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URGENT

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

LRM NO: 1312
FILE NO: 817

5/15/95

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): 7

TO: Legislative Liaison Officer - See Distribution below:
FROM: Janet FORSGREN (for Janet & Forsgren)
Assistant Director for Legislative Reference
OMB CONTACT: Connie BOWERS 395-3803
Legislative Assistant's line (for simple responses): 395-7362

SUBJECT: **REVISED** EDUCATION, TREASURY Proposed Draft Bill: Accelerated Direct Loan Program
Implementation and Student Loan Marketing Association (Sallie Mae) Reorganization Act of
1995

DEADLINE: 5:00 p.m., today Monday, May 15, 1995

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before
advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the
"Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

 **COMMENTS:** Attached is the proposed Congressional transmittal letter to accompany the draft bill that you
are reviewing. The letter was drafted by ED for joint transmittal by ED and Treasury.

AGENCIES:
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LRM NO: 1312
FILE NO: 817

5/15/95
1:45 pm

Honorable Newt Gingrich
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Enclosed for the consideration of the Congress is a legislative proposal entitled "The Accelerated Direct Loan Implementation and Student Loan Marketing Association Reorganization Act of 1995."

This proposal would, among other things, amend the Higher Education Act of 1965 (20 U.S.C. 1001 et seq., hereinafter referred to as "the Act") to accelerate the transition from the Federal Family Education Loan (FFEL) Program to the William D. Ford Federal Direct Loan Program so that by academic year 1997-1998, Direct Loans represent 100 percent of new student loan volume. Then, once full implementation of the Direct Loan Program is achieved, the bill would provide for the orderly termination of the Government-Sponsored Enterprise (GSE) status of the Student Loan Marketing Association (Sallie Mae) by December 31, 2004, and authorize its reorganization as a business corporation without a Federal charter. Finally, as part of the systematic phase-out of guaranty agency operations during the transition from the FFEL Program to the Direct Loan Program, the Secretary of Education would be required to recall at least \$1.1 billion in reserves held or controlled by guaranty agencies in fiscal years 1996 through 2000.

If enacted, these proposals would continue the much-needed transformation of the way the Federal Government does business in the area of student financial assistance, as begun by the enactment of the Student Loan Reform Act of 1993 (P.L. 103-66), which authorized the current phase-in of the Direct Loan Program. Accelerating that phase-in would enable students at more institutions to enjoy the benefits of direct lending--with its efficiency, convenience, lower costs, and reliance on competitively bid servicing contracts--more quickly. The privatization of Sallie Mae is a logical extension of the transition to direct lending, as are the provisions in this proposal concerning the recall of FFEL reserve funds and measures to ensure the availability of loan capital during that transition.

Additionally, the privatization of Sallie Mae is an important step for the Government--which would be, for the first time, removing its ties to a major financial GSE. We are committed to ensuring that the privatization of Sallie Mae is achieved in an orderly fashion that protects access to student loans during the

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transition from guaranteed to direct lending, and ensures the continued financial safety and soundness of the GSE as it winds down its operations.

Accelerating the phase-in of Direct Loans

Under this proposal, Direct Loans would account for 80 percent, rather than 50 percent, of new student loan volume for academic year 1996-1997, and 100 percent of new volume for academic year 1997-1998 and succeeding academic years, rather than 50 percent (plus demand) for academic year 1997-1998 and 60 percent (plus demand) for academic year 1998-1999. This acceleration, in combination with the recovery of Federal advance funds held by guaranty agencies, would save an additional \$5.2 billion in outlays through fiscal year 2000, as compared to savings resulting from the current phase-in schedule.

One of the reasons for these savings is that the Direct Loan Program uses competitively bid servicing contracts, which promote a partnership with the private sector that puts foremost the interests of borrowers and schools rather than the financial interests of subsidy-receiving lenders and guaranty agencies. Under the FFEL Program, lenders and guaranty agencies receive statutorily-mandated payments to perform (or contract out) loan services. These payments are not related to their actual costs of performing these services. In fiscal year 1995 alone, for example, the Department of Education estimates that it will pay banks more than \$600 million in special allowance payments that ensure that banks receive a guaranteed rate of return. This subsidy is not necessary under the Direct Loan Program.

Apart from the cost savings, however, there are substantial programmatic benefits that would be available to more students, their parents, and participating institutions more quickly through accelerating the phase-in of direct lending. These benefits include a simpler and speedier process for obtaining loans, a single holder of the loan throughout its life, and flexible repayment options, including income contingent repayment. The structure of the Direct Loan Program does not suffer from the many delays, inefficiencies, and confusion inherent in the complicated interrelationships among the many lenders, guaranty agencies, secondary markets, and loan servicers in the FFEL Program. As a result, participating institutions can improve the level of their service to students, and borrowers have a lower risk for errors and inadvertent defaults, as well as increased debt management options, which encourage Americans to pursue postsecondary education and the careers of their choice, including lower-paying careers such as public service.

Accelerating the phase-in of direct lending would also build upon the successes enjoyed by the Department of Education in managing this program, and allow the Department to shift its

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administrative resources from FFEL and focus them on direct lending, thereby reducing the need for costly duplicative systems to oversee the two programs simultaneously. The Department of Education places a high priority on managing the Direct Loan Program efficiently, and we are pleased to report that its performance is viewed very favorably by Direct Loan borrowers and participating institutions alike.

Privatizing Sallie Mae

The proposal would authorize Sallie Mae, with stockholder approval, to change its status from a GSE to an ordinary business corporation pursuant to a reorganization plan that would be reviewed by the Secretaries of the Treasury and Education. Under this reorganization, which must occur within 18 months of the date of enactment of the bill, Sallie Mae, the GSE, would become a wholly-owned subsidiary of the ordinary business corporation (the "Holding Company") during a transition period, which would end with the dissolution of Sallie Mae no later than December 31, 2004. Under this proposal, Sallie Mae would be dissolved as of that date even if the stockholders did not approve its reorganization as an ordinary business corporation. As of the dissolution date, any outstanding Sallie Mae debt would be transferred to a trust, together with enough United States-backed obligations held by Sallie Mae to pay all principal and interest on the debt, with the Holding Company responsible for making up any shortfall of obligations transferred.

During the transition period, Sallie Mae could issue new debt obligations, provided that these obligations mature no later than the dissolution date, but its business activities would be restricted to existing contractual commitments, to serving as a lender-of-last-resort (LLR) in the FFEL program, under a proposed expansion of its current LLR authority, and to purchasing FFEL loans under new authority proposed by this bill. The bill would authorize the Secretary of Education to advance funds to Sallie Mae for these new LLR and loan purchasing activities. Other eligible secondary markets would also be authorized to make LLR loans and to purchase loans. These provisions are designed to ensure continued student loan access during the privatization process.

The bill would ensure that Sallie Mae's separate corporate identity is preserved during the transition period, and would insulate it from any financial risk that the Holding Company may experience during that time. Sallie Mae would be permitted to transfer excess capital to the Holding Company, subject to certain restrictions. Those restrictions include limitations, that are tied to the phase-in of direct lending, on the total amount of the excess capital that Sallie Mae has amassed before the reorganization that it may distribute.

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Other measures in this proposal that are intended to ensure the financial safety and soundness of Sallie Mae during the transition period include provisions that would amend the Secretary of the Treasury's oversight authority, add additional reporting requirements, and increase the GSE's minimum capital ratio (along a requirement that the Holding Company contribute capital if Sallie Mae falls below that minimum).

Additional concerns addressed in the proposed privatization are the need to ensure its budget neutrality, as well as provide compensation that reflects the significant benefits the Federal Government has provided to Sallie Mae and its stockholders through GSE status for more than two decades. Therefore, as a condition of being allowed to reorganize as a private business corporation, Sallie Mae would be required to compensate the Federal Government for the loss of revenues that it would have paid to the Federal Government under current law, if it had continued its GSE status. Additionally, the proposal would authorize the issuance of stock purchase warrants, or other instruments, to the United States, so that it may participate in the gains of the Holding Company.

Recall of advances

As part of the overall plan to wind down guaranty agency operations during the ongoing transition from the FFEL Program to the Direct Loan Program, this legislative proposal would require the Secretary to recover from the reserve funds held by guaranty agencies at least \$1.1 billion by fiscal year 2000. In addition to furthering this transition, recovering reserve funds is fully consistent with the current role of the guaranty agency in the FFEL Program--because the Secretary of Education is the ultimate insurer of all FFEL guarantees, a guaranty agency functions more like a loan servicer than a guarantor. As a result, guaranty agencies' need for reserve funds to protect against losses is diminished.

The proposal would authorize the Secretary of Education to establish a required level of reserve funds for each guaranty agency. These reserve amounts would be set at levels designed to meet the needs of the FFEL Program, assist in the transition to Direct Loans, and protect the Federal fiscal interest. In addition, the Secretary would be authorized to establish an alternative to reserves as a means of providing financial support to guaranty agencies; one such alternative could be a system providing working capital to guaranty agencies on a case-by-case basis. This authority would give the Secretary of Education the flexibility to address the changing needs of the guaranty agencies and the FFEL and Direct Loan systems during the transition.

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Consistent with the proposed recovery of reserve funds, this legislative proposal also contains a conforming amendment that would greatly reduce the amount of funds guaranty agencies need to have on hand to discharge their insurance obligations. Under this amendment, a guaranty agency would have the option of filing its claim for reimbursement with the Secretary of Education within 45 days after the guaranty agency discharges its insurance obligation on the loan, provided that the guaranty agency has sufficient funds on hand to discharge such obligation, or within 45 days after the guaranty agency approves a claim that would discharge its insurance obligation on the loan. Under the second option, the guaranty agency would be prohibited from discharging its obligation until the guaranty agency has received reimbursement from the Secretary.

The
bill
language
is
still
being
reviewed

for this.)

Other provisions to ensure access to loan capital

As we have noted previously, a central consideration for both the accelerated phase-in schedule for direct lending and the privatization of Sallie Mae is continued access to student loans during both of these important transitions. In addition to the other loan access safeguards, discussed above in the context of the Sallie Mae privatization, this proposal would also authorize the Secretary of Education to resume providing Federal loan insurance (instead of merely reinsuring loans that have been insured by guaranty agencies) as necessary to ensure students continued access to loan capital. These provisions would ensure that the Secretary of Education has the flexibility needed to address loan access issues in an orderly manner and to assist in the transition from guaranteed to direct lending.

Pay-As-You Go Requirement

The Omnibus Budget Reconciliation Act of 1990 requires that all revenue and direct spending legislation meet a pay-as-you-go requirement. That is, no such bill should result in an increase in the deficit, and if it does, it will trigger a sequester if not fully offset.

[remaining PAYGO materials to be added RE: savings of \$5.2 billion]



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

Finance Student loan

April 16, 1993

NOTE TO FRANK NEWMAN
BILL GALSTON
JACK LEW
ELLEN SEIDMAN
JOE STIGLITZ

Attached for your review are revised materials on the student loan reform portion of the national service bill.

- o Description of the proposal.
- o Description of how flexible repayment options will be provided to all borrowers.
- o Transition plan, moving from guaranteed loans to direct loans.
- o Legislative language.
- o Section-by-section analysis.

Please review these materials and provide comments by Monday COB. My phone number is 708-5547; the fax number is 708-9814.

Thank you for your assistance, especially with such tight time frames.

Maureen McLaughlin

Maureen A. McLaughlin
Acting Assistant Secretary
for Postsecondary Education

Attachments

STUDENT LOAN REFORM: OUTLINE OF THE PROGRAM

April 15, 1993

OBJECTIVES

To reform and simplify student loans through direct federal lending and the elimination of many middlemen in the current system. To provide all borrowers (guaranteed and direct loans) with flexible repayment options, including income-based repayments, so that student debt will not prevent them from taking lower paying service jobs.

A second initiative next year will build upon these changes in student loans to streamline and simplify all student aid programs. This initiative will examine, among other things, setting an overall federal aid maximum and rethinking how to finance postsecondary vocational education and training.

IMPLEMENTATION OF DIRECT LOANS

o Timing

By the end of FY 1997, federal capital will be used for all new student loans. Phase-in will begin in FY 1994.

-- Costing is based on a planned phase-in path of 4 percent of volume in direct lending by the end of FY 1994, 25 percent the second year, 60 percent the third year, and full implementation by the end of FY 1997. This path would not be specified in statute.

o Loan Origination

Some institutions will originate loans themselves; others will use the services of alternative originators.

-- Criteria measuring the financial and administrative capability of institutions to originate loans well will be used to determine which institutions can originate themselves and which should use alternative originators. The basis for the criteria will be in statute; specific criteria will be in regulations.

-- Institutions that meet the financial and administrative criteria, but do not wish to originate loans themselves, will also be able to use alternative originators.

