an income contingent repayment plan and who is unable to provide tax return information would be required to provide to the Secretary alternate documentation of income, which may be used to determine an appropriate repayment schedule.

The income contingent repayment schedule for a FDSLP loan for academic year 1994-1995 would require payments that equal not more than ten percent of a borrower's annual discretionary income, or, for a borrower who provides alternate documentation of income level, payments that equal not more than ten percent of the appropriate portion of the borrower's annual income as determined by the Secretary. For academic year 1995-1996 and succeeding academic years, income contingent repayment schedules would be based on factors identified by the Secretary through regulations.

Proposed section 456(d) of the Act would also require that the balance due on an income contingent FDSLP loan equal the unpaid principal amount of the loan as well as any accrued interest, except that the Secretary may limit by regulation the amount of interest that may be capitalized on the loan. Further, the Secretary would be required to establish procedures under which the borrower of a FDSLP loan who will be using the income contingent repayment plan will be notified, in addition to other information required by the Secretary, that: (1) the Internal Revenue Service will disclose to the Secretary the information concerning the borrower's income taken from the borrower's most recent available tax return,; and (2) if a borrower considers that special circumstances, such loss of employment, would warrant an adjustment in the borrower's loan repayment level, the borrower may contact the servicer of the loan, who shall determine whether such adjustment is appropriate, in accordance with criteria established by the Secretary.

Finally, proposed section 456(d) of the Act would require the Secretaries of Education and the Treasury to evaluate the feasibility of providing additional repayment options through the Internal Revenue Service, and shall transmit the results of this evaluation to the President by June 30, 1994.

Proposed section 456(e) of the Act would provide that a borrower of a FDSLP loan may consolidate the loan with the loans described in subsections (a)(4) and (d)(1)(C) of section 428C of the Act only under terms and conditions set out by the Secretary in regulations.

Proposed section 456(f) of the bill would require the Secretary, notwithstanding any other provision of State or Federal law, to specify in regulations which acts or omissions of an IHE a borrower may assert as a defense to repayment of a loan made under the FDSLP, except that in no event would a borrower recover damages from the Secretary [in any action arising from a loan made under this part?] in excess of the amount the borrower has repaid on the [or "such"] loan.

Proposed section 456(g) of the bill would provide that, notwithstanding any other provision of law, a FDSLP loan shall not be dischargeable in bankruptcy. [do we need to be more specific and refer to chapters 7, 11, and 13?]

Finally, proposed section 456(h) of the Act would provide that records maintained in accordance with section 484A(c) of the Act may be used in any proceeding, as permitted by section 484(c) of the Act, with respect to a FDSLP loan. This would allow for the use of otically imaged documents in certain proceedings involving FDSLP loans.

Section 527. Section 527 of the bill would amend the loan collection and procurement contract authority in section 457 of the Act to reflect the expansion of the demonstration program into the FDSLP. Thus, this section of the bill would allow the Secretary to provide, through one or more contracts, for: (1) the alternative origination of loans to students attending IHEs with FDSLP participation agreements (or their parents), if these IHEs do not have origination agreements; (2) the servicing and collection of FDSLP loans; (3) the establishment and operation of one or more data systems for the maintenance of records on all FDSLP loans; and (4) such other aspects of the proposed program as the Secretary determines are necessary to ensure its successful operation.

Section 528. Section 528 of the bill would amend the report requirements in section 458 of the Act. This section of the bill would retain the requirement in current law that the Secretary transmit to the Congress, not later than July 1, 1993 and each July 1 for the five succeeding year, an annual report on the status of the program under part D of title IV of the Act. Since this would no longer be a demonstration program, other provisions relating to interim reports, control groups, and treatment of costs would be removed.

Section 529. Section 529 of the bill would amend section 459 of the Act regarding the Secretary's promulgation of regulations. In light of the purpose of this bill, which includes the development of mechanisms for direct lending and income contingent repayment of student loans as expeditiously as possible, this section of the bill would require the Secretary to publish in the Federal Register whatever standards, criteria, and procedures, consistent with the provisions of this proposed part, the Secretary determines are reasonable and necessary to the successful implementation of the first year of the FDSLP. This section of the bill would also provide that the master calendar provisions under section 482 of the Act and rulemaking requirements under section 431 of the General Education Provisions Act would not apply with regard to publication of these first-year standards, criteria, and procedures. Finally,

section 529 of the bill make conforming amendments to other provisions concerning Secretarial activities under section 459 of the Act, and would remove the requirement that the Secretary award procurement contracts not later than February 1, 1994.

Section 530. Section 530 of the bill would repeal section 455 of the Act, which concerns withdrawal and termination procedures that would not longer be applicable, and would make conforming redesignation of section numbers within part B of title IV of the Act.

Section 530A. Section 530A of the bill would amend the expenditure authority (which would be section 459, as redesignated, of the Act) to provide for the expanded program proposed by this bill. This section of the bill would provide that the following funds would be available to the Secretary to be obligated for administrative costs under part D of title IV of the Act: Not to exceed $127,000,000 in fiscal year 1994; $367,000,000 in fiscal year 1995; $619,000,000 in fiscal year 1996; $632,000,000 in fiscal year 1997; and $770,000,000 in fiscal year 1998. Section 530A of the bill would also provide that, if in any fiscal year, the Secretary determines that additional funds for administrative expenses are needed as a result of the transition from the loan programs under the Federal Family Education Loan program to the FDSLP, the Secretary would be authorized to use funds available under this section 459 (as redesignated) of the Act for a subsequent fiscal year for these expenses.

PART C--CONFORMING AMENDMENTS TO THE HIGHER EDUCATION ACT OF 1965

SUBPART 1--FEDERAL FAMILY EDUCATION LOAN PROGRAM AMENDMENTS

Section 531. Section 531 of the bill would add to the guaranty agency reserves provisions in section 422 of the Act a clarification that, notwithstanding any other provision of law, the reserve funds described under section 422 [or just the advances? do we need to say something like "regardless of who holds the reserves?"], and any assets purchased with these reserve funds, are the property of the Federal Government. [Do we need to say something about the use of the reserves for program purposes? FEEL FREE TO AMPLIFY THIS PROVISION! We will also need details on the rationale for the section-by-section...]

Section 532. Section 532 of the bill would amend section 428(c)(8) of the Act, concerning assignment of loans from guaranty agencies when it is in the Federal interst to do so. This section of the bill would remove provisions that would no longer be applicable, given the proposed expansion of the direct lending program, and would add a provision that an orderly transition from the Federal Family Education Loan program to the

FDSLP shall be deemed to be in the Federal fiscal interest, and prompt assignment of loans to the Secretary under section 428(c)(8) of the Act upon his or her request shall be considered an essential element of this transition. This section of the bill would also authorize the Secretary to require any borrower who has defaulted on a loan made under part B of title IV of the Act that is assigned to the Secretary to repay that loan under an income contingent repayment plan, the terms and conditions of which shall be established by the Secretary and similar to the income contingent repayment plan established for purposes of the FDSLP. [Do we just offer these borrowers income contingent repayment? Can we require them to convert to income contingent repayment without prior notice? Do I need to cross-reference this authority anywhere else in part B?]

Section 533. Section 533 of the bill would make changes to section 428(c)(10) of the Act, regarding guaranty agency reserves, in conformance with the transition to the FDSLP. Section 533(1) of the bill would no longer require guaranty agencies with low reserves to submit a management plan to the Secretary. Section 533(2) of the bill [why delete reference to subparagraph F?] would give the Secretary increased flexibility to terminate a guaranty agency's agreement by allowing termination if the Secretary determines that termination is necessary to protect the Federal fiscal interest, ensure the continued availability of loans to student or parent borrowers, or ensure an orderly transition from the loan programs under part B of title IV of the Act to the FDSLP. Section 533(3) of the bill would expand the Secretary's authorized functions when a guaranty agency's agreement is terminated to take actions to ensure an orderly transition to the FDSLP.

Section 533(4) of the bill would remove subparagraph (G) of section 428(c)(10) of the Act, which currently prevents the Secretary from taking any termination action against any guaranty agency that is backed by the full faith and cedit of the State where that agency is the primary guarantor. This provision in current law would impede an orderly transition to the FDSLP. Section 533(6) of the bill would further regulate the termination process. Thus, this section of the bill would provide that, notwithstanding any other provision of [Federal or State--necessary?] law, if the Secretary has terminated or is seeking to terminate a guaranty agency's agreement, or has assumed a guaranty agency's functions, the guaranty agency may not file for bankruptcy and may not seek protection from the Secretary's actions in State court, and no provision of State law shall apply to the actions of the Secretary in winding down the operations of the guaranty agency. Further, notwithstanding any other provision of law, the Secretary's liability for any outstanding liabilities of a guaranty agency, the functions of which the Secretary has assumed, shall not exceed the fair market value of the assets [or do we want to just say reserves] assigned by the

guaranty agency to the Secretary, minus any necessary liquidation or other administrative costs. Section 533(7) of the bill would make a conforming amendment in keeping with the ransition to the FDSLP.

