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LEGISLATIVE LANGUAGE FOR SELECTED REAUTHORIZATION PROPOSALS BY HIGHER EDUCATION AND TRAINING ACCESS PROJECT (HETAP)

I. **Student Loan Ombudsman Program** [Sept. 4, 1997 HETAP letter ("HETAP") pp. 12-13] (See also NASFAA pp. 19-B through 20-B)

Upon request, we can provide additional information about other ombudsman programs, such as those dealing with the nursing home ombudsman under the Older Americans Act, 42 USC 3058g and with ombudsman proposals for managed health care or Medicaid.

Add as a new section 483(h) or amend into 483(e) the following program to enable borrowers to cut through red tape, to facilitate finding systemic flaws, and to allow comparison between the FFELP and FDSLP:

"(1) Program Established- The Secretary shall establish a Student Loan Ombudsman Office.

(2) Independence of Ombudsman Office- In the exercise of its functions, powers, and duties, the Ombudsman Office shall be independent of the Secretary and the other offices and officers of the Department.

(3) Purpose and Responsibilities- The Office of the Ombudsman shall :

(A) protect the rights of student loan borrowers with loans made, insured or guaranteed under Title IV of the Higher Education Act;

(B) ensure that student loan borrower complaints and requests for assistance are promptly resolved and responded to by the Secretary, contractors or servicers, guaranty agencies, lenders, and other loan holders;

(C) investigate and resolve complaints of student loan borrowers;

(D) represent the interests of student loan borrowers before government agencies and seek remedies to protect their rights;

(E) comment on existing and proposed statutes, regulations, and Department of Education directives and actions that pertain to the rights of borrowers;

(F) track and analyze complaint data by loan program, institution, lender, guaranty agency, and servicer, as applicable; and

(G) report annually to Congress, which report shall be available to the public, on its responsibilities and performance, including an analysis of complaint data called for by (2)(F).

(4) Ombudsman Access to Records- The Ombudsman shall, upon presentation of a signed release from a student loan borrower, have full and complete access to all records regarding the borrower's loan and educational program that are necessary to carry out his or her duties. The Ombudsman shall maintain personal identifying information in the strictest confidence and shall use such information only for the purpose of assisting the individual pursue his or her complaint, unless written authorization is obtained to use such information for other specified purposes.

(5) Accessibility for Borrowers- The Ombudsman Office shall maintain a toll-free telephone number for receiving borrower complaints and shall provide assistance in languages other than English.

(6) Notification to Borrowers- The Ombudsman shall ensure that maximum outreach to borrowers is undertaken by all appropriate parties, including but not limited to the Department of Education, lenders, and guarantors, to provide ongoing notice to student loan borrowers of the Ombudsman Office. Such notice, at a minimum, shall be given to borrowers through the Education Department's correspondence and notices to borrowers, publications, and Web sites. Written notices pursuant to this subsection shall be provided in languages other than English, according to thresholds of non-English speaking borrower participation specified by the Secretary.

(7) Conflict of Interest- Employees of the Ombudsman Office shall not be current or former employees or officers of any participant in the student loan programs under the Higher Education Act including any lender. guaranty agency, proprietary institution of higher education, postsecondary vocational institution, institution of higher education, loan servicer, collection agency, or trade association representing any of the foregoing. The Ombudsman Office shall avoid all conflicts of interest and appearance of impropriety.

(8) Funding- In each fiscal year, not less than $____________shall be available from the amount appropriated for each such fiscal year from salaries and expenses of the Department for the costs of carrying out the provisions of this section.

(8) Supplement and Not Supplant- The Ombudsman Office is intended to supplement and not supplant any other existing consumer remedies and procedures.

II. Ability to Benefit (ATB) Students

A. Removing ATB students' eligibility for unsubsidized Stafford Loans- [HETAP p. 5] After the second sentence of section 428H(B) add the following: " However, a student who does not have a high school diploma or the recognized equivalent shall not be eligible for an unsubsidized Stafford loan, notwithstanding section 484(d)."

B. Ensuring true independence of testing for ATB students- [HETAP p.5] Add new sentence 2 to 484(d)(1) as follows: "In the case of students at proprietary institutions of higher education, the examination shall be the General Educational Equivalency (GED) test, for which the Secretary shall set the minimum score by part for purposes of Title IV eligibility." Then, amend the next sentence by adding at the beginning, "For all other institutions, the independently administered examination shall be approved by the Secretary...."