-- The Secretary will select the schools to participate during phase-in, mainly from applicants. Most will initially be competent lenders now in the Perkins

program. In addition, ED will select other institutions that will use alternative origination services.

- After the first year of experience, ED will develop more detailed criteria that measure administrative and financial capacity for participation as an originator.

Institutions will receive a small fee--about \$10 to \$15 per borrower--for loan origination. Alternative originators will be chosen by ED through a competitive bid process. Bidders may be state agencies, private lenders, and other organizations. The fee for institutions and originators will not be set in law.

- The fee will be small because the additional costs are small and the benefits to institutions of direct lending are substantial. The fee will be based on the number of borrowers and scaled down for larger numbers of borrowers to adjust for economies of scale.

All originators will be held liable through financial sanctions (in law and regulations) for errors in the origination process.

- o **Loan Servicing**

Responsibility for servicing loans while students are in school and while they are in repayment will not rest with the postsecondary institutions. The Department of Education will contract with a number of organizations to perform servicing of direct loans. These organizations, which could include state agencies and private firms, will be chosen through a competitive process.

- o **Program Integrity**

The Department of Education will be responsible for monitoring and overseeing the student loan system as part of the its overall oversight of the federal student aid system. As in current law, some responsibility is shared with the States in the new state review process.

- o **Student Interest Rate**

Some of the savings from direct lending will be used to lower interest rates for students. At full implementation, we will lower student interest rates by about one-half of a percentage point. The bill provides authority to the Secretary to do this but he also has the latitude to modify the rate based on conditions at the time.

- All other terms for borrowers--including loan limits,

eligibility rules for loan subsidies, and number of loan programs--would remain the same during the phase-in period. Such changes could be included in the second initiative addressing all student aid programs.

o **Data System**

Postsecondary institutions, alternative originators, servicers, and the Department of Education will share easily data on student loans throughout the nation. The Department will complete work on the national student loan data system. Such a system has been under development since 1989 and must be expanded to perform all the functions needed for direct loans. No new legislative authority is required.

FLEXIBLE REPAYMENT OPTIONS

Flexible repayments, including fixed repayments, graduated repayments, and income contingent repayments, will give borrowers the opportunity to choose lower paying jobs regardless of the level of debt incurred while in college. The Secretary will have the authority to require defaulters to repay through income contingency.

o **Plan to Offer Flexible Repayments**

We can fulfill the President's commitment to offer flexible repayments to students in four steps (see attachment also). The Treasury Department agrees with this approach.

- First, the Higher Education Amendments of 1992 provide some additional flexibility to students in choosing how to repay. The Department will develop and publish regulations to implement these additional repayment options by August 1993. The Department will also encourage lenders to offer income contingent repayment options to current borrowers.
- The second step is to provide to the Secretary the authority to offer income contingent repayments to some borrowers using information from the IRS on borrowers' incomes. The legislation will amend the current disclosure provisions to allow IRS to provide this information to ED or its designated servicers.
- Third, the Department will offer income contingent repayment to current borrowers if lenders do not. The Department will pay off current guaranteed loans thereby making them direct loans and will then offer borrowers the full range of flexible repayment options.
- The fourth step is to determine the role of the IRS in

collecting student loans when direct loans and income contingency are fully implemented. The bill requires the Secretaries to develop this role through a joint plan, and to this will allow sufficient time to address all the issues and concerns regarding how such a system would be structured and how much it would cost.

o **Design of Income Contingent System**

The income contingent system addresses the appropriate income measure, the percentage of income, capitalization of interest when payments are insufficient to cover interest, and length of repayment. The legislation will state that the Secretary will set the specific parameters of the income contingent system.

Income Measure. Total income is the best measure of ability to pay because it includes all sources of income for the family, not just earnings.

Percentage of Income. Use a straightforward system that requires borrowers to repay an appropriate percentage of discretionary income. Bill limits percentage to 10 percent of discretionary income.

Capitalization of Interest and Length of Repayment. Interest will accrue and be capitalized (with a possible limit on the total amount of capitalization) so that borrowers whose incomes grow in future years will repay when their incomes are sufficient. Borrowers with persistently low incomes will never fully repay. We will write off the remaining loan balance after some number of years, to be determined by the Secretary.

EASING THE TRANSITION FROM GUARANTEED STUDENT LOANS

Attached is a transition plan that addresses loan capital availability and guarantee agency operations.

FLEXIBLE REPAYMENTS FOR STUDENT LOANS

The President's commitment to provide students the opportunity to take lower paying jobs and repay their loans as a function of their income will be provided to all borrowers. Statutory changes and a fast-track development of regulations implementing statutory changes passed last year will ensure that flexible repayment options are available to borrowers as quickly as possible.

REPAYMENT PROVISIONS FOR CURRENT BORROWERS

- o 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 (up to 3 years) are excluded from the 10-year statutory repayment period.
- o 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.
- o The new legislation will allow ED to refinance student loans for borrowers who wish to use more flexible repayment options if lenders do not offer the options. ED will then provide borrowers the full range of repayment options.

REPAYMENT PROVISIONS FOR NEW BORROWERS IN 1994

- o The 1992 Amendments to the Higher Education Act require lenders to offer borrowers fixed, graduated, and income-sensitive repayment options.
 - These options will 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. The income-sensitive repayments included here are limited to 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

- o The new legislation will provide a "menu" of flexible repayment options for direct loan borrowers, including an income contingent repayment option. As discussed above, the bill will also give ED the authority to refinance guaranteed loans for borrowers who wish to take advantage of the full range of new repayment options.

--This process calls for the Department to obtain 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 detailing how we will use wage withholding and the IRS in the collection of student loans.

FEDERAL DIRECT
STUDENT LOAN PROGRAM
TRANSITION PLAN

April 16, 1993

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PROPOSED TRANSITION PLAN

PRINCIPLES

This paper provides details of the Department's plans for managing the transition from the Federal Family Education Loan (FFEL) program to the Direct Student Loan Program (FDSLSP), including new legal authorities that would be needed and other activities to be undertaken.

The FFEL program's participants include 10,000 lenders and 46 active guarantors controlling more than \$60 billion in guaranteed loans (not defaulted) plus approximately \$17 billion in defaulted loans. These entities will continue to be needed to originate additional loans during the transition period, and will service, track, and report on a diminishing number of outstanding loans for years to come. Because of the Government's responsibility for paying in-school subsidies, special allowance, reinsurance, and other fees to lenders and guarantors, ED will continue to be responsible for FFEL activities after implementation of direct loans.

The period before full-scale implementation of direct loans is referred to in this paper as the "transition period." The period after full-scale implementation is referred to as the "extended transition period." The extended transition period would end when all outstanding FFEL loans are paid off or transferred to Federal servicing or collection, and all Federal assets are recovered from guarantors.

Major principles underlying the transition plans include:

- o Preserving loan access during the transition period . There is concern that many lenders may choose to stop originating new FFEL loans when volume declines in the first transition year.
- o Ensuring performance of tasks now carried out by guarantors. These tasks will continue into the extended transition. Guarantors track loan status, 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 the transition period absent an alternative fee structure, increasing the risk of guarantor insolvencies. Agencies with high costs, low loan volume, little State support, or major management problems may choose to withdraw from the program when the new program is authorized. The Government must ensure that needed functions are performed during and after the transition period.

- o Preserving federal assets. Guarantors have over \$1 billion in federal student loan reserves. These reserves fund their operations and provide working capital to pay claims while awaiting federal reimbursement. Litigation during the late 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 nonprofits, will intensify their efforts to keep the reserves, possibly to use as seed money for other lucrative activities in the future, such as Federal contracts.
- o Rationalizing default collections. As the 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 law allows, to ensure that the quality of collection efforts does not erode.
- o Providing predictability to the financial markets. Financial markets, especially secondary markets and their bond holders, are concerned about the potential effects of FDSLSP on the value of loan portfolios. Stockholders of the Student Loan Marketing Association (Sallie Mae) have already demonstrated their concern through the dramatic decline in Sallie Mae's stock since the inauguration. The Department will have to communicate to the financial markets that the terms of FFEL loans, including the Federal guarantees, in-school interest subsidies and special allowance, will continue to be honored. The terms to be offered to borrowers, including income sensitive repayment plans and consolidation into the FDSLSP, will be of concern to holders, thousands of which will be forecasting cash flows, operating costs, and the value of loan portfolios in deciding whether to hold or sell their loans.
- o Preserving flexibility for responding to contingencies. New authorities are needed to enable the Secretary to respond flexibly to any loan access shortages that may develop and to respond to other changes in the activities of guarantors, lenders, and secondary markets. Flexibility is needed because these entities are expected to respond to the transition out of the FFEL program in a variety of ways and over varying time periods.

PRESERVING LOAN ACCESS

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 a rapid dismantling of their student loan infrastructure could be costly. During the transition period, the Department would focus on maintaining FFEL loan access through the existing infrastructure until the FDSLSP is able to meet demand for loans.

The continued availability of the federal Administrative Cost Allowance (ACA) payments to guarantors of one percent of each new FFEL loan guarantee will support guarantors' costs of issuing new loan guarantees during the transition.

Several new authorities are proposed to enable the Department to respond flexibly to any loan access shortages that may develop. These authorities would enable the Department to work with lenders, guarantors, secondary markets, and through the FDSLSP to provide loans. In the latter case, loan consolidation would occur in the FDSLSP program, even when borrowers had loans in both programs. (This provision would also simplify repayment for borrowers.)

The multiple vehicles for loan origination that would be available under the proposal are as follows:

Lenders, could make loans outside of their customary markets. Guarantors could provide referral services to students through an adaptation of an existing lender referral authority. This proposed provision would enable the Department to pay guarantors a small fee (.05 percent of the loan) to find lenders for students who cannot find a lender on their own. There is an existing authority for this -- Section 428(e) of the Higher Education Act of 1965, as amended (HEA) --, but it requires an appropriation and is limited to in-state students. The new proposal would:

- o Eliminate the requirement for appropriation of funds for lender referral payments to guarantors.
- o Add a provision that the Secretary will make such payments to agencies with whom the Secretary has made an agreement for lender referral services after enactment.
- o Allow the Secretary to set standards for making agreements with agencies to provide lender referral.

- o Permit lender referral payments under an agreement with a guarantor, to students who demonstrate that there is no willing lender or if the Secretary "finds" that loans are not available to all students in a specific geographic area or school.

Guarantors could make loans under the current lender of last resort authority of the HEA enhanced through access to federal or state capital. ED may provide federal advances to guarantors for certain purposes, possibly including lender of last resort loans. Agencies could use existing data and processing systems, relationships with schools, and reporting/accounting procedures to originate FFELs during the transition. New authority would be needed to:

- o Ensure that agencies do not receive interest and special allowance subsidies for loans they make with Federal capital. (Borrower payments would be passed through to ED.)
- o Require agencies to assign lender of last resort loans to the Secretary on demand. Assignment of these loans would liquidate the advance.
- o Pay the agencies a servicing fee established by the Secretary.

The Secretary has authority to provide advances to a guarantor under 422(c)(7) and 428(c)(10)(F)(v) "to assist the agency in meeting its immediate cash needs and ensure the uninterrupted payment of default claims by lenders." The Secretary could interpret "immediate cash needs" as including cash needed to make lender of last resort loans under 428(j). This would ensure that sufficient capital is available in the FFEL program without straining the processing capacity and systems of the FDSL program during transition.

Advances and servicing fees would come out of the FFEL appropriation.

Secondary markets at the state level could expand their operations to meet the origination needs of their states. New authority is requested to enable the Secretary to back bonds issued by state secondary markets, to support the continued availability of capital for student loans.

In addition, Sallie Mae could make lender of last resort loans after a request by the Secretary under existing authority in Section 439 of the HEA. Sallie Mae has significant origination capacity. In 1992, Sallie Mae accounted for more than \$2 billion in student loan originations by providing origination services for some lenders, and origination software support to others

whose loans Sallie Mae later purchases. Had Sallie Mae been the originator of record in these transactions, it would have been the largest FFEL originator in the nation. In contrast, the top FY 1991 originator in the GSL program was Citibank, with \$746 million.

New authority is requested to require Sallie Mae to originate student loans if the Secretary finds it is necessary. Sallie Mae has not previously agreed to make lender of last resort loans, and may not agree to do so in response to a request from the Secretary.

Institutions or alternative originators could originate loans in areas where FFELs become unavailable. Under an amended or more rapid expansion of the FDSLSP, schools or students unable to find an FFEL originator could be referred to the FDSLSP on an accelerated basis. The pace of expansion of the FDSLSP for this purpose would initially be limited to the servicing capacity of the first FDSLSP servicing contractor.