Section 534. Section 534 of the bill would revise the administrative cost allowance provisions in section 428(f)(1)(B) of the Act by reducing the basis used to determine payments to 0.16 percent of the total principal amount of the loans and clarifying that these would be outstanding loans, rather than loans issued during a certain fiscal year. [NOTE: do we need to modify this reflect loans for which the Secretary has reimbursed the g.a., or does "outstanding" cover it sufficiently?]

Section 535. Section 535 of the bill would amend the provisions for the Federal consolidation loan program under section 428C of the Act, in order to facilitate the expansion of the FDSLP. Section 535(1) of the bill would define "eligible borrower" for this program to mean a borrower who, at the time of application for a consolidation loan is in repayment status, or in a grace period preceding repayment, or is a delinquent or defaulted borrower who will reenter repayment through loan consolidation."; [Note that this eliminates the minimum loan amount for all FFEL consolidation, but in (3)(B) below, amendments are made so that the length of repayment for $0-7,500 loans would be 5-10 years, as is the case under Stafford now, and the length of repayment if borrower selects income sensitive or income contingent repayment would be related to that repayment schedule.] Section 535(2) of the bill would provide for income-sensitive repayment terms for a consolidation loan, and, in the event that a borrower is unable to obtain a consolidation loan with income-sensitive repayment terms from the holders of the outstanding loans of that borrower (that are selected for consolidation), would authorize the Secretary to offer the borrower a direct consolidation loan with income contingent repayment terms under the FDSLP.

Section 535(3) of the bill would provide that a consolidation loan made before July 1, 1993 would bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the greater of (1) the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent; or (2) 9 percent. Further, a consolidation loan made on or after July 1, 1993 would bear interest at an annual rate on the unpaid principal balance of the loan that, for any 12-month period beginning on July 1 and ending on June 30, would be determined on the preceding June 1 and would be equal to the bond equivalent rate of 91-day Treasury bill auctioned at the final auction held prior to such June 1 plus 3.1 percent, except that the rate would not exceed 9 percent[?].

Section 535(3) of the bill would make additional changes to the Federal consolidation loan program in comformity to offering income-sensitive and income-contingent repayment options to borrowers. **[What is the reason behind changing the repayment schedule? Is §428C(c)(2)(B) still needed?].**

Section 536. Section 536 of the bill would amend section 432 of the Act to provide that records maintained in accordance with section 484A(c) of the Act may be used in any proceeding, as permitted by section 484(c) of the Act, with respect to a loan that made under part B of title IV of the Act that has been assigned to the Secretary. This would allow the Department to use optically imaged documents in certain proceedings with respect to these loans, in keeping with an authority to use optically imaged documents in certain proceedings with respect to FDSLP loans.

one possible set of amendments to include a "conversion" authority:

Section 537. Section 537 of the bill would amend the debt management options in section 437A of the Act to expand the Secretary's authority to acquire notes of borrowers and to require the Secretary to establish terms and conditions for an income contingent repayment option that shall be similar to the income contingent repayment plan established for the FDSLP. This section of the bill would make other conforming changes to this section of the Act (for example, it would eliminate references to high default rates) and would replace the current loan limitation to $200,000,000 with **what dollar amount? do we need to specify a source of funds?**

[CAN WE/SHOULD WE ELIMINATE THE SEPARATE AUTHORIZATION OF APPROPRIATIONS?]

SUBPART 2--PERKINS LOAN PROGRAM

Section 538. Section 538 of the bill would amend section 461 of the Act to authorize appropriations for the Federal Perkins Loan program under part E of title IV of the Act only for the payment of cancellations under section 465 of the Act of loans made before fiscal year 1994. No new Federal capital contributions to the revolving student loan funds administered by participating IHEs would be authorized, in part because the Federal Perkins Loan program would be duplicative of objectives of the FDSLP. In addition, the revolving loan funds at some IHEs are sizable enough to be self-sustaining without further Federal capital contributions.

Section 539. Section 539 of the bill would make technical and conforming amendments to several provisions in the Federal Perkins Loan program to reflect the fact that no new Federal capital contributions would be authorized after fiscal year 1994. For example, this section of the bill would remove section 467(c) of the Act, regarding an additional revolving fund under this program. However, institutions participating in the Federal Perkins Loan program would still be able to make loans through the revolving loan fund authorized under section 461 of the Act. The special repayment rule authority in section 464(f) of the Act would be retained; this authority would allow institutions to provide loans with flexible repayment schedules similar to the income contingent repayment plan under the FDSLP.

SUBPART 3--GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE

Section 540. Section 540(a) of the bill would amend section 484A of the Act to provide for the use of optically imaged documents in certain proceedings. This section of the bill would describe the purpose of this pproposed provision, which would be to: (1) allow the Secretary to use optical imaging technology to store and retrieve documents and records, including promissory notes and repayment agreements, required for the administration of the FDSLP, or for the administration of loans made under part B of title IV of the Act that have been assigned to the Secretary; (2) permit the Secretary to destroy originals of such documents and records, including promissory notes and repayment agreements, after they have been optically imaged, thereby achieving significant savings in storage and retrieval costs; and (3) ensure that the Secretary may introduce as evidence in any proceeding with respect to these programs or loans optically imaged documents and records, including promissory notes and repayment agreements.

This section of the bill would also provide that, notwithstanding any other provision of Federal or State law, an optically imaged copy of any document or record, including a promissory note or repayment agreement, may be introduced as evidence in any proceeding with respect to these programs or loans in any Federal or State court, or other tribunal, and this optically imaged copy would be admissible in any court or tribunal of the United States or any State as if it were the original document or record and have the same force and effect as the original. However, this provision would not preclude the admissibility of a duplicate of a document or record required for the administration of these programs or loans made by a technology other than optical imaging. Further, this provision would not preclude the admissibility of an optically imaged copy of any document or record in a proceeding outside the scope of section 484A(c) of the Act.

Finally, this section of the bill would amend section 487 of the Act, concerning program participation agreements, to provide that optically imaged documents may be used in any proceeding with respect to the FDSLP or a loan made under part B of this title that has been assigned to the Secretary, as provided in section 484A of the Act.

PART D--AMENDMENTS TO OTHER LAWS

Section 541. Section 541 of the bill would amend provisions of the Internal Revenue Code of 1986 (IRC) that concern confidentiality and disclosure of tax returns and return information. The amendments made by this section of the bill would facilitate the use of an income contingent repayment plan under the FDSLP, which, in turn, would allow students to pursue community service-oriented employment. These amendments would also clarify a disclosure provision under the Department's tax refund offset authority, improve debt collection overpayments under the Federal Pell Grant program.

Section 541(a) of the bill would amend section 6103(a)(3) of the IRC, which sets forth the general rule that tax return information is confidential and specifies those individuals who, although they may receive such information under exceptions to this general rule, may not further disclose the information. This section of the bill would add to that list any person who has access to returns or return information under proposed authority to receive information to carry out an income contingent repayment plan under the FDSLP.

Section 541(b)(1) of the bill would amend the tax refund offset authority in section 6103(l)(10) of the IRC to clarify that agents of the Department may receive certain taxpayer information. This information, which does not include income information, is the same as that now disclosed to the Department under the current tax refund offset program.

Section 541(b)(2) of the bill would add to section 6103(l) of the IRC, which provides for disclosure of returns and return information for purposes other than tax administration, a new provision (section 6103(l)(13)) that would authorize the Secretary of the Treasury to, upon written request from the Secretary of Education, disclose to officers, employees and agents of the Department return information with respect to a taxpayer who has received a Federal loan under a student loan program and whose loan repayment amounts are based in whole or in part on the taxpayer's income. This return information would be limited to taxpayer identity information with respect to such taxpayer, information about whether the taxpayer filed a joint

return, and total income,[or AGI? IRS is checking to see which of these incomes is easier and faster to retrieve] as indicated on the taxpayer's most recent available return.

Section 541(b)(2) of the bill would also provide that any officers, employees, and agents of the Department receiving return information shall use the information only for the purposes of, and to the extent necessary in, establishing an appropriate income contingent repayment level under a student loan program. A student loan program would be restricted only to the FDSLP and to loans made under part B of title IV the Higher Education Act of 1965 and that have been assigned to the Secetary.

Section 541(c) of the bill would amend section 6103(m)(4) of the IRC, which authorizes disclosure of the mailing address of a taxpayer who has defaulted on a student loan administered by the Department. This section of the bill would add to the current list of programs for which mailing addresses could be disclosed the debt collection program for overpayments under the current Federal Pell Grant program (since collection efforts have been seriously hampered without this information) and the new FDSLP. This section of the bill would also make conforming amendments to this authority. However, these amendment would not alter the strict limits on the use of this information now in current law. [Do we have to disclose the Pell overpayments to the student's institution?]