In the alternative, add to the end of 484(d)(1) the following: "An examination shall not be considered independently administered if it is administered at or by a proprietary institution of higher education."

C. Requiring ED to collect data on ATB students- [HETAP p. 5] Add a new subsection 484(d)(3) as follows: "The Secretary shall ensure that each student's "ability to benefit" status shall be noted on the student loan application/promissory notes; SAR; and FAFSA. The Secretary shall compile data and report to Congress on ATB student characteristics, including but not limited to their loan default rates and types of institutions attended." Also, to section 485B concerning NSLDS add a new (b)(5) as follows: "whether the borrower's eligibility was based on "ability to benefit" pursuant to section 484(d)."

D. Maintaining proof of high school diploma, GED, or ability to benefit test and answers- [HETAP pp.3 and 5] (See OIG pp.48-49) Add a new subsection 484(d)(4) as follows: "Unless an institution maintains proof of a student's high school diploma or equivalent, the student will be deemed subject to 484(d). For all students subject to 484(d), the institution shall maintain for five years from the student's withdrawal or graduation the original ability to benefit test booklet and answer sheet, except in the event that a GED test is the ability to benefit test the institution shall maintain a copy of the official GED score for five years from the student's withdrawal or graduation."

E. Eliminating ATB eligibility for correspondence and distance learning- [HETAP p.5] Add as a second sentence to 484(l) insert: " Students lacking a high school diploma or its recognized equivalent shall not be eligible for Title IV aid for correspondence or telecommunications (distance learning) courses, notwithstanding 484(d)."

III. Giving Accrediting Agencies Incentives to Ensure Quality of Education or Training [HETAP p. 4]

Add a new section 496(p) as follows: "A student or the Department may bring an action against the accrediting agency of a proprietary institution of higher education, whether the institution is still operating and whether it still receives Title IV aid, if the agency granted or continued accreditation even though the institution failed to meet the standards referred to in section 496(a)."

IV. **Improving Information Available to Students**

A. Job placement, salary and licensing exam pass rates- [HETAP p.11] Add new section 485(a)(1)(O) as follows: " for institutions that predominantly provide vocational training programs, for each such program the verified job placement rate, average salary or hourly wage of graduates placed in the job for which training was received, and, where applicable, pass rates for state licensing examinations in the job for which training was received."

B. Compilation of vocational program data by the Secretary- [HETAP p. 11] Add a new sentence at the end of section 485(d) as follows: " Annually, the Secretary shall compile and make available to the public in a comprehensive report done in a comparative format, the completion rate, job placement rate, salary, and licensing exam pass rate for each program reported pursuant to 485(a)(1)(O). In the same report, the Secretary shall also state each such school's Title IV student loan default rate for the three most recent years."

C. Clarification of public access to PEPS- [HETAP p.11] In section 498A(c) after "readily available to" insert "students and their representatives,".

D. Improving accuracy of NSLDS data- [HETAP p. 11] (See OIG p.29) Add section 485B(h) as follows: "Integrity of data- The Secretary shall establish procedures to ensure the completeness and accuracy of data in the NSLDS. At a minimum, these procedures shall require at least annual reconciliations of data maintained by NSLDS with guaranty agencies' data and with lenders' data."

E. Ensuring borrower access to their own NSLDS data- [HETAP p. 11] (See NASFAA p. 29-G) The statute currently provides that the NSLDS "shall permit borrowers to use the system to identify the current holders and servicers of [the] borrower's loan." Section 485B(a). The Secretary is implementing this by allowing borrowers solely to obtain the identity of the holders; this information may be obtained by calling 1-800-4FEDAID. While this comports with the letter of the law, it does not afford borrowers the full information about their loans including loan amounts, deferments granted etc. to which schools, lenders, and guarantors have access. Students should full access to this data, just as consumers have to their credit reports, in order to confirm accuracy of the information being circulated about them. Amend section 485B(a), the third sentence by deleting "identify the current holders and servicers" and inserting in its place, "access all data contained about". Then add a fourth and fifth sentence as follows: "A borrower may also obtain a timely, free printed copy of all NSLDS data about the borrower's loan, upon request. A borrower may file a dispute about the borrower's loan information contained in the NSLDS which appears to be inaccurate. Within 30 days the NSLDS shall respond to the borrower explaining whether the data has been corrected and, if not, the reason therefore."