CARRYING OUT GUARANTOR RESPONSIBILITIES

A number of steps will be taken to ensure that guarantor responsibilities will be carried out through the extended transition period. At the same time, plans will be developed to phase out guarantors as their portfolios dwindle, or they leave the program for other reasons.

Most guarantors have sufficient reserves to enable them to continue their operations for many years, given a continued flow of funds to support administrative activities.

Under the current proposals, guarantors would continue to earn an ACA of one percent of each new FFEL loan guarantee throughout the transition period. The remaining funds that would have been paid as ACA for loans that instead are originated in the FDSLSP would be allotted to agencies based on the FDSLSP volume originated in their designated states. During the extended transition period, ACA would be based on the number of borrowers accounted for in their portfolios.

Should certain agencies be unwilling or unable to perform their responsibilities, the Department would intervene to arrange for another agency to take over the guarantor's duties, or to provide for such services through a contractor. Other guarantors would be able to compete for such contracts.

Department contracts established to support the transfer of portfolios from guarantors phasing out their operations could pay costs that would be incurred by agencies in relinquishing records and data relating to existing guarantees. Through the liquidation of the Higher Education Assistance Foundation (HEAF),

the Department has gained experience in the complexity of such transfers, which may include numerous portfolios in different data systems, maintained in a variety of formats, and with unique problems and issues.

Guarantors currently review the program compliance of their top schools and lenders. The Department would amend its regulations to phase out guarantor reviews of lenders and schools after 1996 when FFEL originations end. (Guarantors will continue to be responsible for reviewing lender due diligence before paying individual default claims.) Department reviews and independent audits would be used to monitor lenders and secondary markets after originations cease.

During the transition periods, guarantors may resist modifying their systems to comply with the Department's reporting requirements, including those related to implementation of the National Student Loan Data System. Increased oversight will be needed to monitor compliance, and agencies refusing to comply may be considered for early phase-out.

PRESERVING FEDERAL ASSETS

Guarantors now hold over a billion dollars of cash and liquid assets in their reserves. They also hold other resources (such as buildings, computers, and investments in related entities) purchased with program funds. Court decisions have confirmed that these assets are dedicated to the FFEL program and their use is controlled by the federal government.

Guarantors perform numerous functions using these reserves. A gradual consolidation of these functions on an agency-by-agency basis will provide for an orderly transition out of the FFEL program and preservation of Federal assets. Legislation is needed to:

- o Broaden the Secretary's authority to take over a guarantor. Existing authority is now limited to narrow circumstances, and is focused on reviving agencies, rather than on promoting an orderly liquidation.
- o Codify court decisions that reserves are under strict federal control and are only to be used for FFEL purposes. (While the courts have confirmed such ownership, the Department's experience in recovering agencies' excess cash reserves indicates that agencies with hopes of moving into new ventures are likely to renew their legal battles for control of FFEL assets, thus hindering the transition.)

- o Prevent guarantors from seeking bankruptcy protection or other protection of federal assets in the state courts.
- o Permit the Government to require guarantors to put clauses in their contracts with collection agencies and others to facilitate transfer and liquidation of portfolios. The inflexibility of certain HEAF contracts have been an impediment during the HEAF liquidation.

Regulatory and administrative actions may be taken include:

- o To stabilize agencies during a liquidation, use current authority to provide advances to a guarantor or permit an agency to temporarily keep 100 percent of its collection revenues.
- o During the transition period, regulate in greater detail guarantors' use of their reserves and step up audits of agency operating expenses. The Department has only recently begun to perform such audits, as a result of lessons learned from HEAF.
- o Exempt guarantors engaged in liquidation from initiating new litigation against borrowers, relying instead on wage garnishment, the IRS offset, mandatory assignment, and litigation initiated by U.S. attorneys. This would facilitate recovery of defaulted loans by the Government, another lesson learned from HEAF.
- o Debar from Title IV activities officers of agencies that commit substantial compliance violations during the transition and extended transition periods.

RATIONALIZING DEFAULT COLLECTIONS

Guarantors are now permitted to retain for collection defaulted loans for which they have received reimbursement from the Department. They are permitted to keep 30 percent of payments they collect on these loans. Through the Department's mandatory assignment program, nonpaying accounts are transferred to the Department after three years, for collection by ED.

As the transition progresses, certain guarantors will wish to assign loans to the Department more rapidly to reduce their risks and costs, including those associated with failure to comply with guarantor due diligence regulations. In other cases, defaulted loan portfolios will decline to the point at which consolidation is needed to preserve customer service levels, simplify program administration, and reduce costs to the government.

The Department will develop plans for gradually consolidating default collections. Statutory authority will be needed to:

- o Require agencies to transfer loans to ED on demand, and permit the use of default collection proceeds to finance this activity.
- o Apply all direct loan collection authorities to FFEL loans.

The Department's current capacity for collecting defaulted loans is substantially greater than current demand. With the proposed authority for more flexible mandatory assignment, the Department would increase assignments from 400,000 per year to 1.2 million per year in FY 1994, with additional increases in subsequent years. The Department will contract for additional collection capacity required during the gradual consolidation of defaulted loans.

Because the strategy would first focus on loans not in repayment, the effect on guarantor revenues would be minimal. Defaulted loans for which payments are being received would generally be the last assigned to the Department during the extended transition.

At some point, ED may wish to take defaulted loans when claims are paid. This would eliminate a source of confusion to many defaulters, who are sometimes bewildered by the transfer of loans from the lender to the guarantor, the guarantor's collection agency, and finally the Department.

The proposal would eliminate an HEA 92 provision that limits assignment of loans to the Department.

PROVIDING PREDICTABILITY FOR THE FINANCIAL MARKETS

The financial markets have already demonstrated that investors are concerned regarding the future of the student loan programs. The Department is developing proposals regarding the future of Sallie Mae. Other contemplated actions include:

- o Preserve lenders' benefits, including loan guarantees and interest and special allowance, until loans are paid off.
- o Increased regulation of the sale of loan portfolios, to require sellers to inform buyers as to whether loans have been held by ineligible lenders (thus losing reinsurance.)

- o Consolidation of loans into the FDSLIP, effectively purchasing them from the holders, if lenders are unable to find secondary markets willing to purchase loans.

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1 TITLE V--FEDERAL DIRECT STUDENT LOAN PROGRAM

2 AND

3 INCOME CONTINGENT REPAYMENT OF STUDENT LOANS

4
5
6 PART A--SHORT TITLE

7
8 NAME OF TITLE

9 SEC. 501. This title may be cited as the "Federal Direct
10 Student Loan Program Amendments of 1993".
11
12

13 PART B--AMENDMENTS TO FEDERAL DIRECT LOAN DEMONSTRATION PROGRAM
14

15 HEADING FOR PART

16 SEC. 521. Part D of title IV of the Higher Education Act of
17 1965 (20 U.S.C. 1001 et seq.; hereinafter in this title referred
18 to as "the Act") is amended in the part heading--

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

21 (2) by striking out "DEMONSTRATION".
22

23 PURPOSE; PROGRAM AUTHORIZATION

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

"PURPOSE; PROGRAM AUTHORIZATION

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

"(1) to simplify the delivery of student loans to borrowers and eliminate borrower confusion;

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

"(3) to replace, through an orderly transition, the Federal Family Education Loan program under part B of this title with the Federal Direct Student Loan program under this part;

"(4) to avoid the unnecessary cost to the taxpayer 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; and

"(5) to create a more streamlined student loan program that can be managed more effectively at the Federal level.

"(b) PROGRAM AUTHORITY.--The Secretary shall, in accordance with the provisions of this part, implement loan programs for qualified students and parents at institutions of higher education selected by the Secretary, 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."

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FUNDS FOR ORIGINATION OF DIRECT STUDENT LOANS BY INSTITUTIONS

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

"FUNDS FOR ORIGINATION OF DIRECT STUDENT LOANS BY INSTITUTIONS

SEC. 452. (a) IN GENERAL.--The Secretary shall provide funds for student or parent loans under this part to an institution of higher education[, directly or through an alternative originator with which the Secretary has a contract under section 456,] with an agreement under section 454[(a) if we're talking about all participating institutions, or (b) if we're just referring to institutions that are originating] on the basis of the need and the eligibility of students at each such institution, and parents of such students, for such loans.

"(b) ADMINISTRATIVE FEE.--From the funds described in section 459, the Secretary shall pay to institutions of higher education with agreements under section 454(b) administrative fees, in an amount established by the Secretary, to assist in meeting the costs of loan origination. Such fees--

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

"(2) shall be subject to a sliding scale that decreases the amount of such fees as the number of borrowers increases[.]{, and

~~"(3) for academic years 1994-1995 and 1995-1996, shall~~

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not exceed a program-wide average of \$10 per borrower per year.]

[NOTE: It wasn't clear whether the \$10 figure came out at the Monday meeting]

"(c) NO ENTITLEMENT TO PARTICIPATE OR ORIGINATE.--No institution of higher education shall have a right to participate in the programs authorized by this part, originate loans, or perform any program function under this part. Nothing in this subsection shall be construed so as to limit the ability of an eligible student attending a participating institution (or the parent of such student) to borrow 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 programs, for academic years beginning on or after July 1, 1994. Alternative origination services, whereby an entity other than the participating institution at which the student is in attendance disburses the loan[?], shall be provided by the Secretary, through one or more contracts under section 456, for

1 students attending participating institutions that do not
2 originate direct student loans under this part. In order to
3 ensure an expeditious but orderly transition from the loan
4 programs under part B of this title to the direct student loan
5 programs under this part, the Secretary shall, in the exercise of
6 his or her discretion, determine the number of institutions with
7 which he or she shall enter into such agreements for any academic
8 year. Such agreements for the first year of the program shall,
9 to the extent feasible, be concluded not later than January 1,
10 1994.

11 "(2) The requirements of the Cash Management
12 Improvement Act of 1990 (P.L. 101-453) shall not apply to the
13 program under this part until July 1, 1998.

14 "(b) SELECTION CRITERIA.--(1) PARTICIPATION.--(A) Each
15 institution of higher education desiring to participate in the
16 direct student loan program under this part shall submit an
17 application satisfactory to the Secretary containing such
18 information and assurances as the Secretary may require.

19 "(B) The Secretary shall select institutions for
20 participation in the direct student loan program under this part,
21 and with which the Secretary shall enter into agreements under
22 section 454(a), from among those institutions that submit the
23 applications described in subparagraph (A), and meet such other
24 eligibility requirements as the Secretary may prescribe, by--

1 "(i)(I) categorizing such institutions
2 according to anticipated loan volume under part B of this title,
3 length of academic program, and control of the institution; and

4 "(II) selecting institutions randomly
5 from among the respective categories; and

6 "(ii) if needed to carry out the purposes of
7 this part, selecting additional institutions.

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

10 "(i) has an agreement under subsection
11 454(a);

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

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

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

19 "(I) made loans under part E of this
20 title in academic year 1993-1994 and did not exceed the
21 applicable maximum default rate under section 462(g) for the most
22 recent year for which data are available;

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

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

3 "(IV) is not subject to an emergency
4 action, or a limitation, suspension, or termination under section
5 428(b)(1)(T), 432(h), or 487(c);

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

11 "(VI) has no delinquent outstanding
12 debts to the Department [OR "the United States"], unless such
13 debts are being repaid under or in accordance with a repayment
14 arrangement satisfactory to the Secretary; and

15 "(VII) has not been referred to a State
16 postsecondary review entity for review under section 494C(d).

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

21 "(C) In the event that alternative origination
22 services are unavailable, or the Secretary determines that
23 certain restrictions on the flow of funds under this part to the
24 institution (such as delayed disbursement and third-party
25 monitoring of origination) are sufficient to safeguard adequately

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1 the Federal financial interest, the Secretary may permit an
2 institution that does not meet the requirements in subparagraph
3 (B)(i) to enter into an agreement to originate loans under this
4 subparagraph subject to such restrictions." [NOTE: did this stay
5 in as a fallback for the first year in case we don't have an
6 alternative originator yet?]

