FOIA Number: 2017-1076-F

FOIA MARKER

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

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: National Economic Council

Series/Staff Member: Bob Shireman

Subseries:

OA/ID Number: 13220

FolderID:

Folder Title:
HEA [Higher Education Act] - Pending [2]

Stack:	Row:	Section:	Shelf:	Position:
S	15	1	11	2

SPECIAL

Total Pages: 9

LRM ID: CJB134

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

Monday, November 10, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

Janet R. Forsgren

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference

OMB CONTACT: Constance J. Bowers
PHONE: (202)395-3803 FAX: (202)395-6148

SUBJECT: **EDUCATION Draft Bill on Higher Education Act Reauthorization - Title IV, Part A, Subpart 3 -- Federal Supplemental Educational Opportunity Grants (FSEOG)**

DEADLINE: **cob Tuesday, November 18, 1997**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS:
DISTRIBUTION LIST

AGENCIES:

EOP:
Robert M. Shireman
Michael Cohen
William R. Kincaid
Barry White
Wayne Upshaw
S. A. Noe
Kathryn B. Stack
Daniel J. Chenok
Daniel I. Werfel
Edward M. Rea
Beverly B. Thierwechter
Winifred Y. Chang
Robert G. Damus
Janet R. Forsgren
James C. Murr

SUBPART 3--FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

EXTENSION OF PROGRAM

SEC. 413. Section 413A(b) of the Act is amended by striking out "$675,000,000 for fiscal year 1993" through the end thereof and inserting in lieu thereof "such sums as may be necessary for fiscal year 1998 and for each of the four succeeding fiscal years.".

SELECTION OF RECIPIENTS AND USE OF FUNDS

SEC. 414. Section 413C of the Act is amended --

(1) by amending subsection (c)(2) to read as follows:

"(2) In carrying out paragraph (1), each institution of higher education shall, in the agreement made under section 487, ensure that the selection procedures are designed to award supplemental grants under this subpart first to students who receive Pell Grants and meet the requirements of section 484."; and

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

"(d) USE OF FUNDS FOR ALL STUDENTS.--Awards made under this subpart shall be made reasonably available (to the extent of available funds) to all eligible students in the institution in need thereof.".

ALLOCATION OF FUNDS

SEC. 415. Section 413D of the Act is amended--

(1) in subsection (a)--

(A) in paragraph (1)--

(i) by striking out "100 percent" and inserting in lieu thereof "95 percent"; and

(ii) by striking out "fiscal year 1985" and inserting in lieu thereof "the most recent fiscal year for which data are available";

(B) in paragraph (2)--

(i) in subparagraph (A)--

(I) in the matter preceding clause (i), by striking out "1985" and inserting in lieu thereof "1997"; and

(II) in clause (ii), by striking out "90 percent" and inserting in lieu thereof "95 percent";

(ii) in subparagraph (B) --

(I) in the matter preceding clause (i), by striking out "1985" and inserting in lieu thereof "1997"; and

(II) by striking out "90 percent" each place it appears and inserting in lieu thereof "95 percent";

(iii) in subparagraph (C) --

(I) in clause (i), by striking out "1986" and inserting in lieu thereof "1998"; and

(II) in the flush language at the end thereof, by striking out "90 percent" and inserting in lieu thereof "95 percent"; and

(C) in paragraph (3)--

(i) in subparagraph (A)--

(I) by striking out the subparagraph designation "(A)"; and

(II) by striking out "paragraph (1) of";

(ii) by striking out subparagraph (B);

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

"(b) ALLOCATION FORMULA TRANSITION.--Notwithstanding subsection (a), '100 percent' shall be substituted for '95 percent' each place it appears in paragraphs (1) and (2) of such subsection for purposes of determining an institution's allocation under this subpart for the first fiscal year for which the amendments made by **[insert name of Act]** are effective.";

(3) in subsection (c)(1), by striking out "three quarters of";

(4) in subsection (d)(3), by inserting at the end thereof the following new subparagraph:

"(E) The Secretary may use the actual expected family contribution (computed in accordance with part F) for an institution's eligible undergraduate students in lieu of the calculation in paragraph (2)."; and

(5) by amending subsection (e) to read as follows:

"(e) REALLOCATION OF EXCESS ALLOCATIONS.--If an institution returns to the Secretary any portion of the sums allocated to such institution under this section for any fiscal year, the Secretary shall reallocate such excess in accordance with section 442(c).".

FLEXIBLE USE OF FUNDS

SEC. 416. Subpart 3 of part A of title IV of the Act is amended by adding at the end thereof the following new section:

"FLEXIBLE USE OF FUNDS

"SEC. 413E. (a) CARRY-OVER AUTHORITY.--(1) Of the sums granted to an eligible institution under this subpart for any fiscal year, 10 percent may, at the discretion of the institution, remain available for expenditure during the succeeding fiscal year to carry out the program under this subpart.

"(2) Any of the sums so granted to an institution for a fiscal year that are not needed by the institution to award supplemental grants during that fiscal year, and that the institution does not wish to use during the next fiscal year as authorized in paragraph (1), shall remain available to the Secretary for reallocation under section 413D(e) until the close of the second fiscal year next succeeding the fiscal year for which such funds were appropriated.

"(b) CARRY-BACK AUTHORITY.--(b) Up to 10 percent of the allocation that an institution may receive from funds appropriated for a fiscal year may be used by the institution for expenditure during the fiscal year preceding the fiscal year for which the sums were appropriated.".

SUBPART 2--FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Section 413. Section 413 of the bill would amend section 413A(b) of the Act to extend the FSEOG program through 2002 by providing for such sums as may be necessary for fiscal year 1998 and each of the four succeeding fiscal years.

Section 414. Section 414 of the bill would amend section 413C(c) of the Act by removing the requirement that institutions selecting students for FSEOG funds follow a specific order based on financial need. This amendment would require instead that an institution award supplemental grants first to those students who receive Pell Grants and meet the eligibility requirements of section 484 of the Act. The current requirement is burdensome for institutions, and interferes with the ability of the aid officer to handle the needs of students by "packaging" the student's financial aid in the manner most appropriate for the student. This amendment would retain a reasonable requirement that FSEOGs go to the most needy (i.e., Pell Grant recipients), without placing an undue administrative burden on institutions.

Additionally, section 414 of the bill would amend section 413C(d) of the Act to eliminate the requirement that an institution make at least 5 percent of each of its Federal Supplemental Educational Opportunity Grant (FSEOG) funds available to independent and less-than-full-time students if such students account for at least 5 percent of the total financial need of all students attending the institution. This requirement causes an administrative hardship, because institutions must keep track of students to whom they offer aid based on these artificial categories, and carry out additional calculations and reporting on students in these categories. Furthermore, many institutions are far exceeding the 5 percent minimum for these categories of students, not just in offers, but in actual expenditures. This change will remove the administrative burden, while still enabling the Secretary to take action against those few institutions that do not make funds reasonably available to all students, including independent and less-than-full-time students. In its place, section 414(2) of the bill would add a requirement that funds be reasonably available, to the extent of available funds, to all eligible students in the institution in need thereof. This requirement currently applies to the Federal Work Study (FWS) and Federal Perkins Loan programs.

Section 415. Section 415(1) of the bill would amend the institutional allocation formula in section 413D of the Act. Under current law, the annual appropriation for each of the three title IV, HEA "campus based" programs--the FSEOG, FWS, and Federal Perkins Loan programs--is distributed to institutions according to a two-part statutory formula. The first part, the "base guarantee," considers a school's program expenditures in a previous year. The second step in the current allocation formula, based on institutional need for additional funding, allocates the amount remaining after the base guarantees are fully funded, by providing one-fourth of the remaining amount to institutions on a pro rata basis (the "pro rata increase"), and three-fourths to institutions based on the institution's need (the "fair share"). Additional funding under the second step in the allocation formula is generally available if the annual appropriation is sufficient to fund the full amount to which each school is entitled in step one. That is, all institutions are first "held harmless" to prior funding levels. Two statutory formulas--one for

FSEOG and a second for FWS and Perkins Loans--measure institutional need (the Perkins Loan formula also currently reflects an institution's default experience). This formula essentially aggregates individual student financial need to institutional levels based on national standards. Aggregate institutional need drives the second part of the institutional allocation process.

Since 1986, an institution's base guarantee has been the principal determinant of its current-year allocation. For most schools, the prior year expenditure is linked to its program participation in the 1970's. Thus, today's allocation of campus-based funds largely reflects a 20-year-old distribution of program funds.

The current allocation formula is inequitable because growing schools cannot increase their funding and other institutions' funding levels are largely protected. Even though approximately one-fourth of the FSEOG appropriations is distributed on the basis of institutional need, most of that funding (95 percent) is accounted for by the institutions that began participating in the program before 1986. Also, due to the base guarantee, schools with declining enrollments have not necessarily experienced a corresponding decline in campus-based funding. Conversely, schools with increasing enrollments, and populations of needy students, have not received a corresponding increase in campus-based funding.

Section 415 of the bill would modify the institutional allocation formula so that increasingly larger shares of program appropriations will be distributed on the basis of measured financial need. By shifting the distribution of program funds toward relative institutional need, the campus-based programs will better meet the needs of financially needy students. However, to avoid disruption that could be caused by dramatic shifts in program funds between institutions, the amendment would ensure that no institution's allocation would be reduced by more than five percent compared to the prior year. Next, sections 415(2) and (3) of the bill would eliminate section 413D(b) of the Act, which provides for the allocation of one fourth of the available funds to institutions on a pro rata basis, and make a conforming change. The pro rata increase is a needless complication in the formula.

For most institutions, the base year for prior program expenditures would be the second year preceding the academic year for which allocations are being determined. For example, 1999-2000 allocations would be based on 1997-98 program expenditures for those institutions that participated in that year. Base guarantees for institutions that began participating at a later date would be computed in a fashion similar to current law. Unlike current law, however, an institution's base year would continue to move forward each year, which would "lock in" any annual funding an institution gains for the future and also helps ensure that no school receives less than a specified percentage of its previous year funding.

For the first year that the proposed amendments to the allocation formula would be in effect, the base guarantee percentage would be 100 percent. That is, no school would receive less than 100 percent of their base year program expenditures. Thereafter, the base guarantee percentage would be 95 percent of the preceding year's amount.

Section 415(4) of the bill would amend section 413D(d) of the Act to provide that when the Secretary establishes income categories for aid applicants to determine an institution's need, for purposes of calculating a fair share under the allocation formula, the Secretary would no longer be required to establish an expected family contribution (EFC) for each income category. This change would reduce administrative burden on institutions, which must currently add several items on the output documents in order to comply with this requirement, even though the official EFC is already indicated on these documents. These changes would provide flexibility so that the Secretary can continue to collect income information that is not available elsewhere and derive the EFCs needed for the allocation formula.

Section 415(5) of the bill would amend section 413D(e) of the Act to combine all returned funds from all of the Federal campus-based programs, and reallocate them according to the current reallocation rules in the FWS Program. Institutions would only receive reallocated funds if they have spent at least ten percent of their FWS allocation on community service. Additonally, they must spend all of the reallocated funds for community service. This amendment would simplify the reallocation process for institutions, and for the Department, and would put more funding into the community service component of the FWS program. The effect on the FSEOG and Perkins Loan programs, however, would not be significant, in that most (almost seventy-five percent) of returned funding is already in the FWS Program. A similar change is proposed to the Perkins Loan Program in section 462 of the bill.

Section 416. Section 416 of the bill would amend section 413 of the Act to allow an institution to carry back to the previous award year, or carry forward to the upcoming award year, up to ten percent of its FSEOG allocation. This flexibility, already available in the FWS Program, would give institutions the flexibility to handle minor shortfalls, or excesses in the FSEOG program. Further, it would eliminate the need for an institution to "spend" FSEOG funds at the last minute, and would prevent institutions from having to cancel FSEOG awards, or to to cover FSEOG committments with their own funds, when they were slightly off on their award projections.

