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Education - HEA [Higher Education Act] Reauthorizaton [1]

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7/2/97

HEA Reauth

MM & Bronchp & Ari/ h.

House - Nim student aid in Mx -
Sx Ard Mlg

all of us IF mainly, cleared, as Sig

Senate - Run Senate by end of year
small staff level sesu-

Order: - HPSA / International / Graduate - July 15
x auth. level

- Title III

- TRIO

- Student Aid

? Teacher Prep ? - Senate wants early July 17?

* Funding levels

. will the programs after consolidation, lose liberal arts focus of funds, for example.

REAUTHORIZATION ISSUES -- GRADUATE EDUCATION SUMMARY

It is incumbent on the Federal Government to foster and support graduate education in order to enhance the quality of life; to ensure the technological and economic superiority of the United States of America; and, to improve and expand the teaching capacity of the US. We therefore propose a single graduate education program which would provide incentives and support for US citizens, especially students from traditionally underrepresented populations, to complete doctoral and masters' degree programs leading to academic careers in areas of national need.

CURRENT PROGRAMS

Currently under Title IX, there are 7 programs, of which three are funded. These programs are:
A. Grants to Institutions to Encourage Women and Minority Participation
B. Patricia Roberts Harris Fellowships (Funded)
C. Jacob K. Javits Fellowships (Funded)
D. Graduate Assistance in Areas of National Need (Funded)
E. Faculty Development Fellowships
F. Assistance for Training in the Legal Profession
G. Law School Clinical Experience.

PROPOSAL

The revised Title IX of the HEA will consist of one program: The National Need Graduate Fellowship Program. This program would consolidate the purposes of the GAANN, Patricia Roberts Harris, and Javits Fellowship programs (HEA, Title IX , parts B,C,D). All other Title IX programs (Parts A, E, F & G) would be eliminated.

Focus of the Program
National Need by Discipline

Legislation would read: "the Secretary shall designate on a periodic basis areas of national need, such as the arts, humanities, social sciences, life sciences, or physical sciences." Areas of National Need will be determined in consultation with appropriate Government agencies and other organizations, utilizing statistics on current and projected needs in academic fields, and students currently in the academic pipeline.

Traditionally Underrepresented

Applicants must demonstrate commitment to recruiting and training students from traditionally underrepresented populations. Define "Traditionally Underrepresented" in the statute so that the Secretary may determine on a periodic basis what segments of the population are underrepresented.

The program will focus on teaching and research and will be awarded to those students demonstrating superior ability. Would include non-professional Doctorates and Terminal non-professional masters degrees. Professional degrees, such as MBA, MD and JD would not be eligible. May include teaching-oriented Doctorates in Professional fields (Engineering, Law). The fellowship may not be used at schools or departments of divinity.

Institutional-based awards. Grants shall not be made of less than $125,000 or greater that $750,000. Degree granting institutions, departments, and programs would be eligible to apply. When the Secretary determines that a grantee is unable to use all of the funding available to it, the Secretary may re-allot those funds to programs which can use the funds authorized for this program. Continuation funding will have priority over new awards.

Consistent with the allocation of awards based on the quality of competing applications, the Secretary shall promote an equitable geographic distribution among public and private institutions of higher education.

Grantees will be required to provide data on performance indicators and measures which address: Input Assessment (student quality); Program Performance (student experience and skill building); and, Outcome Assessment (Placement, development of ind. research).

An institutional match based on the GAANN 25% model - the grantee will provide from other non-Federal funds, for purposes of the fellowship program, an amount equal to at least 25% of the amount received.

Only entering students would be eligible; students with existing graduate credit in a particular program would be ineligible.

Grants would provide for 3 years of support or completion of the degree, whichever is less. Students must demonstrate academic progress to continue to receive fellowship funding.

A recipient's financial need would not determine the size of the stipend; the stipend will be set according to the NSF stipend. The institutional allowance will be a $10,000 97-98 base adjusted annually by inflation as determined by the Department of Labor's CPI.

The academic department must provide at least one year of supervised training in instruction.

Budgeted funds will include a set-aside to fund NCC's for prior awards under GAANN, Javits, and Harris prior to funding new awards. Those grants will be funded under the original terms of award.

Request an appropriation of $50,000,000 to carry out this program.

T-IX (GRADUATE FELLOWSHIP PROGRAM)

SEC. ---. Title IX of the Act is amended to read as follows--

"TITLE IX -- NATIONAL NEED GRADUATE FELLOWSHIP PROGRAM

"PURPOSE

"Sec. 901. In order to promote high-quality, graduate-level teaching and research in areas of national need and to encourage women and minorities to prepare for postsecondary academic careers in those fields of national need in which they are, and have traditionally been, under represented, it is the purpose of this title to provide assistance to eligible entities to establish graduate fellowships to recruit and assist students of superior ability.

"GRANTS

"Sec. 902. (a) Authority.--Subject to section 908, the Secretary shall make grants to entities determined eligible under section 903 to enable such entities to award graduate fellowships in designated areas of national need to eligible students in accordance with the provisions of this title.

"(b) Geographic Equity.--In making grants under this title, the Secretary shall, to the exent practicable, promote an equitable geographic distribution among eligible public and private institutions of higher education.

"(c) Duration.--Grants made under this title shall be for a period of up to 3 years.

"(d) Minimum and Maximum Amounts.--Each grant awarded under this title shall be in an amount that is at least $125,000, but not more than $750,000, for any fiscal year.

"(e) Program Quality.--The principal criterion for awarding grants under this title shall be the relative quality of the graduate programs presented in applications submitted under section 905.

"(f) Match and Treatment of Institutional Payments.--(1) To receive a grant under this section for any fiscal year, an eligible entity shall contribute, from non-federal sources, toward the cost of carrying out the graduate fellowship program for which the grant is awarded an amount that is at least 25 percent of the amount of the grant.

"(2) An institution of higher education that makfees in amounts

that exceed the institutional payments made by the Secretary under section 907(a) may count such payments toward the amounts the institution is required to provide under paragraph (1).

"(g) Reallotment.--Whenever the Secretary determines that a recipient of funds under this title is unable to use all of the funds awarded to it, the Secretary may, on such dates during each fiscal year as the Secretary may fix, reallot the funds not needed to other recipients that can use the funds under this title.

"(h) Continuation of Grant Funding.--The Secretary shall award new grants under this section only if previous grant recipient have received continuation of their authorized funding; except that, to the extent appropriations under this title are insufficient to allow full funding, the Secretary may reduce the amounts required to be awarded to previous grant recipients.

"ELIGIBILITY

"Sec. 903.(a) Eligibility.--(1) The Secretary is authorized to award grants under section 902 to--

"(A) academic departments and programs and other academic units of an institution of higher education that offer programs of study leading to a terminal postbaccalaureate degree in an area of national need as designated under subsection (b); and

"(B) those entities eligible under paragraph (1) that submit joint proposals involving one or more nondegree granting institutions that have formal arrangements for support of doctoral dissertation research with degree-granting instititutions.

"(2) The nondegree granting institutions described in subsection (a) (2) include an organization that--

"(i) is described in section 501(c)(3) of the Internal Revenue Code of 1986, and is exempt from tax under section 501(a) of such Code;

"(ii) is organized and operated substantially to conduct scientific and cultural research and graduate training programs;

"(iii) is not a private foundation;

"(iv) has academic personnel for institution and counseling who meet the standards of the institution of higher education in which the students are enrolled; and

"(v) has necessary research resources not otherwise readily available in such institutions to such students.

"(b) Special Rule.--No entity shall be eligible for a grant under section 902 unless the program of postbaccalaureate study that is the subject of its application for assistance has been in existence for at least 4 years prior to the date the application is made.

AREAS OF NATIONAL NEED

"SEC. 904. (a) Designation.--After consultation with the National Science Foundation, the National Academy of Sciences, the National Endowment for the Humanities, the National Endowment for the Arts, the Department of Labor, and other appropriate non-profit agencies and organizations, the Secretary shall, on a periodic basis, designate areas of national need.

"(b) Basis for Designation.--The Secretary shall base such designations on--

"(1) the interest to the nation in--

"(A) supporting postbaccalaureate study in specific academic fields; and

"(B) preparing a larger number of women and individuals from minority groups for postsecondary academic careers in specific fields of postbaccalaureate study in which they are, and have traditionally been, under represented; and

"(2) the extent of other federal and non-federal support for postbaccalaureate study in such fields and for such individuals;

"APPLICATIONS

"SEC. 905. (a) Authority.--An eligible entity that desires to receive a grant under this title shall make an application to the Secretary in such manner and form and containing such information and assurances as the Secretary may reasonably require.

"(b) Contents of Applications.--Each application shall--

"(1) describe--

"(A) the number and types of fellowships that the applicant intends to offer under the grant;

"(B) the designated area or areas of national need the applicant intends to address under the grant;

"(C) the academic program or programs of the applicant for which the grant is sought;

"(D) other instutional support the applicant intends to make available to fellowship awardees; and

"(F) the policies and procedures the applicant will use in awarding fellowships using funds under this title to students of demonstrated achievement and exceptional promise;

"(2) demonstrate the relevant academic program or programs' quality and outcomes by means of performance-based criteria including, but not limited to, the entity's performance in recruiting students, training students, and placing students after completion of the course study; and

"(3) provide assurances that--

"(A) in awarding fellowships using funds under this title, the applicant shall give priority to students traditionally underrepresented in the fields for which the grant is sought; and

"(B) in the event that funds made available to an applicant under this title are insufficient to provide the assistance due a student under the commitment entered into pursuant to section 905(b)(1), the applicant will, to the extent of its ability, fulfill the commitment to the student from any funds available to it;

"(C) the applicant will provide at least 1 year of supervised training in instruction for students; and

"(D) Federal funds made available under this title for any fiscal year shall be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purpose of this title and in no case to supplant those funds; and

"(c) Application Review Panels.--To the extent possible, the Secretary shall use geographically balanced review panels of nationally recognized scholars to review and rank applications.

"FELLOWSHIPS

"SEC. 906. (a). Fellowships.--(1) The institutional recipients of funds under this title shall use such funds to award fellowships in designated areas of national need to eligible students who are--

"(A) entering their first year of graduate study or research in the field;

"(B) intending to pursue a doctoral degree in the field;

"(C) have demonstrated excellence in their previous postsecondary programs of study; and

"(D) plan postsecondary teaching or research careers.

"(2) Notwithstanding paragraph (1)(B), a recipient may award fellowships to students pursuing a master's degree in those fields in which the master's degree is commonly accepted as the appropriate degree for a tenured-track faculty position in such field at a baccalaureate degree-granting institution.

"(b) Stipends.-- Individual stipends awarded under this section shall--

"(1) be provided pursuant to a written commitment between the institutional recipient of funds and the fellowship awardee; and

"(2) provide for support of the awardee through completion of the degree in the awardee's field, not to exceed 3 years.

"(d) Amount of Stipends.--The amount of a stipend to a fellowship awardee shall be set at a level of support at least equal to that provided by the National Science Foundation graduate fellowships.

"(e) Special Rule.--No commitment under subsection (b)(1) shall be made to a fellowship awardee under this section unless the institutional recipient of funds under section 902 has determined that adequate funds, either from the amounts received or anticipated under this title or from other institutional funds, are available to fulfill such commitment.

"(f)Continutation of Fellowships.--No student shall continue to receive a fellowship stipend under this title if he or she is--

"(1) not maintaining satisfactory progress in study or research in the field in which such fellowship was awarded;

"(2) engaged in less than fulltime study or research in the field in which such fellowship was awarded; or

"(3) is engaged in gainful employment other than employment involved in teaching, research, or similar activities determined by the institution to be in support of the student's progress towards a degree.

"INSTITUTIONAL ALLOWANCES

SEC. 907. (a) Institutional Payments.--(1) In addition to the fellowship stipends paid to students under this title, the Secretary shall pay to the institution of higher education for each individual awarded a fellowship under this title at such institution, an institutional allowance.

"(2) Except as provided in paragraph (3), such allowance shall be:

"(A) $10,000 for the academic year 1997-1998; and

"(B) $10,000 for each succeeding academic year, adjusted annually for inflation as determined by the Department of Labor's Consumer Price Index for the previous calendar year.

"(3) The institutional allowance paid under paragraph (1) shall be reduced by the amount the institution charges and collects from a fellowship awardee for tuition and other expenses as part of the recipient's instructional program.

"(b) Use for Overhead Prohibited.--Funds made available under this Title may not be used for the general operational overhead of the academic department or program.