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

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

10 "(g) CONSORTIA.--Subject to such requirements as the
11 Secretary may prescribe, eligible institutions of higher
12 education may apply to participate in the program under this
13 part, and to originate loans under this part for students in
14 attendance at such institutions, as consortia."; and

15 (4) by redesignating subsection (g) as subsection (c).
16
17

18 AGREEMENTS WITH INSTITUTIONS

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

21 "AGREEMENTS WITH INSTITUTIONS

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

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

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

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

8 "(C) the institution will set forth a schedule
9 for disbursement of the proceeds of the loan in installments,
10 consistent with the requirements of section 428G;

11 "(D) the institution will not, in carrying out
12 subparagraphs (A) and (B), provide a statement that certifies the
13 eligibility of any student to receive a loan under this part in
14 excess of the maximum amount applicable to such loan;

15 "(E) for an academic year for which an estimation
16 under subparagraph (B) is made, any loan obtained by a student
17 under this part with the same terms (except as otherwise provided
18 in this part) as loans made under section 428A, or a loan
19 obtained by a parent under this part with the same terms (except
20 as otherwise provided in this part) as loans made under section
21 428B, or obtained under any State-sponsored or private loan
22 program, may be used to offset the expected family contribution
23 of the student for that year;

24 "(F) the institution may refuse to certify a
25 statement that permits a student to receive a loan under this

1 part, or certify a loan amount that is less than the student's
2 determination of need (as determined under part F of this title),
3 if the reason for such action is documented and provided in
4 written form to such student;

5 "(G) if the institution does not have an
6 agreement with the Secretary under subsection (b), the
7 institution will provide timely information concerning student
8 eligibility and need, as determined under subparagraphs (A) and
9 (B), to the Secretary as needed for the alternative origination
10 of loans to eligible students and parents in accordance with this
11 part; and

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

17 "(2) provide assurances that the institution will
18 comply with requirements established by the Secretary relating to
19 student loan information with respect to loans made under this
20 part;

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

24 "(4) provide that students at the institution and
25 their parents (with respect to such students) will not be

1 eligible to participate in the programs under part B of this
2 title for the period during which such institution participates
3 in the direct student loan program under this part;

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

8 "(6) will not charge any fees ["or premiums"?] to
9 students or parents for origination activities or the provision
10 of any information necessary for a student or parent to receive a
11 loan under this part, or any benefits associated with such
12 loan[?];

13 "(7) include such other provisions as the Secretary
14 determines are necessary to protect the interests of the United
15 States and to promote the purposes of this part.

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

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

21 "(2) include provisions relating to the origination of
22 loans by the institution established by the Secretary that are
23 similar to the provisions described in paragraphs (1)(G), (2),
24 (3), (4), (5), (6), and (7) of subsection (a);

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

"(4) provide that the note or evidence of obligation on the loan shall be the property of the Secretary.

"(c) WITHDRAWAL AND TERMINATION PROCEDURES.--The Secretary shall establish procedures by which institutions may withdraw or be terminated from 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.--(1) 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.

"(2) Loans made to borrowers under this part that, except as otherwise specified in this part, have the same terms, conditions, and benefits as loans made to borrowers under--

"(A) section 428 shall be known as "Federal Direct Stafford Loans";

"(B) section 428A shall be known as "Federal Direct Supplemental Loans for Students";

1 "(C) section 428B shall be known as "Federal
2 Direct PLUS Loans"; and

3 "(D) section 428H shall be known as "Unsubsidized
4 Federal Direct Stafford Loans".

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

7 "(2)(A) For Federal Direct Stafford Loans [and
8 Unsubsidized Federal Direct Stafford Loans?] made [for periods of
9 instruction beginning?] before July 1, 1997, the applicable rate
10 of interest shall, during any 12-month period beginning on July 1
11 and ending on June 30, be determined on the preceding June 1 and
12 be equal to--

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

16 "(ii) 3.1 percent,
17 except that such rate shall not exceed 9 percent.

18 "(B) Unless the Secretary determines that the
19 application of this subparagraph would be inconsistent with the
20 purposes of the program under this part and, notwithstanding
21 section 431 of the General Education Provisions Act, ["publishes
22 in the Federal Register an alternate interest rate" OR "publishes
23 in the Federal Register a notice continuing the application of
24 the interest rate in subparagraph (A) for loans made after the
25 date specified in such subparagraph"], for Federal Direct

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1 Stafford Loans [and Unsubsidized Federal Direct Stafford Loans?]
2 made [for periods of instruction beginning?] on or after July 1,
3 1997, the applicable rate of interest shall, during any 12-month
4 period beginning on July 1 and ending on June 30, be determined
5 on the preceding June 1 and be equal to--

6 "(i) the bond equivalent rate of the
7 security with a comparable maturity, as shown in the table
8 "Interest Rates for Credit Reform" in the Economic Bulletin Board
9 published by the Department of Commerce; plus

10 "(ii) 1 percent.

11 "(3)(A) For Federal Direct Supplemental Loans for
12 Students made [for periods of instruction beginning?] before July
13 1, 1997, the applicable rate of interest shall, during any 12-
14 month period beginning on July 1 and ending on June 30, be
15 determined on the preceding June 1 and be equal to--

16 "(i) the bond equivalent rate of 52-week
17 Treasury bills auctioned at the final auction held prior to such
18 June 1; plus

19 "(ii) 3.1 percent,
20 except that such rate shall not exceed 11 percent.

21 "(B) Unless the Secretary determines that the
22 application of this subparagraph would be inconsistent with the
23 purposes of the program under this part and, notwithstanding
24 section 431 of the General Education Provisions Act, ["publishes
25 in the Federal Register an alternate interest rate" OR "publishes

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1 in the Federal Register a notice continuing the application of
2 the interest rate in subparagraph (A) for loans made after the
3 date specified in such subparagraph"], for Federal Direct
4 Supplemental Loans for Students made [for periods of instruction
5 beginning?] on or after July 1, 1997, the applicable rate of
6 interest shall, during any 12-month period beginning on July 1
7 and ending on June 30, be determined on the preceding June 1 and
8 be equal to--

9 "(i) the bond equivalent rate of the
10 security with a comparable maturity, as shown in the table
11 "Interest Rates for Credit Reform" in the Economic Bulletin Board
12 published by the Department of Commerce; plus

13 "(ii) 1 percent.

14 "(4)(A) For Federal Direct PLUS Loans made [for
15 periods of instruction beginning?] before July 1, 1997, the
16 applicable rate of interest shall, during any 12-month period
17 beginning on July 1 and ending on June 30, be determined on the
18 preceding June 1 and be equal to--

19 "(i) the bond equivalent rate of 52-week
20 Treasury bills auctioned at the final auction held prior to such
21 June 1; plus

22 "(ii) 3.1 percent,
23 except that such rate shall not exceed 10 percent.

24 "(B) Unless the Secretary determines that the
25 application of this subparagraph would be inconsistent with the

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1 purposes of the program under this part and, notwithstanding
2 section 431 of the General Education Provisions Act, ["publishes
3 in the Federal Register an alternate interest rate" OR "publishes
4 in the Federal Register a notice continuing the application of
5 the interest rate in subparagraph (A) for loans made after the
6 date specified in such subparagraph"], for Federal PLUS Loans
7 made [for periods of instruction beginning?] on or after July 1,
8 1997, the applicable rate of interest shall, during any 12-month
9 period beginning on July 1 and ending on June 30, be determined
10 on the preceding June 1 and be equal to--

11 "(i) the bond equivalent rate of the
12 security with a comparable maturity, as shown in the table
13 "Interest Rates for Credit Reform" in the Economic Bulletin Board
14 published by the Department of Commerce; plus

15 "(ii) 1 percent.

16 "(c) LOAN FEE.--The Secretary may charge the borrower of a
17 loan made under this part a loan fee not to exceed 6.5 percent of
18 the principal amount of the loan, ~~to be deducted proportionately~~
19 ~~from each installment payment of the proceeds of the loan.~~

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

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

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

5 "(iii) a graduated repayment plan, with
6 annual repayment amounts [established at two or more levels?] and
7 paid over a fixed period of time, provided that the borrower's
8 level of graduated repayment shall be not less than 50 percent,
9 nor more than 150 percent, of what the amortized payment on the
10 amount owed would be if the loan were repaid under the standard
11 repayment plan; [Was there agreement at the 3/13 morning meeting
12 with the Deputy Secy. to offer an extended graduated repayment
13 plan? The percentages specified in this clause do not appear to
14 be appropriate for an extended graduated plan--what parameters
15 should be included if extended graduated plan is added?] and

16 "(iv) an income contingent repayment
17 plan, with varying annual repayment amounts based on the income
18 of the borrower, paid over an extended period of time, not to
19 exceed a maximum length of time determined by the Secretary.

20 "(B) If a borrower of a loan made under this part
21 does not select a repayment plan described in subparagraph (A),
22 the Secretary may provide the borrower with a repayment plan
23 described in clause (i), (ii), or (iii) of subparagraph (A).

24 "(C) The borrower of a loan made under this part
25 may change his or her selection of a repayment plan under

1 subparagraph (A), or the Secretary's selection of a plan for the
2 borrower under subparagraph (B), as the case may be, under such
3 terms and conditions as established by the Secretary.

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

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

13 "(2)(A) The Secretary may obtain such information as
14 is reasonably necessary regarding the income of a borrower (and
15 the borrower's spouse, if applicable) of a loan made under this
16 part that is, or may be, subject to an income contingent
17 repayment plan for the purpose of determining the annual
18 repayment obligation of the borrower. The Secretary shall
19 establish procedures for determining the borrower's repayment
20 obligation on that loan for such year, and such other procedures
21 as are necessary to implement effectively an income contingent
22 repayment plan.

23 "(B)(i) An income contingent repayment schedule
24 for a loan made under this part shall be based on the
25 discretionary income of the borrower or, if the borrower is

1 married and files a Federal income tax return jointly with his or
2 her spouse, on the discretionary income of the borrower and his
3 or her spouse. For purposes of this subparagraph, the term
4 "discretionary income" shall be based on (I) the adjusted gross
5 income, if the borrower files a 1040EZ Federal income tax return,
6 or (II) the total income or wages, salaries and tips, whichever
7 is greater, of the borrower (and his or her spouse, if
8 applicable) as identified on the most recent available Federal
9 income tax return, minus an amount based on the applicable
10 poverty level, as determined by the Secretary, utilizing criteria
11 of poverty used by OMB TO SUPPLY APPROPRIATE STANDARD--
12 ORSHANSKY?.

13 "(ii) A borrower who chooses, or is
14 required, to repay a loan made under this part through an income
15 contingent repayment plan, and for whom tax return information is
16 unavailable, shall provide to the Secretary other documentation
17 of income satisfactory to the Secretary, which documentation the
18 Secretary may use to determine an appropriate repayment schedule.

19 "(iii) For loans made under this part that
20 enter repayment before July 1, 1995, the income contingent
21 repayment schedule shall require payments that equal not more
22 than ten percent of the annual discretionary income of the
23 borrower (and the borrower's spouse, if applicable), or, for a
24 borrower who provides documentation of income other than a
25 Federal income tax return, payments that equal not more than ten

1 percent of the appropriate portion of the applicable annual
2 income as determined by the Secretary. For loans made under
3 this part that enter repayment on or after July 1, 1995, income
4 contingent repayment schedules shall be established by the
5 Secretary through regulations.

6 "(iv) The balance due on an income
7 contingent loan made under this part shall equal the unpaid
8 principal amount of the loan, any accrued interest, and any fees,
9 such as late charges, assessed on such loan. The Secretary may
10 limit by regulation the amount of interest that may be
11 capitalized on such loan, and the timing of any such
12 capitalization.

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

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

22 "(ii) that if a borrower considers that
23 special circumstances, such as a loss of employment by the
24 borrower or his or her spouse, warrant an adjustment in the
25 borrower's loan repayment as determined using the information

1 described in clause (i), or the alternative documentation
2 described in subparagraph (B), the borrower may contact the
3 Secretary, who shall determine whether such adjustment is
4 appropriate, in accordance with criteria established by the
5 Secretary; and

6 "(iii) of such other information as the
7 Secretary may require.

8 "(e) DEFERMENT.--(1) A borrower of a loan made under this
9 part that meets the requirements described in paragraph (2) shall
10 be eligible for a deferment, during which periodic installments
11 of principal need not be paid, but interest--

12 "(A) shall accrue and be paid by the Secretary,
13 in the case of a Federal Direct Stafford Loan; or

14 "(B) shall accrue and be paid or capitalized by
15 the borrower, in the case of a Federal Direct Supplemental Loan
16 for Students loan, a Federal Direct PLUS Loan, or an Unsubsidized
17 Federal Direct Stafford Loan. [WHAT ABOUT FEDERAL DIRECT
18 CONSOLIDATION LOANS?]

19 "(2) A borrower of a loan made under this part shall
20 be eligible for a deferment during any period--

21 "(A) during which the borrower--

22 "(i) is pursuing at least a half-time course
23 of study as determined by an eligible institution; or

24 "(ii) is pursuing a course of study pursuant
25 to a graduate fellowship program approved by the Secretary, or

1 pursuant to a rehabilitation training program for individuals
2 with disabilities approved by the Secretary,

3
4 "except that no borrower shall be eligible for a deferment under
5 this subparagraph, or a loan made under this part (other than a
6 Federal Direct PLUS Loan, or a Federal Direct Consolidation
7 Loan), while serving in a medical internship or residency
8 program;

9 "(B) not in excess of three years during which
10 the borrower is seeking and unable to find full-time employment;
11 or

12 "(C) not in excess of three years during which
13 the Secretary determines, in accordance with regulations
14 prescribed under section 435(o), that the borrower has
15 experienced or will experience an economic hardship, regardless
16 of the reason for such hardship.