SPECIAL

Total Pages: 8

LRM ID: CJB135

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

Monday, November 10, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

Janet R. Forsgren

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference

OMB CONTACT: Constance J. Bowers
PHONE: (202)395-3803 FAX: (202)395-6148

SUBJECT: **EDUCATION Draft Bill on Higher Education Act Reauthorization - Title IV, Part C -- Federal Work Study**

DEADLINE: **cob Tuesday, November 18, 1997**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS:

DISTRIBUTION LIST

AGENCIES:

EOP:

Robert M. Shireman
Michael Cohen
William R. Kincaid
Barry White
Wayne Upshaw
S. A. Noe
Kathryn B. Stack
Daniel J. Chenok
Daniel I. Werfel
Robert G. Damus
Edward M. Rea
Beverly B. Thierwechter
Winifred Y. Chang
Janet R. Forsgren
James C. Murr

LRM ID: CJB135 **SUBJECT:** EDUCATION Draft Bill on Higher Education Act Reauthorization - Title IV, Part C -- Federal Work Study

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Constance J. Bowers Phone: 395-3803 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: ______________

_____ FAX RETURN of _____ pages, attached to this response sheet

PART C--FEDERAL WORK STUDY PROGRAM

EXTENSION OF PROGRAM

SEC. 441. Section 441(b) of the Act is amended by striking out "$800,000,000 for fiscal year 1993" through the end thereof and inserting in lieu thereof "such sums as may be necessary for fiscal year 1998 and for each of the four succeeding fiscal years.".

ALLOCATION OF FUNDS

SEC. 442. Section 442 of the Act is amended--

(1) in subsection (a)--

(A) in paragraph (1)--

(i) by striking out "100 percent" and inserting in lieu thereof "95 percent"; and

(ii) by striking out "fiscal year 1985" and inserting in lieu thereof "the most recent fiscal year for which data are available";

(B) in paragraph (2)--

(i) in subparagraph (A)--

(I) in the matter preceding clause (i), by striking out "1985" and inserting in lieu thereof "1997"; and

(II) in clause (ii), by striking out "90 percent" and inserting in lieu thereof "95 percent";

(ii) in subparagraph (B) --

(I) in the matter preceding clause (i), by striking out "1985" and inserting in lieu thereof "1997"; and

(II) by striking out "90 percent" each place it appears and inserting in lieu thereof "95 percent" in each such place;

(iii) in subparagraph (C) --

(I) in clause (i), by striking out "1986" and inserting in lieu thereof "1998"; and

(II) in the flush language at the end thereof, by striking out "90 percent" and inserting in lieu thereof "95 percent"; and

(C) in paragraph (3)--

(i) in subparagraph (A)--

(I) by striking out the subparagraph designation "(A)"; and

(II) by striking out "paragraph (1) of";

(ii) by striking out subparagraph (B).

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

"(b) ALLOCATION FORMULA TRANSITION.--Notwithstanding subsection (a), '100 percent' shall be substituted for '95 percent' each place it appears in paragraphs (1) and (2) of such subsection for purposes of determining an institution's allocation under this part for the first fiscal year for which the amendments made by **[insert name of Act]** are effective.";

(3) in subsection (o)(1), by striking out "three quarters of"; and

(4) in subsection (d)(4), by inserting at the end thereof the following new subparagraph:

"(E) The Secretary may use the actual expected family contribution (computed in accordance with part F) for an institution's eligible undergraduate, and graduate and professional students, in lieu of the calculation in paragraph (2) and (3), respectively.".

USE OF FUNDS

SEC. 443. Section 443 is amended--

(1) in subsection (b)(3) by striking out "assisted," through the end thereof and inserting in lieu thereof "assisted;"; and

(2) in subsection (c)(2) by striking out "25 percent" and inserting in lieu thereof "50 percent".

PART C—FEDERAL WORK-STUDY PROGRAM

Section 441. Section 441 of the bill would amend section 441(b) of the Act to extend the Federal Work Study (FWS) program through fiscal year 2002 by providing for such sums as may be necessary for fiscal year 1998 and each of the four succeeding fiscal years.

Section 442. Section 442(1) of the bill would amend the institutional allocation formula in section 442 of the Act. Under current law, the annual appropriation for each of the three title IV, HEA "campus-based" programs--the Federal Supplemental Educational Opportunity Grant (FSEOG), FWS, and Federal Perkins Loan programs--is distributed to institutions according to a two-part statutory formula. The first part, the "base guarantee", considers a school's program expenditures in a previous year. The second step in the current allocation formula, based on institutional need for additional funding, allocates the amount remaining after the base guarantees are fully funded by providing one-fourth of the remaining amount to institutions on a pro rata basis (the "pro rata increase"), and three-fourths to institutions based on the institution's need (the "fair share"). Additional funding under the second step in the allocation formula is generally available if the annual appropriation is sufficient to fund the full amount to which each school is entitled in step one. That is, all institutions are first "held harmless" to prior funding levels. Two statutory formulas--one for FSEOG and a second for FWS and Perkins Loans--measure institutional need (the Perkins Loan formula also currently reflects an institution's default experience). This formula essentially aggregates individual student financial need to institutional levels based on national standards. Aggregate institutional need drives the second part of the institutional allocation process.

Since 1986, an institution's base guarantee has been the principal determinant of its current year allocation. For most schools, the prior year expenditure is linked to its program participation in the 1970's. Thus, today's allocation of campus-based funds largely reflects a 20-year-old distribution of program funds.

The current allocation formula is inequitable because growing schools cannot increase their funding and other institutions' funding levels are largely protected. [Even though approximately one-fourth of the FWS appropriations is distributed on the basis of institutional need, most of that funding (95 percent) is accounted for by the institutions that began participating in the program before 1986.] Also, due to the base guarantee, schools with declining enrollments have not necessarily experienced a corresponding decline in campus-based funding. Conversely, schools with increasing enrollments, and populations of needy students, have not received a corresponding increase in campus-based funding.

Section 442(1) of the bill would modify the institutional allocation formula so that increasingly larger shares of program appropriations will be distributed on the basis of measured financial need. By shifting the distribution of program funds toward relative institutional need, the campus-based programs would better meet the needs of financially needy students. However, to avoid disruption that could be caused by dramatic shifts in program funds between institutions, the amendment would ensure that no institution's allocation would be reduced by more than five percent compared to the prior year. Next, sections 442(2) and (3) of the bill would eliminate section 442(b) of the Act, which provides for the allocation of one fourth of the available funds to institutions on a pro rata basis, and make a conforming change. The pro rata increase is a needless complication in the formula.

For most institutions, the base year for prior program expenditures would be the second year preceding the academic year for which allocations are being determined. For example, 1999-2000 allocations would be based on 1997-98 program expenditures for those institutions that participated in that year. Base guarantees for institutions that began participating at a later date would be computed in a fashion similar to current law. Unlike current law, however, an institution's base year would continue to move forward each year, which would "lock in" any annual funding an institution gains for the future and also helps ensure that no school receives less than a specified percentage of its previous year funding.

For the first year that the proposed amendments to the allocation formula would be in effect, the base guarantee percentage would be 100 percent. That is, no school would receive less than 100 percent of their base year program expenditures. Thereafter, the base guarantee percentage would be 95 percent of the preceding year's amount. Similar changes are proposed to the FSEOG program, in section 415 of the bill, and to the Perkins Loan program, in section 462 of the bill.

Section 442(4) of the bill would amend section 442(d)(4) of the Act to provide that when the Secretary establishes income categories for aid applicants to determine an institution's need, for purposes of calculating a fair share under the allocation formula, the Secretary would no longer be required to establish an expected family contribution (EFC) for each category. This change would reduce the administrative burden on institutions, which must currently add several items on the output documents in order to comply with this requirement, even though the official EFC is already indicated on these documents. These changes would provide flexibility so that the Department can continue to collect income information that is not available elsewhere and derive the EFCs needed for the allocation formula. A similar change to the FSEOG program is proposed in section 415(4) of the bill, and to the Perkins Loan program in section 462(4) of the bill.

<u>Section 443</u>. Section 443 of the bill would amend section 443(b)(3) of the Act to eliminate the requirement that an institution make at least 5 percent of its Work Study funds available to independent and less-than-full-time students, if such students account for at least 5 percent of the total financial need of all students attending the institution. This requirement causes an administrative hardship, because institutions must keep track of students to whom they offer aid based on these artificial categories, and carry out additional caluclations and reporting on students in these categories. Furthermore, many institutions are far exceeding the 5 percent minimum for these categories of students, not just in offers, but in actual expenditures. Instead, the current law requirement that funds be reasonably available to all eligible students in the institution in need thereof, would remain in effect without the additional 5 percent limitation. This change will remove the administrative burden, while still enabling the Secretary to take

action against those few institutions that do not make funds reasonably available to all students, including independent and less-than-full-time students. A similar change is proposed to the FSEOG program in section 414(2) of the bill and to the Perkins Loan Program in section 464(2) of the bill.

Section 443(2) of the bill would amend section 443(c)(2) of the Act to increase from 25 percent to 50 percent the amount of an institution's Work Study allocation that can be used to pay the Federal share for students employed at for-profit employers. This would provide greater flexibility and more career-related job opportunities for needy students.

SPECIAL

Total Pages: 20

LRM ID: CJB132

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

Monday, November 10, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO:	Legislative Liaison Officer - See Distribution below
FROM:	Janet R. Forsgren (for) Assistant Director for Legislative Reference
OMB CONTACT:	Constance J. Bowers PHONE: (202)395-3803 FAX: (202)395-6148
SUBJECT:	**EDUCATION Draft Bill on Higher Education Act Reauthorization - Title IV, Part E -- Perkins Loans**
DEADLINE:	**cob Tuesday, November 18, 1997**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS:
DISTRIBUTION LIST

AGENCIES:
118-TREASURY - Richard S. Carro - (202) 622-0650
61-JUSTICE - Andrew Fois - (202) 514-2141
24-Corporation for Natl and Community Service - Gene Sofer - (202) 606-5000

EOP:
Robert M. Shireman
Michael Cohen
William R. Kincaid
Barry White
Wayne Upshaw
S. A. Noe
Kathryn B. Stack
Daniel J. Chenok
Daniel I. Werfel
Robert G. Damus
Edward M. Rea
Beverly B. Thierwechter
Winifred Y. Chang
Thomas P. Stack
Janet R. Forsgren
James C. Murr

LRM ID: CJB132 **SUBJECT:** EDUCATION Draft Bill on Higher Education Act Reauthorization - Title IV, Part E -- Perkins Loans

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Constance J. Bowers Phone: 395-3803 Fax: 395-6148
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _______

_____ Other: ______________________

_____ FAX RETURN of _____ pages, attached to this response sheet

PART E

FEDERAL PERKINS LOAN PROGRAM

EXTENSION OF PROGRAM

SEC. 461. Section 461(b) of the Act is amended--

(1) in paragraph (1), by striking out "$250,000,000 for fiscal year 1993 and such sums as may be necessary" and inserting in lieu thereof "such sums as may be necessary for fiscal year 1998 and"; and

(2) in paragraph (2)--

(A) by striking out "fiscal year 1997" and inserting in lieu thereof "fiscal year 2002"; and

(B) by striking out "October 1, 1997," and inserting in lieu thereof "October 1, 2002,".