"CONTINUATION OF INSTITUTIONAL AWARDS UNDER PREVIOUS PROGRAMS

"SEC. 908. Before making awards under this title for any fiscal year, the Secretary shall fund non-competing continuation awards under parts B: Patricia Roberts Harris Fellowship Program; C: Jacob K. Javits Fellowship Program; and D: Graduate Assistance in Areas of National Need of title IX of the Higher Education Act of 1965 as in effect prior to the enactment of the Amendments of 1997. These non-competiting continuation awards shall be supported in accordance with the terms of the original award.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 909. There are authorized to be appropriated $XX,000,000 for fiscal year 1998 and such sums as may be necessary for each of the 4 succeeding fiscal years to carry out this title.

SUMMARY OF TITLE VI REAUTHORIZATION PROPOSALS
INTERNATIONAL EDUCATION

The Department is recommending that the international education programs continue to be administered as separate programs under Title VI. The reauthorization proposals include minor changes to the legislation to streamline the statute and to provide better outreach to the foreign language community.

Access and Effective Education

Revise Sec. 603 Language Resource Centers to strengthen responsibility of Centers to provide service to a broader range of the education community

- Strengthen the responsibility of the Language Resource Centers to serve as resources to improve foreign language teaching and learning in K-12.
- Require Language Resource Centers to focus on a specific world area and to carry out their activities in collaboration with foreign language educators and professional associations.
- Integrate the dissemination function into each of the Language Resource Center activities as an essential component.
- Encourage Language Resource Centers to utilize the advances in educational technology.
- Authorize Language Resource Centers to conduct domestic and overseas intensive summer language programs.

Streamline the Statute

- Eliminate Intensive Summer Language Institute Program and Foreign Periodicals Program. These programs are not currently funded.
- Eliminate requirement for Preservation of Pre-1992 Programs.

SPECS FOR TITLE VI (HEA) INTERNATIONAL EDUCATION PROGRAMS

1. Eliminate Sec. 605 *Intensive Summer Language Institutes.*

Current law: Sec. 605 authorizes the Secretary to make grants to institutions of higher education, or combinations of such institutions, for the purpose of establishing and conducting intensive summer language institutes.

Proposed change: Eliminate Sec. 605 authorizing the Summer Instensive Language Institutes from Title VI.

Reasons for change:

Sec. 605 has never been funded, and the Department has no plans to fund these Institutes. In keeping with Department policy we are therefore recommending that this section be eliminated from Title VI.

2. Eliminate Sec. 607 *Perodicals and Other Research Materials Published Outside the United States (Foreign Periodicals Program).*

Current law: Sec. 607 authorizes the Secretary to award grants to institutions of higher education, public or nonprofit private library institutions, or consortia of such institutions for the acquisition of, and provision of access to, periodicals and other research materials published outside the United States.

Proposed change: Eliminate Sec. 607 authorizing the acquisition of periodicals and other research materials published outside the United States (Foreign Periodicals Program) from Title VI.

Reason for change:

Sec. 607 has not been funded since 1993. Currently the Department has no plans to resume funding this program. In keeping with Department policy we are therefore recommending that this section be eliminated from Title VI.

3. Eliminate Sec. 632 *Preservation of Pre-1992 Programs.*

Current law: Sec. 632 provides that, not withstanding any other provision of law, amendments to Title VI establishing new programs or expanding existing programs not be funded in fiscal year 1993 or the four succeeding years unless and until Congress enacts appropriations for programs under Title VI enacted prior to the 1992 Amendments at a level no less than the level of funding in effect for such preexisting programs for fiscal year 12992.

Proposed change: Eliminate Sec. 632 mandating the preservation of pre-1992 programs.

Reasons for change:

1. Sec. 632 referrs specifically to the 1992 amendments to HEA and is outdated.

2. The elimination of this trigger provision gives the Department greater flexibility to support programs that best meet the changing needs in international education and the Nation's need for expertise in foreign languages and related world areas and international studies.

4. Revise Sec. 603 *Language Resource Centers* as proposed below.

(A) To strengthen the responsibility of the Language Resource Centers to serve as resources to improve foreign language teaching and learning in K-12.

Current law: Sec. 603 authorizes the Secretary to make grants and to enter into contracts with institutions of higher education, or combinations of such institutions, for the purpose of establishing, strengthening and operating a small number of language resource and training centers, which shall serve as resources to improve the capacity to teach and learn foreign languages effectively.

Proposed change: The Secretary is authorized to make grants and to enter into contracts with institutions of higher education, or combinations of such institutions, for the purpose of establishing, strengthening, and operating a small number of national language resource and training centers, which shall serve as resources to improve the capacity to teach and learn foreign languages effectively **at all levels of education in the United States**.*(proposed changes listed in bold.)*

Reason for change:

The change we are proposing would strengthen the outreach of the Centers to K-12 by directing them to serve as resources to improve foreign language teaching and learning in K-12.

(B) To require Language Resource Centers to focus on a specific world area and to carry out their activities in collaboration with foreign language educators and professional associations.

Current law: Sec. 603 currently contains no requirement that Language Resource Centers focus on a specific world area or that their activities be conducted in collaboration with foreign language educators and professional associations.

Proposed change: Activities carried out by Centers **shall focus on the language of a specific world area, shall be conducted in collaboration with foreign language educators and professional associations, and** may include ---

Reason for change:

1. The proposed change would require that Centers concentrate their resources more effectively for greater benefit.

2. The proposed change would require that Centers develop linkages with other foreign language educators and professionals for greater mutual benefit.

(C) To integrate the dissemination function into each of the Language Resource Center activities as an essential component.

Current law: Sec. 603 currently lists the dissemination of research results and teaching materials as a separate activity, as follows: *(6) the widespread of dissemination of research results, teaching materials, and improved pedagogical strategies to others within the postsecondary education community.*

Proposed changes: We are proposing to eliminate activity (6) as a separate activity and to integrate the dissemination function as an essential component of Center activities. The list of authorized activities would be revised as follows with proposed changes in bold:

(1) the conduct and **dissemination** of research on new and improved teaching methods, including the use of advanced educational technology;

(2) the development **and dissemination** of new teaching materials **and instructional delivery systems** reflecting the use of such research in effective teaching strategies;

(3) the development, [delete "and"] application, and **dissemination** of performance testing **instruments** appropriate to an educational setting for use as a standard and comparable measurement of skill levels in all languages;

(4) the training of teachers in the administration and interpretation of performance tests, the use of effective teaching strategies, and the use of new technologies;

(5). the publication **and dissemination to others in the foreign language field** of instructional materials in the less commonly taught languages;

Reasons for changes:

1. These proposed changes would strengthen the responsibility of the Centers to serve the foreign language community.

2. Strengthening the dissemination function of Centers would maximize the benefits resulting from the federal investment in the improvement of foreign language teaching and learning.

(D) To encourage Language Resource Centers to utilize the advances in educational technology.

Current law: Sec. 603 as currently written does not reflect the advances in educational technology that can be utilized to increase the effectiveness of outreach.

Proposed changes: Add the following to the list of authorized activities:

. the development and coordination of networking frameworks and activities (such as Internet listservs and bulletin boards, newsletters, conferences and discussion groups) to provide foreign language teachers with ongoing professional development opportunities;

We are also proposing to add the words **and instructional delivery systems** to activity (2) listed above.

Reason for changes:

1. The proposed changes would encourage the Centers to make use of the advances in educational technology to improve dissemination and to enhance their outreach function.

(E) To authorize Language Resource Centers to conduct domestic and overseas intensive summer language programs.

Current law: Sec. 603 does not currently authorize Centers to conduct intensive summer language programs, either in the U.S. or overseas.

Proposed change: We are proposing to add the following section under allowable activities.

. the conduct of overseas or domestic intensive summer language institutes designed to meet the needs for intensive foreign language training by students or to provide professional development and improve language instruction through pre-service and in-service training for foreign language teachers

Reason for change:

1. We are proposing the elimination of Sec. 605 Intensive Summer Language Institutes as a separate authorization. Adding the above section into Sec. 603 will give the Language Resource Centers an added measure of flexibility in helping to improve foreign language teaching and learning.

NOTE: The changes proposed for Sec. 603 *Language Resource Centers* are attached as a chart for purposes of comparison.

Changes to LRC Legislation: Proposed changes are indicated in ***bold italics***.

SEC. 603. LANGUAGE RESOURCE CENTERS *(current legislation)*	SEC. 603. LANGUAGE RES

<u>Changes to LRC Legislation:</u> Proposed changes are indicated in ***bold italics***.

SEC. 603. LANGUAGE RESOURCE CENTERS *(current legislation)*	SEC. 603. LANGUAGE RESOURCE CENTERS *(proposed changes)*
(a) LANGUAGE RESOURCE CENTERS AUTHORIZED.—The Secretary is authorized to make grants to and enter into contracts with institutions of higher education, or combinations of such institutions, for the purpose of establishing, strengthening, and operating a small number of national language resource and training centers, which shall serve as resources to improve the capacity to teach and learn foreign languages effectively. Activities carried out by such centers may include--	**(a) LANGUAGE RESOURCE CENTERS AUTHORIZED.--The Secretary is authorized to make grants to and enter into contracts with institutions of higher education, or combinations of such institutions, for the purpose of establishing, strengthening, and operating a small number of national language resource and training centers, which shall serve as resources to improve the capacity to teach and learn** foreign languages effectively ***at all levels of education in the United States.*** Activities carried out by such centers ***shall focus on the languages of a specific world area, shall be conducted in collaboration with foreign language educators and professional associations, and*** may include------
(1) the conduct of research on new and improved teaching methods, including the use of advanced educational technology;	(1) the conduct and ***dissemination*** of research on new and improved teaching methods, including the use of advanced educational technology;
(2) the development of new teaching materials reflecting the use of such research in effective teaching strategies;	(2) the development ***and dissemination*** of new teaching materials ***and instructional delivery systems*** reflecting the use of such research in effective teaching strategies;
(3) the development and application of performance testing appropriate to an educational setting for use as a standard and comparable measurement of skill levels in all languages;	(3) the development, [delete "and"] application, and ***dissemination*** of performance testing ***instruments*** appropriate to an educational setting for use as a standard and comparable measurement of skill levels in all languages;
(4) the training of teachers in the administration and interpretation of performance tests, the use of effective teaching strategies, and the use of new technologies;	(4) the training of teachers in the administration and interpretation of performance tests, the use of effective teaching strategies, and the use of new technologies;
(5) the publication of instructional materials in the less commonly taught languages; and	(5) the publication ***and dissemination to others in the foreign language field*** of instructional materials in the less commonly taught languages; and
(6) the widespread dissemination of research results, teaching materials, and improved pedagogical strategies to others within the postsecondary education community.	[DELETE CURRENT LANGUAGE DUE TO INCLUSION OF DISSEMINATION IN ALL PREVIOUS ACTIVITIES. INSTEAD:} ***(6) the development and coordination of networking frameworks and activities (such as Internet listservs and bulletin boards, newsletters, conferences and discussion groups) to provide foreign language teachers with ongoing professional development opportunities.***

	(7) the conduct of overseas or domestic intensive summer language institutes designed to meet the needs for intensive ***foreign language training by students or to provide professional development and improve language instruction through preservice and inservice training for foreign language teachers.***
(b) CONDITIONS FOR GRANTS.--Grants under this section shall be made on such conditions as the Secretary determines to be necessary to carry out the provisions of this section.	(b) CONDITIONS FOR GRANTS.--Grants under this section shall be made on such conditions as the Secretary determines to be necessary to carry out the provisions of this section.

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LEGISLATIVE SPECIFICATIONS FOR REAUTHORIZATION

TITLE X, PART A

FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION (FIPSE)

The Educational and Institutional Improvement team recommends continuation of the current legislative language for this section, with the following exceptions:

1) Subpart 1, Section 1001(a) Authority:

a) Current language: "The Secretary is authorized to make grants to...institutions of higher education or combinations of such institutions and other public and private nonprofit institutions and agencies..."

b) Proposed language: "The Secretary is authorized to make grants to...institutions of higher education or other public and private nonprofit institutions and agencies..."

c) Rationale: The current language does not clearly permit a grant to, for example, a nonprofit association of mathematics faculty members, unless that association has somehow "combined" with a college or university in the grant application. The recommended change would clarify but not alter current practice -- all nonprofit organizations have been considered eligible to apply for FIPSE support for projects to improve postsecondary education. There are no costs involved.