17 "(f) FORBEARANCE.--(1) A borrower of a loan made under
18 this part shall be eligible for forbearance, as defined in
19 paragraph (2), granted by the Secretary if the borrower is
20 willing but unable to make scheduled loan payments.

21 "(2) The term "forbearance" means permitting the
22 temporary cessation of payments, allowing an extension of time
23 for making payments, or temporarily accepting smaller payments
24 than previously scheduled.

1 "(g) CONSOLIDATION.--A borrower of a loan made under this
2 part may consolidate such loan with the loans described in
3 subsections (a)(4) and (d)(1)(C) of section 428C under the terms
4 and conditions established by the Secretary[, including a variety
5 of repayment plans such as the plans described in subsection
6 (d)(1) of this section?]. A loan made under this subsection
7 shall be known as a "Federal Direct Consolidation Loan".

8 "(h) BORROWER DEFENSES.--Notwithstanding any other
9 provision of State or Federal law, the Secretary shall specify in
10 regulations (except as authorized under section 459(a)) which
11 acts or omissions of an institution of higher education a
12 borrower may assert as a defense to repayment of a loan made
13 under this part, except that in no event may a borrower recover
14 from the Secretary, in any action arising from or relating to a
15 loan made under this part, an amount in excess of the amount such
16 borrower has repaid on such loan.

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

21 "(j) NONDISCHARGEABILITY IN BANKRUPTCY.--Notwithstanding
22 any other provision of law, a loan made under this part shall not
23 be dischargeable in bankruptcy."

24 STILL CHECKING ON WHETHER TO AMEND BANKRUPTCY CODE DIRECTLY...

1 CONTRACTS

2 SEC. 527. Section 457 of the Act is amended to read as
3 follows:
4

5 "CONTRACTS

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

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

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

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

17 "(4) such other aspects of the direct student loan
18 programs as the Secretary determines are necessary to ensure the
19 successful operation of the programs."
20

21 REPORTS

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

23 (1) in subsection (a), by striking out "demonstration
24 program." and inserting in lieu thereof "program under this
25 part.";

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

3 (3) adding at the end thereof the following new
4 subsection:

5 "(b) DIRECT LOAN ADMINISTRATION AND REPAYMENT OPTIONS
6 EVALUATIONS.--(1) The Secretary may use a portion of the funds
7 described in section 459 for research on, or the demonstration or
8 evaluation of, any aspects of the administration of the program
9 authorized by this part, including flexible repayment options,
10 that the Secretary determines are necessary to implement such
11 program effectively.

12 "(2) The Secretaries of Education and the Treasury
13 shall evaluate the feasibility of providing repayment options
14 through the Internal Revenue Service for loans made in accordance
15 with this part, and shall transmit the results of this evaluation
16 to the President by June 30, 1994.

17 [NOTE THAT THE SECTION NUMBERS REFERRED TO ABOVE REFLECT THE
18 REDESIGNATIONS PERFORMED IN SECTION 530, BELOW!]

19
20 SECRETARIAL ACTIVITIES

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

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

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

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

10 (3) by striking out subsections (b) and (e);

11 (4) in subsection (c)--

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

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

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

22 (6) by redesignating subsections (c) and (d) as
23 subsections (b) and (c), respectively.

1 REPEALS AND REDESIGNATIONS

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

3 (b) Sections 456, 457, 458, 459, and 459A are redesignated
4 as sections 455, 456, 457, 458, and 459, respectively.
5

6 FUNDS FOR ADMINISTRATIVE EXPENSES

7 SEC. 530A. Section 459 of the Act (as redesignated by
8 section 530) is amended by striking out "administrative costs
9 under this part," through the end thereof and inserting in lieu
10 thereof the following: "administrative costs under this part,
11 including the costs of the transition from the loan programs
12 under part B to the direct student loan programs under this part,
13 not to exceed \$127,000,000 in fiscal year 1994, \$367,000,000 in
14 fiscal year 1995, \$619,000,000 in fiscal year 1996, \$632,000,000
15 in fiscal year 1997, and \$770,000,000 in fiscal year 1998. If in
16 any fiscal year, the Secretary determines that additional funds
17 for administrative expenses are needed as a result such
18 transition, or the expansion of the direct student loan programs
19 under this part, the Secretary is authorized to use funds
20 available under this section for a subsequent fiscal year for
21 such expenses. The Secretary is also authorized to carry over
22 funds available under this section to a subsequent fiscal year."

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 of the guaranty agencies, and any assets purchased with such reserve funds, regardless of who holds or controls the reserves or assets, are the property of the Federal Government, to be used in the operation of the program authorized by this part or the program authorized by part D of this title. The Secretary may--

"(1) direct a guaranty agency to return all, or any portion of, its reserve fund to the Secretary;

"(2) allow the guaranty agency to maintain all or part of its reserve fund to pay for expenses authorized by the Secretary in regulations; or

"(3) direct the guaranty agency to require the return [to the Secretary?] of any funds or assets held by, or under the control of, any other entity."

TERMS OF LOANS

SEC. 532. Section 428 of the Act is amended--

(1) in subsection (b)(1)(D), by striking out "be subject to" through the end thereof and inserting in lieu thereof the following: "be subject to income contingent repayment in accordance with subsection (m)"; and

(2) in subsection (m)--

(A) by amending paragraph (1) to read as follows:

"(1) The Secretary may require any borrower who has defaulted on a loan made under this part that is assigned to the Secretary under subsection (c)(8) 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."; [NOTE THAT IN ORDER TO REQUIRE INCOME CONTINGENT REPAYMENT ON THESE LOANS, THIS SUBSECTION REQUIRES THAT NOTICE OF THAT REQUIREMENT BE IN THE NOTE OR OTHER EVIDENCE OF THE LOAN--DO WE WISH TO KEEP THIS?]

(B) by striking out paragraphs (2) and (4); and

(C) in paragraph (3)--

(i) in the matter preceding subparagraph (A), by striking out "this section" and inserting in lieu thereof "this subsection"; [do we also want to eliminate exception from requirement for income contingent repayment for defaulted PLUS loans that are assigned to the Secy.?)]

1 (ii) in subparagraph (A), by adding at the
2 end thereof "and";

3 (iii) in subparagraph (B), by striking out
4 at the end thereof the semicolon and "and" and inserting in lieu
5 thereof a period;

6 (iv) by striking out subparagraph (C); and
7 (v) by redesignating such paragraph as
8 paragraph (2).

9
10
11 ASSIGNMENT OF LOANS; REPAYMENT TERMS OF ASSIGNED LOANS

12 SEC. 533. (a) Section 428(c)(8) of the Act is amended--

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

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

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

19 "(B) An orderly transition from the Federal
20 Family Education Loan program under this part to the Federal
21 Direct Student Loan program under part D of this title shall be
22 deemed to be in the Federal fiscal interest, and a guaranty
23 agency shall promptly assign loans to the Secretary under this
24 paragraph upon his or her request."

1 TERMINATION OF GUARANTY AGENCY AGREEMENTS;

2 ASSUMPTION OF GUARANTY AGENCY FUNCTIONS BY THE SECRETARY

3 SEC. 534. Section 428(c)(10) of the Act is amended--

4 (1) in subparagraph (C), by inserting "as
5 appropriate," immediately preceding "the Secretary shall
6 require";

7 (2) in subparagraph (D)--

8 (A) by inserting the clause designation "(i)"
9 immediately following the subparagraph designation;

10 (B) by striking out "Each" and inserting in lieu
11 thereof the following "If the Secretary is not seeking to
12 terminate the guaranty agency's agreement under subparagraph (E),
13 or assuming the guaranty agency's functions under subparagraph
14 (F), a";

15 (C) by adding at the end thereof the following
16 new clause:

17 "(ii) If the Secretary is seeking to
18 terminate a guaranty agency's agreement under subparagraph (E),
19 or assuming a guaranty agency's functions under subparagraph (F),
20 a management plan described in subparagraph (C) shall include the
21 means by which the Secretary and the guaranty agency shall work
22 together to ensure the orderly conclusion[?] [OR liquidation[?]]
23 of the guaranty agency's operations.";

24 (3) in subparagraph (E)--

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

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

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

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

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

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

16 (4) in subparagraph (F)--

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

20 (B) by amending clause (v) to read as follows:

21 "(v) provide the guaranty agency with
22 additional advance funds in accordance with section 422(c)(7),
23 with such restrictions on the use of such funds as is determined
24 appropriate by the Secretary, in order to--
25

1 "(I) meet the immediate cash needs of
2 the guaranty agency;

3 "(II) ensure the uninterrupted payment
4 of claims; or [and?]

5 "(III) provide Federal capital with
6 which the guaranty agency would make loans as the lender of last
7 resort, in accordance with subsection (j), except that such
8 guaranty agency would be paid a fee, established by the
9 Secretary, for making such loans in lieu of interest and special
10 allowance subsidies, and would be required to assign such loans
11 to the Secretary on demand (in return for which the portion of
12 the advance represented by such loans would be considered repaid
13 by such guaranty agency);";

14 (C) in clause (vi)--

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

17 (ii) by striking out the period at the end
18 thereof and inserting in lieu thereof a comma and "and to ensure
19 an orderly transition from the loan programs under this part to

1 the direct student loan programs under part D of this title.";
2 and

3 (iii) by redesignating such clause as clause
4 (vii); and

5 (D) by inserting immediately following clause (v)
6 the following new clause:

7 "(vi) use all funds and assets of the
8 guaranty agency to assist in the activities undertaken in
9 accordance with this subparagraph and take appropriate action to
10 require the return [to the Secretary?] of any funds or assets
11 provided by the guaranty agency, under contract or otherwise, to
12 any person or organization; or";

13 (5) by striking out subparagraph (G);

14 (6) by redesignating subparagraphs (H), (I), and (J)
15 as subparagraphs (I), (J), and (K), respectively;

16 (7) by inserting immediately following subparagraph
17 (F) the following new subparagraphs:

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

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

1 "(ii) no State court may issue any order
2 affecting the Secretary's actions with respect to such guaranty
3 agency;

4 "(iii) the Secretary shall not be bound by
5 any contract made between such guaranty agency and another party;
6 and

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

10 "(H) Notwithstanding any other provision of law,
11 the Secretary's liability for any outstanding liabilities of a
12 guaranty agency (other than outstanding student loan guarantees
13 under this part), the functions of which the Secretary has
14 assumed, shall not exceed the fair market value of the reserves
15 of the guaranty agency, minus any necessary liquidation or other
16 administrative costs."; and

17 (7) in subparagraph (K) (as redesignated by paragraph
18 (5)), by striking out "system, together" through the end thereof
19 and inserting in lieu thereof the following: "system and the
20 progress of the transition from the loan programs under this part
21 to the direct student loan programs under part D of this title."
22
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LENDER REFERRAL SERVICES

SEC. 535. Section 428(e) of the Act is amended--

(1) in paragraph (1)--

(A) by amending the paragraph heading to read as follows: "IN GENERAL; AGREEMENTS WITH GUARANTY AGENCIES.--";

(B) by inserting the subparagraph designation "(A)" immediately after the paragraph designation;

(C) by striking out "in any State" and inserting in lieu thereof "with which the Secretary has an agreement under subparagraph (B)"; and

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

"(B) The Secretary shall enter into agreements with guaranty agencies that meet standards established by the Secretary [are we going to have to go through an expedited process on this?] to provide lender referral services in geographic areas specified by the Secretary. Such guaranty agencies shall be paid in accordance with paragraph (3) for such services.";

(2) in paragraph (2)--

(A) in the matter preceding subparagraph (A), by striking out "in a State" and inserting in lieu thereof "with which the Secretary has an agreement under paragraph (1)(B)";

1 (B) by amending subparagraph (A) to read as
2 follows:

3 "(A)(i) such student is either a resident of, or
4 is accepted for enrollment or is attending an eligible
5 institution located in, a geographic area for which the Secretary
6 (I) determines that loans are not available to all eligible
7 students, and (II) has entered into an agreement with a guaranty
8 agency under paragraph (1)(B) to provide lender referral
9 services; and"; and

10 (4) by striking out paragraph (5).
11
12

13 ADMINISTRATIVE COST ALLOWANCE

14 SEC. 536. Section 428(f)(1)(B) of the Act is amended--

15 (1) in the first sentence, by striking out "The" and
16 inserting in lieu thereof "Until full implementation of the
17 Federal Direct Student Loan program under part D of this title,
18 the";

19 (2) by striking out the period at the end of the first
20 sentence and inserting in lieu thereof a comma and "plus an
21 allotment established by the Secretary based on the volume of
22 loans made under part D of this title in the State for which such
23 agency is the designated guaranty agency. Upon full
24 implementation of the Federal Direct Student Loan program under
25 part D of this title, the total amount of payments for any fiscal

1 year made under this paragraph shall be established by the
2 Secretary and based on the number of borrowers in such guaranty
3 agency's portfolio.";

6 CONSOLIDATION LOANS

7 SEC. 537. Section 428C of the Act is amended--

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

10 "(A) For the purpose of this section, the term
11 "eligible borrower" means a borrower who, at the time of
12 application for a consolidation loan is in repayment status, or
13 in a grace period preceding repayment, or is a delinquent or
14 defaulted borrower who will reenter repayment through loan
15 consolidation.";

16 (2) in subsection (b)--

17 (A) in paragraph (1)--

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

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

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

1 "(E) that the lender shall offer an income-
2 sensitive repayment schedule, established by the lender in
3 accordance with the regulations of the Secretary, to the borrower
4 of any consolidation loan made by the lender on or after July 1,
5 1994; and"; and

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

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

14 (3) in subsection (c)--

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

17 "(B) A consolidation loan made before July 1,
18 1994 shall bear interest at an annual rate on the unpaid
19 principal balance of the loan that is equal to the greater of--

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

23 "(ii) 9 percent.