F. Improved notice and availability of deferment rights- [HETAP p. 11] Add section 433(b)(10) as follows: "an explanation of the borrower's deferment and forbearance rights and the manner in which to exercise them." Add to 428(b)(1)(M) at the end thereof the following sentence: " All such deferments of the payment shall be retroactive to the date the borrower would have been eligible had he or she timely applied."

V. Minimizing Loss of Federal Funds Related to High-Default Rate Schools

A. To make Pell Grant cut-off permanent, add a new section 481(a)(4)(C) as follows: " it is ineligible for the Title IV student loan programs pursuant to 435(a)(2)." (the high loan default rate cut-off). [HETAP p.3] (See OIG p. 7)

B. To avoid loss of funds during loan default rate appeals, add to the end of section 435(a)(2)(A) the following: " During such appeal, the Secretary may permit the institution to continue to participate in a program under this part provided the institution posts a surety bond or letter of credit based on its annual loan volume and cohort default rate to protect the Secretary against loss from defaults." [HETAP p. 4] (See OIG pp. 12-13)

* Potential cost implications - William

11/4/97

HEA CHANGES BEFORE DECEMBER 1

Small Policy Issues

- Flexibility provisions in campus-based programs
  - Associations likely to support these changes.
- Flexibility in need analysis formula (such as increased use of professional judgement)
  - Associations did not make recommendations here; IG opposes.
- FASFAA as loan application for FFEL
  - All the associations (including Advisory Committee) support this
- Multi-year promissory note in 2000-2001, unless Secretary not ready
  - Community has been working with ED on this; I believe they support our proposal. NASFAA recommends that the Secretary create a master promissory note with the lending community and schools. Advisory Committee also supports this.
- Flexibility for Secretary to modify, after consultation, SFA delivery requirements to take into account new technologies,
  - In general, EASI supports this
- Flexibility for Secretary to provide ancillary services related to delivery of non-federal aid
  - In general, EASI supports this
- New refund policy
  - All groups want this simplified. Our proposal is a compromise developed by OSFA in conjunction with the community. Is still somewhat complicated but...
- Flexibility for Secretary to create a performance-based oversight approach
  - Groups support broad regulatory reform
- Broaden authority for Quality Assurance
- Revise master calendar
  - Associations do not have an official position on this, but, we should be able to get their support. NASFAA has recommended that the master calendar be extended to cover all written guidance provided to schools (not just regulations)
- Changes in Pell Grant operations to reduce burden
  - Likely support among the associations
- Data base matching for PLUS — add the checks on immigration, SS, etc.
  - NASFAA recommends eliminating matches related to Selective Service.
- Extend 85/15 requirements for 2 years on institutions switching from profit to non-profit status
  - AASCU supports this; NASFAA opposes it; IG supports.
- Other miscellaneous provisions
  - Post surety if appeal high default rate -- IG supports
  - Repeal SPRE and state share of default costs -- Associations support this
- Incarcerated students - Pell eligibility

12,000 people

Need white paper

Larger Policy Issues

Accred. agency must have stds for distance learning.

+ White Paper

- * o Changes to accommodate distance learning
  - -- Associations are interested in this but they have not offered specific proposals. More is happening at the state level -- Governors ~~Roemer~~ and Levitt, and Western Governors University for example
- * o Campus-based allocation formula — Bob Cook @ — growing needy students.
  - -- Hispanic caucus is the only group to propose a change in the allocation formula. Their proposal would change the formula, but only for funds above the FY 1998 appropriation.
- o Eligibility of ESL-only programs — Proprietaries? — Prop. only
  - -- Likely to generate opposition, even if limited to ESL only programs. HACU [illegible] ?
- * o Extend 70/70 requirements to vocational programs of a year in length at proprietary schools
  - -- Proprietary schools will oppose this unless it is extended to community colleges; IG supports

  Lack of workforce bill - need only for occupational courses.
- * o Need analysis changes: flexibility for the Secretary, after consultation, to use PPI and to impute asset. — Much needed discussion
- * o Income protection allowances; changes due to HOPE and lifelong learning credit — Need some analysis
  - -- Supported by the associations. If not fully enacted this year
- * o Time limits on eligibility for Pell Grants — $40 million cost savings
  - -- Rejected by some of the associations.
- o Matching with IRS
  - -- EASI supports this; IG supports

DRAFT -- 11/3/97

HEA CHANGES AFTER DECEMBER 1

Possible Presidential Initiatives: Other Strategic Issues with Budgetary Implications