2) Subpart 1, Section 1003(a) Technical Employees:

a) Current language: "The Secretary may appoint...not more than 5 technical employees to administer this subpart..."

b) Proposed language: "The Secretary may appoint...not more than 7 technical employees to administer this subpart..."

c) Rationale: This section is designed to permit flexibility in hiring so that the expertise of permanent staff can be supplemented to reflect emerging issues of postsecondary reform. The recommendation to increase allowable technical employees from 5 to 7 is not a request for additional staff lines; rather, it would simply permit greater flexibility in filling positions that may open up in the future. As the nature and content of grant applications to FIPSE change continuously in response to evolving trends in postsecondary education, a high degree of staff flexibility is essential.

3) Subpart 1, Section 1004(a) In General:

a) Current language: "There are authorized to be appropriated to carry out this subpart...$20,000,000 for the fiscal year 1993 and such sums as may be necessary for each of the 4 succeeding years.

b) Proposed language: "There are authorized to be appropriated to carry out this subpart...$30,000,000 for the fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding years.

c) Rationale: The authorization number is increased to leave open the possibility that increases might be proposed in FY99 and thereafter. The Comprehensive Program grant competition conducted under this part annually receives some 2,000 proposals to reform postsecondary education, of which FIPSE's current budget enables funding of about 70 grants (about 3 percent of applications). The result is that many fine proposals go unfunded for lack of resources. An increase to $30 million, authorized and appropriated, would enable FIPSE to fund approximately twice as many reform initiatives each year.

4) Subpart 1, Section 1004(b) Planning Grants:

a) Current language: "There are authorized to be appropriated to carry out section 1001(b) $1,000,000 for fiscal year 1993 and such sums..."

b) Proposed language: "There are authorized to be appropriated to carry out section 1001(b) $1,000,000 for fiscal year 1999 and such sums..."

c) Rationale: A change in dates to reflect the new authorization statute.

5) Subpart 2, Section 1011 (c) Areas of National Need:

a) Current language: "Areas of national need shall initially include, but shall not be limited to, the following: (1) International exchanges. (2) Campus climate and culture. (3) Evaluation and dissemination.

b) Proposed language: "Areas of national need shall initially include, but shall not be limited to, the following: (1) International postsecondary education and exchange. (2) Institutional restructuring to improve learning and promote cost efficiencies. (3) Evaluation and dissemination of model programs."

c) Rationale: Two of the three specified areas would remain the same, with somewhat more descriptive language. The third area in the current statute (campus climate) would be replaced by a new one (institutional restructuring) to recognize the increasing interest among the public in discovering new ways to provide postsecondary education at reasonable cost. As the language does not limit the areas of national need to those specifically listed, these changes would not preclude consideration of other project ideas in any case. There are no costs involved.

6) Subpart 2, Section 1011(d) Authorization of Appropriations:

a) Current language: "There are authorized to be appropriated to carry out this subpart $5,000,000 for fiscal year 1993 and such sums as may be necessary for each of the 4 succeeding fiscal years."

b) Proposed language: "There are authorized to be appropriated to carry out this subpart $5,000,000 for fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding fiscal years.

c) Rationale: There is a change of dates to reflect the new authorization statute.

AACC

AMERICAN ASSOCIATION OF COMMUNITY COLLEGES

Feb 21, 1997

Representative William Goodling
Chairman
House Committee on Education and the Workforce
2181 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Goodling:

I write as President of the American Association of Community Colleges (AACC) concerning your solicitation for comments on the upcoming reauthorization of the Higher Education Act (HEA). AACC represents nearly 1,100 associate degree-granting institutions of higher education. These institutions and the students they were created to serve have an immense interest in the reauthorization process.

Community colleges strive to be responsive to a variety of needs. The institutions offer transfer education, vocational education and job training, adult basic education, and customized training for employers. Community colleges emphasize access to all individuals who wish to benefit from their programs. The key component of this strategy is keeping tuitions low. The average public two-year community college tuition and fees in 1995-96 was $1,245. Community colleges do this by providing instruction at a fraction of the cost of other types of higher education institutions. Still, we remain concerned about rises in the tuitions of public two-year colleges--in the last five years they have increased 28 percent in real terms.

Additionally, the nation's community colleges believe that federal student aid policies should emphasize providing access to college to the neediest members of our society. Overall college participation by high school graduates in the U.S. continues to grow, but in recent years the gap in college attendance between the most and least affluent has spread. This trend has alarming implications for the future productivity and political and social cohesiveness of our society. For the most disadvantaged students, large amounts of student indebtedness is not a practical option, and the availability of grant funds determines whether or not they will attend college.

AACC starts from the premise that all of the five discretionary federal student financial aid programs and the two major loan programs should be reauthorized. On balance, these programs work phenomenally well, and they have helped create a stronger economy, a better citizenry, and a fairer society. The following are some specific comments on these and other programs authorized by the Higher Education Act:

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Student Financial Assistance

Pell Grant Program: The Pell Grant Program should be retained in its current form. As presently configured, Pell ensures the broadest possible participation in college for disadvantaged individuals. In particular, we urge that the current student eligibility standards for Pell be maintained. Specifically, 30 units of remedial education eligibility should be continued (Section 410(c)(2)). Students also should continue to be able to use student aid funds for courses in English as a Second Language (ESL) if they are necessary to use existing knowledge, training or skills (Section 401(c)(2)).

AACC supports the Pell Grant award rules established in the 1992 reauthorization. However, if Congress chooses to alter the Pell Grant award rules in this reauthorization, we believe that the same maximum Pell Grant should be available to all students regardless of the cost of the institution they attend. Pell Grants should retain their traditional emphasis on access to higher education (Section 401(b)(3)).

AACC also believes that the existing eligibility for less-than-half-time students should be retained. However, in order to ensure program integrity, these students should carry a course load of at least three credits. Slightly more than 11 percent of community college students receiving Pell Grants are enrolled less-than-half time (Section 401(b)(2)(B)).

Loan Programs: Incentives should be provided to institutions to limit student borrowing in cases where they feel it is inappropriate. The current "professional judgment" accorded student financial aid officers is insufficient to allow them to prevent borrowing by students who, in the formers' best judgement, should not be borrowing. The reauthorized Higher Education Act should permit colleges to set policies whereby entire categories of students would not be given loans or would only be eligible for reduced maximums, so long as the policies are written and uniformly applied to all similarly situated students. This would help promote responsible borrowing, and it would give institutions a needed tool to keep their default rates down (Section 428(a)(2)(F)).

Just as importantly, institutions with a minimal reliance on loans should not be subjected to the loan default penalties in Section 435 of the Higher Education Act. Alteration of the statutory language in the "exceptional mitigating circumstances" section can achieve this. An institution that has fewer than 15 percent of its eligible borrowing population relying on either the FFEL or DSL programs should be exempt from any default-related penalties. The federal government should provide positive incentives for institutions to do whatever they can to inhibit student borrowing (Section 435(a)(2)(A)(ii)).

Finally, the requirement that a student's loan be prorated based on length of program or if a student has less than one academic year remaining should be eliminated. This provision forces students with real educational expenses into higher cost, unsubsidized loans. (Sections 425(a)(1)(A), 428(b)(1)(A), 428(H)(d)(2)).

Need Analysis: The need analysis provisions must be revisited to give single, independent students greater eligibility for student financial aid programs, particularly Pell Grants. This would mitigate the impact of the changes made in the Higher Education Amendments of 1992, which created a severe financial hardship for hundreds of thousands of hard-working, low-income students, because a dramatically greater portion of their resources were assumed to be available to pay for college. We believe that many students withdrew from college because of this drop in the income protection allowance. An income protection allowance of $6,400 should be considered, and it should be indexed to inflation. This would help recover some of the ground lost in the last reauthorization. (Section 476).

Similarly, the earnings of dependent students must also be given greater shielding from need analysis so that incentives for work are retained. Consideration should be given to increasing to $4,200 the protection given to these earnings (Section 475).

Vocational Education Courses: Currently, the Higher Education Act does not make program eligibility distinctions between vocational and academic programs, except in the case of very short training programs (those between 300 and 599 clock hours). AACC urges that this approach be continued. During its tenure, the Clinton Administration has suggested a variety of proposals that would subject vocational education programs to different and more stringent standards than academic programs. We strongly oppose this line of thinking, and anything related to it.

There is a growing consensus that colleges and universities must emphasize the connection between what they teach and the needs of the workplace. Any policies that would undermine the ability of community colleges to deliver vocational education and job training to needy students should be rejected (Section 481(e)(1)).

Telecommunications: Congress moved into this arena in its 1992 HEA amendments, and it now needs to build on those policies. Distance learning is clearly the wave of the future, and student aid policy should reflect this reality. In particular, we recommend that courses offered via distance learning technologies that are part of one-year certificate programs at community colleges be eligible for Title IV aid. (Section 481(l)(1)).

Ability-to-Benefit (ATB) students: The current testing requirement for ATB students (i.e., those who lack a high school diploma or GED) should be eliminated for those individuals attending public institutions that certify that the individual has the ability to benefit from postsecondary education and training. Denying ATB students aid prevents the colleges from meeting a key part of their mission. This approach is especially justified since state and local sources provide almost 70 percent of the cost of educating students; it is wrong for the federal government to undermine the commitment these entities make to serving ATB students. In its regulations concerning ATB students, the Department of Education has made it progressively more difficult for our institutions to serve this population (Section 484(d)).

Refunds: Congress is aware that the current federal refund policies need to be overhauled. These policies are unfair in principle and, to make matters worse, tremendously cumbersome to administer. Institutions should be permitted to use the refund policies established by accrediting bodies recognized by the Secretary of Education. Lacking that, federal policies should simply conform with state and local policies for public institutions.

AACC particularly objects to the existing requirement that a pro rata tuition refund be provided for 60 percent of a student's first period of enrollment. This is well beyond the point at which the student should know whether he or she intends to finish that academic period. If Congress insists on prescribing college refunds, we believe that it is fair to require a pro rata refund for significantly less than 60 percent of a student's first period of enrollment.

The calculations of refunds also must change. Current regulatory requirements in this area have often resulted in large amounts of time being spent unproductively, as college officials have labored to determine the exact day when a student was no longer in attendance. Students must share in responsibility in this area. We propose that institutions be required to disseminate information about their official withdrawal policies, and that the recorded date of the student's official withdrawal be used as the date for calculating refunds (Section 484B).

Selective Service Administration (SSA) Registration Verification: While the goal that this provision addresses is worthwhile, the verification process has proven to be so burdensome that we recommend its elimination. There is no evidence that non-compliance with SSA requirements is a significant problem.

Program Integrity Triad

State Postsecondary Review Entities (SPREs): The program is essentially dead, and its authority should now be eliminated. SPREs were misconceived from the start; for example, community colleges already undergo extensive review from a variety of public entities, especially various bodies of state government. SPREs represented unnecessary interference into institutional activities (Section 494).

Accreditation: The requirement that accrediting agencies conduct unannounced site visits for institutions with vocational training programs should be eliminated. Unannounced site visits are antithetical to the basic principles of accreditation. Accrediting agencies should not be required to monitor policies specifically related to Title IV (Section 496(c)(1)).

Standards of Financial Responsibility: Public institutions of higher education should not be subjected to these standards. The primary purpose of these criteria is and should be to ensure against precipitous closure of an institution, so that students and/or the federal government are not left vulnerable. There is no evidence that unanticipated closures have been a problem in the case of community colleges, in part because of the level of support they receive from local, state and private entities. And, for all intents and purposes, community colleges simply do not close (Section 498(c)).

Other Issues

Community College Liaison: The "Community College Liaison" should be retained at the U.S. Department of Education. Unlike the current implementation arrangement, the Liaison should report directly to the Secretary of Education. The liaison position has proved especially valuable to community colleges, both in responding to Departmental priorities and regulations, and in promoting the spirit of partnership between the Department and the nation's community colleges.

Title III-A, Strengthening Institutions Program: Community colleges enthusiastically support the Strengthening Institutions program, which has helped hundreds of community colleges improve program quality and institutional capacity. However, some changes are needed to keep the program vital. To help colleges evaluate the effects of their grants, we recommend requiring a two-year "wait-out" period before institutions are permitted to re-apply for grants (Section 313(b)).

Also, "special consideration" should be given to institutions seeking to upgrade and incorporate high technology into their curricula. As we head into the 21st century, an institution can't function effectively without up-to-date technology (Section 311(b)(3)(a)).

International Education: Community college participation in Title VI is primarily focused on two programs: the Business and International Education (BIE) program and the Undergraduate International Studies and Foreign Language (UISFL) program. The existing undergraduate programs in Title VI should be expanded to encourage international education and language study at the nation's community colleges.