24 "(C) A consolidation loan made on or after July
25 1, 1994 shall bear interest at an annual rate on the unpaid

1 principal balance of the loan that is equal to the weighted
2 average of the interest rates on the loans consolidated, rounded
3 upward to the nearest whole percent.";

4 (B) in paragraph (2)--

5 (i) in subparagraph (A)--

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

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

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

20 "(i) is less than \$7,500, then such
21 consolidation loan shall be repaid in not less than 5 years
22 (unless the borrower specifically requests a shorter repayment
23 period, or prepays all or part of such loan), nor more than 10
24 years;"; [Note: clarification was drafted this way to keep the
25 provision fairly parallel to the rest of the clauses concerning

1 length of repayment.]

2 (ii) by striking out subsection (B); and

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

5 (C) in paragraph (3)(A), by inserting immediately
6 following the subparagraph designation the following: "except as
7 required by an income sensitive repayment schedule offered by the
8 lender in accordance with the regulations of the Secretary, or by
9 income contingent repayment terms offered by the Secretary
10 pursuant to subsection (b)(5),".

11
12 OPTICALLY IMAGED DOCUMENTS

13 SEC. 538. Section 432 of the Act is amended by adding at
14 the end thereof the following new subsection:

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

19
20 STUDENT LOAN MARKETING ASSOCIATION

21 SEC. 539. Section 439 of the Act is amended by adding at
22 the end thereof the following new subsection:

23 "(s) TRANSITION STUDY AND ACTIVITIES.--(1) The Secretaries
24 of Education and the Treasury, in consultation with the
25 Association, shall prepare a study that examines alternatives

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1 that would allow, upon full implementation of the Federal Direct
2 Student Loan program under part D of this title, for the
3 transition of the Association from a Government-Sponsored
4 Enterprise to a private corporation. Such study shall--

5 "(A) consider how best to meet the needs of
6 students and taxpayers;

7 "(B) reflect the need for the Association to
8 maintain liquidity and perform other functions for the Federal
9 Family Education Loan program during the transition from such
10 program to the Federal Direct Student Loan program under part D
11 of this title, including additional duties as specified by the
12 Secretary of Education or the Secretary of the Treasury;

13 "(C) be completed within six months of the enactment of
14 this provision; and

15 "(D) be considered by the Secretary of Education
16 in developing any legislative proposals concerning any changes to
17 the status of the Association as a Government-Sponsored
18 Enterprise or its duties under the Federal Family Education Loan
19 program.

20 "(2) The Secretaries of Education and the Treasury are
21 directed to work with the Association to ensure that the
22 transition [which one? FFEL to FDSLIP or GSE to private
23 corporation?] is carried out efficiently and effectively.

SUBPART 2--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 following 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

1 records, including promissory notes and repayment agreements.

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

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

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

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

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1 "(f) USE OF OPTICALLY IMAGED DOCUMENTS.--In any proceeding
2 with respect to a program or activity under part D of this title,
3 or with respect to a loan made under part B of this title that
4 has been assigned to the Secretary, records maintained in
5 accordance with section 484A may be used as provided in that
6 section."
7

PART D--AMENDMENTS TO OTHER LAWS

still need to add procurement, bankruptcy code (maybe) after tax
section

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(1) 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,

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1 employees, and agents of the Department of Education return
2 information with respect to a taxpayer who has received a Federal
3 loan under a student loan program and whose loan repayment
4 amounts are based in whole or in part on the taxpayer's income.
5 Such return information shall be limited to--

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

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

10 "(iii) as indicated on the taxpayer's most
11 recent available return,--

12 "(I) the total income or wages,
13 salaries, and tips of such taxpayer, whichever amount is greater;
14 or

15 "(II) the adjusted gross income of such
16 taxpayer, if such taxpayer files the form 1040EZ.

17 "(B) RESTRICTION ON USE OF DISCLOSED
18 INFORMATION.--Return information disclosed under subparagraph (A)
19 may be used by officers, employees, and agents of the Department
20 of Education only for the purposes of, and to the extent
21 necessary in, establishing an appropriate income contingent
22 repayment level under a student loan program.

23 "(C) DEFINITIONS.--For purposes of this paragraph, the
24 term "student loan program" means the program authorized under
25 part D of title IV of the Higher Education Act of 1965 and

1 includes loans under parts B and E of title IV the Higher
2 Education Act of 1965 that are in default and have been assigned
3 to the Department of Education.

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

5 (1) in the heading, by inserting "OWE AN OVERPAYMENT ON
6 FEDERAL PELL GRANTS OR" immediately after "INDIVIDUALS WHO";

7 (1) in subparagraph (A)--

8 (A) by redesignating clauses (i) and (ii) as
9 subclauses (I) and (II); and

10 (B) by striking out "of any taxpayer who" and
11 inserting in lieu thereof "of any taxpayer--

12 "(i) who owes an overpayment of a grant
13 awarded to that taxpayer under subpart 1 of part A of title IV of
14 the Higher Education Act of 1965, or

15 "(ii) who"

16 (2) in subparagraph (B)--

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

19 (B) in clause (ii), by striking out "under part
20 E" and inserting in lieu thereof "under subpart 1 of part A,
21 part D, or E";

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

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

1 (2) in paragraph (4)--

2 (A) in the matter preceding subparagraph (A), by
3 striking out "(10), or (11)," and inserting in lieu thereof
4 "(10), (11), or (13),";

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

8 (C) in the flush left material after subparagraph
9 (F), by striking out "under subsection (1)(12)(B)" and inserting
10 in lieu thereof "under paragraph (10), (12)(B), or (13) of
11 subsection (1)".

12 (e) Section 7213(a)(2) of the Code is amended by striking
13 out "(10) or (12)" and inserting in lieu thereof "(10), (12), or
14 (13),".

15

16 AMENDMENT TO THE BALANCED BUDGET

17 AND EMERGENCY DEFICIT CONTROL ACT OF 1985

18 SEC. 452. Section 255(g)(1)(A) of the Balanced Budget and
19 Emergency Deficit Control Act of 1985 (P.L. 99-177) is amended by
20 inserting immediately after "Federal Deposit Insurance
21 Corporation, Savings Association Insurance Fund;" the following:
22 "Federal Direct Student Loan program (91-0243-0-1-502?)".

23

PART E--EFFECTIVE DATES

SEC. 551. (a) Except as otherwise provided in this section, the amendments made by this title shall be effective upon enactment.

(b) The amendments made by section 532 of this Act shall be effective for loans made in accordance with section 428 for periods of instruction beginning on or after July 1, 1993[?], or made on or after July 1, 1993 in the case of loans made in accordance with section 428A, 428B, or 428C of the Act.

(c) The amendments made by section 536 of this Act shall be effective on October 1, 1994.

(d) The amendments made by section 537 of this Act shall be effective for loans made in accordance with section 428C of the Act or after July 1, 1994. [Should amendment made in section 537(2)(B) be available sooner?]

(e) [WHAT EFFECTIVE DATE FOR IRS DISCLOSURE PROVISION?]

DRAFT

**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

In general, part B of title V of the bill would provide for sweeping, borrower-oriented changes in the current student loan program under the Higher Education Act. These changes are founded on two basic principles: first, the Federal government should simplify the process by which a student and his or her parents can get loans for the student's postsecondary education; and second, any student who wants to serve in programs that will benefit the Nation should not be prevented from doing so by an unwieldy and inflexible burden of debt from education loans.

The provisions set forth in part B of title V of the bill reflect these two principles. The first principle generates reforms to the "front end" of the current system, that is, to provisions under which a student and his or her parent can get a loan to defray part of the cost of higher education. Under the Federal Direct Student Loan Program proposed under this portion of the bill, a variety of student loans, including loans for parents of students, could be obtained directly from the student's institution of higher education, without application to an outside lender and the complex apparatus of loan guarantees and reinsurance. Qualified institutions approved by the Secretary of Education would originate an education loan for the student or the student's parents. A student at an institution that did not yet qualify (or did not wish) to originate education loans would be able to obtain his or her loans directly as well, through an institution or other organization that would act as an "alternative" originator for the student.

The second principle generates reforms that, for the most part, focus on the "back end" of the system, that is, repayment of loans by student borrowers or their parents. In this area, the proposed Federal Direct Student Loan Program would provide

for a variety of flexible repayment plans from which borrowers may choose the one best suited to individual needs. All borrowers in the proposed program would be able to choose from these repayment plans, including repayment plans based on income. Borrowers who have guaranteed student loans in the current system would also be offered an income-based repayment plan.

The following is a description, analyzed by section number of the bill, of the details of the proposed Federal Direct Student Loan Program (FDSLSP).

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 read "FEDERAL DIRECT STUDENT LOAN PROGRAM."

Section 522. Section 522 of the bill would amend the program and payment authority in section 451 of the Act to reflect the replacement of the current Federal direct loan demonstration program with a new "phased-in" FDSLSP that would, when fully implemented, provide the main Federal lending mechanism through which students and their parents would be able to receive loans to pay for postsecondary education. Under the FDSLSP, the Secretary would implement a direct loan program for qualified students and parents at selected institutions of higher education (IHEs) to enable those students to pursue their courses of study there during the period beginning July 1, 1994 and ending on June 30, 1998.

Proposed section 451 of the Act would set forth the purposes of the FDSLSP. Consistent with the underlying principles of this title of the bill, these purposes would include: (1) simplifying the delivery of student loans to borrowers and eliminate borrower confusion; (2) providing borrowers a variety of repayment options, including an income contingent repayment option, so that borrowers have flexibility in managing their student loan repayment obligations and so that these obligations do not foreclose community service-oriented career choices for borrowers; (3) replacing, through an orderly transition, the Federal Family Education Loan (FFEL) program under part B of title IV of the Act with the FDSLSP; (4) avoiding the unnecessary cost to the taxpayer and administrative complexity associated with the FFEL program through the use of a direct student loan program; and (5) creating a more streamlined student loan program that can be managed more effectively at the Federal level.

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 IHEs that would originate loans to students under the FDSLSP. This section of the bill would require the Secretary to provide funds for student or parent loans under the FDSLSP to an IHE with an origination

agreement ? under proposed section 454(b) ? of the Act, on the basis of the need of students (and their parents) for an FDSLPL loan at each participating IHE.

Section 523 would also require the Secretary to pay administrative fees to an IHE participating in the FDSLPL and also originating loans under the new program. These fees would be established by the Secretary and would assist in meeting the cost of loan origination at the IHE. The fees would be paid by the Secretary on a per-borrower, per-year basis and would be subject to a sliding scale that decreases the amount of fees as the number of borrowers increases. It is expected that the average of these fees would be approximately ten dollars per borrower, per year. ???

Finally, section 523 of the bill would provide that no IHE would be deemed to have a right to participate in the FDSLPL, to originate FDSLPL loans, or to perform any FDSLPL program function. However, this provision could not be construed so as to limit the ability of an eligible student who is attending a participating IHE (or the parent of that student) to borrow under the FDSLPL.

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 on selection requirements for the phase-in portion of the FDSLPL, prior to full implementation of the program.