ALLOCATION OF FUNDS

SEC. 462. Section 462 of the Act is amended--

(1) in subsection (a)--

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

"(1) From the amount appropriated pursuant to section 461(b) for each fiscal year, the Secretary shall first allocate to each eligible institution an amount equal to 95 percent of the amount of Federal capital contribution allocated to such institution under this part for the most recent fiscal year for which data are available.";

(B) in paragraph (2)--

(i) in subparagraph (A)--

(I) in the matter preceding clause (i), by striking out "1985" and inserting in lieu thereof "1997"; and

(II) in clause (ii), by striking out "100 percent" and inserting in lieu thereof "95 percent";

(ii) in subparagraph (B) --

(I) in the matter preceding clause (i), by striking out "1985" and inserting in lieu thereof "1997"; and

(II) by striking out "90 percent" each place it appears and inserting in lieu thereof "95 percent" in each such place;

(iii) in subparagraph (C) --

(I) in clause (i), by striking out "1986" and inserting in lieu thereof "1998"; and

(II) in the flush language at the end thereof, by striking out "90 percent" and inserting in lieu thereof "95 percent"; and

(iv) by striking out subparagraph (D);

(C) in paragraph (3)--

(i) in subparagraph (A)--

(I) by striking out the subparagraph designation "(A)"; and

(II) by striking out "paragraph (1) of";

(ii) by striking out subparagraphs (B) and (C);

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

subsection:

"(b) <u>ALLOCATION FORMULA TRANSITION</u>.--Notwithstanding subsection (a), '100 percent' shall be substituted for '95 percent' each place it appears in paragraphs (1) and (2) of such subsection for purposes of determining an institution's allocation under this part for the first fiscal year for which the amendments made by **[Insert name of Act]** are effective.";

(3) in subsection (c)--

(A) in paragraph (1), by striking out "three quarters of"; and

(B) in paragraph (3), by striking out from "; multiplied by" through the end thereof and inserting in lieu thereof a period;

(4) in subsection (d)(4), by inserting at the end thereof the following new subparagraph:

"(E) The Secretary may use the actual expected family contribution (computed in accordance with part F) for an institution's eligible undergraduate students, and eligible graduate and professional students, in lieu of the calculations in paragraphs (2) and (3), respectively.";

(5) in subsection (f), by adding at the end thereof the following new paragraph:

"(3) For fiscal year 1998 and any succeeding fiscal year, any institution with a cohort default rate (as defined under subsection (h)) that is equal to or greater than 25 percent for each of the three most recent fiscal years for which data are available shall not be eligible to participate in a program under this part for the fiscal year for which the determination is made and for the two succeeding fiscal years, unless, within 30 days of receiving notification from the Secretary of the loss of eligibility under this paragraph, the institution appeals the loss of eligibility to the Secretary. The Secretary shall issue a decision on any such appeal within 45 days after its submission. Such decision may permit the institution to continue to participate in a program under this part if --

"(i) the institution demonstrates to the satisfaction of the Secretary that the Secretary's calculation of its cohort default rate is not accurate, and that recalculation would reduce its cohort default rate for any of the three fiscal years below twenty-five percent; or

"(ii) there are, in the judgment of the Secretary, exceptional mitigating circumstances, as defined by the Secretary in regulation, that would make the application of this paragraph inequitable.

"During such appeal, the Secretary may permit the institution to continue to participate in a program under this part.";

(6) in subsection (h)--

(A) by amending the heading to read as follows: "DEFINITIONS OF DEFAULT RATE, COHORT DEFAULT RATE, AND LOSS OF ELIGIBILITY.--";

(B) in paragraph (3)--

(i) by striking out subparagraph (B); and

(ii) by redesignating subparagraphs (C), (D), (E), (F), and (G) as subparagraphs (B), (C), (D), (E), and (F), respectively;

(C) in paragraph (4), by amending the matter preceding subparagraph (A) to read as follows:

"(4) For purposes of calculating the default rate and the cohort default rate under this subsection, a loan shall be considered to be in default--"; and

(D) by inserting at the end thereof the following new paragraph:

"(5) For the purposes of subsection (f)(3), 'loss of eligibility' shall be defined as the mandatory liquidation of an institution's revolving fund, and assignment of the institution's outstanding loan portfolio to the Secretary."; and

(7) by amending subsection (j) to read as follows:

"(j) REALLOCATION OF EXCESS ALLOCATIONS.--If an institution returns to the Secretary any portion of the sums allocated to such institution under this section for any fiscal year, the Secretary shall reallocate such excess in accordance with section 442(e).".

AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION

SEC. 463. Section 463 of the Act is amended--

(1) by amending subsection (a)(2)(B) is amended to read as follows:

"(B) a capital contribution by an institution, in an amount not less than three-seventeenths of such Federal capital contribution in fiscal year 1993, and one-third of such Federal capital contribution in each of the succeeding fiscal years, of the amount of the Federal capital contributions described in subparagraph (A);";

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

"(c) AGREEMENTS WITH CREDIT BUREAU ORGANIZATIONS.--(1) For the purpose of promoting responsible repayment of loans made pursuant to this part, the Secretary shall enter into agreements with credit bureau organizations regarding [defaulted?] loans held by the Secretary or by an institution.

"(2) Each agreement made pursuant to paragraph (1) shall be made in accordance with the requirements of section 430A except that such agreement shall provide for the disclosure by the Secretary or the institution, as the case may be , to such organizations, with respect to any **[defaulted?]** loan held by the Secretary or the institution, respectively, of--

"(A) the date of disbursement and the amount of any such loan, and the amount of loans made to any borrower under this part at the time of the disbursement of the loan; and;

"(B) information concerning **[the repayment and ?]**collection of any such loan, including information concerning the current status of the loan; and

"(C) the date of cancellation of the note upon completion of repayment by the borrower of any such loan.**[should this also reference cancellation under section 465?]**

"(3) Notwithstanding paragraphs (4) and (6) of section 605(a) of the Fair Credit Reporting Act (15 U.S.C. 1681c (a)(4), (6)), a consumer reporting agency shall make a report containing information received from the Secretary or an institution, as the case may be, regarding the status of a borrower's account on a loan made under this part until the loan is paid in full.

"(4) Except as provided under such criteria as the Secretary may establish under which the institution may cease reporting such information before a loan is paid in full, each institution of higher education, after consultation with the Secretary and pursuant to the agreements entered into under paragraph (1), shall disclose to any credit bureau organization with which the Secretary has such an agreement the information set forth in paragraph (2), and disclose promptly to such credit bureau organization any changes to information previously disclosed.".

TERMS OF LOANS

SEC. 464. Section 464 of the Act is amended--

(1) in subsection (a)(2), by amending subparagraphs (A) and (B) to read as follows:

"(2)(A) Except as provided in paragraph (4), the total of loans made to a student in any academic year or its equivalent by an institution of higher education from a loan fund established pursuant to an agreement under this part shall not exceed--

"(i) $3,000, in the case of a student who has not successfully completed a program of undergraduate education; or

"(ii) $5,000, in the case of a graduate or professional student (as defined in regulations issued by the Secretary).

"(B) Except as provided in paragraph (4), the aggregate of the loans for all years made to a student by institutions of higher education from loan funds established pursuant to agreements under this part may not exceed--

"(i) $15,000, in the case of any student who has not successfully completed a program of undergraduate education prior to the effective date of the **[insert name of Act]**; or

"(ii) $30,000, in the case of any graduate or professional student (as defined by regulations issued by the Secretary) and including any loans from such funds made to such student before the student became a graduate or professional student.";

(2) in subsection (b)--

(A) by striking out the paragraph designation "(1)"; and

(B) by striking out paragraph (2);

(3) in subsection (c)(1)--

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

(B) by inserting immediately after subparagraph (G) the following new subparagraph:

"(H) shall provide that, in the case of a loan made on or after July 1, 1999, the loan shall be considered to be in default (except as otherwise provided in section 462(h)) if the borrower of a loan made under this part fails to make an installment payment when due, or to meet other terms of the promissory note or written repayment agreement, and such failure persists for--

"(i) 180 days in the case of a loan that is repayable in monthly installments; or

"(ii) 240 days in the case of a loan which is repayable in less frequent installments;";

(4) by amending subsection (e) to read as follows:

"(e) FORBEARANCE.--(1) The Secretary shall ensure that--

"(A) upon written request, an institution of higher education shall grant a borrower forbearance, renewable at 12 month intervals, on terms agreed to in writing by the parties to the loan, and otherwise consistent with the regulations of the Secretary if the borrower-

"(i) is serving in a medical or dental internship or residency program, the successful completion of which is required to begin professional practice or service, or is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training, provided that if the borrower qualifies for a deferment under subsection (c)(2), the borrower has exhausted his or her eligibility for such deferment;

"(ii) has a debt burden under this title that equals or exceeds 20 percent of income; or

"(iii) is serving in a national service position for which the borrower receives a national service educational award under the National and Community Service Act of 1990;

"(B) the length of the forbearance granted by the institution--

"(i) under subparagraph (A)(i) shall equal the length of time remaining in the borrower's medical or dental internship or residency program, if the borrower is not eligible to receive a deferment described in such subparagraph,or such length of time remaining in the program after the borrower has exhausted the borrower's eligibility for such deferment;

"(ii) under subparagraph (A)(ii) shall not exceed 3 years; or

"(iii) under subparagraph (A)(iii) shall not exceed the period for which the borrower is serving in a position described in such clause; and

"(C) no administrative or other fee may be charged in connection with the granting of a forbearance under subparagraph (A), and no adverse information regarding a borrower may be reported to a credit bureau organization solely because of the granting of such forbearance;

"(2) To the extent provided in regulations of the Secretary, the borrower and the institution may agree to forbearance for the benefit of the student borrower;

"(3) The form of forbearance granted by the institution for purposes of this subsection shall be the temporary cessation of payments, unless the borrower selects forbearance in the form of an extension of time for making payments, or smaller payments than were previously scheduled.

"(4) The Secretary shall permit institutions to exercise administrative forbearances that do not require the agreement of the borrower, under conditions authorized by the Secretary. Such forbearances shall include forbearances for borrowers who are delinquent at the time of the granting of an authorized period of deferment under subsection (c)(2)."; and

(5) by adding at the end thereof the following new subsections:

"(g) DISCHARGE--(1) IN GENERAL.--If a student borrower who received a loan made under this part on or after January 1, 1986, is unable to complete the program in which such student is enrolled due to the closure of the institution, then the Secretary shall discharge the borrower's liability on the loan (including interest and collection fees) by repaying the amount owed on the loan and shall subsequently pursue any claim available to such borrower against the institution and its affiliates and principals or settle the loan obligation pursuant to section 121(c).

"(2) ASSIGNMENT.--A borrower whose loan has been discharged pursuant to this subsection shall be deemed to have assigned to the United States the right to a loan refund up to the amount discharged against the institution and its affiliates and principals.

"(3) ELIGIBILITY FOR ADDITIONAL ASSISTANCE.--The period of a student's assistance at an institution at which the student was unable to complete a course of study due to the closing of the institution shall not be considered for purposes of calculating the student's period of eligibility for additional assistance under this title.

"(4) SPECIAL RULE.--A borrower whose loan has been discharged pursuant to this subsection shall not be precluded from receiving additional grant, loan, or work assistance under this title for which the borrower would be otherwise eligible (but for the default on such discharged loan). The amount discharged under this subsection shall be treated the same as loans under section 465(a)(5).

"(5) REPORTING.--The Secretary or institution, as the case may be, shall report to credit bureaus with respect to loans that have been discharged pursuant to this subsection."; and

"(h) REHABILITATION OF LOANS.--(1)(A) If the borrower of loan made under this part who has defaulted on such loan makes 12 on-time, consecutive, monthly payments of amounts owed on such loan, the loan shall be considered rehabilitated, and the institution that made the loan (or the Secretary, in the case of a loan held by the Secretary) shall instruct any credit reporting organization to which the default was reported to remove the default from the borrower's credit history.

"(B) As long as the borrower continues to make scheduled repayments on a loan rehabilitated under this paragraph, the rehabilitated loan shall be subject to the same terms and conditions, and qualify for the same benefits and privileges, as other loans made under this part.

"(C) The borrower of a rehabilitated loan shall not be precluded by section 484 from receiving additional grant, loan, or work assistance under this title (for which he or she is otherwise eligible) on the basis of defaulting on the loan prior to such rehabilitation.

"(D) A borrower may only obtain the benefit of this paragraph with respect to rehabilitating the loan once.

"(2) If the borrower of loan made under this part who has defaulted on such loan makes 6 on-time, consecutive, monthly payments of amounts owed on such loan, the borrower's eligibility for title IV student financial assistance shall be restored. A borrower may only obtain the benefit of this paragraph with respect to restored eligibility once.".

DISTRIBUTION OF ASSETS

SEC. 465. Section 466 of the Act is amended--

(1) in subsection (a)--

(A) in the matter preceding paragraph (1), by striking out "After September 30, 1996," through "March 31, 1997," and inserting in lieu thereof "Upon the expiration of the authorization for the program under this part,"; and

(B) in paragraph (1), by striking out "at the close of September 30, 1996," and inserting in lieu thereof "upon the expiration of the authorization for the program under this part,";

(2) in subsection (b)--

(A) by striking out "After March 31, 2005," and inserting in lieu thereof

"Upon the expiration of the authorization for the program under this part,"; and

(B) by striking out "September 30, 1996," and inserting in lieu thereof "the expiration of such program authorization,"; and

(3) in subsection (c), by striking out "prior to October 1, 1997,".