As indicated, the foregoing is just a preview of recommendations that will be more fully articulated in the next two months. Many other issues and some other programs could be mentioned. Taken together, however, these recommendations would significantly improve the federal student financial aid programs and better serve the students for whom they were designed.

We thank you for your consideration of these comments. We look forward to working with you in the reauthorization process.

Sincerely,

David Pierce

David Pierce
President

5/27/97

- MM
- Gen Mahaffee

6/19 Testimony
4 themes

<u>Grad Loans</u>
- Lenders pay ins. fee for amt. above limits. - 10%
(HEAL is 6-8% very broad in
~~up to the assn~~

* — Precedent? Instit'l risk-sharing (class.)
HHS wants to reauth. HEAL (died 2 yrs. ago)

D Discount rate $\xrightarrow{\text{paper to}}$ MM.
Servicing costs

21st Century Scholars Proposal Cost Outlook

(millions of dollars)

Assumptions: 500,000 eligibles per year, $6 billion BA yearly score per cohort for a total $30 billion BA score over 1998-2002 budget window.

Scenario 1:
8% of Scholars are induced to attend college

Base Scholar participants: 225,000
Incremental participants because of program: 40,000
Total Participants: 265,000

Cohort Year	Total 4-year Pell Cost Per Cohort	delta cohort cost from induced students	delta cohort cost from students ineligible for Pell max	Incremental Outlay Cost of New Program: Total Incremental Pell Cost	delta cost from induced students	delta cost from students ineligible for Pell or Pell max
1998-99	2,728	412	1,545	—	—	—
1999-00	2,794	422	1,582	—	—	—
2000-01	2,862	432	1,620	—	—	—
2001-02	2,936	443	1,663	—	—	—
2002-03	3,018	455	1,709	—	—	—
total	*14,338*	*2,164*	*8,119*	—	—	—
2003-04	—	—	—	—	—	—
2004-05	—	—	—	—	—	—
2005-06	—	—	—	638 1	134	504
2006-07	—	—	—	1,196	252	944
2007-08	—	—	—	1,673	352	1,321

Scenario 2:
16% of Scholars are induced to attend college

Base Scholar participants: 225,000
Incremental participants because of program: 80,000
Total Participants: 305,000

Cohort Year	Total 4-year Pell Cost Per Cohort	delta cohort cost from induced students	delta cohort cost from students ineligible for Pell max	Incremental Outlay Cost of New Program: Total Incremental Pell Cost	delta cost from induced students	delta cost from students ineligible for Pell or Pell max
1998-99	3,140	824	1,545	—	—	—
1999-00	3,215	843	1,582	—	—	—
2000-01	3,294	864	1,620	—	—	—
2001-02	3,379	886	1,663	—	—	—
2002-03	3,473	911	1,709	—	—	—
total	*16,501*	*4,328*	*8,119*	—	—	—
2003-04	—	—	—	—	—	—
2004-05	—	—	—	—	—	—
2005-06	—	—	—	772 1	268	504
2006-07	—	—	—	1,447	503	944
2007-08	—	—	—	2,025	704	1,321

1. First college year for the 1998-99 6th grade cohort. For context, the current estimated total Pell program cost for the 1998-99 cohort without the 21st Century Scholars program is $9.1 billion

05/23/97

Bob Shireman

Recommendations for Reauthorization of Title IV Loan Programs

Prepared by:
The Loans Reauthorization Policy Group
February 1997

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I. Summary

The loans reauthorization policy group consists of representatives from the office of postsecondary education, the office of the general counsel, budget service, the inspector general's office, and the CFO's office. The policy group was asked to provide recommendations to the reauthorization steering committee on proposals for reauthorization of the Higher Education Act. Given the large number of issues and interested parties, the loans group divided into three subgroups that considered the following specific issues: terms of loans and equalization of student benefits between loan programs, FFEL management and operations, and debt collection. Each subgroup wrote one section of this paper.

Many of the recommendations made by this group have already been included in the President's budget for FY98 and were therefore not included in this paper. Loan proposals contained in the budget include:

- Reducing borrower origination fees to 2 percent on subsidized loans and 3 percent on unsubsidized loans.
- Providing new extended and graduated repayment plans to FFEL borrowers.
- Requiring FFEL lenders offer the same benefits (*e.g.,* origination fees and interest rates) to all of their borrowers.
- Improving the terms of FFEL consolidation loans to match those in Direct Loans.
- Transforming guaranty agencies to clarify that the federal government is the sole guarantor of FFEL loans. Guaranty agencies will act as third-party servicers of federal guarantees under performance-based agreements. The Department will pay 100 percent of lender default claims and will recall federal funds held in reserve by guaranty agencies over five years.
- Increasing lender risk sharing from 2 to 5 percent.
- Reducing the percentage of default collections that guaranty agencies may retain from 27 to 18.5 percent.
- Requiring Sallie Mae fee on securitized loans.
- Replacing supplemental/pre-claims assistance payments with performance-based lender payments to guaranty agencies tied to agency success in bringing delinquent loans current.

- Setting the in-school interest rate at the ED borrowing rate.

- Reducing Section 458 administrative costs. And,

- Computing special allowance rates at the same time and in the same manner as student interest rates.

For purposes of drafting this paper, the loans policy group assumed that proposals in the budget will be enacted.

II. Terms of the Loans/Equalization of Benefits

1. Frequency of Interest Capitalization

Issue: Whether to provide the same terms regarding the frequency of interest capitalization in the FFEL and Direct Loan programs.

Background: The HEA provides that FFEL lenders may capitalize interest "not more frequently than quarterly" but does not address the frequency of interest capitalization in the Direct Loan program. Through regulation, the Department has provided that capitalization of interest on Direct Loans occurs only when unsubsidized loans enter repayment or at a change in status (*e.g.*, at the end of a deferment or forbearance period).

Options:

Option 1: Require FFEL lenders to capitalize interest only upon entering repayment and at status changes.

> Pros: This would be a major benefit to FFEL borrowers and would ensure consistency across programs.
>
> Cons: Lenders are likely to object to this proposal, because they would not be able to capitalize interest as frequently as they do now. (Currently, many lenders capitalize quarterly.) The White House recently sent out materials stating the Administration's budget will not cost lenders as much as last year's republican budget. Adopting this option may be viewed as inconsistent with that statement.
>
> Cost Estimate: No federal costs, but would cost lenders roughly $500 million over five years.

Option 2: Require all lenders, including the federal government, to capitalize interest quarterly while the borrower is in school or in a grace period.

> Pros: Would ensure consistency within and across programs.
>
> Cons: For unsubsidized loans, would eliminate a benefit for Direct Loan borrowers and for FFEL borrowers whose lenders do not currently follow this practice.

Recommendation: The policy group recommends Option 1, requiring FFEL lenders to capitalize interest in accordance with the limits in the Direct Loan regulations.

2. PLUS Loans

Issue: How should the federal fiscal interest be protected with respect to the PLUS loan program?

Background: Currently, any parent without an adverse credit history is eligible for a PLUS loan, even if the parent has no income and no credit history. In the FFEL program, private lenders are not required to make PLUS loans to any particular borrower, and they frequently consider credit worthiness when making these loans. The Department, on the other hand, must make PLUS loans to all eligible borrowers and cannot consider creditworthiness. The statute does not require database matching of social security and immigration status for PLUS loans, as is required for student loans.

Options:

Option 1: Establish creditworthiness and/or ability to repay as PLUS eligibility criteria.

Pros: This option may reduce PLUS defaults and over-borrowing.

Cons: This option would be difficult to administer. More PLUS applications would be denied, thus forcing more students to assume additional debt. Loan limits on Stafford loans may preclude certain students from attending the schools of their choice. PLUS loans now fill this gap for dependent students. Adding a creditworthiness standard may deny these students the ability to attend the institutions of their choice Analysis of defaults in the PLUS program does not indicate that this change would significantly reduce defaults.

Analysis/Cost Estimate: The lifetime default rate under the PLUS program is 9%.

Option 2: Hold students jointly liable for PLUS loans.

Pros: Would improve collections of PLUS loans by allowing the Department to collect loans that would otherwise be discharged due to death, etc., and would reduce PLUS defaults.

Cons: Would be difficult to administer. If students are forced to assume more debt, some could be driven into default particularly when they first graduate and their incomes may be low. Joint liability may discourage parents from taking any responsibility for their children's postgraduate education. Analysis of defaults and discharges in the PLUS program does not indicate that this change would significantly reduce default and discharge costs.

Analysis/Cost Estimate: PLUS discharges (death, disability, and bankruptcy) comprise approximately 15% of the total volume of loan discharges, and the lifetime default rate for PLUS loans is only 9 %.

Option 3: Require database matching of social security and immigration status for PLUS eligibility alone or as part of requiring FAFSA completion by the student for the parent to receive a PLUS loan.

Pros: Would greatly improve monitoring of PLUS borrower eligibility.

Cons: If parent borrowers are required to supply additional information on the FAFSA and are required to complete a PLUS loan application, this option could result in a slight increase in burden on parent borrowers. However, if the FAFSA becomes the loan application for parent borrowers, there would be a reduction in burden for some of these borrowers.

Option 4: Establish a $15,000 annual loan limit for PLUS.

Pros: Would protect against PLUS over-borrowing and embarrassing anecdotes of elderly people borrowing large sums of money with no anticipation of paying them back. (This option was proposed in the President's FY 1997 budget but not in the FY 1998 budget.)

Cons: Analysis shown below does not support the need for this limit. Could severely restrict educational access.

Analysis/Cost Estimate: Only 2% of all PLUS borrowers exceed the $15,000 annual loan limit, and the Department does not project any significant increase in the near future. The Department estimates that with inflation, only 12% of all PLUS borrowers will have annual loans over $15,000 by the year 2003. Additionally, only 11% of PLUS borrowers who receive a discharge borrow an aggregate amount of $15,000 or more.

Recommendation: The policy group recommends Option 3, requiring database matching of social security numbers and immigration status. The policy group recommends no other changes in this area (although there was some strong dissent).

3. Consolidation of Defaulted Loans

Issue: Should borrowers be permitted to consolidate defaulted loans, and if so, under what circumstances?

Background: Under the FFEL program, the law provides that a defaulted loan is eligible for consolidation if the borrower makes "payment arrangements satisfactory to the holder" or the borrower agrees to repay under the income-sensitive repayment plan. Satisfactory arrangements are defined as three consecutive, monthly, voluntary, full, on-time payments to the guarantor. FFEL lenders are not required to make consolidation loans, and some lenders, including Sallie Mae, will not consolidate defaulted loans even if the loan is eligible for consolidation. In the Direct Loan program, borrowers with defaulted loans have the option of making three consecutive, voluntary, on-time, full, monthly payments or agreeing to repay the consolidation loan under the income contingent repayment plan.

The current law is silent about the treatment of defaulted borrowers against whom the Secretary or the guarantor has secured a court judgment or has initiated a wage garnishment. Since 1993, the Secretary has instructed guaranty agencies not to automatically exclude defaulted borrowers in these situations from access to consolidation. They do not, however, have to consider involuntary payments as "satisfactory arrangements." Under the Direct Loan program, judgment accounts are excluded from consolidation, and the Department is considering excluding wage garnishment accounts as well.

Options:

Option 1: Require defaulted borrowers to make six consecutive monthly payments before defaulted loans (including FFEL, Direct, and Perkins loans) can be consolidated. (Other statutory changes would be necessary to make this option operationally feasible.)

> Pros: Would establish the same number of monthly payments for the purpose of defining "satisfactory repayment arrangements" for defaulters in the FFEL and Direct Loan programs. Would require a defaulter to establish a repayment trend on the defaulted loan, before using the consolidation process to eliminate the default from his or her credit record and regain eligibility for additional student aid. Is consistent with the requirements for a defaulted borrower to regain title IV eligibility. The current policy may increase the rate and cost of defaults in the program, because borrowers who have already defaulted on student loans (and who some believe are strong candidates to default again) are able to borrow additional funds by consolidating without making any payments and without establishing a history of consistent loan repayment. Would likely reduce the potential for guaranty agencies to encourage their defaulted borrowers to consolidate into the Direct Loan program.
>
> Cons: Would delay the borrower's ability to consolidate and possibly regain eligibility for further title IV assistance to return to school. Would be seen by some as inconsistent with the President's pledge to provide income contingent repayment to all student borrowers. This proposal was recently rejected by OMB, because they believe the data does not support the need for a change in policy. Consolidation of defaulted loans have been an important element of the improved collection statistics recently praised by the President, and this recommendation may adversely affect those statistics (although it also may encourage collection agencies to work with borrowers to require six payments).