Proposed section 453(a) of the Act would require the Secretary to enter into agreements with IHEs to participate in the FDSLPL, as well as supplementary agreements with IHEs to originate loans in the proposed program, for academic years beginning on or after July 1, 1994. This proposed section would also require the Secretary to provide alternative origination services, through one or more contracts, for students attending an IHE that is participating in the FDSLPL but not originating FDSLPL loans. In order to ensure an expeditious and orderly transition from the current loan programs under the FFEL program to the FDSLPL, 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, proposed section 453(a) of the Act would provide that the requirements of the Cash Management Improvement Act of 1990 (P.L. 101-453), which is designed to facilitate coordination between Federal and State governments on the use of Federal funds, shall not apply to the FDSLPL until July 1, 1998, after the program's phase-in period. Without this temporary exemption, State institutions would be subjected to additional burdens in

implementing the Cash Management Improvement Act, which takes effect on July 1, 1994, at the same time that these institutions commence participation in the FDSLPL.

Proposed section 453(b) of the Act would set forth the criteria to be used by the Secretary in selecting IHEs to participate in the new program and to originate FDSLPL loans. Each IHE desiring to participate in the FDSLPL would be required to submit an application to the Secretary containing such information and assurances as the Secretary may require. In order to include a variety of participants prior to full implementation of the FDSLPL, 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 their anticipated volume of FFEL loans, the length of their academic programs, and organizational control (public, private, non-profit, or proprietary institutions). The Secretary would then randomly select participants from within each of these respective categories and would select additional IHEs as needed to carry out the purposes of the FDSLPL.

Further, proposed section 453(b) of the Act would authorize the Secretary to enter into a supplemental agreement with a participating IHE that desires to originate FDSLPL loans and meets additional criteria. For academic year 1994-1995, the Secretary would be authorized to approve an IHE to originate FDSLPL loans only if 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 for the most recent year for which data are available; (2) is not on the reimbursement system of payment under the Federal Pell Grant program, the Federal Supplemental Educational Opportunity Grant program, the Federal Work-Study programs, or the 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 severe program performance deficiencies, including those demonstrated by audits and program reviews conducted during the five calendar years prior to applying to originate FDSLPL loans; (6) has no delinquent outstanding debts to the Department, unless such debts are currently being repaid under a repayment arrangement satisfactory to the Secretary; and (7) has not been referred to a State postsecondary review entity for review under section 494C(d) of the Act.

Proposed section 453(b) of the Act 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 appropriate restrictions on the

flow of funds under the FDSLPL to the IHE were sufficient to safeguard the Federal financial 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) of the Act) to originate loans subject to those restrictions.

Finally, section 524 of the bill would remove those provisions of section 453 of the Act that are applicable to a demonstration program and would add an authority for IHEs to apply to participate in the FDSLPL, and to originate FDSLPL loans as consortia, subject to requirements prescribed by the Secretary. The consortia provision would facilitate direct lending options for borrowers by encouraging an institution that is eligible to participate in the FDSLPL but is unwilling or unable to originate FDSLPL loans to use the origination services of another member of the consortium.

Section 525. Section 525 of the bill would amend the demonstration program participation agreement provisions under section 454 of the Act to provide for implementation of the FDSLPL.

The participation agreement under proposed section 454(a) of the Act would provide for the establishment and maintenance of the FDSLPL at the IHE under which the IHE would: (1) identify eligible students who seek student financial assistance in accordance with section 484 of the Act; (2) estimate the need of each such student (as required by need analysis provisions of part F of title IV of the Act); (3) set forth a schedule for disbursement of the proceeds of the FDSLPL in installments, consistent with the requirements of section 428G of the Act; (4) provide, if the IHE is not a FDSLPL loan originator, timely information to the Secretary as needed for alternative origination services; and (5) provide timely information concerning the status of student and parent borrowers to the Secretary for servicing or collecting FDSLPL loans.

Under this agreement, in any academic year for which a student's need is determined and, except as otherwise provided in the FDSLPL, a loan made to the student under section 428A of the Act, or a loan made to the student's parents under section 428B of the Act, or obtained under a State-sponsored or private loan program, may be used to offset the expected family contribution of the student for that year. In addition, the agreement would: (1) provide that the IHE would not, in estimating a student's need and eligibility, provide a statement that certifies the eligibility of a student to receive a FDSLPL loan in excess of the applicable maximum amount; and (2) authorize the IHE, except in certain circumstances, to refuse to certify a statement that permits a student to receive a FDSLPL loan or to certify a loan amount that is less than the student's determination of need, if

the reason for this action is documented and provided to the student.

Under the participation agreement set forth in proposed section 454(a) of the Act, the IHE would also: (1) provide assurances that it will comply with the requirements specified by the Secretary relating to FDSLSP loan information; (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 FFEL program for the period during which the IHE participates in the FDSLSP; (4) provide for the implementation of a quality assurance program, to ensure that the IHE is complying with program requirements and meeting program objectives; (5) not charge fees to students or their parents for origination activities or for providing any other information needed for receive a FDSLSP loan; and (6) include other provisions that may be necessary to protect the interests of the United States and to promote the purposes of the FDSLSP.

Section 525 of the bill would also set forth, in proposed section 454(b) of the Act, requirements for origination agreements under the FDSLSP. 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 provisions described in that agreement. In addition, the origination agreement would provide that the IHE will originate loans to eligible students and parents in accordance with FDSLSP provisions and that the note or evidence of obligation on the loan would be the property of the Secretary.

Finally, proposed section 454(c) of the Act would require the Secretary to prescribe procedures by which IHEs may withdraw or be terminated from the FDSLSP.

Section 526. Section 526 of the bill would amend section 456 of the Act to provide certain new terms and conditions for the FDSLSP. In general, these terms are designed to provide borrowers with an assortment of loan options while maintaining an orderly transition from the guaranteed loan system.

Proposed section 456(a) of the Act would provide that, unless otherwise specified, loans made to borrowers under the FDSLSP would have the same terms, conditions, and benefits as loans made to borrowers for Federal Stafford Loans, Federal Supplemental Loans for Students (SLS), Federal PLUS Loans, and Unsubsidized Stafford Loans. The FDSLSP loans would be known respectively as Federal Direct Stafford Loans, Federal Direct Supplemental Loans for Students, Federal Direct PLUS Loans, and Unsubsidized Federal Direct Stafford Loans. Each of these direct

loans would have, unless otherwise specified, the terms, conditions, and benefits of its corresponding indirect loan.

Proposed section 456(b) of the Act would provide that section 427A(a) of the Act, which provides that a student loan borrower who continues to borrow receives his or her subsequent student loans at the same interest rate as the first student loan borrowed, would not apply to FDSLPL loans. Interest rates under the FDSLPL would be calculated on a 12-month period beginning July 1 and ending June 30, to be determined on the preceding June 1, using financial instruments auctioned at the final auction held prior to that June 1.

For Federal Direct Stafford Loans and Unsubsidized Federal Direct Stafford Loans ??? made before July 1, 1997, the interest rate would be equal to the bond equivalent rate of 91-day Treasury bills plus 3.1 percent, with a cap at 9 percent. Federal Direct Supplemental Loans for Students made prior to July 1, 1997 would have an interest rate equal to the bond equivalent of 52-week Treasury bills plus 3.1 percent, with a cap at 11 percent. Federal Direct PLUS Loans made before July 1, 1997 would have an interest rate equal to the bond equivalent of 52-week Treasury bills plus 3.1 percent, with a cap at 10 percent. Unless the Secretary determines that the application of the interest rate proposed for loans made under these programs on or after July 1, 1997 is inconsistent with the purposes of the FDSLPL, the interest rate for these loans would then be the bond equivalent rate of the security with a comparable maturity, as shown in the table "Interest Rates for Credit Reform" in the Economic Bulletin Board published by the Department of Commerce, plus 1 percent.

Proposed section 456(c) of the Act would provide that the Secretary may charge the borrower of a FDSLPL loan a loan fee of not to exceed 6.5 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.

Proposed section 456(d) of the Act would require the Secretary to offer a variety of plans for repayment of FDSLPL loans. Under these provisions, the borrower would be able to choose from four different types of repayment plans the type of 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; (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 graduated repayment is 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.

The extended repayment plan is intended to accommodate borrowers who prefer to make payments that are unchanged over a repayment period of moderate length, for example, 15 years. The graduated repayment plan is designed to ensure that borrowers are not faced with a "balloon" payment at the end of their loan period that they would be unable to afford. The graduated repayment plan could extend over a moderately lengthy period as well. ??? The income contingent repayment plan is intended to accommodate borrowers whose income after graduation of an IHE is low, and thus would be attractive to borrowers who plan to enter employment oriented towards community service. Because the individual payments under an income contingent repayment plan could be quite small (the minimum being enough to cover interest on the loan), borrowers would have an option to have a very lengthy repayment period, for example, 25 years.

In addition, proposed section 456(d) of the Act would 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, graduated repayment plan, or extended repayment plan. The borrower of a FDSLP loan may also 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. Further, the Secretary would be 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 types of 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 authorize the Secretary to obtain such information as is reasonably necessary regarding the income of a borrower (and the borrower's spouse, if applicable) 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 contingent repayment plan, including procedures for determining the borrower's repayment obligation.

Further, proposed section 456(d) 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 files a Federal income tax return jointly with his or her spouse, on the discretionary income of the borrower and his or her spouse. For purposes of this provision of the bill, the term "discretionary income" would be based on the total income or wages, salaries, and tips, whichever is greater, (or adjusted gross income if the borrower files a 1040EZ Federal income tax return), of the borrower (and his or her spouse, if applicable), as identified on the most recent available tax return, minus an amount based on the applicable poverty level, as determined by the Secretary. A borrower who chooses or is required to repay a FDSLPL loan through an income contingent repayment plan and who is unable to provide Federal income tax return information would be required to provide to the Secretary other documentation of income, which may be used to determine an appropriate repayment schedule.

The income contingent repayment schedule for a FDSLPL loan that entered repayment before July 1, 1995 would require payments that do not exceed 10 percent of the annual discretionary income of the borrower (and the borrower's spouse, if applicable), or, for a borrower who provides documentation of income level other than a Federal income tax return, payments that do not exceed 10 percent of the appropriate portion of the applicable annual income as determined by the Secretary. For FDSLPL loans that enter repayment on or after July 1, 1995, income contingent repayment schedules would be established by the Secretary through regulations.

Finally, proposed section 456(d) of the Act would require that the balance due on an income contingent FDSLPL loan equal the unpaid principal amount of the loan, as well as any accrued interest and any fees, such as late charges. The Secretary may limit by regulation the amount of interest that may be capitalized on the loan and the timing of that capitalization. Further, the Secretary would be required to establish procedures under which the borrower of a FDSLPL loan who will be using the income contingent repayment plan will be notified 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; (2) if a borrower considers that special circumstances, such loss of employment by the borrower or his or her spouse, would warrant an adjustment in the borrower's loan repayment level, the borrower may contact the Secretary, who shall determine whether such adjustment is appropriate, in accordance with established criteria; and (3) such other information as the Secretary may require.

Proposed section 456(e) of the Act would provide that a borrower of a FDSLPL loan who is eligible for a deferment, may refrain from paying periodic installments of principal. However, interest shall accrue and be paid by the Secretary in the case of a Federal Direct Stafford Loan, or shall accrue and be paid or

capitalized by the borrower in the case of other loans made under the FDSLSP ??? . A borrower would be eligible for a deferment during any period in which the borrower was pursuing at least a half-time course of study at an eligible IHE, or pursuing a course of study under a graduate fellowship program approved by the Secretary, or a rehabilitation training program, approved by the Secretary, for individuals with disabilities. The borrower would also be eligible for a deferment during a period of not more than three years during which time the borrower (1) is seeking and unable to find full-time employment, or (2) has experienced or will experience an economic hardship, as determined by the Secretary in accordance with regulations for section 435(o) of the Act. However, a borrower would not be eligible for a deferment, or for a FDSLSP loan other than a Federal Direct PLUS Loan or a Federal Direct Consolidation Loan, while serving a medical internship or residency program.

Proposed section 456(f) of the Act would provide that a borrower of a FDSLSP loan would be eligible for forbearance if the borrower is willing but unable to make scheduled payments on the loan. Forbearance would mean permitting the temporary cessation of loan payments, allowing an extension of time for making these payments, or temporarily accepting smaller payments than previously scheduled.

Proposed section 456(g) of the Act would provide that a borrower of a FDSLSP loan may consolidate the loan with loans described in subsections (a)(4) and (d)(1)(C) of section 428C of the Act under terms and conditions established by the Secretary. These loans are the Federal Stafford loans (subsidized and unsubsidized), SLS loans, Federal Perkins loans, and loans made under title VII, part C-II, of the Public Health Service Act. Loans consolidated under this authority would be called Federal Direct Consolidation Loans.