Finally, section 541(d) of the bill would amend section 6103(p) of the IRC, concerning recordkeeping requirements and safeguards. This section of the bill would provide that the Secretary of the Treasury would not be required to maintain a record or accounting of requests for inspection or disclosure or returns and return information, or of returns and return information inspected or disclosed, under the income contingent repayment disclosure authority proposed for section 6103(l)(13) of the IRC. This is in keeping with other disclosure authorities under section 6103 of the IRC. Further, section 541(d) would require the Department to undertake the same safeguards for the income contingent repayment disclosure authority and for receipt of mailing addresses as are required by other Federal agencies that similar information under section 6103 of the IRC.

PART E--EFFECTIVE DATES

Section 551. Section 551 of the bill would provide that, in general, the amendments made by title V of this bill shall take effect upon enactment of the bill. However, the amendments made by subpart 2 of part C of title V of this Act, relating to the Federal Perkins Loan program, would take effect on October 1, 1995.

PROPOSED TRANSITION PLAN

The Federal Family Education Loan Program's participants include 10,000 lenders and 46 active guarantors controlling a more than $60 billion portfolio. These entities will continue to originate additional loans during the transition period, and will be responsible for providing services on outstanding loans for many years to come. Major issues that must be addressed include:

- o Preserving loan access until the new program is fully operational. Many lenders may choose to stop originating loans when volume declines in the first transition year.

- o Ensuring performance of tasks now carried out by guarantors. Guarantors track loan status tracking, report data, answer customer inquiries, perform default prevention, review lenders and schools, and review and pay lender default claims. These tasks are supported by fees that would decline during transition. Some agencies may become insolvent when this happens. Others with high costs, low volume, little State support, or major management problems may choose to withdraw from the program when the new program is authorized, limiting the opportunities for a turnaround. The Government must ensure that needed functions are performed during and after the transition.

- o Preserving Federal assets. Guarantors have over $1 billion in Federal student loan reserves. These fund their operations and provide working capital to pay default claims while awaiting Federal reimbursement. Litigation during the 1980s established that these reserves could be reclaimed by the Government, but in the meantime guarantors have great freedom to spend the funds. Guarantors, especially those that are private companies, will intensify efforts to keep the reserves, possibly to provide seed money for other lucrative activities, such as Federal contracts.

- o Rationalizing default collections. As transition progresses, guarantors will be collecting on declining portfolios of defaulted loans. The Department will need authority to consolidate these portfolios at its collection contractors more rapidly than current legislation allows, to ensure that the quality of collection efforts does not erode.

Proposed plans for continuing necessary services in the Federal Family Education Loan Program during transition include the following:

Access to Loans: It is expected that most of the largest lenders will continue to originate and hold loans during the transition period because student loans are lucrative, and because rapid

dismantling of their student loan infrastructure could be costly. Access shortages would be handled by:

- Guarantors, under the current lender of last resort provisions;
- Sallie Mae, after a request by the Secretary under existing Section 439 lender of last resort authority; or
- Institutions or alternative originators under a more rapid expansion of the direct loan program.

Transition out of guarantee agencies: Guarantors now hold over a billion dollars in reserves, and court decisions have confirmed that these are federal property. They perform numerous functions using these reserves and their guarantee and other federal fees. A gradual consolidation of these functions on an agency-by-agency basis will provide for an orderly transition out of the FFEL program. Steps include:

- To prevent needless additional litigation, codify court decisions that reserves are Federal property.
- Stop guarantor reviews of lenders and schools after 1996 when FFEL originations end. ED and independent audits provide for monitoring of holders thereafter.
- Gradually consolidate guarantor functions as follows:

  --Permit guarantors and other entities to compete for a number of contracts ED will offer to perform GA services for FFEL portfolio.

  --Contracts will transfer portfolios and pay appropriate fees to losers for necessary records and data transfer activities.

FFEL Default Collections: The Department now collects defaulted loans not in repayment after three years of GA efforts. The transition plan would gradually default collections in a manner paralleling collections for the Direct Loan Program:

- Loans not in repayment 180 days after the payment of a claim will be assigned to ED on demand upon passage of the act. The act will give ED the authority to use default collection proceeds to finance this activity.
- Loans in repayment at GA's will gradually be folded into ED contracts.
- All collection authorities applicable to the Federal Direct loans apply to FFEL defaults.

FLEXIBLE REPAYMENTS FOR STUDENT LOANS

OPTIONS FOR CURRENT BORROWERS

- Student borrowers may be eligible for loan deferments or forbearance if they have difficulty repaying.

  --Borrowers may defer repayment on their loans during specified periods, including unemployment and economic hardship. The federal government pays the interest for the borrower during authorized deferment periods.

  --Borrowers who do not qualify for a deferment but are otherwise unable to repay their loans may be granted forbearance. During forbearance, interest continues to accrue and is capitalized.

  --Authorized periods of forbearance and deferment are excluded from the 10-year statutory repayment period.

- Lenders *may* offer borrowers graduated or income-sensitive repayment schedules. We have encouraged lenders to offer alternative schedules to borrowers, but most lenders are not interested.

- The new legislation will allow ED to pay off student loans for borrowers who wish to use income-sensitive repayments if lenders do not offer the options. ED will then provide borrowers the full range of repayment options.

OPTIONS FOR NEW BORROWERS IN 1994

- The 1992 Amendments to the Higher Education Act require lenders to offer borrowers fixed, graduated, and income-sensitive repayment options. These options would be available to new student borrowers as of July 1, 1993 and to consolidation loan borrowers whose applications are received on or after January 1, 1993. These income-sensitive repayments have a maximum repayment period of 10 to 13 years and payments must cover at least interest.

- Regulations implementing these provisions will be published in the fall of 1993.

INCOME-CONTINGENT REPAYMENT SCHEDULES

- The 1992 Amendments to the HEA require income contingent repayment to be offered to two types of student borrowers in the existing Federal Family Education Loan (FFEL) Program: "high-risk (of default)" borrowers and borrowers whose loans are assigned to the Secretary by guarantors following default.

--The HEA requires appropriated funds (currently unappropriated), the establishment of a collection mechanism, and a finding by the Secretary that this option would be cost effective.

--The Secretary would purchase these loans and provide the income repayment option either directly or under contract. Borrowers would be provided with up to 25 years to repay. We have not begun to develop regulations in this area.

o The Federal Direct Student Loan Amendments of 1993 will provide a "menu" of flexible repayment options for direct loan borrowers, including an income contingent repayment option.

--This process calls for the Department's receipt of borrowers' income information from the IRS for the development of the repayment schedule. Loans would be collected by servicers under contract to the federal government.

--The Secretaries of Education and Treasury will jointly develop a plan within a year how to involve the IRS in collecting student loans.

KEY IDEA FOR LETTER TO RILEY:

(NOTE: As currently drafted, the income-contingent and direct lending sections are so closely connected that if one goes down, the other does as well. The only way to sever our portion from theirs would be to cut between the two drafts; there's no way to keep part of their draft.

These paragraphs presume that we actually want to see NS and income-contingent lending linked -- more than we want to see NS and direct lending linked. If this is not your view -- if you feel that all the lending elements can come or go at the same cost -- then Education has drafted everything to our satisfaction.)

As we understand the draft, income-contingent loans will be available only as a repayment option for direct loans -- not as an option for the guaranteed loans that continue to be made over the next several years. We fully understand the political and substantive arguments for this policy: with it, you bring supporters of income-contingent lending to support direct lending, and you do not create a potentially clumsy and costly apparatus for implementing income-contingent lending in guaranteed loans -- loans which you hope cease to exist in a few years.

Nonetheless, from our perspective there are serious problems with this approach. The President's campaign commitment was to offer national service and income-contingent schedules as two new repayment options. We feel that we must make sure to keep the President's two-part promise, and not risk sacrificing it in order to shore up support for direct lending or avoid complicating the system. If direct lending gets into trouble, we feel that we must be ready and able to cut it out of a bill that still retains the link between the service initiative our office has developed and the income-contingent repayment options that you have created.

Ideally, we would want to see income-contingent lending made available immediately, and to all borrowers, in a section of the draft easily severable from the direct lending part. As a second possibility that raises questions with regard to the campaign promise, the income-contingent repayment options might be made available in a separate section, but only to recipients of direct loans (including those in the current demonstration).

UNITED STATES DEPARTMENT OF EDUCATION

THE DEPUTY SECRETARY

April 9, 1993

NOTE TO ADDRESSEES:

Attached is a draft and section-by-section of the Education Department's part of the national service/student aid reform legislation.

Please review this draft and bring your written comments to a meeting on Tuesday, April 13 from 10:00 AM until 12 noon in the Secretary's Conference Room (400 Maryland Avenue, room 4004). In the first hour, we will identify the large issues of concern, and in the second hour, we will address some of the more technical aspects of the legislation. Please leave word with Kerstin at 401-1000 only if you are unable to attend.

I look forward to meeting with you on Tuesday.