<u>Analysis/Cost estimate</u>: This will cost money, because it reduces the number of consolidations.

<u>Option 2</u>: Prohibit consolidation of defaulted loans.

<u>Pros</u>: Would prevent a borrower clearing up his/her credit record and regaining eligibility for further student aid simply by consolidating a defaulted loan. Program benefits such as deferment, forbearance, and loan rehabilitation are already adequate to assist a borrower in preventing default or in rehabilitating the default. Borrowers could also rehabilitate their loans and then consolidate them. Would likely reduce the potential for FFEL lenders to encourage their defaulted borrowers to consolidate into the Direct Loan program.

<u>Cons</u>: Would eliminate a mechanism for the Department to reduce costs of default in the FFEL and Direct Loan programs. May be viewed as inconsistent with the President's pledge that income contingent repayment will be available to all borrowers. This proposal was recently rejected by OMB. There is no data to support the need for a change in policy. Consolidation of defaulted loans have been an important element of the improved collection statistics recently praised by the President, and this recommendation may adversely affect those statistics (although it may also encourage collection agencies to work with borrowers to require six payments).

<u>Analysis/Cost estimate</u>: This will cost money, because it reduces the number of consolidations.

<u>Option 3</u>: Prohibit consolidation of defaulted loans in wage garnishment unless the borrower agrees to continue to repay the loan through wage garnishment after consolidation.

<u>Pros</u>: Would not allow borrowers to avoid wage garnishment simply by consolidating their loans. Would increase collections of defaulted loans.

<u>Cons</u>: May be viewed as inconsistent with the President's promise that income contingent repayment will be available to all borrowers.

Recommendation: The policy group recommends Option 1 which would require six consecutive month payments before a defaulted loan can be consolidated. One office dissents.

4. <u>Loan Limits for HEAL Borrowers and Other Borrowers in High Cost Programs</u>

Issue: Should the HEA be amended to increase loan limits for borrowers in high cost programs?

Background: The HEA provides authority for the Department to increase loan limits for borrowers at high-cost schools. In FY1996, Congress eliminated funding for new HEAL loans, and the Department increased loan limits for borrowers who would have been eligible for HEAL program loans if the program had been funded. HEAL funding is unlikely to be restored in the near future.

Options:

Option 1: Eliminate the open-ended authority for increasing loan limits for high-cost programs, and replace it with increased loan limits for borrowers who would have been eligible for HEAL program loans. (This option is intended make our current policy statutory.)

> Pros: Provides needed funding for borrowers who would have qualified for HEAL without subjecting the Department to political pressures to raise loan limits for students in other high cost programs.
>
> Cons: Adds administrative burden for the Department and lenders. An Administration proposal to capture current policy in legislation may backfire into a decision to overturn current policy.
>
> Analysis/Cost estimate: No cost -- higher loan limits for HEAL borrowers are already assumed in the baseline.

Option 2: Provide more specific authority to increase loan limits for borrowers in high-cost programs, such as business, law, etc. in addition to HEAL borrowers. The statute could specify which groups of borrowers would be eligible for the higher limits and could specify limits for these borrowers.

> Pros: Would improve access to educational opportunities and permit borrowers in high-cost programs to borrow at a lower cost than is currently available from private lenders. Because these students generally have low default rates, lending additional funds to them will not add significant risk of default.
>
> Cons: It would be difficult to establish criteria for selection of high-cost programs to be eligible for increased loan limits. The Department would become subject to political pressure to raise limits for numerous types of students. Depending on the eligibility criteria established for the increased loan limits, this option could result in an inconsistent treatment of borrowers. Currently, the private sector is willing to make these loans without any governmental involvement. Raising loan limits would squeeze out this market.

Recommendation: The policy group recommends Option 1 which would eliminate the open-ended authority to increase loan limits and increase limits solely for borrowers who would have been eligible for HEAL. The statute should provide that these increased loan limits will only apply to borrowers who meet the eligibility criteria but cannot receive HEAL loans.

5. Provide Greater Flexibility for Institutions to Limit Borrowing

Issue: Should institutions have greater flexibility to limit borrowing?

Background: Under both the Direct Loan and FFEL programs, schools can limit the amount borrowed or refuse to make loans to borrowers on a case-by-case basis but cannot reduce loan limits for categories of students (such as freshmen or students in a particular program). Many schools, especially community colleges, have actively lobbied for this discretion. They argue that their students are not borrowing to pay for tuition, which is low, but for luxuries such as cars. They also argue that they are held accountable for their default rates, but they have no control over who borrows, how much they borrow, or any debt collection activities.

Options:

Option 1: Provide greater flexibility for schools to limit borrowing. Allow schools to refuse to make loans or to reduce loan limits for entire categories of borrowers, as long as schools do not reduce or deny loans because of race, gender, color, religion, national origin, age, disability status or income. Schools would not be required, as they are currently, to document their determinations in the student's file, but would be required to prepare pro forma documentation regarding their lending policy.

> Pros: This option would reduce administrative burden on schools and would provide greater ability to schools to prevent over-borrowing and reduce defaults. This proposal would be supported by many institutions.
>
> Cons: Providing this authority would create potential for abuse, discrimination, and lawsuits alleging discrimination. Additionally, access could be restricted for some of the most needy students, because the types of schools that are likely to take advantage of this provision are ones that serve low-income populations. Schools already have the means of denying loans to certain borrowers (even if they do not have the authority to deny loans to entire categories of borrowers).

Recommendation: Most policy group members recommend no change, but there is some dissent. [This issue is directly related to the rules governing institutional default rates. If the default rate rules are changed to limit the effect on institutions, there will be fewer requests for this authority.]

6. Line of Credit/Multi-Year Promissory Note

Issue: Whether to propose a line of credit/multi-year prom note for FFEL, Direct Loans, and possibly Perkins Loans.

Background: Currently, a new promissory note with a specific dollar amount must be generated and signed by the borrower each time the borrower's eligibility is determined. The Direct Loan program staff and the FFEL community have worked separately on developing a multi-year promissory note. The FFEL community recently submitted a proposed a multi-year note to the Department for approval. Student Financial Assistance is currently preparing a recommendation to immediately begin further analysis of the legal and computer systems issues related to developing a multi-year note.

Essentially, there is little difference in function between a multi-year note and a line of credit. In both instances, the borrower signs an agreement to repay all funds received and draws on that account, as needed, up to the maximum limit. Under a multi-year note, annual and aggregate loan limits would continue to apply.

Option:

Option 1: Create a multi-year promissory note with electronic confirmation and authorization by students. As electronic signatures and PINs are introduced into the delivery system, the PIN could become an interactive tool for the student to request and control borrowing. Initially, the PIN might be used to replace annual signatures on the promissory note. Students would acknowledge acceptance of the loan at the packaging/loan origination stage. Ultimately, students would use the PIN at registration time to release aid funds to the institution.

> Pros: Eliminates the burden on schools of handling paper promissory notes annually. Would result in faster loan processing due to the electronic authorization/confirmation. Implementation of the multi-year note may be a logical, incremental step towards the implementation of Project EASI. Will result in reduced administrative burden for the Department and cost savings for the federal government.
>
> Cons: The receipt of funds is harder to document without having a paper trail, thus making the enforceability and institutional compliance issues and investigations more complicated. Although the electronic documentation that would replace the written signatures may ultimately be preferable to the current process, the technology is not available now to implement this (although the Department should be able to develop this technology quickly). Additionally, this technology has not been thoroughly tested in the legal system to determine that electronic documentation and signatures have the same legal enforceability standards as written signatures. Borrower protection and control could be at greater risk, unless good borrower control points are put in place in the process. This proposal could not be implemented without a change in the Credit Reform Act, which requires that the full value of the loans be assigned to a cohort year based on when the promissory note is signed. Given annual loan limits, multi-year notes could not be accommodated under this requirement.

Recommendation: No consensus. The OPE members of the policy group recommend Option 1 with strong dissent from other offices, including the Office of the General Counsel, Budget Service, and the Office of the Inspector General.

7. Student Loan Discharges

Issue: Should loan discharge provisions be changed?

Background: Currently, the HEA provides that a borrower's obligation to repay the loan may be discharged on a variety of grounds including: death, total and permanent disability and (under certain conditions) bankruptcy. In addition, a loan may be discharged if the student could not complete the program of study because the school closed or if the borrower's eligibility to receive the loan was falsely certified. There are questions as to whether all the discharges are appropriate and serve the public interest. For example, questions have been raised as to whether borrowers are receiving equal treatment on disability discharges and whether it is appropriate to allow borrowers to avoid their student loan obligations by declaring bankruptcy. In addition, the Department and guaranty agencies are forced to utilize significant resources to litigate bankruptcy petitions and evaluate false certification discharges.

Options:

Option 1: Consider eliminating the discharge for death for PLUS borrowers and require the loans to be repaid by the borrowers' estate.

> Pros: May result in increased recoveries and would limit the problem of older parents borrowing more than they are expected to repay.
>
> Cons: Would be seen as heartless, would be difficult to ensure collection of a loan from an estate, and would likely require increased litigation. We do not know the relative costs and benefits of collecting from parents' estates. The Department would have to litigate in probate court (which it currently cannot do). The analysis below does not support the need for this change.
>
> Analysis/Cost Estimate: PLUS discharges (death, disability, and bankruptcy) comprise approximately 15% of the total volume of loan discharges, and the lifetime default rate for PLUS loans is only 9%.

Option 2: Eliminate the bankruptcy discharge.

> Pros: The increasing availability of income contingent and income sensitive repayment plans allows a borrower to make affordable payments. Additionally, borrowers with financial problems may take advantage of deferments and forbearances. Because of the complexity of the bankruptcy system, numerous borrowers receive discharges not because

they are truly facing a hardship but because the loan holder does not respond in time (often the loan holder does not learn of the bankruptcy petition in enough time to contest the discharge). Elimination of this discharge would save significant resources and would equalize treatment of borrowers. There is also significant confusion regarding the current laws governing the bankruptcy discharge -- frequently borrowers think they are getting a discharge when they are not.

Cons: Will seem unfair to borrowers who are in financial trouble. PLUS borrowers are not eligible to repay their loans under the income contingent and income sensitive repayment plans. However, an alternative repayment plan could be designed to accommodate the needs of PLUS borrowers in the Direct Loan program who are having financial difficulties, and PLUS borrowers are eligible for deferments and forbearances.

Option 3: Modify the closed school discharge to make it more difficult for students who received multiple years of education to have all of their loans discharged.

Pros: A borrower may currently get all loans received for attendance at a school that closed discharged even though the borrower received many years of education. This proposal would limit the discharge to these individuals on the ground that the education they previously received was valuable.

Cons: This would be seen as unrealistic. Most schools that close are trade schools that are teaching a particular skill. Unless the borrower can complete the training, the earlier training may be essentially worthless. Regulating this proposal would be very difficult. Savings may be modest, because school closures do not affect many long-term students. There is no data indicating that there is a significant problem in this area.

Option 4: Establish a discharge for borrowers whose loan (or part of a loan) should have been repaid through a refund by a school. The Secretary would then pursue the school for the refund.

Pros: Would address one of the problems that most seriously harms borrowers and would respond to numerous complaints by student and borrower representatives. Current statute and regulations do not protect borrowers who do not get their refunds from the requirement that they repay their full loan amount.

Cons: Actual recoveries from schools is limited and would not cover costs -- most schools with significant refund problems go out of business without sufficient funds to repay their liabilities. It would also be hard to determine the amount of refunds to which students are entitled.

Recommendation: The policy group recommends Option 2 (eliminating the bankruptcy discharge) and Option 4 (creation of a discharge for borrowers who have not been paid a refund by a school). Although the policy group as a whole opposed eliminating the discharge for death of PLUS borrowers (Option 1), there was some dissent. The policy group recommends against Option 3 (modifying the closed school discharge).

8. Borrower Defenses

Issue: Should federal borrower defenses to collection of student loans be established?

Background: Under current law, a borrower may have a defense against collection of a student loan based on school misconduct if state law allows such a defense and there is some connection between the school and the lender beyond that required by program requirements. There has been extensive litigation regarding exactly what state defenses may be available and what connections make the lenders liable. In many situations, these cases are litigated in state court and different borrowers receive different treatment depending on what state law is applied. In early 1995, the Department followed up on an earlier commitment and convened a negotiated rulemaking proceeding to develop national rules for borrower defenses that would apply to both FFEL and the Direct Loan program. However, at the urging of borrower and industry representatives, the Department cancelled the proceeding after one preliminary meeting.