PART E--FEDERAL PERKINS LOAN PROGRAM

Section 461. Section 461 of the bill would amend section 461(b) of the Act to extend the Federal Perkins Loan program through fiscal year 2002 by providing for such sums as may be necessary for fiscal year 1998 and each of the four succeeding fiscal years. In addition, section 461 of the bill would extend, through October 1, 2002, the authorization of appropriations to enable students who previously received Perkins Loans to obtain additional Perkins Loans in order to continue or complete their courses of study

Section 462. Section 462(1) of the bill would amend the institutional allocation formula in section 462 of the Act. Under current law, the annual appropriation for each of the three title IV, HEA "campus-based" programs--the Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work-Study (FWS), and Federal Perkins Loan programs--is distributed to institutions according to a two-part statutory formula. The first part, the "base guarantee", considers a school's program expenditures in a previous year. The second step in the current allocation formula, based on institutional need for additional funding, allocates the amount remaining after the base guarantees are fully funded by providing one-fourth of the remaining amount to institutions on a pro rata basis (the "pro rata increase"), and three-fourths to institutions based on the institution's need (the "fair share"). Additional funding under the second step in the allocation formula is generally available if the annual appropriation is sufficient to fund the full amount to which each school is entitled in step one. That is, all institutions are first "held harmless" to prior funding levels. Two statutory formulas--one for FSEOG and a second for FWS and Perkins Loans--measure institutional need (the Perkins Loan formula also currently reflects an institution's default experience). This formula essentially aggregates individual student financial need to institutional levels based on national standards. Aggregate institutional need drives the second part of the institutional allocation process.

Since 1986, an institution's base guarantee has been the principal determinant of its current-year allocation. For most schools, the prior year expenditure is linked to its program participation in the 1970's. Thus, today's allocation of campus-based funds largely reflects a 20-year-old distribution of program funds.

The current allocation formula is inequitable because growing schools cannot increase their funding and other institutions' funding levels are largely protected. [Even though approximately one-fourth of the Perkins Loan appropriations is distributed on the basis of institutional need, most of that funding (95 percent) is accounted for by the institutions that began participating in the program before 1986.] Also, due to the base guarantee, schools with declining enrollments have not necessarily experienced a corresponding decline in campus-based funding. Conversely, schools with increasing enrollments, and populations of needy students, have not received a corresponding increase in campus-based funding.

Section 462 of the bill would modify the institutional allocation formula so that increasingly larger shares of program appropriations would be distributed on the basis of measured financial need. By shifting the distribution of program funds toward relative institutional need, the campus-based programs will better meet the needs of financially needy students. However, to avoid disruption that could be caused by dramatic shifts in program funds between institutions, the amendment would ensure that no institution's allocation would be reduced by more than five percent compared to the prior year. Next, sections 462(2) and (3) of the bill would eliminate section 462(b) of the Act, which provides for the allocation of one fourth of the available funds to institutions on a pro rata basis, and make a conforming change. The pro rata increase is a needless complication in the formula.

For most institutions, the base year for prior program expenditures would be the second year preceding the academic year for which allocations are being determined. For example, 1999-2000 allocations would be based on 1997-98 program expenditures for those institutions that participated in that year. Base guarantees for institutions that began participating at a later date would be computed in a fashion similar to current law. Unlike current law, however, an institution's base year would continue to move forward each year, which would "lock in" any annual funding an institution gains for the future and also helps ensure that no school receives less than a specified percentage of its previous year funding.

For the first year that the proposed amendments to the allocation formula would be in effect, the base guarantee percentage would be 100 percent. That is, no school would receive less than 100 percent of their base year program expenditures. Thereafter, the base guarantee percentage would be 95 percent of the preceding year's amount. In order to achieve comparability and uniformity among the campus-based programs, each eligible institution that began participation in the Perkins Loan program after fiscal year 1985 but is not a first or second time participant, will have a base guarantee of 95 percent, instead of the current base guarantee of 100 percent.

Section 462(4) of the bill would amend section 462(d)(4) of the Act to provide that when the Secretary establishes income categories for aid applicants to determine an institution's need, for purposes of calculating a fair share under the allocation formula, the Secretary would no longer be required to establish an expected family contribution for each income category. This change would reduce the administrative burden on institutions, which must currently add several items on the output documents in order to comply with the requirement even though the official EFC is already indicated on these documents. These changes would provide flexibility so that the Secretary can continue to collect information that is not available elsewhere and derive the EFCs needed for the allocation formula. A similar change to the FSEOG program is proposed in section 415(4) of the bill, and to the FWS program in section 442(4) of the bill.

Section 462(5) of the bill would amend section 462(f) of the Act to mandate the loss of eligibility for an institution participating in the Perkins Loan program if its cohort default rate is equal to or greater than 25 percent for each of the three most recent fiscal years for which data are available. This amendment is similar to FFEL provisions, as amended by this bill. Section 462(6) would also add language to section 462(h) of the Act to define "loss of eligibility" as the bmandatory liquidation of an institution's revolving fund and assignment of an institution's portfolio to the Secretary. This would provide a powerful incentive for institutions to keep their Perkins Loan program cohort default rates low and to improve their administration of the program, especially with respect to loan collection. This would lead to increased protection for students and taxpayers, and would improve the integrity of the Perkins Loan program.

Finally, section 462(7) of the bill would amend section 462(j) of the Act to combine all returned funds from all of the Federal campus-based programs, and reallocate them according to the current reallocation rules for the FWS Program. Institutions would only receive reallocated funds if they have spent at least ten percent of their FWS allocation on community service. Additonally, they must spend all of the reallocated funds for community service. This amendment would simplify the reallocation process for institutions, and for the Department, and would put more funding into the community service component of the FWS program. The effect on the FSEOG and Perkins Loan programs, however, would not be significant, in that most (almost seventy-five percent) of returned funding is already in the FWS program. A similar change is proposed to the FSEOG Program in section 415(5) of the bill.

Section 463. Section 463(1) of the bill would modify section 463 of the Act to eliminate the Expanded Lending Option (ELO) that allows certain schools to award higher annual and aggregate loan amounts in award years in which they contribute to their Perkins Loan fund an amount at least equal to the Federal contribution for that year.

This amendment would simplify the Perkins Loan program for institutions, and for the Department. There are currently fewer than 100 schools participating in ELO. The current law is inequitable in that it bases the ability of a school to award higher amounts on its matching of Federal contribution. Therefore, a school with a small amount of new Federal money might easily provide the full match, and receive the benefits of the increased maximums, while a school with a large Federal share might not. In either case, the total loan program might be the same, and both school's students, regardless of the Federal share, have need. Additionally, by increasing loan maximums for all schools, nothing would be taken away from the current ELO schools, and great flexibility would be available for all schools.

Section 463(2) of the bill would amend section 463(c) of the Act to eliminate the prohibition on reporting defaulted Perkins Loans as negative credit information beyond seven years. Instead, credit bureaus would be required to continue to report negative information received from the institution that made the loan, or the Secretary, until the loan is paid in full. In addition, the amendments would provide authority for the Secretary to develop appropriate criteria to allow institutions to cease voluntarily the reporting of negative information before a loan is paid in full. Finally, section 463(c) of the Act would be clarified regarding what information institutions are required to provide to credit bureaus, and other stylistic changes would be made. These amendments would provide consistency between the statute of limitations for collecting loans and the period for reporting negative credit information. The reporting of defaulted loans to credit bureaus is an effective and important tool that should be available for the entire time that the Department is able to collect on the loan. Similar changes are proposed for the FFEL program in section ___ of the bill.

Section 464. Section 464(1) of the bill would make conforming amendments to section 464(a) of the Act, to eliminate special ELO maximums, and increase regular loan maximums, consistent with the amendments in section 463(1) of the bill, discussed above.

Section 464(2) of the bill would amend section 464(b) of the Act to remove the requirement that an institution make at least 5 percent of its Perkins Loan funds available to independent and less-than-full-time students, if such students account for at least 5 percent of the total financial need of all students attending the institution. This requirement causes an administrative hardship, because institutions must keep track of these categories of students to whom they offer aid, based on these artificial categories, and carry out additional calculations and reporting on students in these categories. Furthermore, many institutions are far exceeding the 5 percent minimum for these categories of students, not just in offers, but in actual expenditures. Instead, the current law requirement that funds be reasonably available to all eligible students in the institution in need thereof, would remain in effect without the additional 5 percent limitation. This change will remove the administrative burden, while still enabling the Secretary to take action against those few institutions that do not make funds reasonably available to all students, including independent and less-than-full-time students. A similar change is proposed to the FSEOG program, in section 414(2) of the bill, and to the FWS program, in section 442(4) of the bill.

Section 464(3) of the bill would amend section 464 of the Act by adding a new subparagraph (H) to define "default.". For all Perkins Loans made on or after July 1, 1999, default would be defined as 180 days past due 180 days, if the loan is repayable in monthly installments, or 240 days past due if the loan is repayable in less frequent installments. This change would be consistent with the definition of default in the FFEL program, eliminating disparities among similarly situated borrowers in the two programs. Section 464(3) of the bill would also redesignate subparagraphs (G) and (H) as (H) and (I), respectively.

Section 464(4) of the bill would amend section 464(e) of the Act to provide the same general forbearance provisions to borrowers under the Perkins Loan Program as are currently available to FFEL and Direct Loan borrowers. This would eliminate disparities among similarly situated borrowers who have loans from different programs, and would reduce confusion for borrowers who have both Perkins Loans and FFELs.

Section 464(5) of the bill would amend section 464 of the Act by adding a new subsection addressing closed school discharges in the Perkins Loan Program. Both the FFEL and Direct Loan programs include provisions, intended to protect studetns, that set the standards for the discharge of FFEL and Direct Loans for students who were attending a school that closed. The lack of a similar provision in the current law for the Perkins Loan program means that a student who attends a school that closes is able to have his or her obligation on a FFEL or Direct Loan discharged, but cannot do the same for Perkins Loans. Section 464(5) would eliminate this inconsistency and add to the Perkins Loan Program comparable discharge provisions as those that currently exist in the FFEL and Direct Loan Programs.

Section 464(5) of the bill would also add a new subsection (h) to section 464 of the Act on the rehabilitation of Perkins Loans. The Act currently contains no authorization or procedures for loan rehabilitation in the Perkins Loan program. Section 464 would establish a rehabilitation program for Perkins Loans that has the same general terms and conditions as the rehabilitation programs in both the FFEL and Direct Loan Programs. Loans would be rehabilitated after twelve on-time, consecutive, monthly payments, and at that time, the default would be removed from the borrower's credit history. Additionally, defaulted Perkins Loan borrowers would be able to renew eligibility for student aid by making six on-time, consecutive monthly payments. Borrowers could rehabilitate the loan and renew eligibility for student aid only one time each. In the Perkins Loan program, the institution, in its professional judgment, would determine what repayment amount would be reasonable and affordable for the borrower.

Authorizing such a rehabilitation program for Perkins Loans would provide a tool for institutions and servicers to return defaulted loans to repayment. It would also provide motivation for borrowers to repay their loans and for institutions to encourage defaulters to repay, because borrowers would have their bad credit erased, and rehabilitated loans would be removed from an institution's cohort default rate.

Section 465. Section 465 of the bill would amend section 466 of the Act by removing the date for mandatory liquidation of Perkins Loan funds, and replacing it with a general authority for the Secretary to implement liquidation procedures upon the expiration of the authorization for the Perkins Loan Program. A fixed date for the liquidation of Perkins Loan funds at each institution creates unnecessary problems if reauthorization does not occur before that specific date. This amendment would provide institutions with adequate lead time to liquidate the funds, should it become necessary.

DRAFT -- August 12, 1997

Reauthorization of the Higher Education Act -- Student Aid Issues

The Department's reauthorization proposals emphasize universal access to postsecondary education and lifelong learning, building upon the Hope Scholarship and lifelong learning tax credits and increases in Pell Grants and Work Study. The proposals are designed, first, to improve benefits to students. In addition, these proposals are designed to improve the management of the student aid programs and simplify program delivery. The Department is strongly committed to reducing burden on students, families, and institutions and to provide program flexibility so that the schools and the Department can manage the programs to best serve the needs of students.

As the Department of Education continues working on its proposals for reauthorization of the Higher Education (HEA), it is interested in hearing comments and suggestions from the community. This attachment includes specific proposals that the Department is considering for the student financial aid programs, and are grouped as follows:

- Pell Grant Program;
- Student Loan Programs;
- Campus-Based Programs;
- Need Analysis and Delivery System; and
- Gatekeeping and Oversight.