Sincerely yours,

Madeleine

Madeleine M. Kunin

① severability p. 11

② jurisdiction p. 35

③ Maximum % for repayment p. 11-13

Treatment of Service stipend as income re % / contingent loans -- should be ~~considered~~ deferral like in-school deferral

FLEXIBLE REPAYMENT OPTIONS
FOR STUDENT LOANS

OPTIONS FOR CURRENT BORROWERS

- Student borrowers may be eligible for loan deferments or forbearance if they have difficulty repaying.

  --Borrowers may defer repayment on their loans during specified periods, including unemployment and economic hardship. The federal government pays the interest for the borrower during authorized deferment periods.

  --Borrowers who do not qualify for a deferment but are otherwise unable to repay their loans may be granted forbearance. During forbearance, interest continues to accrue, and is capitalized.

  --Authorized periods of forbearance and deferment are excluded from the 10-year statutory repayment period.

- Lenders <u>may</u> offer graduated or income-sensitive repayment schedules. Most lenders do not, and require borrowers to repay under a fixed-amount schedule. We have encouraged lenders to offer alternative schedules to borrowers, but most lenders are not interested.

OPTIONS FOR NEW BORROWERS IN 1994

- The 1992 Amendments to the Higher Education Act (HEA) require lenders to offer a choice of either a graduated, fixed-amount, or income-sensitive repayment schedule to new student borrowers as of July 1, 1993 and to consolidation loan borrowers whose applications are received on or after January 1, 1993.

  --Income sensitive repayments differ from income contingent in that the maximum repayment period is 10 to 13 years and that payments must cover at least interest.

- Regulations implementing these provisions will be published in the fall of 1993.

INCOME-CONTINGENT REPAYMENT SCHEDULES

- The 1992 Amendments to the HEA require income contingent repayment to be offered to two types of student borrowers in the existing Federal Family Education Loan (FFEL) Program: "high-risk (of default)" borrowers and borrowers whose loans are assigned to the Secretary by guarantors following default.

--The HEA requires appropriated funds (currently unappropriated), the establishment of a collection mechanism, and a finding by the Secretary that this option would be cost effective.

--The Secretary would purchase these loans and provide the income repayment option either directly or under contract. Borrowers would be provided with up to 25 years to repay. We have not begun to develop regulations in this area.

o The Federal Direct Student Loan Amendments of 1993 will provide a "menu" of flexible repayment options for Direct Loan borrowers, including an income contingent repayment option.

--This process calls for the Department's receipt of borrowers' income information from the IRS for the development of the repayment schedule. Loans would be collected by servicers under contract to the federal government.

--The Secretaries of Education and Treasury will jointly develop a report within a year how to involve the IRS in collecting student loans.

KEY IDEA FOR LETTER TO RILEY:

(NOTE: As currently drafted, the income-contingent and direct lending sections are so closely connected that if one goes down, the other does as well. The only way to sever our portion from theirs would be to cut between the two drafts; there's no way to keep part of their draft.

These paragraphs presume that we actually want to see NS and income-contingent lending linked -- more than we want to see NS and direct lending linked. If this is not your view -- if you feel that all the lending elements can come or go at the same cost -- then Education has drafted everything to our satisfaction.)

As we understand the draft, income-contingent loans will be available only as a repayment option for direct loans -- not as an option for the guaranteed loans that continue to be made over the next several years. We fully understand the political and substantive arguments for this policy: with it, you bring supporters of income-contingent lending to support direct lending, and you do not create a potentially clumsy and costly apparatus for implementing income-contingent lending in guaranteed loans -- loans which you hope cease to exist in a few years.

Nonetheless, from our perspective there are serious problems with this approach. The President's campaign commitment was to offer national service and income-contingent schedules as two new repayment options. We feel that we must make sure to keep the President's two-part promise, and not risk sacrificing it in order to shore up support for direct lending or avoid complicating the system. If direct lending gets into trouble, we feel that we must be ready and able to cut it out of a bill that still retains the link between the service initiative our office has developed and the income-contingent repayment options that you have created.

Ideally, we would want to see income-contingent lending made available immediately, and to all borrowers, in a section of the draft easily severable from the direct lending part. As a second possibility that raises questions with regard to the campaign promise, the income-contingent repayment options might be made available in a separate section, but only to recipients of direct loans (including those in the current demonstration).

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: JM DATE: 10/3/17
2017-1069-F

~~CONFIDENTIAL~~

DRAFT

APR - 9 1993
12:45 p.m.

TITLE V--FEDERAL DIRECT STUDENT LOAN PROGRAM

AND

INCOME CONTINGENT REPAYMENT OF STUDENT LOANS

PART A--SHORT TITLE

NAME OF TITLE

SEC. 501. This title may be cited as the "Federal Direct Student Loan Program Amendments of 1993".

PART B--AMENDMENTS TO FEDERAL DIRECT LOAN DEMONSTRATION PROGRAM

HEADING FOR PART

SEC. 521. Part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; hereinafter in this title referred to as "the Act") is amended in the part heading--

(1) by inserting "STUDENT" immediately following "DIRECT"; and

(2) by striking out "DEMONSTRATION".

PURPOSE; PROGRAM AUTHORIZATION

SEC. 522. Section 451 of the Act is amended to read as follows:

"PURPOSE; PROGRAM AUTHORIZATION

"SEC. 451. (a) PURPOSE.-- It is the purpose of this part--

"(1) to replace, through an orderly transition, the Federal Family Education Loan program under part B of this title with the direct student loan program under this part;

"(2) to provide a variety of repayment options, including income contingent repayment, to borrowers so that they are afforded flexibility in managing their student loan repayment obligations, and so that those obligations do not foreclose community service-oriented career choices for those borrowers; and

"(3) to avoid the unnecessary costs and administrative complexity associated with the Federal Family Education Loan program under part B of this title through the use of a direct student loan program.

"(b) PROGRAM AUTHORITY.--The Secretary shall, in accordance with the provisions of this part, implement loan programs for qualified students and parents at selected institutions of higher education to enable such students to pursue their courses of study at such institutions during the period beginning July 1, 1994 and ending on June 30, 1998.".

FUNDS FOR ORIGINATION OF DIRECT LOANS BY INSTITUTIONS

SEC. 523. Section 452 of the Act is amended to read as follows:

"FUNDS FOR ORIGINATION OF DIRECT LOANS BY INSTITUTIONS

SEC. 452. (a) IN GENERAL.--The Secretary shall provide funds under this part for each academic year to an institution of higher education with an agreement under section 454(b) on the basis of the Secretary's determination of the estimated needs of students at each such institution, and parents of such students, for student or parent loans, taking into consideration the demand, and the eligibility of such students and parents, for loans under this part.

"(b) ADMINISTRATIVE FEE.--The Secretary shall pay to an institution of higher education with an agreement under section 454(b) administrative fees in an amount established by the Secretary. Such fees--

"(1) shall be paid by the Secretary on a per-borrower, per-year basis;

"(2) shall be subject to a sliding scale that decreases the amount of such fees as loan volume increases; and

"(3) for academic years 1994-1995 and 1995-1996, shall not exceed a program-wide average of $10 per borrower per year.

"(c) NO ENTITLEMENT TO PARTICIPATE OR ORIGINATE.--No institution of higher education shall be deemed to have an unconditional right to participate in the programs authorized by this part, originate loans, or perform any program function under this part.".

SELECTION OF INSTITUTIONS

SEC 524. Section 453 of the Act is amended--

(1) by amending subsections (a) and (b) to read as follows:

"(a) PHASE-IN OF PROGRAM.--(1) The Secretary shall enter into agreements pursuant to section 454(a) with institutions of higher education to participate in the direct student loan programs under this part, and agreements pursuant to section 454(b) with institutions of higher education to originate loans in such program, for academic years beginning on or after July 1, 1994, but not later than June 30, 1998. In order to ensure an expeditious but orderly transition from the loan programs under part B of this title to the direct loan programs under this part, the Secretary shall, in the exercise of his or her discretion, determine the number institutions with which he or she shall enter such agreements with institutions for any academic year. Such agreements for the first year of the program shall, to the extent feasible, be concluded not later than January 1, 1994.

"(2) The requirements of the Cash Management Improvement Act of 1990 (P.L. 101-453) shall not apply to the program under this part during the transition described in paragraph (1).

"(b) SELECTION CRITERIA.--(1) PARTICIPATION.--(A) Until the direct loan program under this part is fully implemented and replaces the loan programs under part B of this title, the Secretary shall enter into agreements with institutions of higher education that are eligible to participate in programs under this

title, meet such other eligibility requirements as the Secretary may prescribe, and that desire to participate in the direct loan program under this part. Each such institution desiring to participate in the direct loan program under this part shall submit an application to the Secretary containing such information and assurances as the Secretary may require.

"(B) The Secretary shall select institutions for participation in the direct loan program under this part from among those institutions meeting the eligibility requirements and submitting the applications described in subparagraph (A) by--

"(i) categorizing such institutions according to their loan volume under part B of this title for fiscal year 1992, length of academic program, and control of the institution; and

"(ii) selecting institutions randomly from among their respective categories.