- **Early intervention and information campaign**
  - General support for early intervention although none of the current proposals are college - school partnerships in the way the Administration is likely to propose. Think we can get support from groups, however, if we work closely with them and if they believe the program supplements current activities.
  - The associations (including the Advisory Committee) support early intervention activities through TRIO. NCEOA specifically supports more early intervention in Talent Search.
  - NASFAA also supports the current state-based National Early Intervention Scholarship and Partnership program. Some others who support the continuation of SSIG have suggested early intervention as a new emphasis for the SSIG program.
  - EASI generally supports early information and access.
- **Super Pell**
  - The associations have not taken a position on Super Pell. It is likely that we could get their general support for this approach, however, since it is needs-based (in contrast to the Administration's proposed Presidential Honors Scholarship program which was only merit-based). Some might suggest higher overall Pell maximum grants instead.
  - NASFAA supports Presidential Access Scholarships, which are currently authorized but not funded. Most other associations did not comment specifically on this program.
- **Retention grant for institutions**
  - Associations have not taken a position; some may support more funding for TRIO's Student Support Services program instead. Likely that many campus representatives would be interested in this proposal.
- **Pell maximum award/minimum award**
  - Groups support maximum awards as high as possible (they would keep high maximum grants in the authorized bill even if they are later reduced by appropriations).
  - AASCU supports a true $400 minimum.
- **Student loan proposals**
  - Groups support some of our student loan proposals, including, for example, lower fees for students, two strong loan programs with a level playing field and equal benefits for students, and ability for aid officers to limit borrowing for certain groups of students. Other parts of our proposals, including, for example, reducing lender yields, streamling guarantee agencies, and reimbursing GAs with performance based agreements are not generally supported (at least not publicly).
- **Possibility of PBO -- modernize student aid**

- -- Associations propose careful consideration of fundamental changes in the way student aid is delivered.

- **Authorization levels for discretionary programs**
  - -- Groups support authorization levels as high as possible.

HEA CHANGES BEFORE DECEMBER 1

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NEED ANALYSIS

Issue 1: Raising Independent Student Income Protection Allowance

ED proposes increasing IPAs for single and married independent students to $6,000 or $9,000. ED's proposal represents an increase of $3,000 over the current IPA levels for these students. For FY 1998, the President proposed increasing IPAs for these students to $9, 150 or $12,030 (or $9,980). The President's proposal would provide income protection for these students at the same level as for independent students with children and parents of dependent students. (Mioduski's IPA levels: $5,170 and $ 7,990)

1. level
2. inflation

ED proposal would cost $425 million at a maximum award level of $3,000.

Issue 2: Raising Dependent Student Income Protection Allowance

more analysis

ED proposes increasing an IPA for dependent students from $ 1,750 to $3,500. The President's FY 1998 budget included no increase in the dependent student IPA. A number of authorizers and the higher education community strongly support this proposal. (Mioduski's IPA level: $2,350) 2,160

This proposal would cost $342 million at a maximum award level of $3,000.

Issue 3: Eliminating simplified Forms and Automatic Zero EFC Calculations

- how to incorporate?

ED proposes to eliminate two simplifications of the application process, the Simplified Needs Test (SNT) and the automatic zero expected family contribution. Under the SNT, applicants may qualify for a determination of need using fewer data elements if the parents of a dependent student or independent students with children have an income of not more than $50,000 and (1) were non-tax-filers, (2) filed a 1040A or 1040EZ, or (3) were eligible to file a 1040A or 1040EZ. Eliminating the SNT would ~~cost~~ save $32 million.

Why?

ED also proposes to eliminate automatic zero EFC calculations. Under current law, a dependent student's family may qualify if they had parental income of less than $12,000 and were non-tax-filers, filed a 1040A or 1040EZ or were eligible to file a 1040A or 1040EZ. Eliminating the auto zero EFC calculations would ~~cost~~ save $269 million.

Issue 4: Modification of Assets Counting

- include capacity

ED proposes adding an authority that would allow the Secretary to regulate asset calculations. (At this point, ED wants to eliminate contributions from assets or impute assets for students. Treasury strongly supports ED's position.)

Issue 6: Definition of the Base Year

- Colleges [illegible] on high defaults

ED proposes adding an authority that would allow the Secretary to regulate the definition of the "base year."