Options:

Option 1: Amend the HEA to establish (or direct the Secretary to establish through regulation) a set of federal borrower defenses to preempt state law.

> Pros: The establishment of federal borrower defenses would ensure that borrowers would receive equal treatment regardless of individual state laws, would eliminate uncertainty, and would ensure equal treatment of FFEL and Direct Loan borrowers. Additionally, creation of federal borrower defenses would save significant costs and resources currently spent litigating this issue.
>
> Cons: The development of federal borrower defenses would be extremely controversial. The Department recently held a negotiated rulemaking session with the community on this issue, and the unanimous opinion of all participants other than the Department was that there should be no change to the regulations. Four-year schools would oppose this option, because they have not faced the risk of borrower defense claims to date and believe that new federal defenses would increase their risk. Politically, this proposal may not be popular in Congress given the desire to increase power given to states.

Recommendation: The policy group recommends creating a uniform national law regarding borrower defenses.

9. <u>30-day Delayed Disbursements</u>

Issue: Should the requirement to delay disbursements to first-year, first-time, undergraduate borrowers for 30 days be eliminated, modified, or retained?

Background: The HEA currently requires that the first disbursement of a loan that is made to a first-year, first-time undergraduate student borrower must be delayed until 30 days after the borrower begins his or her course of study. Perkins regulations have a similar requirement, but the Perkins requirement applies only to institutions that have cohort default rates that equal or exceed 15 percent.

Options:

<u>Option 1</u>: Eliminate the 30-day delayed disbursement requirement.

<u>Pros</u>: Reduces burden on institutions. This option would allow schools to make all disbursements at the same time. Makes cash disbursements to first year, first time borrowers available when they are needed to pay for books and off-campus expenses such as housing, food, and books.

<u>Cons</u>: First-year, first-time undergraduate student borrowers are most likely to leave school in the first 30 days and are more likely to default on their loans if they do not complete their coursework. Eliminating the 30-day delayed disbursement would be very controversial in Congress. The costs to the federal government would be very high.

<u>Option 2</u>: Restrict the requirement to schools having high cohort default rates, as is done in Perkins, or limit this provision to proprietary schools or schools on reimbursement (perhaps as part of the gatekeeping and oversight proposal).

<u>Pros</u>: This option would provide burden reduction to many schools while reducing borrower and federal risk at schools with high default rates.

<u>Cons</u>: Will increase federal costs significantly.

Recommendation: No consensus.

10. <u>Imaged Promissory Notes</u>

Issue: Should imaged promissory notes have the same legal standing as an original?

Background: Currently, the Direct Loan program servicer and FFEL lenders use optical imaging technology to maintain most records required for the loan programs. However, federal and state evidentiary rules require the Department and guarantors to have the original promissory note in any litigation relating to enforcement of the loan. The Department has previously proposed legislation to permit optically imaged documents to substitute for original promissory notes in both programs because of the significant additional costs involved in maintaining these records.

Option:

Option 1: Permit optically imaged documents to substitute for original promissory notes.

Pros: Use of optically imaged documents would save significant costs and resources for the Department and lenders. Elimination is consistent with the Department's development of a fully electronic financial aid system that would speed delivery of funds.

Cons: The use of imaged documents may reduce the Department's ability to discover and punish fraud, and inconsistent quality of the images of the promissory notes may reduce the Department's ability to enforce loans in court.

Recommendation: The policy group recommends Option 1.

11. Rehabilitation of Perkins Loans

Issue: Should a Perkins Loans Rehabilitation Program be authorized?

Background: Congress authorized and detailed procedures for a loan rehabilitation program for FFEL. Congress did not provide any such authorization or detailed procedures for the Federal Perkins Program. Congress merely included a reference to loan rehabilitation. This lack of statutory specificity has caused some confusion about the status of loan rehabilitation for this program even though a definition of loan rehabilitation was added to the Federal Perkins Loan Program regulations effective July 1, 1995. Loan rehabilitation is defined in the Federal Perkins Loan Program as executing a new written repayment agreement and making one payment each month for 12 months or paying the loan in full.

Option 1: Specify statutory authority for a Rehabilitation Program for Federal Perkins Loans.

Pros: Authorizing a Rehabilitation Program for the Federal Perkins Loan Program would provide another tool for institutions and servicers to use in returning defaulted loans to repayment. It also allows institutions to remove rehabilitated loans from their cohort default rate, thus providing institutions with real motivation to get defaulted loans back into repayment. Lastly, loan rehabilitation provides that a defaulted borrower's bad credit history will be erased after meeting the requirements of loan rehabilitation, thus providing the borrower with motivation to return his/her loan repayment status.

Cons: Institutions may view a loan rehabilitation program as burdensome. Some may criticize the erasure of a bad credit history as being too lenient on defaulted borrowers.

Recommendation: The policy group recommends Option 1 -- seeking specific authorization for a rehabilitation program.

12. Proration

Issue: Should loan proration requirements in the FFEL and Direct Loan programs be simplified?

Background: Loan proration is a process that reduces the annual maximum loan amount under the FFEL and Direct Loan programs that a student may receive when the student is enrolled for less than an academic year. The HEA currently prescribes two different methods for calculating the prorated annual loan amount depending upon both the category of loan and the length of the academic program. The law also requires that loans be prorated under certain specific circumstances of reduced enrollment, also related to length of the academic program.

Currently, there are two different types of loan proration that a school must calculate. The formula that is used depends upon the program length, type of loan, and whether the borrower is in a final period of enrollment in his or her academic program.

The HEA requires that "base" Stafford loans and "additional" unsubsidized Stafford loans be prorated according to fixed amounts when a program is less than an academic year in length. Under the fixed proration calculation, borrowers are eligible for only a statutorily specified reduced annual loan limit based on whether their program or the remainder of their program is at least one-third or two-thirds of an academic year in length (if the program is less than one-third of an academic year in length, students are not eligible for loans).

When a program is greater than one but less than two academic years in length, during the second year of the program, statute requires that base Stafford loans be prorated proportionally while additional unsubsidized Stafford loans must be prorated based on fixed amounts. Under the proportional proration calculation, annual loan limits are prorated based on the ratio of the number of hours for which a student is enrolled to the number of hours in the academic year.

For undergraduate programs longer than two academic years in length, the HEA requires that all Stafford loans be prorated proportionally when the student's remaining period of enrollment is less than one academic year in length. No proration is required for loans made to graduate students or for PLUS loans.

Under fixed proration, a borrower in a program that is greater than one-third but less and two-thirds of an academic year in length is eligible or a loan limit that is exactly one-third of the annual loan limit. Similarly, a borrowers in a program that is at least two-thirds of an academic year in length but less than a full year, is eligible for a loan limit that is exactly two-thirds of the annual loan limit. Because the loan amount calculated under proportional proration is based on the actual number of hours for which a student is enrolled, it is more equitable and beneficial to borrowers than fixed proration.

If proportional proration were used for all required prorations, the requirement that a borrower must be enrolled for at least one-third of an academic year in length in order to be eligible for a student loan would be eliminated. It would allow a student completing a remainder of a program that is less than one-third of an academic year to receive a proportionally small loan. However students in very short programs would still be ineligible for loans under related "eligible program" requirements.

Options:

Option 1: Require that all proration be done proportionally.

> Pros: Will significantly simplify proration requirements. Will be more beneficial and equitable to students. Might reduce "course stretching" by schools, because they would be assured that their students would receive at least a proportional loan amount rather than having no eligibility at all if the remainder of the program is less than one-third of an academic year.
>
> Cons: This option will likely cost more than requiring only fixed proration because this option increases the number of students eligible for loans and may often increase the amount for which they are eligible.

Option 2: Require proration only for programs less than one academic year in length. For programs greater than one academic year in length, eliminate proration requirements for any remaining periods of enrollment.

> Pros: Eliminates the current proration calculation requirements for programs of all other lengths. Schools that offer these short-term programs for which proration would be required, have relatively high default rates and have a greater risk of closing than other institutions. The higher education community will support this change. In particular, four-year schools will support this option, because it eliminates the requirement that graduating students who attend less than a full academic year receive a prorated loan.
>
> Cons: Will increase costs, because it reduces the circumstances in which proration is required. This option may not sufficiently protect borrowers and taxpayers, because programs greater than one but less than two academic years in length also have higher default rates and greater risk of closing than traditional four-year schools.

Option 3: Require proration for programs of less than one academic year in length and for remaining periods of enrollment in programs that are greater than one but less than two academic years in length. For programs of study greater than two academic years, eliminate proration requirements for any remaining periods of enrollment.

Pros: Eliminates the current proration calculation requirements for all programs greater than two academic years in length. These programs have higher default rates than longer term programs and the schools offering them have a greater risk of closing than traditional four-year schools. Requires proration at a greater number of high-risk schools than would be required under option 2. This option should also be less expensive than option 2. The higher education community will support this change. In particular, four-year schools will support this option, because it eliminates the requirement that graduating students who attend less than a full academic year receive a prorated loan.

Cons: Will increase costs, because it reduces the circumstances in which proration is required. Some two-year community colleges may object to being included with other short-term programs.

Option 4: Maintain current requirements that require proration for all programs less than one academic year and for the remainder of any other program if it is less than a full academic year. This includes the remainder of a student's four-year program if it is less than a full academic year.

Pros: Will not be as expensive as other options which require proration only for programs less than one or two academic years in length.

Cons: Requires proration at many traditional schools that have low default rates and are unlikely to close.

Recommendation: Options 1 and 3. Require that all proration be done proportionally, and require proration of programs of study less than one academic year in length and for remaining periods of enrollment in programs that are greater than one but less than two academic years in length. For programs of study greater than two academic years in length, eliminate proration requirement for any remaining periods of enrollment. [This recommendation reflects only the views of OPE. Other offices did not have an opportunity to comment on this recommendation.]

13. Definition of "Default" for Perkins Loans

Issue: Should the current definition of "default" for the Federal Perkins Loan Program be changed?

Background: Currently, there is no statutory definition of "default" in the Perkins loan program, but the statute does require that loans that are 240 days or more past due are included when calculating institutional default rates. In the FFEL and Direct Loan programs, "default" is defined as 180 days past due.

Through regulation, the Secretary has defined "default" in the Perkins program as "the failure of a borrower to make an installment payment when due or to comply with other terms of the promissory note or written repayment agreement." Accordingly, a Perkins loan is technically in default on the first day after a payment is past due. Institutions have a variety of inconsistent practices, using default standards that range from 1 to 240 days. This results in inequitable treatment of similarly-situated borrowers. Under this policy, a borrower who is only one day past due is potentially not eligible for additional federal student aid, unless the borrower pays the loan in full or makes six consecutive monthly payments.

Current Perkins regulations have a due diligence billing cycle that does not support the current definition of "default", and for NSLDS reporting purposes, schools have been told not to report Perkins loans in default until the loan is at least 240 days past due.

Options:

Option 1: Define "default" in the Perkins loan statute as 180-days past due.

> Pros: Would be consistent with the other two loan programs. Would resolve internal inconsistencies within Perkins regulations and NSLDS reporting requirements. Would eliminate disparities among similarly-situated borrowers.
>
> Cons: Schools and billing agents would have to reprogram their systems to adjust to the new time frame. There might be an increase in schools' cohort default rates.

Recommendation: The policy group recommends Option 1.

14. Forbearance in the Federal Perkins Loan Program

Issue: Should the 3-year period for a forbearance in the Federal Perkins Loan Program be extended?

Background: In the FFEL and Direct Loan programs, lenders (including the Department) grant forbearances upon written notice renewable at 12-month intervals. The FFEL and Direct Loan programs have provisions for discretionary forbearance that could exceed three years, if the borrower is financially unable to make required payments on a loan. The Perkins program has no such open-ended provision that can be used to provide repayment relief to a borrower for an unlimited period of time.

Option:

Option 1: Provide forbearance provisions that are consistent with the FFEL and Direct Loan programs.

> Pros: Would make the Perkins program more consistent with the FFEL and Direct Loan programs. Would eliminate inequitable treatment among similarly-situated borrowers who have Perkins and Stafford loans.

Cons: Would decrease funds coming back into the Perkins loan fund.

Recommendation: The policy group recommends Option 1 -- making the Perkins program consistent with the FFEL and Direct loan programs.

15. Multiple disbursement

Issue: Should institutions be required to disburse loans in multiple disbursements for a single term?