"(2) ORIGINATION.--(A) The Secretary may enter into a supplemental agreement with an institution that--

"(i) has an agreement under subsection 454(a);

"(ii) desires to originate loans under this part; and

"(iii) meets the criteria specified in subparagraph (B).

"(B)(i) For academic year 1994-1995, the Secretary may approve an institution to originate loans only if

such institution--

"(I) made loans under part E of this title in academic year 1993-1994 and did not exceed the applicable maximum default rate under section 462(g) for such year;

"(II) is not on the reimbursement system of payment for any of the programs under subpart 1 or 3 of part A, part C, or part E;

"(III) is not overdue on any financial reports or audits required under this title;

"(IV) is not subject to an emergency action, or a limitation, suspension, or termination under section 428(b)(1)(T), 432(h), or 487(c);

"(V) has, in the opinion of the Secretary, not had severe program performance deficiencies, including those demonstrated by audits submitted, or program reviews conducted, during the five calendar years immediately preceding the date of application; and

"(VI) has no delinquent outstanding debts to the Department, unless such debts are subject to a repayment arrangement satisfactory to the Secretary.

"(ii) For academic year 1995-1996 and subsequent academic years, the Secretary shall publish regulations governing the approval of institutions to originate loans.

"(C) In the event that alternative origination

services are unavailable, or the Secretary determines that certain restrictions on the flow of funds under this part to the institution (such as delayed disbursement) are sufficient to safeguard adequately the Federal fiscal interest, the Secretary may permit an institution that does not meet the requirements in subparagraph (B)(i) to originate loans under this subparagraph subject to such restrictions.".

(2) by striking out subsections (c), (d), (e), and (f);

(3) by amending subsection (g) to read as follows:

"(g) CONSORTIA.--Institutions of higher education may apply to participate in the program under this part, and to originate loans under this part for students in attendance at such institutions, as consortia."; and

(4) by redesignating subsection (g) as subsection (c).

AGREEMENTS WITH INSTITUTIONS

SEC. 525. Section 454 of the Act is amended to read as follows:

"AGREEMENTS WITH INSTITUTIONS

"SEC. 454. (a) PARTICIPATION.--An agreement with any institution of higher education for participation in the loan program under this part shall--

"(1) provide for the establishment and maintenance of a direct loan program at the institution under which--

"(A) the institution will identify eligible students who seek student financial assistance at such institution in accordance with section 484;

"(B) the institution will estimate the need of each such student as required by Part F of this title;

"(C) if the institution does not have an agreement with the Secretary under subsection (b), the institution--

"(i) will provide timely information concerning student eligibility and need, as determined under subparagraphs (A) and (B), to the Secretary as needed for the alternative origination of loans to eligible students and parents in accordance with this part; and

"(ii) will not charge any administrative fees to such students or parents for the provision of such information; and

"(D) the institution will provide timely information concerning the status of student borrowers, and students on whose behalf parents borrow under this part, to the Secretary for the servicing and collecting of direct loans made under this part;

"(2) provide assurances that the institution will comply with requirements specified by the Secretary in regulations and similar to the provisions of section 433, relating to student loan information, with respect to direct student loans made under this part;

"(3) provide that the institution accepts responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement;

"(4) provide that students at the institution and their parents (with respect to such students) will not be eligible to participate in the programs under part B of this title for the period during which such institution participates in the loan program under this part;

"(5) provide for the implementation of a quality assurance system, as specified by the Secretary, that shall ensure that the institution is complying with program requirements and meeting program objectives; and

"(6) include such other provisions as the Secretary determines are necessary to protect the financial interest of the United States and to promote the purposes of this part.

"(b) ORIGINATION.--An agreement with any institution of higher education for the origination of loans under this part shall--

"(1) supplement the agreement entered into in accordance with subsection (a);

"(2) include provisions with respect to the origination of loans by the institution that are similar to, or are incorporated by reference in, the provisions described in paragraphs (1)(D), (2), (3), (4) and (5) of subsection (a);

"(3) provide that the institution will originate loans to eligible students and parents in accordance with this part,

and will not charge any administrative fees to such students or parents for such origination activities; and

"(4) provide that the note or evidence of obligation on the loan shall be the property of the Secretary and that the institution will act as the agent of the Secretary for the purpose of making loans under the program under this part.".

TERMS OF LOANS

SEC. 526. Section 456 of the Act is amended to read as follows:

"TERMS AND CONDITIONS OF LOANS

"SEC. 456. (a) IN GENERAL.--Unless otherwise specified in this part, loans made to borrowers under this part shall have the same terms, conditions, and benefits as loans made to borrowers under sections 428, 428A, 428B, and 428H of this title.

"(b) INTEREST RATE.--(1) Section 427A(a) shall not apply to loans made under this part.

"(2) For loans under this part for academic year 1994-1995 and the two succeeding academic years, the interest rate determined under section 427A shall be apply.

"(2) For loans made for academic year 1997-1998, [?] the applicable interest rate determined under section 427A shall be calculated by adding 2.5 percent to the appropriate bond equivalent rate specified in such section.

"(c) LOAN FEE.--The Secretary may charge the borrower of a loan made under this part a loan fee of not to exceed 6.5? 8? percent of the principal amount of the loan, to be deducted proportionately from each installment payment of the proceeds of the loan prior to payment to the borrower. An institution may not charge the borrower any origination fee or insurance premium on any loan made under this part.

"(d) REPAYMENT PLANS.--(1)(A) The Secretary shall offer to a borrower of a loan made under this part a variety of plans for repayment of such loan, including principal and interest on the loan. The borrower may choose--

"(i) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time;

"(ii) an extended repayment plan, with a fixed annual repayment amount paid over an extended but fixed period of time, provided that the borrower annually repays a minimum amount determined by the Secretary;

"(iii) a graduated repayment plan, with varying annual repayment amounts paid over a fixed period of time, provided that the borrower's level of graduated repayment shall be not less than 50 percent, nor more than 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan; and

"(iv) an income contingent repayment plan, with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time, not to

Any Minimum?

exceed a maximum length of time determined by the Secretary.

"(B) If a borrower of a loan made under this part does not select a repayment plan described in subparagraph (A), the Secretary may provide the borrower with the standard repayment plan described in subparagraph (A)(i).

"(C) The borrower of a loan made under this part may change his or her selection of a repayment plan under subparagraph (A), or the Secretary's selection of a plan for the borrower under subparagraph (B), as the case may be, under such terms and conditions as established by the Secretary.

"(D) The Secretary may provide an alternative repayment plan to a borrower of a loan made under this part who demonstrates to the satisfaction of the Secretary that the terms and conditions of the repayment plans available under subparagraph (A) are not adequate to accommodate the borrower's exceptional circumstances.

"(E) The Secretary may require any borrower who has defaulted on a loan made under this part to repay under an income contingent repayment plan.

Default avoidance

"(2)(A) The Secretary may obtain such information as is necessary regarding the income of a borrower of a loan made under this part that is, or may be, subject to an income contingent repayment plan for the purpose of determining the annual repayment obligation of the borrower. The Secretary shall establish procedures for determining the borrower's repayment obligation on that loan for such year, notifying the borrower of

such obligation, and such other procedures as are necessary to effectively implement an income contingent repayment plan.

"(B)(i) An income contingent repayment schedule for a loan made under this part shall be based on the discretionary income of the borrower or, if the borrower is married and filing jointly or is a dependent, on the discretionary income of the borrower's family. For purposes of this subparagraph, the term "discretionary income" means adjusted gross income, as identified on the most recent available tax return, minus an amount based on the applicable poverty level, as determined by the Secretary, utilizing criteria of poverty used by the Bureau of the Census in compiling the most recent decennial census.

"(ii) A borrower who chooses or is required to repay a loan made under this part through an income contingent repayment plan and who is unable to provide tax return information shall provide to the Secretary alternate documentation of income, which documentation the Secretary may use to determine an appropriate repayment schedule.

"(iii) For loans made under this part for academic year 1994-1995, the income contingent repayment schedule shall require payments that equal not more than ten percent of a borrower's annual discretionary income, or, for a borrower who provides alternate documentation of income level, payments that equal not more than ten percent of the appropriate portion of the borrower's annual income as determined by the Secretary. For

academic year 1995-1996 and succeeding academic years, income contingent repayment schedules shall be based on factors established by the Secretary through regulations.

"(iv) The balance due on an income contingent loan made under this part shall equal the unpaid principal amount of the loan as well as any accrued interest, except that the Secretary may limit by regulation the amount of interest that may be capitalized on such loan.

"(C) The Secretary shall establish procedures under which a borrower of a loan made under this part who chooses or is required to repay such loan through an income contingent repayment plan is notified of the terms and conditions of such plan, including notification of such borrower that--

"(i) the Internal Revenue Service will disclose to the Secretary the information concerning the borrower's income taken from the borrower's most recent available tax return;

"(ii) if a borrower considers that special circumstances, such as a loss of employment, would warrant an adjustment in the borrower's loan repayment as determined using the information described in clause (i), or the alternative documentation described in subparagraph (B), the borrower may contact the servicer of the loan, who shall determine whether such adjustment is appropriate, in accordance with criteria established by the Secretary; and

"(iii) such other information as the

Secretary may require.