. D.L. schools –
. more differentials
– benefits for students –

. ICB

DRAFT -- August 12, 1997

Federal Pell Grant Program

The Administration continues to support a strong Federal Pell Grant Program as the foundation of aid for needy students and proposes the following changes designed to increase benefits to students and improve the management of the program.

Improve benefits to students: To promote access to postsecondary education, the Department is considering proposals to:

- Provide a "Super Pell" to second-year Pell Grant recipients with zero-EFCs. The purpose is to encourage persistence among the neediest students between the first and second years of postsecondary education when many students drop-out. Students would receive an additional $300 in 1999-2000.

- Encourage and reward institutions for programs and practices aimed at reducing the drop-out rates of Pell Grant recipients. The retention grant, which would be awarded to institutions based on their success in graduating low-income students, would be by institutions to provide services such as counseling and tutoring designed to increase retention and graduation.

- Reintroduce time-limits on student eligibility for Pell Grants to encourage students to complete their education more quickly. Students could receive grants for a time period equal to 150% of the period normally required to complete their course of study, with an overall full time equivalent limit of six years for a student in a four-year program. Part-time students receive proportionately longer, and students with disabilities would be exempted from the time limits.

- Base eligibility of stand-alone English as a Second Language (ESL) only programs on performance of graduates in standardized tests to improve the effectiveness of these programs. At the completion of the course of study, each individual would take an approved language proficiency exam. The institution's continued eligibility to offer ESL-only programs, and have those students remain eligible for Pell Grants, would be based on the percentage of its graduating students passing the proficiency test. This proposal does not affect ESL courses that are part of a larger academic or vocational program.

- Introduce a true Pell Grant minimum of $400. The current rule allows students who would otherwise be eligible for $200 to receive $400. This proposal would eliminate this provision.

- Modify tuition sensitive award rule to clarify that "fees" are included with tuition in the calculation. No other tuition sensitivity changes will be proposed.

DRAFT -- August 12, 1997

Improve management and operations of the programs: To streamline the programs, simplify administration of the programs for institutions and the Department, and improve accountability, the Department is considering proposals to:

- Improve program management by phasing out the requirement to advance 85% of Pell Grant funds to institutions when the alternative "just-in-time" procedures become available.

- Remove provision that directs when excess funds may be carried over to the next fiscal year and make program funding available until expended. The current language permits the Department to carry over excess funds only if the funds are less than 15% greater than needed. This is difficult to calculate until well after the end of the year and causes administrative problems.

- Increase institutional flexibility by providing minor changes to provision on crediting of Pell Grants to students' accounts to reflect current cash management regulations. This would simply specify that the rules on distribution of funds and crediting student's accounts would be established via regulation, rather than in the law, and allow the Department greater ability to react to institutions' needs.

DRAFT -- August 12, 1997

Student Loan Programs

The Administration continues to support both the Direct Loan program and the FFEL program and proposes the following changes designed to increase benefits to students, equalize benefits between programs, and improve management and operations of the programs. This proposal builds off of the proposals in the President's FY98 budget.

Improve benefits to students: To provide increased benefits to students, the Department is considering proposals to:

- Reduce borrower origination fees as much as possible.
- Provide new repayment plans to FFEL borrowers. FFEL lenders will be required to offer the extended and graduated repayment plans currently available in the Direct Loan program.
- Require FFEL lenders to capitalize interest under the terms used in the Direct Loan program. In many cases, this will reduce costs to FFEL borrowers.
- Improve the terms of FFEL consolidation loans to match those in Direct Loans. FFEL consolidation loans will have a variable interest rate; FFEL borrowers will be able to consolidate while in school; consolidation of consolidation loans will be permitted; and borrowers will not lose their interest subsidy when they consolidate.
- Allow institutions to provide higher loan limits for graduate and professional programs if they are willing to share in the default risk. To certify loans greater than $18,500, institutions will pay an insurance premium to the Department of ten percent of the amount greater than $18,500. No student could borrow more than the student's estimated cost of attendance minus other financial aid.
- Do not accrue interest on unsubsidized loans that are in deferment for economic hardship if the borrower is performing community service. This proposal will allow young people with college loans to take up to three years to serve their communities without accruing additional interest on their loans. Check if fits private

Improve management and operations of the programs: To streamline the loan programs, simplify administration for institutions and the Department, and improve accountability, the Department is considering proposals to:

- Transform 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

DRAFT -- August 12, 1997

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.

- Adopt other improvements to the FFEL program from the Department's 1998 budget proposal including, raising 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 the 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; and computing special allowance rates at the same time and in the same manner as student interest rates.

- Ensure continued access to FFEL loan funds by applying lender of last resort provisions to unsubsidized as well as subsidized loans; by allowing the Secretary to make advances directly to lenders for lender of last resort loans, rather than having to use guaranty agencies as intermediaries; and by allowing the Secretary to make institutions automatically eligible to participate in the Direct Loan program if they are eligible to participate in the FFEL program but their students do not have access to FFEL loans. These schools could enter the Direct Loan program at any time during the academic year and could participate in both the FFEL and DL programs simultaneously.

Okay, but Why?

- Prohibit schools from acting as lenders unless the Secretary determines that it is necessary to provide access. The authority for schools to act as lenders was created to address access problems which no longer exist. The FFEL and Direct Loan programs should provide sufficient access to all students at eligible schools.

- Prevent insurance companies from acting as lenders, because the regulatory system for insurance companies is not sufficient for a consumer loan business.

- Make the Perkins loan program more similar to the FFEL and Direct Loan programs by authorizing a Perkins rehabilitation program, defining "default" as 180 days past due, and providing forbearance provisions that are consistent with the FFEL and Direct Loan programs.

- Allow institutions to limit borrowing for certain categories of students such as freshmen or students in particular programs as long as they do not reduce or deny loans because of race, gender, color, religion, national origin, age, disability status, or income. Schools would be required to have established policies, but would not be required to document these determinations in individual student files.

DRAFT – August 12, 1997

- Create flexibility that would allow the Department to use new technologies as they become available. For example, establish authority for the Department to create a multi-year promissory note in the future and provide authority for the Department to use imaged documents as originals.

- Reduce burden on institutions by simplifying proration.

- Eliminate the bankruptcy discharge, because it is unnecessary and is not the most efficient way for the Department to assist borrowers who are facing financial hardships. Elimination of the discharge will save Departmental resources and equalize treatment of borrowers. 7

- Require database matching of social security numbers, selective service registration, and immigration status for PLUS borrowers.

DRAFT – August 12, 1997

Campus-Based Programs

The Administration continues to strongly support Federal campus-based student aid programs and is considering the following changes designed to improve the management of the programs.

Improve management and operations of the programs: To streamline the programs, simplify administration of the programs for institutions and the Department, and improve accountability, the Department is considering proposals to:

- Allow for increased flexibility for Perkins Loan funds to be used for Federal Supplemental Educational Opportunity Grants (FSEOG) and Federal Work Study (FWS).
- Reduce institutional burden and increase flexibility by eliminating the requirement that institutions provide at least 5% of funds for each campus-based program to independent and less-than-half-time students. For most institutions this is an unnecessary administrative burden and could be an impediment to life-long learning. ?
- Reduce institutional burden by simplifying the requirement that institutions award FSEOGs first to Pell Grant recipients. Instead of the complicated EFC ordering requirement in the law, institutions would generally be required to first make grants to Pell Grant recipients and then to any other students.
- Gradually increase the portion of campus-based funds allocated based on "fair share" to reflect more accurately the current distribution of needy students. * details

DRAFT -- August 13, 1997

Need Analysis and Delivery System

The reauthorization proposals for the Federal need analysis formulas and changes in the delivery of student aid further the principle that parents have the primary responsibility for financing their child's college education and the student, who is the primary beneficiary of the education shares that responsibility. The Department's proposals also recognize the objective of targeting Federal student financial aid to the most needy low-income students and improving management of the programs through a delivery system that is consistent with Project EASI.

Improve benefits to students: To provide increased benefits to students, the Department is considering proposals to:

- Allow schools the professional judgment authority to change a student's dependency status from independent to dependent. Schools currently have the professional authority to change the dependency status of an applicant from dependent to an independent. This proposal would allow financial aid administrators the discretion to change the dependency based on their information at hand.

  why? examples who adds??

- Provide schools with the professional judgment authority to adjust a student's expected family contribution by altering the EFC methodology and the final amount due to extraordinary circumstances, as defined by the Secretary. Currently, the statute ~~restricts a~~ financial aid administrator's authority to use professional judgement to adjust only data elements used in calculating the EFC due to special circumstances. This proposal would allow schools to make adjustments that more accurately reflect a student's circumstances.

  examples

- Modify the income offsets for single independent students and married independent students with no other dependents. Specifically, raise the income offset for a single independent student to $6,000 and to $9,000 for a married couple, if only one is enrolled in postsecondary education, or $6,000, if both are enrolled. The new income offsets provide more reasonable protection against income not available for college.

- Provide an incentive for increased student earnings for postsecondary education by increasing the dependent student income protection allowance from $1,750 to $3,500. This increase would protect $3,500 of student earnings, with the amount earned above that amount assessed at 50 percent.

- Allow the Secretary to impute an asset amount in the need analysis formulas based on the family's income, parents' age, and number of family members, rather than relying on reported assets. The current treatment of savings in the need analysis formulas has been viewed as a disincentive to savings for students and their families. This proposal would create a simpler and fairer way to incorporate savings in the determination of need.

- Adjust need analysis to reflect the recently-enacted HOPE scholarship and lifelong learning tax credits so that students do not receive less aid if they receive the tax credits.

- Eliminate the taxation of forgiveness for income-contingent loans that are forgiven after being in repayment for 25 years.

Improve management and operations of the programs: To streamline the Title IV programs, simplify administration for institutions and the Department, and improve accountability, the Department is considering proposals to:

- Move the base year back one year to allow for an earlier and simpler application process. The proposal would give the Secretary the flexibility to implement use of other than the base year income only after consultation with relevant parties. This proposal would relieve burden on students and schools, and, in conjunction with a match with the IRS, would allow for data verification of income information.

- Allow the Secretary to obtain the names, dates of birth, and social security numbers of the student's parents and the student's spouse on the FAFSA. This will enable the Department to match income information with the IRS. * re: HOPE

- Allow the Department to obtain adjusted gross incomes and taxes paid for Title IV aid students, their spouses, and if dependent, their parents from the Internal Revenue Service for the purpose of improved data verification.

- Simplify the application process of need analysis determination through enactment of two proposals. The first would simplify the criteria used for qualifying for the "automatic zero" expected family contribution. The second proposal would delete the current "simplified needs test formula" because many applicants find the tax form qualification requirements confusing and a barrier to completing the

DRAFT -- August 13, 1997

application filing process.

- Provide an expected family contribution calculation for periods of enrollment other than nine months to the two independent student formulas, as currently exists in the dependent student formula.

- Provide authority and flexibility to the Secretary to use the FAFSA as the loan application for the FFEL program. This change will reduce burden for students and streamline the application process for schools, lenders, and the Department.

- Modify the provision that specifies that no more than eight nonfinancial data elements needed by the States may be included on the FAFSA by eliminating the specification of only eight data elements. This change would assure the continued ability to maintain a single national student aid delivery system by providing the Secretary with the necessary authority to meet the needs of the States. keep it? why not to?

- Delete the provision that requires any person who assists another person with completing the FAFSA to provide his/her name and identifying information on the FAFSA.

- Provide authority for the Secretary to provide services to entities for a fee for ancillary services related to the delivery of student aid, and to pay entities for providing data essential to Title IV programs. This authority is needed to provide flexibility to pursue reenginering and integrating the student aid delivery system. Under this authority, the Secretary would be able to encourage and provide support for the continued expansion of the use of electronic processes in the delivery of student aid. !

- Provide authority for the Secretary, after consultation with affected parties, to modify any requirement concerning applying for aid and delivery of funds to take into account innovations in technology and business processes if those modifications would better meet the needs of delivering aid to students. This authority will facilitate the Secretary's efforts to reengineer the student aid delivery system.

DRAFT -- August 12, 1997

Gatekeeping and Oversight

The Department's reauthorization proposals for gatekeeping and oversight will help to ensure access, promote effective education, and improve the administration and management of the programs by easing burdens on students, institutions, and the Department.