Background: Currently, institutions are required to disburse loan proceeds in two or more disbursements. This requirement was intended to reduce risk to the government and borrowers by reducing the dollar amount of loans owed by students who do not complete a term (and are therefore more likely to default). Many institutions have asked the Department to eliminate or modify requirements for multiple disbursement for single terms arguing that they are extremely burdensome, especially during the summer term. Further some institutions argue that the multiple disbursement provision should not apply to students at term-based schools, particularly students who are graduating. These schools argue that students at term-based institutions are charged for room and board at the beginning of the term and thus need the full amount of the loan for tuition and fees, as well as, room and board.

Options:

Option 1: Eliminate multiple disbursement for single terms for all term-based institutions.

Pros: Multiple disbursements for single terms are not required in the Pell or campus-based programs. Institutions have actively lobbied for this option -- they believe that multiple disbursements for a single term are very burdensome, especially during the summer term. Some believe that the requirement is unwarranted and that it is in the students' best interest to receive the entire loan up front when many expenses are incurred.

Cons: Increases risk to the government which pays default costs and to the borrower who must repay a loan for a term not completed. Many institutions, including traditional schools, have high attrition rates. Accordingly, eliminating this requirement would subject the government to significantly increased risk. Some believe that institutions are seeking to eliminate this requirement, not to reduce burden or benefit students, but merely to get as much money as they can as quickly as possible, at the lowest possible cost. Would increase federal costs significantly.

Option 2: Waive the multiple disbursement requirement for high-performing schools or schools with low default rates under the gatekeeping/oversight proposal. (See the gatekeeping and oversight group's paper.)

Pros: Would target burden reduction to institutions with the lowest default rates. Risk to the government and federal costs would be significantly less than under option 1. Some institutions would support this proposal.

Cons: Would increase risk to the government and borrowers somewhat. Would increase federal costs.

Option 3: Eliminate multiple disbursement for graduating students at term-based institutions.

Pros: Graduating seniors have very low attrition rates. Accordingly, eliminating this requirement for them would not create much additional risk to the government or borrowers.

Cons: This would be difficult to administer for the Department and institutions, because it would be difficult to identify graduating students and provide separate rules for this small group. This option would increase the government's risk without corresponding gain in burden reduction for schools. This option would cost money, although less than under options 1 and 2.

Option 4: Eliminate multiple disbursements for loans that are less than half the annual loan limit or less than $1,000.

Pros: Would reduce burden without significantly increasing the government's risk.

Cons: Would increase federal costs.

Recommendation: No consensus.

III. FFEL Management and Operations:

1. Loan Access

Issue: Should the current system to insure that every eligible student attending an eligible institution has access to a student loan be strengthened?

Background: The current system to insure loan access is a combination of voluntary cross-subsidization by private lenders, the FFEL lender-of-last-resort program under §§ 428(j) and 439(q) of HEA and more recently the potential availability of Direct Loans for schools that cannot obtain service under FFEL. In addition, secondary markets using tax-exempt financing are currently required by §438(e)(2) to deal with all eligible lenders in their service areas on the same terms and conditions. Within the limits of their capital, they are also required to purchase all eligible loans involving students or schools within those areas. Those secondary markets and Sallie Mae are also prohibited by §§438(e)(3) and 440A from discrimination on the basis of the borrower's income, the school attended, the length of the academic program or the academic year in school. Although there have not been any major access problems to date, several recent developments have potentially weakened this safety net; and further adverse developments may occur.

a. A series of subsidy reductions by Congress have reduced the excess profit in desirable loans.
b. Price competition among lenders and with DIRECT LOANS and profit-sharing with school "lenders" has further eroded the excess subsidy.
c. Sallie Mae will either privatize and shed its LLR obligations or liquidate. Other secondary markets may leave FFEL as a result of the Nellie Mae tax legislation.
d. DL does not accept all eligible schools, and any future volume caps could limit its ability to do so. DL cannot serve particular students unless their school applies for the program.

Discussion: There is no way to know whether a safety net is actually sufficient until a large problem has tested it. Such an approach in this case could be very unfair to the students whose lives might be unalterably changed by not being able to pursue a post-secondary education at the time of their choosing. On the other hand, the appropriate amount of insurance to hold against a risk depends upon the magnitude of the premium as well as the magnitude of the risk. In this case, since it is not known whether the reductions in the existing safety net will in fact be problematical, any improvements should have minimum pre-problem costs. Finally, although access problems could be totally eliminated by imposing mandatory-service requirements on all lenders, that would be a drastic change in the current structure of FFEL and would generate enormous opposition.

Recommendation: The current system for ensuring loan access should be strengthened as follows:

a. The nondiscrimination provisions for some secondary markets should (1) be clarified by specifically providing that they must offer to purchase any non-delinquent eligible loan offered to them at no less than par plus accrued interest and (2) be expanded to apply to all secondary markets. They should not be required to pay the same price for all loans, however, because that would enable other lenders to game the system by selling only their less desirable loans to the secondary markets. Budget Service believes that the risk of substantial access problems is not sufficiently great to justify further intrusion into the voluntary nature of the lender function and therefore dissents from this recommendation.
b. Because the LLR provision for guaranty agencies in §428(j)(1) is limited to subsidized loans, the Department has interpreted that limitation as applicable to the entire LLR program. The program should be expanded to cover unsubsidized loans.
c. The Secretary should be authorized to make advances directly to lenders for LLR loans, rather than having to use guaranty agencies as intermediaries, as currently provided by §428(j)(3).
d. The Secretary should be authorized to make DL loans as LLR irrespective of the school's nonparticipation in the program or any volume cap. (Direct Loan policy and some others dissent on this issue believing that it would not be cost effective or operationally feasible.)

Cost estimate: This set of recommendations has no budgetary impact.

2. Comparable Maturity

Issue: Should the approach for determining comparable maturity be changed?

Background: The concept of comparable maturity is extremely important in determining the cost of both FFEL and DL loans to students and the Department. Section 427A(h) changes the reference rate for determination of the interest rate for FFEL loans made after July 1, 1988, to the bond-equivalent rate for securities with a "comparable maturity." This concept is already used in determining the cost of funds charged to the Department for both loan programs and the rate used to discount future revenues and expenses (including defaults) under Credit Reform. The cash flow from DL is projected to be positive once the program reaches a steady state, so a reduction in discount rate would reduce its scored cost. OMB views the 10-year Government bond as the comparable maturity to FFEL loans.

Discussion: The 10-year Government bond has a fixed interest rate and a single balloon payment of principal at maturity. FFEL and DL loans have interest rates that are reset annually; and their principal is paid down over the term of the loan, although that term can be extended under certain circumstances. In economic terms, FFEL loans are probably most comparable in maturity to the 5-year bond. In the absence of further experience with ICR, the same is probably true of DL loans, also. Currently, the spread between the 5- and 10-year bonds is 0.30 percent. Floating-rate bonds normally have substantially lower interest rates than fixed-rate bonds of the same maturity.

The principles that Government programs are scored on the basis of an arbitrary transfer price of funds from the Treasury rather than the Government's actual borrowing cost, and that the same transfer rate is also used as the discount rate under Credit Reform are applicable Government-wide and almost impossible to change for a single program. The inclusion of the term "comparable maturity" in the HEA and the need to define the term, however, provide an opportunity to reduce the cost of FFEL loans to students by selecting a shorter maturity with a floating rate and hopefully influence the result for the other purposes as well.

Recommendation: The reference to "comparable maturity" in §427A(h) should be expanded to provide that comparable maturity is to be determined on the basis of average life rather than final maturity and of the frequency with which the interest rate resets. (One office dissents believing that this is not a legislative issue. OMB currently defines comparable maturity, and there is no reason to open up Credit Reform legislation for revision.)

Cost estimate: This concept needs further development to be scored by Budget Service.

3. <u>Conflicts of Interest</u>

Issue: Should the statutory authority for the Secretary to deal with conflicts of interest by guaranty agencies be changed?

Background: A number of guaranty agencies are involved in potential conflicts of interest by virtue of the conduct of other related activities in the guaranty agency itself or in other entities affiliated with the guaranty agency or with directors, officers or employees of the guaranty agency. Serious abuses of these relationships have been uncovered in the past, particularly in the quality of claims review by the guaranty agency of related lender and lender-servicing activities and in the prices at which goods and services have been transferred. The Secretary has recently issued a new regulation that provides further protection against, but does not prohibit, such conflicts of interest.

Discussion: There is considerable support for a "bright-line" provision prohibiting a guaranty agency from having any affiliation with a lender or lender-servicer and perhaps from having any transactions with a related entity. OGC believes that the Secretary has current statutory authority to impose such a prohibition under §432(a)(3). The NPRM for the new regulation solicited comment on the stricter alternative and reserved it as a later possibility if further regulation does not solve the problem. Thus, no further action should be taken on the subject at this time. In light of the new regulation, the existing statutory requirement in §432(p) for the reporting of conflicts of interest by guaranty-agency personnel, which has never been implemented and is overly burdensome, is no longer necessary.

Recommendation: The existing reporting requirement should be repealed, but no further action should be taken at this time. (Budget Service dissents believing this would be seen as weakening the Department's commitment to policing agency conflicts of interest.)

Cost estimate: This recommendation has no budgetary impact.

4. Enforcement

a. Delegation of functions/responsibilities

Issue: Should further limitations be placed on the delegation of functions and responsibilities by lenders and guaranty agencies to third parties?

Background: Lenders and guaranty agencies commonly delegate some or all of their functions to third parties. Sections 426, 432(a) and 481(f) specifically contemplate the roles of trustee banks and third-party servicers, and the Secretary has regulated their functions. Some lenders and guaranty agencies have in fact delegated all or substantially all of the functions inherent in their participation in FFEL in those capacities, which is inconsistent with the establishment of eligibility qualifications in HEA for those participations. Although the Secretary's regulations provide in 34 CFR §682.203(a) that delegation does not relieve the eligible participant from its compliance responsibilities under the statute and regulations, the delegating parties are normally indemnified by their delegees and rarely actually monitor their activities.

Discussion: Although delegation of all or substantially all of a lender or guaranty agency's functions to a third party is objectionable in principle, enforcement of such a restriction now would affect existing arrangements that have been approved or at least condoned for many years. For example, five States have multiple secondary markets through the use of trustee banks, even though §435(d)(1)(D) authorizes only one eligible secondary market per State. Attempting to draw the line between permissible and impermissible delegations would be a difficult task. Moreover, in the case of lenders, the use of trustee banks is necessary for the use of modern financing techniques, such as securitization. A less severe alternative would be a requirement that the eligible participant actively monitor the activities of its delegee(s), coupled with a prohibition against indemnification of the eligible participant in the absence of adequate supervision. Although OGC believes that the Secretary already has authority to promulgate a regulation to this effect, a statutory provision would be preferable in light of the impact on long-standing arrangements. There are precedents in other areas of the law for the imposition of supervisory responsibilities and the identification of situations in which indemnification is against public policy.

Recommendation:

(1) Options:

(i) The majority of the working group would not restrict the current authorization for delegation of functions. They do, however, recommend that eligible lenders and guaranty agencies should be required to monitor the activities of third parties to which they delegate functions and should be prohibited from being held harmless from loss from those activities in the absence of adequate supervision.

(ii) Budget Service, OGC and OMB do not believe that the Government should be concerned with private lenders' cost of funding and recommend that the trustee-bank provision be repealed. They do however, agree with the majority recommendation for increasing legal and financial responsibility for those delegations that would still be permitted.

Cost estimate: Neither of these options has a budgetary impact.

b. Fines

Issue: Should the Secretary's power to fine lenders and guaranty agencies be expanded?

Background: Section 432(g) authorizes the Secretary to impose a civil penalty on a lender or guaranty agency after notice and an opportunity for a hearing. Although the Secretary may impose a penalty of up to $25,000, all violations relating to the same practice or policy must be treated as a single violation. Thus, the Secretary is limited to a $25,000 fine even though millions of dollars and a large number of borrowers are involved. Moreover, in order to impose any penalty whatsoever, the Secretary must show that the violation is material, and that the lender or guaranty agency knew or should have known that it was violating the law. Finally, no penalty may be imposed if the lender or guaranty agency corrects the violation prior to receiving notice from the Department that it intends to levy a civil penalty, even if the correction occurs only after knowledge that the Department is preparing action.

Discussion: These limitations on the Secretary's authority are not common in similar provisions for other Government agencies, are in some respects not applicable to the Secretary's authority to impose civil penalties on schools and unduly hinder the exercise of the Secretary's statutory authority.