"(3) REPAYMENT STUDY.--The Secretaries of Education and the Treasury shall evaluate the feasibility of providing additional repayment options through the Internal Revenue Service, and shall transmit the results of this evaluation to the President by June 30, 1994.

"(e) CONSOLIDATION.--A borrower of a loan under this part may consolidate such loan with the loans described in subsections (a)(4) and (d)(1)(C) of section 428C only under the terms and conditions set out by the Secretary in regulations pursuant to this subsection.

"(f) BORROWER DEFENSES.--Notwithstanding any other provision of State or Federal law, the Secretary shall specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under this part, except that in no event may a borrower recover damages from the Secretary [in any action arising from a loan made under this part?] in excess of the amount such borrower has repaid on the [or "such"] loan.

"(g) NONDISCHARGEABILITY IN BANKRUPTCY.--Notwithstanding any other provision of law, a loan made under this part shall not be dischargeable in bankruptcy. [do we need to be more specific and refer to chapters 7, 11, and 13?]

"(h) OPTICALLY IMAGED DOCUMENTS.--Records maintained in accordance with section 484A(c) may be used in any proceeding, as permitted by section 484(c), with respect to a loan made under

this part.".

CONTRACTS

SEC. 527. Section 457 of the Act is amended to read as follows:

"CONTRACTS

"SEC. 457. The Secretary may provide, through one or more contracts, for--

"(1) the alternative origination of loans to students attending institutions with agreements to participate in the program under this part (or their parents), if such institutions do not have agreements with the Secretary under section 454(b);

"(2) the servicing and collection of loans made under this part;

"(3) the establishment and operation of one or more data systems for the maintenance of records on all loans made under this part; and

"(4) such other aspects of the direct loan program as the Secretary determines are necessary to ensure the successful operation of the program.".

REPORTS

SEC. 528. Section 458 of the Act is amended--

(1) in subsection (a)--

(A) by striking out the subsection designation; and

(B) by striking out "demonstration program." and inserting in lieu thereof "program under this part."; and

(2) by striking out subsections (b), (c), (d), and (e).

SECRETARIAL ACTIVITIES

SEC. 529. Section 459 of the Act is amended--

(1) in the section heading, by striking out "SCHEDULE OF";

(2) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) NOTICE IN LIEU OF REGULATIONS FOR FIRST YEAR OF PROGRAM.--The Secretary shall publish in the Federal Register whatever standards, criteria, and procedures, consistent with the provisions of this part, the Secretary determines are reasonable and necessary to the successful implementation of the first year of the direct loan program authorized by this part. Section 482 of the Act and section 431 of the General Education Provisions Act shall not apply to the publication of such standards, criteria, and procedures.";

(3) in subsection (b)--

(A) by striking out "The Secretary" and inserting in lieu thereof "Except as provided in subsection (a), the Secretary"; and

(B) by inserting "the first year of" immediately following "for carrying out";

(4) in subsection (c)--

(A) by inserting "a date not later than" immediately preceding "October 1, 1993,"; and

(B) by striking out "participate" through the end thereof and inserting in lieu thereof the following: "participate in the first year of the loan program under this part.";

(5) in subsection (d), by striking out "participate" through the end thereof and inserting in lieu thereof the following: "participate in the first year of the loan program under this part."; and

(6) by striking out subsection (e).

REPEALS AND REDESIGNATIONS

SEC. 530. (a) Section 455 of the Act is repealed.

(b) Sections 456, 457, 458, 459, and 459A are redesignated as sections 455, 456, 457, 458, and 459, respectively.

FUNDS FOR ADMINISTRATIVE EXPENSES

SEC. 530A. Section 459 of the Act (as redesignated by section 530) is amended by striking out $17,000,000" through the end thereof and inserting in lieu thereof the following: "$127,000,000 in fiscal year 1994, $367,000,000 in fiscal year 1995, $619,000,000 in fiscal year 1996, $632,000,000 in fiscal year 1997, and $770,000,000 in fiscal year 1998. If in any

fiscal year, the Secretary determines that additional funds for administrative expenses are needed as a result of the transition from the loan programs under part B to the loan programs under this part, the Secretary is authorized to use funds available under this section for a subsequent fiscal year for such expenses.".

PART C--CONFORMING AMENDMENTS TO THE HIGHER EDUCATION ACT OF 1965

SUBPART 1--FEDERAL FAMILY EDUCATION LOAN PROGRAM AMENDMENTS

GUARANTY AGENCY RESERVES

SEC. 531. Section 422 of the Act is amended by adding at the end thereof the following new subsection:

"(g) FEDERAL OWNERSHIP OF RESERVES.--Notwithstanding any other provision of law, the reserve funds described under this section [or just the advances? do we need to say something like "regardless of who holds the reserves?"], and any assets purchased with such reserve funds, are the property of the Federal Government.". [Do we need to say something about the use of the reserves for program purposes? FEEL FREE TO AMPLIFY THIS PROVISION! We will also need details on the rationale for the section-by-section...]

ASSIGNMENT OF LOANS; REPAYMENT TERMS OF ASSIGNED LOANS

SEC. 532. (a) Section 428(c)(8) of the Act is amended--

(1) by inserting the subparagraph designation "(A)" immediately following the section heading;

(2) by striking out the second and third sentences therein; and

(3) adding at the end thereof the following new subparagraphs:

"(B) An orderly transition from the Federal Family Education Loan program under this part to the Federal Direct Student Loan program under part D of this title shall be deemed to be in the Federal fiscal interest, and prompt assignment of loans to the Secretary under this paragraph upon his or her request shall be considered an essential element of such transition.

"(C) The Secretary may require any borrower who has defaulted on a loan made under this part that is assigned to the Secretary under this paragraph to repay that loan under an income contingent repayment plan, the terms and conditions of which shall be established by the Secretary and similar to the income contingent repayment plan established for purposes of part D of this title. [Do we just offer these borrowers income contingent repayment? Can we require them to convert to income contingent repayment without prior notice? Do I need to cross-reference this authority anywhere else in part B?]

TERMINATION OF GUARANTY AGENCY AGREEMENTS; ASSUMPTION OF GUARANTY AGENCY FUNCTIONS BY THE SECRETARY

SEC. 533. Section 428(c)(10) of the Act is amended--

(1) in subparagraph (C), by striking out "the Secretary shall require" and inserting in lieu thereof "the Secretary may require";

(2) in subparagraph (E)--

(A) in the matter preceding clause (i), by striking out "in accordance with subparagraph (F)"; [what was the rationale for this suggestion?]

(B) in clause (ii), by striking out "or" at the end thereof;

(C) in clause (iii), by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(D) by adding at the end thereof the following new clauses:

"(iv) the Secretary determines that such action is necessary to protect the Federal fiscal interest;

"(v) the Secretary determines that such action is necessary to ensure the continued availability of loans to student or parent borrowers; or

"(vi) the Secretary determines that such action is necessary to ensure an orderly transition from the loan programs under this part to the loan programs under part D of this title.";

(3) in subparagraph (F)--

(A) in the matter preceding clause (i), by striking out "Except as provided in subparagraph (G), if" and inserting in lieu thereof "If";

(B) in clause (vi)--

(i) by striking out "and to avoid" and inserting in lieu thereof a comma and "to avoid";

(ii) by striking out the period at the end thereof and inserting in lieu thereof a comma and "and to ensure an orderly transition from the loan programs under this part to the loan programs under part D of this title.";

(4) by striking out subparagraph (G);

(5) by redesignating subparagraphs (H), (I), and (J) as subparagraphs (I), (J), and (K), respectively;

(6) by inserting immediately following subparagraph (F) the following new subparagraphs:

"(G) Notwithstanding any other provision of [Federal or State--necessary?] law, if the Secretary has terminated or is seeking to terminate a guaranty agency's agreement under subparagraph (E), or has assumed a guaranty agency's functions under subparagraph (F)--

"(i) such guaranty agency may not file for bankruptcy;

"(ii) such guaranty agency may not seek protection from the Secretary's actions in State court; and

"(iii) no provision of State law shall apply to the actions of the Secretary in terminating the operations of a guaranty agency;

"(H) Notwithstanding any other provision of law, the Secretary's liability for any outstanding liabilities of a guaranty agency, the functions of which the Secretary has assumed, shall not exceed the fair market value of the assets [or do we want to just say reserves] assigned by the guaranty agency

to the Secretary in accordance with paragraph (1)(B), minus any necessary liquidation or other administrative costs."; and

(7) in subparagraph (K) (as redesignated by paragraph (5)), by striking out "system, together" through the end thereof and inserting in lieu thereof the following: "system and the progress of the transition from the loan programs under this part to the loan programs under part D of this title.".