Improve benefits to students: To provide increased benefits to students, the Department is considering proposals to:

- Broaden Title IV opportunities for distance learners by expanding eligibility for students in distance learning programs at degree-granting institutions. Eliminate differences in cost of attendance treatments between distance learners and on-campus learners. Ensure accountability of distance programs through accreditation and, to assist the Department in evaluating accrediting agency activities, authorize an independent study to examine the effectiveness with which accrediting agencies are developing and enforcing outcome measures for distance learning programs.

- Extend the current cohort default rate threshold exemption that currently applies to Historically Black Colleges and Universities, Tribally Controlled Community Colleges, and Navajo Community Colleges until the year 2000. Beginning in 2000, continue to exempt those institutions from the default rate penalties as long as they are showing improvement in their default rates.

Ensure effective education: To ensure that students receive a quality education, the Department is considering a proposal to:

- Extend the 70/70 completion and placement requirement to all vocational programs up to one-year in length. Modify the existing requirement by allowing institutions to meet the requirement if 70 percent of their students are placed in jobs for which they are trained regardless of whether they complete the program.

Improve management and operations of the programs: To streamline the Title IV programs, simplify administration for institutions and the Department, and improve accountability, the Department is considering proposals to:

- Repeal State Postsecondary Review Entity program.

- Repeal State share of default costs provision.

- Provide the Secretary the authority to develop a performance-based approach to statutory

DRAFT -- August 12, 1997

and regulatory requirements whereby the Secretary would exempt institutions from selected administrative requirements provided they meet specific administrative performance criteria.

- Impose the existing 85/15 requirement on institutions that switch from for-profit to non-profit status during a two-year transition period.

  Why isn't it a new entity that must wait??

- Repeal the refund requirements and substitute a simplified proposal that incorporates a disbursement schedule that determines the amount of Title IV aid a student has earned when the student ceases attendance.

- Limit required unannounced reviews by accrediting agencies at schools offering vocational programs to those agencies at which at least 10 percent of the institutions they accredit have cohort default rates for the most recent year of 20 percent or higher. Allow the option for all accrediting agencies to conduct unannounced site visits when they are deemed necessary by the agency.

  This and others — apply only to for-profit ??

- Make the cohort default rate threshold provisions in the Perkins Loan program consistent with FFEL and Direct Lending, including terminating an institution's participation in the Perkins program if its Perkins default rate exceeds 25% for the three most recent years.

- Require institutions that appeal high cohort default rates to post surety. If the appeal is unsuccessful, the institution will be liable for loans and related costs that are incurred during the appeal process.

- Broaden the statutory authority for the Quality Assurance (QA) program to include the processing and disbursement of student financial aid, related student services, and verification of student financial aid application data.

- Repeal the provision in 498(f) that requires the Department to conduct site visits at institutions for each certification or recertification. Repeal the provision in 498(f) that allows the Department to charge institutions for the costs associated with these site visits.

- Revise the master calendar provisions applying to the regulatory process to provide more flexibility for institutions and the Department. Specifically, any final regulation affecting the calculation of awards and delivery of aid to students that has not been published in final form by November 1 prior to the start of the award year shall not become effective until the beginning of the second award year after November 1. However, the Secretary may designate specific provisions that an institution can choose to implement prior to the delayed effective date.

National Consumer Law Center Inc.
18 Tremont Street, Suite 400
Boston, MA 02108-2336
(617) 523-8089 (Fax) 523-7398
HN0639@handsnet.org

Washington Office:
1875 Connecticut Ave., NW, Suite 510
Washington, DC 20009
(202)986-6060 (Fax) 986-6648
HN0846@handsnet.org

HETAP:
P.O. Box 829
243 Railroad Avenue
Woodacre, CA 94973-0829
Phone and fax: 415-488-0662

September 4, 1997

Hon. Jim R. Jeffords, Chairman
Labor and Human Resources Committee
United States Senate
Senate Dirksen Office Building (Room 428)
Washington, D.C. 20510

Dear Chairman Jeffords:

Set forth below are the joint recommendations for reauthorization of the Higher Education Act by several non-profit groups representing the interests of students. These groups include the Higher Education and Training Access Project (HETAP) of the National Consumer Law Center (NCLC), the U.S. Student Association (USSA), Public Counsel, and Community Legal Services. In addition to representing individual students, representatives of each group have participated in negotiated rulemaking with the Department of Education from 1992-1995. The undersigned representative of HETAP also participated in the 1992 reauthorization and has testified before both Senate and House committees in that connection. Statutory language for selected proposals, as noted below, is provided in an attachment to this letter (hereinafter referred to as "Legislative Language").

NCLC is non-profit organization whose mission is to seek justice for poor Americans struggling with consumer problems. Over the past decade, NCLC has become increasingly involved in student loan problems faced by low-income students, particularly those who have been defrauded by private vocational schools. HETAP is NCLC's consumer advocacy and community education effort on student financial aid and vocational school issues. USSA, founded in 1947, is the nation's oldest and largest student organization. USSA currently represents more than 3 million students at over 300 campuses nationwide. Public Counsel is the public interest law firm of the Los Angeles County and Beverly Hills Bar Associations. Over the years, Public Counsel has provided assistance to over a thousand victims of proprietary trade school fraud and abuse. Community Legal Services (CLS) is a non-profit agency providing free civil legal representation to the poor in Philadelphia. Over the past seven years, CLS has helped hundreds of low-income students resolve their trade school fraud and student aid problems.

A. Program Integrity-- an ongoing concern for students and taxpayers -- must be given precedence over "reducing burdens" on schools.

While anecdotal evidence suggests that the epidemic of problems with scam trade schools experienced in the decade covering 1984-1994 may have subsided, these problems have by no means been eradicated. Staff of the Senate Permanent Subcommittee on Investigations' noted at a hearing in July 1995 that the problems with proprietary trade schools abound and focused on one egregious example, IADE American Schools based in Los Angeles. Some of the amendments to the Higher Education Act (HEA) in 1992 appear to have made a difference in gatekeeping. In many respects, however, the 1992 amendments did not go far enough, veered off in the wrong direction, or were never fully implemented and therefore failed to achieve the program integrity gains necessary to protect students or the federal fiscal interest. The State Postsecondary Review Program, for example, was destined to fail because it grouped together all types of institutions. Great reliance was placed on the SPREs as the means for oversight of high-risk institutions. Without SPREs, other measures must be put in place to preserve program integrity.

As the IADE case illustrates so forcefully, enforcement has been lax in all three prongs of the "triad". IADE was monitored, audited, censured, placed on reimbursement, threatened, and reviewed by the state, the accreditor and the Department. Violations were found by all parties that reviewed the school, yet no administrative action was actually ever taken. The owner and the financial aid director of IADE have been indicted for defrauding the federal government of more than $1 million in Pell grant funds. As the IADE example illustrates, once an entity is accredited, licensed by the state, and certified by the Department as eligible, it is hard to get these imprimaturs of validity removed. Because monitoring and oversight often do not result in sufficient protection of students and public funds and because timely enforcement action often seems nearly impossible, front end gatekeeping is critical.

While no "silver bullet" can assure flawless program integrity, our laundry list of recommendations below suggests multiple strategies to achieve that goal.

We make the following recommendations for improving front-end gatekeeping and ongoing enforcement for program integrity:

1. ***Create separate standards for proprietary vocational schools.*** Increasingly, Congress has recognized that separate standards for trade schools are appropriate based upon the difference in mission and operation between for-profit and public or non-profit institutions. See, e.g., 20 USC

1088(a)(3) amendment in 1993 allowing non-profit, degree-granting schools exceptions to the 25% incarcerated students and 50% "ability to benefit" student caps. Scanning the Department's high-default rate and closed school lists on which the overwhelming majority of schools are proprietary trade schools, it is evident that that sector is where the bulk of the Title IV problems lie. We note that the reauthorization proposals presented by the Department of Education's Office of the Inspector General (dated July 1997) echo many of these same concems and proposed solutions. Some areas in which to set distinct standards for proprietary schools include:

(a) extending to all proprietary vocational programs the current eligibility requirement for short-term programs of **70% graduation and job placement rates;**

(b) enacting **distinct financial responsibility standards,** such as those in the recent NPRM published by the Department, for proprietary schools;

(c) requiring **electronic reporting of financial audits** to the Department in standardized format for easier analysis;

(d) imposing **special consumer disclosure responsibilities** on vocational schools. See section C, infra.; and

(e) statutorily requiring schools that admit students without high school diplomas or GEDs ("ability to benefit" or ATB students) to **maintain proof of high school diploma or its equivalent**, as well as ATB tests and answer sheets, in their files. ATB fraud, including falsification of high school diplomas, has been an ongoing and costly problem. We are at a loss to understand why the Department has apparently reversed its policy requiring maintenance of proof of high school diploma or equivalent, a longstanding anti-fraud policy. For many years, some states, such as New York, have required trade schools to maintain high school diplomas or the equivalent and have found it quite workable and useful in weeding out fraud. See Legislative Language, proposal II (D).

2. ***Cut off Pell Grant eligibility*** *for schools subject to termination from the loan programs* ***due to high default rates***. We understand that this requirement is temporarily in effect under an appropriations bill, but it should be codified in the HEA. See Legislative Language, proposal V(A).

3. *Vigorously* ***enforce the "85-15 Rule"*** *as written in the HEA*. The new financial responsibility regulation requiring uniform "85-15" reporting on annual audits should make enforcement easier. No statutory change is required or recommended to achieve this recommendation.

4. ***Provisional certification*** *should be the status for at least all new proprietary institutions, the sector in which the vast majority of Title IV abuses have occurred, for their first five years of participation* <u>*without renewability*</u> *of provisional status.* We understand that this is the Department's practice currently. Codifying it would ensure continuity.

5. ***Personal financial guarantees or individual liability*** *should be required* :
(a) of school owners of all proprietary **institutions placed on provisional certification**. This recommendation was put forth to the Senate Permanent Subcommittee on Investigations by Assistant Secretary Longanecker in the summer of 1995. It would require deletion of section 498(e)(4) of the HEA;
(b) of school owners who knowingly **permit delivery of a grossly deficient educational program** at a proprietary trade school;
(c) of school owners and officers **for unmade student loan refunds**. The issue of unmade loan refunds remaining after schools close is a nagging one adversely affecting hundreds of thousands of students and adding greatly to default costs. See section B below for discussion of relief needed for borrowers affected by this abuse.

6. *Impose* ***liability on accrediting agencies*** *that grant or continue accreditation of trade schools that fail to meet prescribed standards.* Accrediting agencies, meant to assure quality of educational institutions and their programs, have failed miserably in the trade school context. For example, reviewing the Department's closed school list, the overwhelming majority of schools are proprietaries accredited by the largest trade school accrediting bodies (e.g. nearly 200 locations were accredited by ACCET). Imposing liability on these accreditors when they fail to do their job would protect the federal fiscal interest by giving students and the Department an additional party to seek collection from if the school closes. It should also provide theses accreditors with a strong incentive to improve the quality of their work. See Legislative Language, Proposal III.

7. ***Bar accreditation for institutions until a site visit*** *by the accreditor has been made.* We understand that some accreditors make the site visit and then grant retroactive accreditation, allowing federal dollars to flow before the school has been inspected.

8. ***Hold institutions that appeal high default rates responsible*** *for posting a bond , or require their owners to assume personal liability, to cover the cost of loans to the school during the appeal process , should the appeal be unsuccessful.* While loan default cutoffs have been an effective means for eliminating problem schools from the loan programs, some schools have manipulated default rates and the appeal process in order to delay their ultimate removal from Title IV programs while in the meantime enrolling scores of unsuspecting new students. See Legislative Language, Proposal V(B).