Issue 7: Correspondence Students

?! Cong [illegible]

ED proposes deleting two provisions on correspondence students. Those provisions do not allow correspondence students to receive room and board, travel allowances, or the cost of rental or purchase of equipment. ED knows that deleting these provisions would increase program costs but do not know how much.

Issue 8: Expansion of Professional Judgment

Issue 9: EFC Calculation for a Period of Enrollment Other Than 9 Months

Issue 10: General Methodology Issues

We need to understand how and why certain components of student's and parent's EFC calculation are adjusted, as well as why other components are unadjusted.

- Procedure accounting / Misallocated authority...

→ Regulate??

400

4,000

$ 3,000

- Title IV
'98 reauth.
Feb. mark-up?

→ 'such sims'

— mandatory — 'cost neutral'

⇒ Thanksgiving...

* All our comps-based...
- proposing something =
- Paxga side — how to use / interactions of the rest.

→ Mid-Dec. budget

Roll-out for President — State of Union / Race roll-out...

... all of the items —
Race: Lots [illegible]
- Chaka
- [illegible] ideas...
- Race/Ex Ucd

→ [illegible] analysis.

To: Wayne

From: Aromie

RE: My comments on ED's HEA Proposals on Pell

Below is a list of my comments on ED's proposed legislative language on Pell. I have tried to organize my comments in order of importance.

Issue 1: Pell Persistence Supplement/Super Pell (Section 401A)

ED proposes establishing a persistence supplement to second-year students who are Pell recipients and have an expected family contribution of zero for that award year. The award amount would be $300 for AY 1999-2000, and would be set in the appropriations process for succeeding award years. ED proposes that no funds be authorized for persistence supplements for a fiscal year if insufficient funds are appropriated for Federal Pell Grants for that year. For FY 1999, funding of $150 million is requested.

We need to ask ED to: (1) submit ED's policy rationales for proposing this new program; (2) explain how ED would implement this program (e.g., how is ED going to identifying students "in the second year"? How is ED going to decide whether "insufficient funds are appropriated for Federal Pell Grants"?): and (3) discuss ED's plans for documenting how effective this program will be or how this program serves its program goals.

Issue 2: Time Limit on Student Eligibility (Section 401 (c))

ED proposes imposing time limits on student eligibility for a Pell grant -- specifically a limit equal to 150% of a program's typical length (a maximum of 6 years for a 4-year program). (ED's proposal allows students with disabilities to receive grants for more than eight academic years of full-time study.) This proposal will save $40 million a year. No change is proposed for students who are enrolled in noncredit or remedial courses (including ESL courses). I support ED's proposal.

Issue 3: Pell Grants to Incarcerated Students (Section 401 (b) (8))

ED proposes providing Pell grants to an incarcerated student in a Federal or State penal institution if the individual exhibits good behavior. Current law provides grants to eligible students in local penal institutions. This change would cost about $25 million a year. I find convincing the studies suggesting that there exists a positive relationship between correctional education programs and recidivism or post-release employment.

Issue 4: Authorized Maximum Award Levels (Section 401 (b) (2)(A))

ED proposes eliminating the schedule of maximum awards specified under current law. ED's proposed language indicates that the maximum award would instead be established in an appropriations Act. Although the proposed language reflects the reality, the lack of only reference to specific award levels or increases might hurt the President's message about guaranteeing two years of college education.

No 1999 and edu

Issue 5: No Bumping in the Minimum Award Rules (Section 401(b)(5))

ED proposes eliminating the current bumping mechanism in the minimum award rules. Under current law, students who are eligible for $200 to $399 automatically receive a $400 grant. Eliminating the bumping mechanism will save about $40 million a year. I wonder whether many Congressional members would support since this proposal would eliminate relatively less needy, middle-income students who are marginally eligible for grants. Nevertheless, if we need to find an offset for a new program, this proposal could be a good candidate.

Issue 6: Stand-Alone ESL Programs (Section 401(c)(2))

ED proposes issuing regulations that would help them determine which stand-alone ESL programs are providing an adequate level of instruction for purposes of participation in the Pell grant program. I support ED's proposal. —why are they eligible in first place...