ADMINISTRATIVE COST ALLOWANCE

SEC. 534. Section 428(f)(1)(B) of the Act is amended--

(1) by striking out "1 percent" and inserting in lieu thereof ".16 percent"; and

(2) by striking out "loans upon which insurance was issued under this part during such fiscal year" and inserting in lieu thereof "loans outstanding upon which insurance has been issued under this part". [NOTE: do we need to modify this reflect loans for which the Secretary has reimbursed the g.a., or does "outstanding" cover it sufficiently?]

CONSOLIDATION LOANS

SEC. 535. Section 428C of the Act is amended--

(1) by amending subsection (a)(3)(A) to read as follows:

"(A) For the purpose of this section, the term "eligible borrower" means a borrower who, at the time of

application for a consolidation loan is in repayment status, or in a grace period preceding repayment, or is a delinquent or defaulted borrower who will reenter repayment through loan consolidation."; [Note that this eliminates the minimum loan amount for all FFEL consolidation, but in (3)(B) below, amendments are made so that the length of repayment for $0-7,500 loans would be 5-10 years, as is the case under Stafford now, and the length of repayment if borrower selects income sensitive or income contingent repayment would be related to that repayment schedule.]

(2) in subsection (b)--

(A) in paragraph (1)--

(i) in subparagraph (A)(ii), by inserting "with income-sensitive repayment terms" immediately following "obtain a consolidation loan";

(ii) by redesignating subparagraph (E) as subparagraph (F); and

(iii) by inserting immediately following subparagraph (D) the following new subparagraph:

"(E) that the lender shall offer an income-sensitive repayment schedule, established by the lender in accordance with the regulations of the Secretary, to the borrower of any consolidation loan made by the lender on or after July 1, 1993; and"; and

(B) by adding at the end thereof the following new paragraph:

"(5) In the event that a borrower is unable to obtain a consolidation loan with income-sensitive repayment terms from the holders of the outstanding loans of that borrower (that are selected for consolidation), the Secretary is authorized to offer the borrower a direct consolidation loan with income contingent repayment terms under part D of this title."; and

(3) in subsection (c)--

(A) in paragraph (1), by amending subparagraphs (B) and (C) to read as follows:

"(B) A consolidation loan made before July 1, 1993 shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the greater of--

"(i) the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent; or

"(ii) 9 percent.

"(C) A consolidation loan made on or after July 1, 1993 shall bear interest at an annual rate on the unpaid principal balance of the loan that, for any 12-month period beginning on July 1 and ending on June 30, shall be determined on the preceding June 1 and shall be equal to--

"(i) the bond equivalent rate of 91-day Treasury bill auctioned at the final auction held prior to such June 1; plus

"(ii) 3.1 percent,

except that such rate shall not exceed 9 percent[?].";

(B) in paragraph (2)--

(i) in subparagraph (A)--

(I) in the matter preceding clause (i), by striking out "income sensitive repayment schedules. Such repayment terms" and inserting in lieu thereof "income sensitive repayment schedules, established by the lender in accordance with the regulations of the Secretary. Except as required by such income sensitive repayment schedules, or by income contingent repayment terms offered by the Secretary pursuant to subsection (b)(5), such repayment terms"

(II) by redesignating clauses (i), (ii), (iii), (iv), and (v) as clauses (ii), (iii), (iv), (v), and (vi), respectively; and

(III) by inserting immediately preceding clause (ii) (as redesignated by subclause (II)) the following new clause:

"(i) is less than $7,500, then such consolidation loan shall be repaid in not less than 5 years, nor more than 10 years;";

(ii) by striking out subsection (B)[It doesn't seem needed anymore; is it?]; and

(iii) by redesignating subparagraph (C) as subparagraph (B); and

(C) in paragraph (3)(A), by inserting immediately following the subparagraph designation the following: "except as required by an income sensitive repayment schedule offered by the

lender in accordance with the regulations of the Secretary, or by income contingent repayment terms offered by the Secretary pursuant to subsection (b)(5),".

OPTICALLY IMAGED DOCUMENTS

SEC. 536. Section 432 of the Act is amended by adding at the end thereof the following new subsection:

"(q) OPTICALLY IMAGED DOCUMENTS.--Records maintained in accordance with section 484A(c) may be used in any proceeding, as permitted by section 484(c), with respect to a loan that was made under this part and has been assigned to the Secretary.".

<u>one possible set of amendments to include a "conversion" authority:</u>

DEBT MANAGEMENT OPTIONS

SEC. 537. Section 437A of the Act is amended--

(1) in subsection (a)--

(A) in the matter preceding paragraph (1), by striking out "authorized," through the end thereof and inserting in lieu thereof "authorized--";

(B) in paragraph (1), by striking out "who are considered to be at a high risk of default and"; and

(C) in paragraph (2), by striking out "shall, subject to subsection (b)(2)," and inserting in lieu thereof

"shall";

(2) by amending subsection (b) to read as follows:

"(b) INCOME CONTINGENT REPAYMENT OPTION.--For purposes of subsection (a)(2), the Secretary shall establish the terms and conditions for an income contingent repayment option that shall be similar to the income contingent repayment plan established for purposes of part D of this title.";

(3) by striking out subsections (c) and (e) [CAN WE/SHOULD WE ELIMINATE THE SEPARATE AUTHORIZATION OF APPROPRIATIONS?]; and

(4) in subsection (d)--

(A) by striking out "$200,000,000" and inserting in lieu thereof "what dollar amount? do we need to specify a source of funds?"; and

(B) by redesignating such subsection as subsection (c).

SUBPART 2--PERKINS LOAN PROGRAM

AUTHORIZATION OF APPROPRIATIONS

SEC. 538. Section 461 of the Act is amended to read as follows:

"APPROPRIATIONS AUTHORIZED

"SEC. 461. (a) PROGRAM AUTHORITY. The Secretary shall carry out a program of assisting institutions of higher education to maintain funds for making low-interest loans to students who need such loans to pursue their courses of study. Loans made under this part shall be known as 'Federal Perkins Loans'.

"(b) AUTHORIZATION OF APPROPRIATIONS.--For the purpose of reimbursing institutions for loans that are canceled pursuant to section 465, there are authorized to be appropriated such sums as may be necessary for fiscal year 1994 and for each of the four succeeding fiscal years.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 539. Part E of title IV of the Act is amended--

(1) in section 462 of the Act--

(A) by amending the heading to read as follows: "DEFAULT RATES";

(B) in subsection (f)--

(i) by striking out paragraph (1); and

(ii) in paragraph (2)--

(I) by striking out the paragraph designation; and

(II) by striking out "fiscal year 1994" and inserting in lieu thereof "fiscal year 1995";

(C) in subsection (g)--

(i) by striking out paragraph (1); and

(ii) by striking out the pargraph designation "(2)";

(D) in subsection (h)--

(i) by striking out paragraphs (1) and (2); and

(ii) by redesignating paragraphs (3) and (4) as paragraphs (1) and (2), respectively;

(E) by striking out subsections (a), (b), (c), (d), (e), (i), and (k); and

(F) by redesignating subesctions (f), (g), and (h) as subsections (a), (b), and (c), respectively.

(2) in section 463(a) of the Act--

(A) in the matter preceding paragraph (1), by striking out "for the payment of Federal capital contributions";

(B) in paragraph (1), by striking out "establishment and";

(C) in paragraph (2)--

(i) by striking out "the deposit in" and inserting in lieu thereof "the maintenance of";

(ii) in subparagraph (A), by striking out

the semicolon at the end thereof and inserting in lieu thereof a comma and "as in effect prior to the enactment of the Federal Direct Student Loan Program Amendments of 1993;"; and

(iii) in subparagraph (B)--

(I) in clause (i)(I), by striking out "is granted" and inserting in lieu thereof "was granted"; and

(II) in clause (ii), by striking out "in each of the succeeding fiscal years" and inserting in lieu thereof "in fiscal year 1994";

(D) in paragraph (6), by striking out "in accordance with section 462;" at the end thereof and inserting in lieu thereof a semicolon.

(3) Section 464(b)(2) of the Act is amended by inserting a comma and "as in effect prior to the enactment of the Federal Direct Student Loan Program Amendments of 1993," after "section 462".

(4) Section 466(c)(2) of the Act is amended by striking out the period at the end thereof and inserting in lieu thereof a comma and "as in effect prior to the enactment of the Federal Direct Student Loan Program Amendments of 1993.".

(5) Section 467 of the Act is amended--

(1) by amending the heading to read as follows: "COLLECTION OF DEFAULTED LOANS"; and

(2) by striking out subsection (c).