9. ***Strengthen "ability to benefit" standards,*** for example by:
(a) excluding ATB borrowers' eligibility for **unsubsidized Stafford loans**, the **statutory limitation** that existed for SLS loans in section 428A of the HEA. When the SLS program was merged into the unsubsidized Stafford loan program, this previous limitation was (we assume inadvertently) omitted. We have begun to see trade school students without high school diplomas incurring high-cost unsubsidized Stafford loan debts in addition to subsidized Stafford debts. This sets the students and the Department up for repetition of the SLS default experience. It should be statutorily corrected. See Legislative Language, Proposal II (A);
(b) **precluding** Title IV **eligibility for ATB students in correspondence**/distance learning **programs**, because of the particular dangers of ATB falsification posed by these courses of study. See Legislative Language, Proposal II (E);
(c) requiring that at least **for-profit schools maintain copies of high school diplomas or GEDs** in order to maintain an audit trail for compliance with ability to benefit provisions. See (1)(e) above and Legislative Language, Proposal II (D);
(d) **maintaining and enforcing the institutional eligibility criteria of 50% ATB students** found in current law, 20 USC 1088(a)(3)(D);
(e) amending the statute to **require that ATB testing be accomplished by prospective students taking the GED test**, where appropriate, administered by local education agencies. Passing scores for Title IV eligibility purposes could be set by the Secretary on particular sections of the test and could be lower than is required for obtaining a GED. Because administration of the GED tests is secure, it would improve program integrity by removing the testing from the school cite. It could also have the salutary effect of securing GEDs for some students who otherwise might not have sought one. See Legislative Language, Proposal II (B); and
(f) to ensure sound and informed public policy decisions on ATB students, **requiring the Department to collect comprehensive data on ATB students** participating in the loan programs. See Legislative Language, Proposal II (C).

10. *Amend the HEA, or General Education Provisions Act, to **require that schools keep loan-related records for five years after the loan has been paid** in full and other Title IV-related records for five years after the last date of attendance.* This should include student attendance records which, in part, provide evidence of "satisfactory progress" for Title IV eligibility purposes.

11. In order to rank schools for program review and enforcement purposes, *create a **set of weighted, objective "risk factors"** based on the Department's experience with schools that have closed leaving funds owed to students and/or the Department*. We understand that this effort, consonant

with Section 498A(a)(2) of the HEA, has been underway at the Department for some time. Congressional action requiring such a ranking, i.e. changing "may" in the statute to "shall", would ensure that it is implemented, rather than abandoned, in order to rationalize targeting of enforcement efforts.

12. ***Increase the use of unannounced visits*** *to suspect schools and* ***start using "shoppers"*** *to pose as prospective students where admissions fraud is suspected.* Neither of these measures would require new statutory authority. There is no better, and may be no other, way to prove unlawful activity than to surprise the perpetrators. Conversely, advance notice allows unscrupulous schools to alter, hide or destroy key documents. Adelphi Business Schools, for example, became famous for their "moving libraries" which appeared on their campuses only when accreditors or regulators had announced planned visits. Also, shoppers have been used successfully by some state agencies to uncover or verify complaints, such as those involving falsified ability to benefit testing.

13. ***Maintain the existing caps*** *(no more than 50% of institution's courses of study may be correspondence or 50% of its students may be enrolled in correspondence courses)* ***for correspondence programs****. Ensure that they also cover "distance learning"; if any new institutional or programmatic eligibility waivers are created for distance learning, limit them t o non-profit schools.* Among the worst abuses of Title IV aid in the 1980's were those committed by proprietary correspondence schools. They recruited unqualified students, grossly inflated the clock hours their lessons represented, routinely created falsified ability to benefit and satisfactory progress records, often had withdrawal rates of 90% and more, and bilked students and taxpayers of millions of dollars. The special difficulties of measuring the quality of correspondence and other distance learning methods militates against allowing for-profit schools to obtain unlimited Title IV funds for such programs.

14. ***Maintain existing default cut-off provisions***, the Department's most successful enforcement tool. Default cutoffs are responsible, in large measure, for the current reduction in student loan defaults.

We are also extremely concerned that the Department's stated goal of easing the regulatory burden on institutions may conflict with protecting students and with the Department's own enforcement capability. As the U.S. Senate Permanent Subcommittee on Investigations was told by the Department's Inspector General in 1995 during hearings on proprietary school abuses of the Pell Grant Program:

> *...it may be inviting to think that, in the context of reinventing government or otherwise, we can do away with prescriptive regulations. However, we must be cautious when applying this*

approach in an area or to an industry where there is an identified abuse of taxpayer funds and students.... [The] easy availability of huge sums of Federal ... funds provides motivation for some unscrupulous program participants to look for gaps in the existing laws and regulations in order to enhance their own financial interest rather than that of the students or the public. In rendering their decisions, courts will require that regulatory or legislative requirements are clear, and we must ensure that such requirements exist to protect taxpayers and the intended beneficiaries of the [federal] programs. Statement of John P. Higgins, Acting Inspector General, U.S. Department of Education, to Senate Permanent Subcommittee on Investigations' Hearing on "Abuses in Federal Student Grant Programs and Proprietary School Abuses", July 12, 1995, p. 10 of written statement.

Unless executed with great precision and care, regulatory simplification combined with current federal down-sizing efforts could have a disastrous multiplier effect, crippling enforcement efforts and increasing loan defaults. The Comptroller General has expressed concern that the federal government "has insufficient accounting systems and managers to ensure that ... liabilities [owed to the government] are properly monitored." "U.S. Is Taking On Rising Loan Risk-- As liabilities mount, oversight wanes", article by Jeff Gerth of New York Times, from San Francisco Chronicle, February 22, 1996, p. A6. De-regulation of the 1980's, numerous reports have shown, allowed booming growth in federal programs, including student loans, without adequate oversight. The result: horrendous student loan default rates, due in large measure to unscrupulous training providers set up exclusively to cash-in on Title IV funding. The tools for preventing unlawful activity by postsecondary institutions must be maintained and strengthened in order to protect students and to prevent the student loan defaults that result from such activity.

We hope the Congress will agree with us that regulatory relief is appropriate only where the regulatory provisions do not provide meaningful protection for students or taxpayers. Some recent "simplifications" that have taken place and are still in progress have not necessarily followed that principle. For example:

-Electronic funds transfers (EFTs) hold the potential for making loan proceeds more quickly available to students and of reducing paperwork in the loan disbursement process. EFTs also, however, hold potential pitfalls for educational consumers. Over the past few years, when student advocates have raised concerns for example about the loss of student control over loan funds through the use of EFTs, Department and other officials in the student aid industry assured us that the borrower can always maintain control by notifying the school to send back all or part of the loan funds if the student does not enroll, withdraws or simply determines that he or she does not want the total loan amount. The recent Cash Management

Regulation (Nov. 29, 1996) attempts to address this problem by allowing a student 14 days from the notice of crediting the student's account with EFT proceeds within which to cancel the loan disbursement. While this is a step in the right direction, we believe the time limit is too short.

-<u>Master checks</u> again simplify the paperwork for lenders and schools by allowing one check to be cut for multiple students' loans, but deprive students of the power of check endorsement. The use of master checks, rather than individual ones also raises questions about tracking individual disbursements.

-<u>Single loan applications for subsidized and unsubsidized Staffords</u> lack an adequate explanation of the differences between the two types of loans. This may cause students unknowingly to incur larger unsubsidized loan debts than they can reasonably repay.

- The <u>period allowed for schools to hold loan proceeds</u> has for many schools become the normal delay in disbursing loan proceeds, i.e. the ceiling has become the floor. This delay allows schools to collect interest on the loan funds, while denying students access to moneys needed for their living expenses. This practice is particularly offensive in the case of unsubsidized loans since the borrower pays interest on the funds while the school holds them.

- <u>Line-of-credit proposals or multi-year promissory notes</u> under discussion would also distance borrowers from the process, diminish borrower control over funds, and foster high borrowing. This concept is fraught with dangers for students and for taxpayers in that uninformed borrowing and over-borrowing will lead to increased loan defaults.

- <u>Record retention rule changes</u> may directly harm the Department's ability to effectively enforce the HEA and regulations. Acceding to institutional complaints about accumulation of paper, the record retention requirements now state that schools must retain loan disbursement documents for only 3 years after the student's last date of attendance. A student may stop attending one school but move on to another, have several years of deferments, and not go into repayment until more than three years after attendance at the first school. Yet, loan disbursement records (e.g. payment to student for funds in excess of tuition, crediting to student's account or other charges) are often kept at the school.Three years from the last date of attendance is simply not long enough for principal balance disputes to surface and be addressed.

In summary, program integrity is an ongoing concern for students and taxpayers and must not be relegated to a secondary role. Any regulatory relief urged by postsecondary institutions, lenders, or others should not be undertaken unless a finding is made that it will not adversely affect student protections, the Department's and the Inspector General's enforcement efforts, and the federal fiscal interest.

B. The lingering effects of trade school fraud and need for borrower redress

The HEA has enabled countless low- and moderate-income individuals who otherwise would have been unable to do so to obtain high quality education and postsecondary training. In so doing, the HEA, like the GI Bill before it, has opened the door to the American dream for millions of Americans. Unfortunately, it has also slammed the door shut on hundreds of thousands of low-income Americans by allowing unscrupulous trade schools to flourish and to hoodwink those most desperate for self-improvement into obligating themselves for loans to pay for worthless job training. The tragic result is students left with little or no training, no jobs, substantial debts they cannot possibly repay, ruined credit ratings, and ineligibility for further student aid to get a real education or high quality training.

Certain provisions in the 1992 amendments to the HEA, notably the closed school and false certification discharge provisions, provided relief to some of those victimized by unlawful or unethical trade school activity. We strongly support those provisions and urge no modification to them. What is called for is implementation by the Department and the guaranty agencies to effectuate the beneficent purpose of the discharge provisions. We have strongly urged the Department to work with us on a public service information campaign to ensure that all eligible students are reached and receive the loan cancellation to which they are statutorily entitled. Anecdotal evidence suggests that: (1) a large percentage of the defaulted borrowers eligible for closed school discharge have been unreachable due to inaccurate addresses in the hands of loan holders; and (2) only about 20% of the defaulted borrowers identified by guarantors as potentially eligible for closed school discharge and to whom notices of discharge rights have been sent even respond. Clearly, more needs to be done to reach out to these borrowers whose loans may go back as far as 1986 and who, therefore, otherwise may be lost to the system.

Furthermore, the 1992 provisions reach only a small segment of those who have suffered set backs from their experience with fraudulent trade schools. We believe that the Department already has sufficient statutory authority to cease collection of student loan balances owed by students whose school owes but failed to pay loan refunds on their behalf and then closed. The Department previously had indicated that it would by regulation provide relief to this group of students, but has not yet done so. We have strongly urged the Department to provide relief for these students by using its regulatory authority, or if deemed necessary, by seeking statutory authority.

Recommendations (none of which require statutory amendments):

1. **Maintain, as written, the closed school and false certification discharge provisions** and implement them fully.

2. Encourage the Department to **embark on a public education campaign**, including public service announcements, working with students' advocates **to inform borrowers of their discharge rights.**

3. Encourage the Department to **step up recoupment activity against closed schools**, their principals and affiliates.

4. Urge the Department to **discharge loan balances**-- both prospectively for new loans and retroactively for existing balances-- **for students whose schools owed but never paid loan refunds** on their behalf and which have closed. See Recommendations of the Department of Education Office of the Inspector General, July 1997, pp. 36 and 39-40.

C. Improving information available to students in order to reduce bad choices and consequent loan defaults

The availability of comparative consumer information on training programs may not save all prospective students from poor educational experiences. Unsophisticated and poor people desperate to better their situation may instead succumb to high pressure sales tactics. Nevertheless, without basic, comparative data it is impossible for consumers to make informed choices. Essential information for trade school students includes graduation rates; licensing examination pass rates, if applicable; and placement rates, showing the number of graduates who got the job for which they had trained (and not merely a "related job") within six months of graduation and who kept the job for at least four months. This information was required under prior Departmental regulations. We had urged such expanded information In our comments on the Right-to-Know Act regulations. We, again, strongly recommend that such data-- verified for accuracy-- be provided to prospective students and be compiled for distribution on a comparative basis by the Department.

Many other sources of information on schools should also be made available through the Department to students and their human services counselors and advocates. For example, we have strongly urged the Department to continue developing the Postsecondary Education Participants System (PEPS) to encompass data from all Departmental sources, accreditors, and state agencies and make this information accessible to the public, perhaps electronically. The National Student Loan Data System (NSLDS), already up and running and accessible by institutions, should also be available to students in order to help them track their loans and other aid. In order to be truly useful to all parties, of course, NSLDS information must be fully accurate and up-to-date-- two features we understand it cannot currently boast.