Proposed section 456(h) of the bill would require the Secretary, notwithstanding any other provision of State or Federal law, to specify in regulations (except as authorized under proposed section 459(a)) the conditions under which acts or omissions of an IHE may be asserted by a borrower as a defense to repayment of a loan made under the FDSLSP, except that in no event would a borrower recover an amount from the Secretary in an action arising from or relating to a FDSLSP loan that would be more than the borrower had repaid on the loan.

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 484A(c) of the Act, with respect to a FDSLSP loan. This would allow for the use of optically imaged documents in certain proceedings involving FDSLSP loans.

Finally, proposed section 456(j) of the bill would provide that, notwithstanding any other provision of law, a FDSLPL loan is not dischargeable in bankruptcy.

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 FDSLPL. 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 (or their parents) attending IHEs with FDSLPL participation agreements, if these IHEs do not have origination agreements; (2) the servicing and collection of FDSLPL loans; (3) the establishment and operation of one or more data systems for the maintenance of records on FDSLPL 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 reporting 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 years, 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.

Proposed section 458(b) of the Act would require additional evaluations of the FDSLPL. This provision would authorize the Secretary to use a portion of funding for the FDSLPL for research on, or demonstration or evaluation of, any aspects of the administration of the FDSLPL, including flexible repayment options that the Secretary determines are necessary to effectively implement the program. This provision would also require the Secretaries of Education and the Treasury to evaluate the feasibility of providing additional repayment options through the Internal Revenue Service, and transmit the results of this evaluation to the President by June 30, 1994.

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 for the successful implementation of the first year of the FDSLPL. 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, but only these first-year, standards, criteria, and procedures. Finally, section 529 of the bill would 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, since this requirement is incompatible with the proposed expansion and transition to the FDSLPL.

Section 530. Section 530 of the bill would repeal section 455 of the Act, which concerns institutional withdrawal and termination procedures for the demonstration program that would no longer be applicable, and would make conforming redesignations of section numbers within part D of title IV of the Act. The redesignation would create the following statutory structure for the FDSLPL:

PART D--FEDERAL DIRECT STUDENT LOAN PROGRAM

- Sec. 451. Purpose; Program Authorization.
- Sec. 452. Funds for Origination of Direct Student Loans by Institutions.
- Sec. 453. Selection by the Secretary.
- Sec. 454. Agreements with Institutions.
- Sec. 455. Terms and Conditions of Loans.
- Sec. 456. Contracts.
- Sec. 457. Reports.
- Sec. 458. Regulatory Activities by the Secretary.
- Sec. 459. Funds for Administrative Expenses.

Section 530A. Section 530A of the bill would amend the expenditure authority (which would be redesignated as proposed section 459 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 the FDSLPL and administrative costs of the transition from the FFEL program to the FDSLPL: 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 FFEL program to the FDSLPL, or the expansion of the FDSLPL, the Secretary would be authorized to use funds available under this proposed section of the Act for a subsequent fiscal year for these expenses. The Secretary would also be authorized to carry over funds to any subsequent fiscal year.

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

SUBPART 1--FEDERAL FAMILY EDUCATION LOAN PROGRAM AMENDMENTS

In general, this portion of the bill would amend the current law in conformity with the proposed transition to a fully implemented FDSLSP while avoiding disruptive changes to current program operations. Several provisions in the current FFEL program that are particularly beneficial to student borrowers have been retained, for example, the requirement in section 428(b)(1)(E)(i) of the Act that lenders offer borrowers an income sensitive repayment plan. Thus, while there are several differences between the income-based repayment plans under the FDSLSP and the FFEL program, notably in the length of repayment and mechanism for disclosing and verifying income, the bill would provide all borrowers the option to repay their loans based on their income, regardless of whether the loan is made under the FDSLSP or the FFEL program.

The particular amendments to the FFEL program are as follows, analyzed by section number of the bill.

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 of the guaranty agencies, and any assets purchased with these reserve funds, regardless of who holds or controls the reserves or assets, are the property of the Federal Government, to be used in the operation of the FFEL program or the FDSLSP.

This section of the bill clarifies the Act to reflect the longstanding view that the guaranty agency's assets are dedicated to the loan programs and may not to be used for unauthorized purposes. This authority would allow the Secretary to ensure that program assets are used to operate the loan program in the most efficient way possible.

Thus, for example, the Secretary would be authorized under this provision to direct a guaranty agency to return all or a portion of its reserve fund to the Secretary or, to permit the agency to maintain all or part of its the reserve fund to pay expenses authorized according to the Secretary's regulations. The Secretary would also be authorized to direct the guaranty agency to require the return of any funds or assets held by or under the control of any other or entity.

Section 532. Section 532 of the bill would amend the terms of loans under the FFEL program, in section 428 of the Act, to

require that an insurance program agreement provide for income contingent repayment following a borrower's default. This section of the bill would also authorize the Secretary to require any borrower who has defaulted on a loan made under the FFEL program and assigned to the Secretary to repay that loan under an income contingent repayment plan, the terms and conditions of which would be established by the Secretary and would be similar to the income contingent repayment plan established for purposes of the FDSLSP.

Section 533. Section 533 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 interest 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. It would also add a provision that an orderly transition from the FFEL program to the FDSLSP shall be deemed to be in the Federal financial interest, and a requirement that a guaranty agency promptly assign loans to the Secretary, if deemed by the Secretary to be necessary to protect the Federal financial interest, upon the Secretary's request.

Section 534. Section 534 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 FDSLSP. Section 533(1) of the bill would no longer mandate that the Secretary require a guaranty agency that has low reserves or is financially or administratively impaired to submit a management plan to the Secretary before the Secretary takes other steps concerning that agency. The Secretary would take this step only as appropriate, consistent with the transitional nature of the FFEL program. Similarly, section 534(2) of the bill would allow modification of a guaranty agency's management plan in conformity with the transition to the FDSLSP.

Section 534(3) of the bill 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 financial interest, to ensure the continued availability of loans to student or parent borrowers, or to ensure an orderly transition from the FFEL program to the FDSLSP.

Section 534(4) of the bill would expand the Secretary's authorized functions when a guaranty agency's agreement is terminated. The Secretary would be authorized to provide the guaranty agency with additional advance funds in accordance with section 422(c)(7) of the Act, with such restrictions on the use of such funds as is determined appropriate by the Secretary, in order to meet the immediate cash needs of the guaranty agency, ensure the uninterrupted payment of claims, or [and?] provide

Federal capital with which the guaranty agency would make loans as the lender of last resort. As a lender of last resort, the guaranty agency would be paid a fee, established by the Secretary, for making these loans in lieu of interest and special allowance subsidies, and would be required to assign these loans to the Secretary on demand (in return for which the portion of the advance represented by the loans would be considered repaid by the guaranty agency. This section of the bill would also authorize the Secretary to use all funds and assets of the guaranty agency to assist in the activities undertaken in accordance with termination of the guaranty agency agreement and to take appropriate action to require the return [to the Secretary?] of any funds or assets provided by the guaranty agency, under contract or otherwise, to any person or organization. Finally, this section of the bill would authorize the Secretary to take whatever other action is necessary to ensure an orderly transition from the FFEL program to the FDSLSP.

Section 534(5) of the bill would remove subparagraph (G) of section 428(c)(10) of the Act, which currently prevents the Secretary from terminating the agreement of any guaranty agency that is backed by the full faith and credit of the State where that agency is the primary guarantor. This provision in current law would impede efforts to "wind down" the FFEL program.

Section 534(6) of the bill would make conforming amendments to the structure of section 428(c)(10) of the Act. Section 534(7) of the bill would provide additional authorities needed by the Secretary to ensure an orderly termination of the FFEL program. If the Secretary has terminated or is seeking to terminate a guaranty agency's agreement, or has assumed a guaranty agency's functions, this section of the bill would provide that, notwithstanding any other provision of law: (1) the guaranty agency may not file for bankruptcy; (2) no State court may issue an order affecting the Secretary's actions with respect to that guaranty agency; and (3) no provision of State law shall apply to the actions of the Secretary in terminating 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 reserves of guaranty agency, minus any necessary liquidation or other administrative costs.

Section 534(8) of the bill would make a conforming amendment to a reporting requirement, consistent with the transition to the FDSLSP.

Section 535. Section 535 of the bill would amend the lender referral services provisions in section 428(e) of the Act. This section of the bill would require the Secretary to enter into

agreements with guaranty agencies that meet standards established by the Secretary [are we going to have to go through an expedited process on this?] to provide lender referral services in geographic areas specified by the Secretary. The agencies would be paid under the terms provided in section 428(e)(3) of the Act for these services. Further, this section of the bill would expand the eligibility criteria for students to receive lender referral services and would remove the specific authorization of appropriation for lender referral services payments.

Section 536. Section 536 of the bill would revise section 428(f)(1)(B) of the Act concerning payment based on insurance program agreements. Until full implementation of the FDSLDP, this section of the bill would add to the amount authorized in current law an allotment established by the Secretary based on the volume of FDSLDP loans in the State for which the agency is the designated guaranty agency. Upon full implementation of the FDSLDP, the total amount of payments for any fiscal year would be established by the Secretary and based on the number of borrowers in the guaranty agency's portfolio. This provision would ensure that guaranty agencies continue to receive an adequate administrative cost allowance while they maintain their outstanding loan volume.

Section 537. Section 537 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 FDSLDP. Section 537(1) of the bill would define "eligible borrower" for the loan consolidation program in the FDSLDP 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.

Section 537(2) of the bill would require a lender to offer income-sensitive repayment terms for a consolidation loan made on or after July 1, 1994. 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), this section of the bill would authorize the Secretary to offer the borrower a direct consolidation loan with income contingent repayment terms under the FDSLDP.

Section 537(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. 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 is equal to the

weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent.

Section 537(3) of the bill would make additional changes to the Federal consolidation loan program consistent with offering income-based repayment options to borrowers. During the transition from the FFEL program to the FDSL, lenders under the FFEL program would be required to offer income sensitive repayment on a consolidated loan, while the Secretary would offer income contingent repayment on a loan assigned to the Secretary.

Section 538. Section 538 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 484A(c) of the Act, with respect to a loan that was made under the FFEL program and assigned to the Secretary. This would allow the Department to use optically imaged documents as evidentiary material in certain proceedings with respect to these loans. This authority would be consistent with the authority proposed for allowing as evidentiary material in certain proceedings optically imaged documents with respect to FDSLPL loans.

Section 539. Section 539 of the bill would add a provision to section 439 of the Act, concerning the Student Loan Marketing Association ("Sallie Mae"). This provision would require the Secretaries of Education and the Treasury, in consultation with Sallie Mae, to prepare a study that examines alternatives that would allow, upon full implementation of the FDSLPL, for the transition of Sallie Mae from a government-sponsored enterprise to a private corporation.

The study, which would be completed within six months of the enactment of title V of this bill and would be considered by the Secretary of Education in developing relevant legislative proposals, would consider how best to meet the needs of students and taxpayers. The study would also be required to reflect the need for Sallie Mae to maintain liquidity and perform other functions for the FFEL program during the transition from that program to the FDSLPL, including additional duties as specified by the two Secretaries.

Finally, this section of the bill would direct the Secretaries of Education and the Treasury to work with Sallie Mae to ensure that the transition from the FFEL program to the FDSLPL and the transition in the status of Sallie Mae from a government-sponsored enterprise to a private sector corporation are carried out efficiently and effectively.

SUBPART 2--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 proposed 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 FDSLPL, or for the administration of loans made under the FFEL program that have been assigned to the Secretary; (2) permit the Secretary to destroy originals of these 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 FDSLPL or a FFEL program loan 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 FDSLPL, 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 and 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 FDSLPL.

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 income information as indicated on the taxpayer's most recent available return. The income information would be the total income or the wages, salaries, and tips, whichever is greater, of the taxpayer (or the taxpayer and his or her spouse if the taxpayer has filed a joint tax return) or, adjusted gross income, if the taxpayer files a 1040EZ.

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 for the FDSLPL and for FFEL program loans or Federal Perkins loans that have been assigned to the Secretary.

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 FDSLTP. This section of the bill would also make conforming amendments to this authority. However, these amendments would not alter the strict limits on the use of this information now in current law.

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.

Finally, section 541(e) of the bill would amend section 7213(a)(2) of the IRC, concerning criminal sanctions. This section of the bill would provide that unauthorized disclosure of tax return information by agents of the Department of Education would be a felony punishable by a fine of not more than five thousand dollars, or imprisonment of not more than five years, or both, together with the costs of prosecution. This sanction is consistent with sanctions for disclosures of other tax return information under the IRC.

Section 452. Section 452 of the bill would add the FDSLTP to the list of programs and activities exempt from budget reduction under section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)).

PART E--EFFECTIVE DATES

Section 551. Section 551 of the bill would set out the effective dates for the amendments made by title V of this bill.

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