SUBPART 3--GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE

AUTHORITY TO USE OPTICALLY IMAGED DOCUMENTS

SEC. 540. (a) Section 484A of the Act is amended--

(1) in the heading, by adding a semicolon and "OPTICALLY IMAGED DOCUMENTS" after "LIMITATIONS"; and

(2) by adding at the end thereof the folowing new subsection:

"(c)(1) IN GENERAL.--It is the purpose of this subsection to--

"(A) allow the Secretary to use optical imaging technology to store and retrieve documents and records, including promissory notes and repayment agreements, required for the administration of the programs authorized under part D of this title, or for the administration of loans made under part B of this title that have been assigned to the Secretary;

"(B) permit the Secretary to destroy originals of such documents and records, including promissory notes and repayment agreements, after they have been optically imaged, thereby achieving significant savings in storage and retrieval costs; and

"(C) ensure that the Secretary may introduce as evidence in any proceeding with respect to the programs or loans described in subparagraph (A) optically imaged documents and records, including promissory notes and repayment agreements.

"(2) Notwithstanding any other provision of Federal or State law, an optically imaged copy of any document or record, including a promissory note or repayment agreement, may be introduced as evidence in any proceeding with respect to the programs or loans described in paragraph (1)(A) in any Federal or State court, or other tribunal, and such optically imaged copy shall be admissible in any court or tribunal of the United States or any State as if it were the original document or record and have the same force and effect as the original.

"(3) Nothing in this subsection shall be interpreted to preclude the admissibility of a duplicate of a document or record required for the administration of the programs or loans described in paragraph (1)(A) made by a technology other than optical imaging consistent with the Federal Rules of Evidence and section 1732 of title 28 of the United States code, or applicable State law.

"(4) Nothing in this subsection shall be interpreted to preclude the admissibility of an optically imaged copy of any document or record in a proceeding outside the scope of this subsection consistent with the Federal Rules of Evidence and section 1732 of title 28 of the United States code, or applicable State law.".

(b) Section 487 of the Act is amended by adding at the end thereof the folowing new subsection:

"(f) USE OF OPTICALLY IMAGED DOCUMENTS.--In any proceeding with respect to a program or activity under part D of this title,

or with respect to a loan made under part B of this title that has been assigned to the Secretary, records maintained in accordance with section 484A may be used as provided in that section.".

PART D--AMENDMENTS TO OTHER LAWS

DISCLOSURE OF TAX RETURN INFORMATION

SEC. 541. (a) Section 6103(a)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(a)(3); relating to confidentiality and disclosure of returns and return information; hereinafter referred to as "the Code") is amended by striking out "(1)(12)" and inserting in lieu thereof "(1)(10), (12), or (13)".

(b) Section 6103(l) of the Code is amended--

(1) in paragraph (10)--

(A) in subparagraph (A), by inserting a comma and "and to officers, employees, and agents of the Department of Education," after "any agency"; and

(B) in subparagraph (B), by striking out "officers and employees" and inserting in lieu thereof "officers, employees, and agents"; and

(2) at the end thereof, by adding a new paragraph to read as follows:

"(13) Disclosure of return information to carry out income contingent repayment of student loans.--

"(A) In general.--The Secretary may, upon written

request from the Secretary of Education disclose to officers, employees, and of the Department of Education return information with respect to a taxpayer who has received a Federal loan under a student loan program and whose loan repayment amounts are based in whole or in part on the taxpayer's income. Such return information shall be limited to--

"(i) taxpayer identity information with respect to such taxpayer;

"(ii) whether such taxpayer filed a joint return; and

"(iii) total income [**or AGI? THE IRS IS CHECKING TO SEE WHETHER TOTAL INCOME OR AGI IS EASIER AND FASTER TO RETRIEVE FROM THEIR DATA BASES; SHOULD WE GO WITH WHATEVER INCOME INFORMATION IS FASTER TO RETRIEVE?**] of such taxpayer, as indicated on the taxpayer's most recent available return.

"**(B) Restriction on use of disclosed information.**--Any officers, employees, and agents of the Department of Education receiving return information under subparagraph (A) shall use such information only for the purposes of, and to the extent necessary in, establishing an appropriate income contingent repayment level under a student loan program.

"**(C) Definitions.**--For purposes of this paragraph, the term "student loan program" means the program authorized under part D of title IV of the Higher Education Act of 1965 and includes loans under part B of title IV the Higher Education Act of 1965 that are in default and have been assigned to the

Department of Education.

(c) Section 6103(m)(4) of the Code is amended--

(1) in the heading, by inserting "owe overpayment on Federal Pell Grants or" after "Individuals who";

(1) in subparagraph (A)--

(A) in clause (i), by striking out "part B or E" and inserting in lieu thereof "part B, D, or E";

(B) by redesignating clauses (i) and (ii) as subclauses (I) and (II); and

(C) by striking out "of any taxpayer who" and inserting in lieu thereof "of any taxpayer (i) who owes an overpayment of a grant awarded to that taxpayer under subpart 1 of part A of title IV of the Higher Education Act of 1965 [Question for reviewers: What about SEOGs?], or (ii) who"

(2) in subparagraph (B)--

(A) in clause (i), by striking out "under part B" and inserting in lieu thereof "under part B or D"; and

(B) in clause (ii), by striking out "under part E" and inserting in lieu thereof "under subpart 1 of part A, part D, or E"; [Question for reviewers: Does the Department or its agents need to disclose overpayments of Pell Grants to institutions of higher education?]

(d) Section 6103(p) of the Code is amended--

(1) in paragraph (3)(A), by striking out "(11), or (12)(m)" and inserting in lieu thereof "(11), (12), or (13), (m)";

(2) in paragraph (4)--

(A) in the matter preceding subparagraph (A), by striking out "(10), or (11)," and inserting in lieu thereof "(10), (11), or (13),";

(B) in subparagraph (F)(ii), by striking out "(11), or (12)," and inserting in lieu thereof "(11), (12), or (13),"; and

(C) in the flush left material after subparagraph (F), by striking out "under subsection (l)(12)(B)" and inserting in lieu thereof "under subsections (l)(10), (12)(B), or (13)".

PART E--EFFECTIVE DATES

SEC. 551. (a) Except as otherwise provided in this section, the amendments made by title V of this Act shall take effect upon enactment.

(b) The amendments made by subpart 2 of part C of title V of this Act shall take effect on October 1, 1995.

MORE EFFECTIVE DATES TO COME...

Higher Ed piece of NDS

(1) severability of Direct lending + ICL — not in separate titles as drafted. S/L & ICL in separate titles.

(A) can't just cut out - it is way of repaying.

(B) do they apply to non-direct loans?

Can we say next year ICL are available to all?
(probably not - looks like not)

(2)

(2) Subpart D — amendments to Internal Revenue code — jurisdiction → Finance Committee p35 V-(14)

(3)

pg 11 of Bill.

minimum repayment terms: would PS stipend put you into repayment category — or deferral.

our lang: deferral same as in-school deferral.

means student deferral - they're going to pay.

0

April 11, 1993

Memorandum for Eli J. Segal

From: Jack Lew

Subject: Comments on Department of Education Draft

I have reviewed the draft legislation submitted on Friday afternoon by the Department of Education and have several concerns:

(1) income contingent loans are only available as a repayment option for direct loans

(2) income contingent loans are not drafted so that they can be severed easily from direct lending if direct lending proves to be politically impossible

(3) direct amendments to the Internal Revenue Code may present a jurisdictional problem (e.g. Finance Committee may claim jurisdiction in the Senate)

(4) we need to make certain that the minimum repayment terms for income contingent loans do not require repayment during national service term

H - joint referral
S - need not
(Kennedy)
possible to take piecemeal?
H - comprehensive bill
S - Byrd rule → split / not in Reconcil.

- has the ns bill shipped?
Bill b: Th pm or Fri.
- making flex repayment option more broadly available - but not all in the legislation in presentation, need to stress availability to all borrowers, though not only in legislation
S in legislation: extend to 15 yrs rather than 10.
IC only to direct loans + those who consolidate into DL
but consolidation available to anyone.
but not to borrowers in guarantee program
can always consolidate into DL.
- not old borrowers.
Bill b: already borrowed -
direct loan borrowers -
not direct loan borrowers - as soon as ED issues regs → income-sensitive - can be sold as IRB. IC = use of IRS
IS = old program. new regs w/o info from IRS. Same effect as
borrow - except # of years -
also, under IS, payments cover interest -

Why have we stayed in old framework like?

Current rqts = no ability on Dept to buy up loans -

The Dept A = they can buy up all the loans of folks.

To get true IC, Dept needs to buy up.

"IC" frames expectations = longer repayment period in the bill.

Can Dept student request Dept to consolidate private loans into direct/ICL?

= paying the student to pay the bank

Scoring problems

Old law = faster.

& refashioned

Plan IS → IC by law. Is possible IS change

When would IS be available? Full.

Mkuin - don't make it real easy to cut them.

how are we doing on DL?

- A: badly

Automatic forbearance - interest accumulates.

no #s.

whether in mandatory fixed approp. is still wise.

different deferments.

Standard for eco hardship deferment. (all)

or decreasing income (ICL)

problem is opening a door to others to claim this #, and now they have shut that door for weird deferrals.

- write challenge post -