Clo ck

Issue 7: Tuition-Sensitivity Rule (Section 401(b)(3)(A))

ED proposes retaining the current tuition-sensitivity rule with minor modifications, mainly because ED believes that Congress supports the rule at this point. This rule is triggered when a maximum award level exceeds $2,400. Although this rule attempts to make grant amounts tuition-sensitive -- that is, a student attending higher-tuition institutions would receive a higher dollar amount than a student with similar characteristics attending a low- tuition school, it affects only students at extremely low-cost institutions. We need more data/analysis on this proposal (e.g., nation-wide distribution of tuition and fees charged/ Why does this rule have to be triggered at $2,400 rather than at a higher amount?/Why does ED use the same $750 for child care expenses that is used in 1992?)

Issue 8: Dear Colleague Letter vs. Federal Register

ED proposes legislative language that confirms their current practices -- ED publishes both a full-time payment schedule and a less-than-full-time reduction schedule through "Dear Colleague" letters prior to or on February 1. (Yes, ED has been violating current rules. . .) I do not have a strong opinion about whether these schedules should be published in "Dear Colleagues" letters or in Federal Register. I believe that publishing in Federal Register has much more formal and enforcement power; however, I would not think that there would be any enforcement problems with disbursing Pell funds to students.

Issue 9: Revision of the Excess-Fund Provision (Section 401(h))

Current law allows up to 15 percent in excess to carry over to next fiscal year, with any amounts that exceed 15 percent returning to Treasury. ED proposes spending surplus without any time constraints. Although I recognize some practical, implementational problems in current law, I support current law (perhaps with some minor modifications). I do not think it is prudent to remove the incentive for accurate estimates by removing the penalty associated with grossly inaccurate estimates.

Issue 10: 85 percent Advanced Payment to Just-In-Time Payment (Section 401 (a))

I am all for converting the current system to a "just-in-time" payment system. I also think that schools should be converted to a "just-in-time" payment system as soon as possible. However, this proposed language or the current cash management regulation provides no incentive to move to a "just-in-time" payment system. ED should devise language here to encourage schools to convert. (The proposed language seems to put a burden on the Secretary to implement an electronic payment disbursement system without demanding anything from schools.) To encourage schools to adopt an electronic payment system, how about proposing that schools that do not implement a "just-in-time" system by a certain year, say, 2000 would be allowed only to receive up to 50 percent of Pell funds?

Issue 11: Purpose of Pell Grants (Section 401 (a))

ED proposes deleting the current purpose statement, which says that the purpose of the Pell grant program is to provide a grant that, in combination with the expected family contribution, and SEOG and SSIG, will meet at least 75 percent of a student's cost of attendance. ED thinks that this goal is unrealistic given budget constraints. I concur with ED.

Issue 12: Elimination of the Study Abroad Provision (Section 401 (b)(7))

ED proposes eliminating a provision on how to calculate students who study abroad. (Sec. 401 (b) (7)). I have no problem with ED's proposal.

Joe Russo

Performance Based Ideas

- 3 new R's in education

  Responsibility
  Respect
  Results

At campus level

Default rates
Graduation rates
Audits
Financials
Bond rating

Higher Education Reauthorization Strategy

- Secretary Riley is pressing OMB to clear its legislative proposals on student financial aid programs within the next few weeks, prior to the end of FY 1999 budget process. HRD and NEC believe this is inadvisable because:

  -- these are complex and potentially controversial proposals that have not been thoroughly analyzed;

  -- some of the proposals have significant cost implications that should be reviewed in the context of the FY 1999 Budget;

  -- Congressional action is not likely to occur until late spring or summer at the earliest, so there is less urgency than the Secretary believes.

- ED officials are responding to intense pressure from Congressional staff. Both the House and Senate plan to have bills for committee action in January or February, 1998. Republicans are very critical of ED's delay; and Democratic staff tell ED that the Administration's proposals will not be considered if not delivered now. Some of this pressure is the result of inexperienced Hill staff now on the authorizing committees, who must turn to the Department for both ideas and legislative language.

- Under the most optimistic scenario, Congress will not pass a bill in time to become effective prior to FY 99 and school year 1999-2000. There is strong speculation that Congress will not be able to produce a bill until sometime in FY 99. If that happens, it is not likely to become effective (except perhaps for some cost savers in the loan programs) until the following fiscal and academic year.

- Since July, portions of ED's HEA proposals have been dribbling into OMB. OMB has not still received proposals for the $1.6 billion campus-based aid programs such as College Work-Study. HRD staff are now having biweekly meetings with ED staff to work through the proposals we have received to date.