Regarding deferments, a confusing array of possibilities exist for borrowers depending on when their loan promissory notes were signed and when the proceeds were disbursed. The only statutory requirement for notification of deferment rights is that they be contained in the promissory note. Borrowers are often unaware of these rights. Thus, some entitled to postponement of the repayment obligation may unwittingly slip into default. More meaningful notice of deferment rights-- after leaving school-- should be given.

Recommendations:

1. Amend the HEA to **require schools that predominantly provide vocational training programs to provide**, in a uniform format, **data on their graduation, placement (as defined above), and licensure exam pass rates**. Vocational training institutions already retain the responsibility to compile the data under many state licensing laws and accrediting body standards. The statute should require that they provide the data to prospective students and to the Department. The Department would compile the data in comparative format for dissemination to the public. By including programs offered by both proprietary and non-proprietary institutions, prospective students will be able to engage in much more comprehensive comparison shopping. The data should be verified by some outside source, such as attestation by a certified public accountant, and should remain auditable by government entities. See Legislative Language, Proposals IV (A) and (B).

2. **Make development of PEPS**, as a thorough data base, **a priority** to carry out the mandate of section 498A(a)(3) of the HEA and amend the statute to clarify public access to the data. See Legislative Language, Proposal IV (C).

3. **Urge the Department to ensure that students have access to accurate, up-to-date NSLDS** data on their own student aid. This would enable students and their advocates to locate the holders of their student loans far more easily than can be accomplished currently. See Legislative Language, Proposals IV (D) and (E).

4. Amend the statute to **require lenders or guarantors**, or the Department in the case of the Direct Loan Program, **to notify borrowers of their deferment rights** and to make deferments retroactive to the date of delinquency upon the borrower's showing that he would have been so entitled had he timely applied. See Legislative Language, Proposal IV (F).

D. Increased funding for Adult Literacy Training

We know that the President is concerned with literacy issues and has proposed the use of volunteer literacy tutors and work study student tutors, a worthwhile endeavor which we support. But in order to make significant headway in the war against illiteracy, funds must be committed to provide the expertise of trained reading instructors both for students and to train lay tutors. The adult population, an increasing percentage of those seeking higher education and job training, is especially hard to reach and yet must not be forsaken.

Recommendation: We suggest that our national education policy should aim to raise literacy levels and increase the percentage of those with high school diplomas and equivalencies rather than allowing to grow the number of ATB students receiving aid meant for those in higher education. We strongly urge the Congress to allocate increased funds for localities under the Adult Literacy Act and to embark on a national adult literacy campaign.

E. Massive confusion in the student loan programs warrants an ombudsman program for student loan problems as a means for default avoidance

Some student advocates spend much of their work life trying to help students sort out complicated student loan problems like the following that never should have happened:

*a lump sum loan payment rather than delay the next payment date as intended, mistakenly hurled the borrower into default;

*a deferment granted on 5 of the student's 6 loans held by the same entity erroneously was not granted on the sixth and put the student into default, collection fees, and ineligibility for further aid to finish her last semester;

* a student whose Direct Loan is promptly, electronically received by the college can't get the excess proceeds for weeks because the college is holding them for the maximum allowable period-- although the student needs the loan proceeds for food and is accruing interest charges on the unsubsidized portion of the loan on which is earning interest.

Students trying to pay their loans and avoid default are increasingly tripped up by computer glitches, lost mail , and other administrative problems that are virtually impossible to untangle. As *Smart Money Magazine* put it, such students "get caught up in a maelstrom of bureaucratic bumbling, computer systems gone wild, misplaced paperwork, and even thuggish collection agencies. It's a tale of borrowers-- and there are thousands of them-- who've had their lives disrupted or even been put into default because of a mistake by their loan servicer or guaranty agency." "Getting the Third Degree", by Devin Leonard, March 1996, p. 108.

Few lawyers or other advocates have expertise in student loan issues at all, let alone the detailed and frequently changing regulations and actors. An Ombudsman Program, properly funded and staffed and with enough independence to be a strong advocate for borrowers and not an apologist for any systemic or individual failings, could serve several important functions. It could resolve individual borrowers' loan problems, thereby reducing defaults, and track systemic patterns.

We note that the National Association of Student Financial Aid Administrators (NASFAA) has adopted this proposal as one of its May 1997 reauthorization recommendations to Congress. Also, the California Student Aid Commission and Texas Guaranty Agency each have new ombudsman offices. While these may serve a useful role for loans held by those agencies, many borrowers have loans guaranteed or held by multiple agencies, agencies that do not have ombudsman offices, or have loans held by the Department either because they are Direct Loans or are FFEL loans in default and assigned to the Department. We also note that the Department has recently established a toll-free Customer Support Branch Inquiry Service for financial aid professionals. Dear Colleague GEN-96-12. The stated purpose of the new hotline is to provide a means to "cut through the red tape", with a 3 day turn around for questions from financial aid administrators. If students are truly viewed as the number one customer of the financial aid programs, they should also be provided with a meaningful way to cut through student loan red tape in order to help them avoid defaults.

Recommendation: See Legislative Language, Proposal I on creation of Student Loan Ombudsman Program.

F. Increasing Pell Grants and Structuring Tax Credit Proposals to Help the Poor

Low-income students who 20 years ago would have relied solely on grants today are highly dependent upon student loans due to the skyrocketing costs of higher education and the stagnation of federal grant monies. The dramatic imbalance between federal grants and loans is evidenced by the fact that while such grants as a percentage of all sources of aid doubled from 1963 to 1973, they have dropped steadily since then. In 1993, federal grants comprised less of the total than in 1963, i.e. less than 20% of all aid. The College Board, *Trends in Student Aid 1984 to 1994*. Federally backed student loans, on the other hand, have mushroomed in significance from roughly 20% of all aid in 1963 (equal to federal grants at the time) to over 50% of all aid in 1993. Id. Increasing the Pell Grant is the most direct and effective way begin to address the imbalance and to make higher education and training accessible to the poor. We, therefore, strongly support the increase in the maximum Pell Grant. We recognize that this is a budgetary issue rather than a matter for reauthorization since the HEA already provides an even higher maximum than that proposed to be funded. Nonetheless, we wanted to get on record our support for this method of helping the poor. Pell grants and favorable loan terms become even more important for low-income students in light of the new tax credits by which Congress and the Administration have provided a significant benefit for middle-income students.

While helpful for those students, the tax credit presents a far less effective way to make higher education accessible to the poor because, unless the credit is refundable and applicable to very low levels of adjusted gross income it will not put any dollars in the pockets of people earning less than 150% to 200% of the poverty level. Moreover, getting a $1500 tax credit in April or May will not enable those with no discretionary income to pay community college tuition for the previous September or

January.

The refundability issue is critical to the millions of individuals who have relied, in part or solely, on welfare for income support prior to the 1996 changes in federal law. While many of those individuals have some amount of earned income each year, typically it would be an amount well below the minimum income to incur a positive tax liability, especially after taking into account the Earned Income Tax Credit (EITC). It would indeed be ironic if the EITC, part of the effort to "make work pay", prevented low-income workers from receiving money for their education through the new education tax credit. Like the EITC, the education tax credit formula should, therefore, allow workers with any amount of earned income to receive some refundable credit, and should be phased out at higher levels of income.

The delayed reimbursement issue is not readily solved. If at all possible, the education tax credit should be eligible for the advance payment system that we understand is now allowed for the EITC (by having employer withholding reduced). That way, at least some low-income beneficiaries of the credit would get help with living expenses, while perhaps relying on Pell grants or other sources to pay for tuition and books.

Recommendations:

1. During the reauthorization process, we strongly urge the Congress to **focus** on low-income students' needs, particularly **on strengthening the Pell Grant Program, reducing loan costs to students, and providing remedial benefits to student loan borrowers**. See especially B and E supra.

2. To the extent possible, we urge restructuring the tax credit to make it a **refundable tax credit** that would kick in at low income levels could help realize the worthy goal of putting community college within the reach of every American.

G. Providing labor market information to Title IV applicants and considering labor market needs in determining eligibility for Title IV aid to proprietary school vocational programs.

Current law requires that to attain eligibility for Title IV aid proprietary schools must provide "training to prepare students for gainful employment in a recognized occupation." Section 481(b)(1) of the HEA, 20 USC section 1088(b)(1). Yet, as the GAO has recently pointed out, schools are not required to consider students' likelihood of securing employment in the occupation for which they were trained. Testimony before Subcommittee on Human Resources and Intergovernmental Relations, Committee on Reform and Oversight, House of Representatives, by Cornelia M. Blanchette, June 6, 1996, GAO/T-HEHS-96-158, pp. 11-12. In its 1991 report on abuses in Title IV programs, the Senate Permanent Subcommittee on Investigations had recommended that Congress:

consider the feasibility of setting reasonable limits on the type of proprietary school education that federal dollars should subsidize, emphasizing education and training from which students, and ultimately, society as a whole, will realistically benefit. In the past federal financing for relatively worthless training in "glutted" career fields has created unnecessary financial costs to the taxpayer and very real costs to the students in terms of lost opportunities in marketable skills. "Abuses in Federal Student Aid Programs," Report of the Senate Permanent Subcommittee on Investigations, Committee on Governmental Affairs, May 17, 1991, p. 35.

The Department's Inspector General, examining Title IV expenditures on one vocation, similarly noted that although approximately $725 million in Title IV funds are spent annually to train cosmetologists, the supply of cosmetologists routinely far exceeds the demand. In 1990, for example, over 113,000 students who enrolled in cosmetology programs did not obtain a license to practice. Office of Inspector General Management Improvement Report No. 93-03, March 12, 1993, p. 5. The Inspector General's Office concluded that, "students and taxpayers lose under this system...The Federal Government does no service to students by making Title IV funds available to them for vocational training if they do not eventually find gainful employment." Id., p. 1. Both the Inspector General and the Senate Permanent Subcommittee have suggested that labor market information be used to identify occupations where workers are needed, and to place reasonable limitations on Title IV funds to proprietary school training to fields in which demand exists. The GAO also apparently is studying this issue. See GAO/T-HEHS-96-158.

Recommendations:

1. As a start, the Congress should **require the Department of Education, in cooperation with the Department of Labor, to develop and make widely available to Title IV applicants accurate information on current and future market needs** for those trades and skills that are subsidized through federal student aid programs. For more sophisticated students, this information alone could diminish the likelihood of enrollment in programs offering training for glutted fields.

2. For less sophisticated educational consumers, however, more than information is needed. The HEA **definition of an eligible "proprietary school" should be amended to require such schools to provide evidence that each program for which they seek Title IV eligibility provides a reasonable chance that its students will find gainful employment** in the job for which they will be trained. This could be proven by a formula of verified completion and job placement and earnings data.

H. Ensure inclusion of legal organizations representing low-income students and other student organizations in future negotiated rulemaking or other negotiations with the Department

In the 1992 amendments to the HEA, Congress required the Department to convene regional meetings to obtain public involvement by affected parties in the development of proposed regulations and to conduct negotiated rulemaking on the regulations implementing the 1992 amendments. Section 492 of the HEA. The statute recognized that organizations representing students had an important role to play as representatives of parties directly affected by the amendments and specifically named " students" and "legal organizations that represent students" as those to be included. Section 492(a)(1).

The undersigned organizations were selected by the Secretary to participate in negotiations and did so over a period of 3 years. We made a significant contribution to the process and to the resulting regulations and also learned a great deal. The expertise we acquired should be tapped if the Department is directed by Congress to engage in negotiated rulemaking or other meetings with the higher education community. Inclusion of legal organizations representing students and other student organizations should, therefore, be made explicit in any new or continuing legislative provisions for processes between the department and the higher education community.

Thank you for this opportunity to comment. We look forward to working with you to improve students' access to high quality education and training programs under the Higher Education Act. We also ask to be invited to participate in any future hearings by your Committee .

Very truly yours,

Elizabeth M. Imholz, Director
Higher Education and Training Access Project
National Consumer Law Center
P.O. Box 829
243 Railroad Avenue
Woodacre, CA 94973-0829
(415) 488-0662

Erica Adelsheimer, Legislative Director
United States Student Association
1413 K Street, NW (10th floor)
Washington, D.C. 20006
(202) 347-8772

Kenneth Babcock, Directing Attorney
Consumer Law Project
Public Counsel
601 S. Ardmore Ave.
Los Angeles, CA 90005
(213) 385-2977

Alan White, Senior Attorney
Community Legal Services
3638 N. Broad St.
Philadelphia, PA 19104
(215) 227-2414