Recommendation: The limitations described above on the Secretary's authority to impose civil penalties on lenders and guaranty agencies should be eliminated.

Cost estimate: This recommendation has no budgetary impact.

c. Substance versus form

Issue: Should the Secretary have explicit authority on the basis of their substance over their form?

Background: The HEA does not explicitly authorize the Secretary to review the substance of lender and guaranty-agency transactions and arrangements rather than their form. Accordingly, it is not uncommon for FFEL participants to devise formal structures that appear on their surface to satisfy the statute but are inconsistent in substance with the statutory purpose.

Discussion: The recent decision on the Sallie Mae offset fee by the U.S. Court of Appeals for the D.C. Circuit supports the proposition that the Secretary already has implicit authority to evaluate transactions and arrangements on the basis of their substance. Explicit statutory authority to this effect would, however, make it easier for the Department to support those decisions in a court challenge.

Recommendation: The Secretary should have explicit authority to evaluate transactions and arrangements on the basis of their substance over their form.

Cost estimate: This recommendation has no budgetary impact.

5. Lender eligibility

a. Schools

Issue: Should the eligibility of schools as lenders be further restricted?

Background: Schools are currently eligible under §435(d)(2) to be FFEL lenders if they use their interest and special allowance receipts for need-based grant programs. They may not make loans to more than 50 percent of their undergraduate students, however, and then only to students who have previously been turned down by another eligible lender.

Discussion: Schools are required to counsel their students about their loans both before and after the borrowings. When the school has a direct financial interest in the loan (over and above the inherent financial interest in receiving tuition income), it has a serious conflict of interest in performing its counseling role. In principle, the other elements of the safety net for loan access should obviate any need for schools to act as lenders. Unfortunately, the number of major educational institutions that are currently considering becoming lenders or are already so is growing rapidly, and an outright prohibition might not be achieved in the absence of a grandfather list so long as to engulf the prohibition. On the other hand, there seems to be even less need for schools to make loans to their own graduate and professional students than to their undergraduates. Although the current provisions for loans to undergraduates may be justifiable as a form of LLR program, there is no basis to distinguish between interest and special-allowance receipts and the other income from the program.

Recommendation: The current limitations on the eligibility of schools to make loans to their own undergraduate students should be extended to graduate and professional students, also; and all net earnings as lenders should be required to be used for need-based grant programs.

Cost estimate: This recommendation has no budgetary impact.

b. Other lenders

Issue: Should the eligibility requirements for non-school lenders be changed?

In theory, with the exception of schools, lender eligibility is essentially limited by §435(d)(1) to various regulated financial institutions, State agencies or a single private, nonprofit agency designated by a State. In practice, any person or entity may substantively become a lender by use of a trustee bank.

Discussion: For the reasons stated above, a majority of the subgroup believe that the use of trustee banks should not be eliminated. Accordingly, the current limitations on lender eligibility would continue not to restrict the availability of all potential loan capital to FFEL. Nor would there be any purpose in establishing capability requirements for lender eligibility, as there is for school eligibility. On the other hand, it would still be useful to continue to limit the parties that may assume legal responsibility for lender compliance with the HEA and the Secretary's regulations. In the case of insurance companies, however, the regulatory system is not sufficient for a consumer-loan business, and a number of problems have arisen in FFEL as a result.

Recommendation: The eligibility of insurance companies as lenders in §435(d)(1)(C) should be repealed.

Cost estimate: This recommendation has no budgetary impact.

6. Collection of Lender Fee

Issue: Should lender fees be directly collectible?

Background: Section 438(d)(1) restricts the collection of the lender origination fee to a deduction from payments of interest and special allowance to the lender.

Discussion: There is no reason to relieve lenders of the obligation to pay the lender fee on highly subsidized FFEL loan simply because no special allowance is necessary to deliver the subsidy, or the lender does not have a sufficient number of borrowers still in school or the grace period.

Recommendation: Lender fees should be directly collectible.

Cost estimate: This recommendation has no budgetary impact.

7. Non-functioning Programs

Issue: Should a group of non-functioning programs be eliminated?

Background: There are a number of programs that have either never been implemented or are no longer performing any substantial function. They are:

a. Assistance for borrowers in §432(k) (encouragement of employers to assist borrowers in repaying loans; never implemented)

b. District of Columbia Loan Program in §436 (loans currently guaranteed by Massachusetts guaranty agency under normal FFEL program)

c. Doing-business plans by secondary markets using tax-exempt financing in §438(e) (little useful information and inadequate Department resources to review them; substantive limitations to be retained)

d. Exceptional performers in §428I (100 percent insurance for lenders, servicers and guaranty agencies whose compliance-performance rate exceeds 97 percent; never implemented, and other incentives sufficient)

e. Lender referral services in §428(e) (payment to guaranty agencies for referring students to lenders; never implemented, and guaranty agencies already legally required to be LLR's or find other lenders to be so)

f. Loan Forgiveness for Teachers in 428J (this program has never been funded)

Discussion: No reason exists for the continuation of the statutory authority for any of these programs.

Recommendation: The group of non-functioning programs should be eliminated.

Cost estimate: This recommendation has no budgetary impact. (The elimination of Federal advances is already encompassed in the recommendation for changing the role and financial structure of guaranty agencies.)

8. Special Allowance

Issue: Should the former decrease in special allowance for holdings financed with tax-exempt funds be restored?

Background: Although lenders are specifically authorized by §427A(j) to set their own interest rates on FFEL loans, the balance of that section sets maximums. In the early years of FFEL, the maximums were in fixed terms. They are now floating rates referenced to Government securities, with fixed-rate caps. To ensure that the maximums and caps for the benefit of the borrowers did not impede loan access by making voluntary lending by private lenders uneconomic, Congress also enacted §438 to establish a special allowance. The special allowance structure has been highly complex; but, as reformulated for all new loans in the President's budget, it would simply make up the difference to the lender for any reduction in interest as a result of the fixed-rate caps. Because lenders using tax-exempt financing have a substantially lower cost of funds than other lenders, §438(b)(2)(B) formerly halved the special allowance for holdings financed with tax-exempt funds. This reduction was eliminated in 1993 because the floor established as part of the reduction was actually increasing the Department's costs.

Discussion: A reduced special allowance is appropriate for new loans financed by tax-exempt funds. There are currently some $20 billion in such loans outstanding.

Recommendation: The special allowance should be halved for new FFEL loans financed with tax-exempt funds. There should be no floor on the reduced payment.

Section IV: Debt Collection

1. <u>Increase ED's access to data sources</u>

Issue: Whether to Secure legislative authority for the Department to receive/gain access to home address and employment information from IRS, the U.S. Dept of Labor (State Offices of Employment Security), and state licensing agencies (Motor Vehicle Departments, Medical licensing, CPA licensing, Bar Associations, etc.) in all states to:

- o increase the Department's ability to locate and collect defaulted student loans overall; and

- o increase the Department's ability to effect Administrative Wage Garnishment through employers for borrower's who refuse to meet their loan repayment obligations.

Background: The ability of any loan holder to recover defaulted student loans is increased dramatically when the holder has access to home address and personal employment information. Debtors are less likely to succeed in avoiding their repayment obligations when the loan holder (the Department) 1) knows that they are gainfully employed; and 2) can take procedural steps to garnish their wages.

The Internal Revenue Service, while cooperating with excellent results in the offset of income tax refunds for debtors who have refused to repay their student loans, has steadfastly refused to share employment information with federal agencies in pursuit of defaulters.

Securing the legislative authority to access such information will enhance substantially the Department's ability to recover defaulted student loan funds.

Discussion: IRS provides employer information for every debtor referred by the Department to the IRS Address Locator Service; ED, in concert with the U.S. Department of Labor, enters into agreements with state offices of employment security and licensing agencies (Motor Vehicle Departments, Medical licensing, CPA licensing, Bar Associations, etc.) in all states to match records and gain home address and <u>personal employment</u> information to be used in pursuit of unpaid student loan debts.

Pros:

- o critically important information is concentrated and should be readily available at such sources;

- gives the Department a substantial advantage in reaching the debtor (i.e. via phone contacts at both home and workplace);
- enables the Department to effect administrative wage garnishment if the debtor persists in refusing to repay the debt.

Cons:

- IRS (and perhaps others) is likely to claim that the administrative burden or information gathering burden is too great;
- some people will take the position that too much personal information is already available for such purposes.

Recommendation: Consensus of the policy group is that securing authority to obtain this information would substantially benefit the Department's debt collection effort, and result in a dramatic increase in recoveries.

2. Direct matching of State employee records and salary offset of same

Issue: Whether to secure authority for the Department to match defaulted student loan records against the personnel rolls of state government civil service employees, with the states then carrying out mandatory salary offset (at 15% of disposable income) for debtors who persist in ignoring their legal obligation to repay. This would increase coverage of the Department's Salary Offset program (currently only Federal employees are subject to salary offset) and increase ED's ability to locate and collect defaulted student loans;

Background: Federal Employee Salary Offset program began in 1982, under the authority of the Debt Collection Act of 1982. In the fourteen years since passage of that law, the Department of Education has recovered over $100,000,000.

Once identified, employees are afforded due process - the opportunity to voluntarily repay the loan(s) before their employing agency is notified. Refusal to cooperate results in notification to the employing agency and initiation of the offset of the employees salary at a rate of 15% of disposable pay per pay period. State employees, who also serve the public, should be required to abide by the same standards.

Gaining the legislative authority to access such information will substantially enhance the Department's ability to recover defaulted student loan funds.

Discussion: State civil service personnel rolls contain employment information on every individual paid by public funds. Such a universe of information, coupled with the mandate to automatically initiate a salary offset for all those who refuse to cooperatively repay their loans, will result in the recovery of millions.

Pros:

- information should readily available in each state personnel system;
- gives the Department a substantial advantage in reaching the debtor (i.e. via phone contacts at both home and workplace);
- enables the Department to efficiently move for administrative wage garnishment if the debtor persists in refusing to repay the debt;
- increases public confidence in the student loan programs.

Cons:

- some states may not have legislative authority at the state level to cooperate in such matches;
- ED may be required to reimburse some or all of the states for the work associated with such matches.

Recommendation: Consensus of the policy group is that securing authority to conduct such matches will benefit the Department through a substantial increase in recoveries.

3. Extend period for reporting negative credit information

Issue: Whether to report negative credit information indefinitely on defaulted student loans except in the case of a debtor whose loan is repaid under terms acceptable to the Department; under such a circumstance, the loan holder could direct that the information be removed after seven years.

Background: In 1991 Congress eliminated the Statute of Limitations on the collection of student loan debts for all intents and purposes. This amendment effectively made student loans collectible during the entirety of the student's lifetime.

A related statutory change was not addressed however, that is a change to the Fair Credit Reporting Act. That is the prohibition on reporting a defaulted student loan as negative credit information beyond seven years.

This oversight should now be addressed by eliminating the prohibition on reporting except and giving the loan holder the discretion to voluntarily cease reporting the negative information upon debtor compliance with a satisfactory repayment schedule.

Discussion: Secure authority for loan holder's discretion on removal of negative information after seven years as a negotiating tool to effect repayment of the debt.

Pros:

- o maximizes debtor awareness and incentive to repay the debt;

- o provides like treatment in both the Statute of Limitations and the credit reporting industry.

Cons:

- o consumer protection organizations may object.

Recommendation: Consensus of the policy group is that the Department should seek this authority. The reporting of defaulted student loans to credit bureaus has proven to be an effective tool in convincing debtors to repay just debts while providing the debtor with a substantial benefit in securing credit financing for homes and automobiles.

4. Transcripts

Issue: Should the HEA require institutions to withhold copies of borrowers' grade transcripts or stamp "defaulted loan outstanding" on the transcripts of borrowers who have not met the repayment terms of their student loans.

Background: For years, the Department encouraged schools to withhold transcripts or mark them as defaulted (without the benefit of force of law), and it proved very successful. The only successful legal challenge came from the public university sector.

Pros:

- o Would provide a strong incentive for borrowers to repay their loans. Would likely increase collections of student loans.

- o May result in federal cost savings.

Cons:

- o May be seen as overly punitive.

- o Institutions may object. Would increase burden on institutions. Would be difficult for institutions to determine when a borrower is in default.

- o For borrowers who have not repaid their loans because of unemployment, this requirement may make it increasingly difficult for these borrowers to obtain employment and repay their loans.

- May be subject to legal challenge.

Recommendation: The policy group recomends no change (with some dissent).