- While we have cleared several, mostly non-controversial HEA sections, we have not cleared the student financial aid programs and their management provisions. HEA's student aid title affects over $9 billion in discretionary spending (Pell Grants, etc.), $4 billion in annual mandatory spending on loan programs, the President's Direct Loan initiative, and many of the management aspects of these programs.

- ED's student aid proposals that we have received call for significant resource investments and policy changes (or maintaining the problematic status quo). Examples include: (1) a new $150 million program add-on to Pell grant recipients in their second-year of school, intended to improve persistence; (2) a new $150 million grant program for colleges to improve retention and graduation of low-income students; (3) changing the methodology for calculating need-based aid from using reported assets to using imputed assets based on income data or to eliminating asset contributions entirely; (4) $3 billion in five-year savings from student loans; and (5) few proposals for management changes.

- One option the Department may suggest is to clear its HEA proposals now with the understanding that revisions can be sent forward after the FY 99 Budget decisions are made. This approach would be very dangerous. ED's piecemeal approach to releasing its HEA proposals has already triggered public relations problems that ED acknowledges. The Administration's ability to assert leadership in HEA policy is dependent upon its ability to put forth a coherent, well-conceived set of proposals and not wavering in our support for them.

- HRD is formulating specific recommendations for presentation to the Director at the Education Review on November 14. Assuming agreement between OMB, NEC, and ED can be reached shortly thereafter, we could consider allowing the Department to transmit its legislative proposals in December or January, prior to formal transmittal of the Budget.

- Learning on demand

- Loans — [illegible] rate

— $$ to a middle school program.

SPECIAL

Total Pages: 12

LRM ID: CJB93

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

Wednesday, August 20, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

Connie O Bowers for

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

OMB CONTACT: Robert J. Pellicci
PHONE: (202)395-4871 FAX: (202)395-6148

SUBJECT: **EDUCATION Draft Bill on Higher Education Act Reauthorization - Title IV, Part A, Subpart 1 -- Pell Grants**

DEADLINE: noon **Tuesday, August 26, 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: The HEA reauthorization legislation is being circulated for clearance in separate parts for ED to transmit informally to congressional committees. ED will consolidate the entire bill for formal transmittal later.

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LRM ID: CJB93 **SUBJECT:** EDUCATION Draft Bill on Higher Education Act Reauthorization - Title IV, Part A, Subpart 1 -- Pell Grants

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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: Robert J. Pellicci Phone: 395-4871 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 reponse 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 reponse sheet draft 8/18

PART A--GRANTS TO STUDENTS

SUBPART 1--PELL GRANTS

AMENDMENTS TO PELL GRANTS

SEC. 401. Section 401 of the Act is amended--

(1) in subsection (a)(1)--

(A) in the first sentence therein--

(i) by striking out "September 30, 1998," and inserting in lieu thereof "September 30, 2003"; and

(ii) by inserting immediately after the parenthetical a comma and the following: "who applies for a basic grant under this subpart,"; and

(B) in the second sentence therein, by striking out "Not less than" and inserting in lieu thereof "Until such time as the Secretary prescribes in regulation an electronic payment disbursement system based on the specific payments to be disbursed to the institution for each student receiving an award under this subpart, not less than";

(2) in subsection (b)--

(A) in the heading thereof, by striking out "PURPOSE AND";

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

"(1) Except as provided in paragraph (5), the amount of the basic grant for a student eligible under this subpart shall be the lowest of the amounts calculated under paragraphs (2), (3), and (4).

(C) in paragraph (2)--

(i) by amending subparagraph (A) to read as follows:

"(A) No basic grant under this subpart shall exceed the maximum amount established for that academic year in the applicable appropriations Act, minus an amount equal to the amount determined under part F to be the expected family contribution with respect to that student for that year.";

(ii) in subparagraph (B), by striking out the last sentence therein;

(D) in paragraph (3)(A)--

(i) in the matter preceding clause (i), by striking out "the amount of a student's basic grant shall equal" and inserting in lieu thereof "no basic grant under this subpart shall exceed"; and

(ii) in clause (ii)(II), by striking out "tuition," and inserting in lieu thereof "tuition and fees,";

(E) in paragraph (5), by striking out "$400", the first time it appears, and everything that follows through the end thereof and inserting in lieu thereof "$400."; and

(F) by amending paragraph (8) to read as follows:

"(8) A basic grant may be awarded to an individual who is incarcerated in a Federal or State penal institution only if such individual exhibits good behavior, as determined in accordance with the regulations of the Secretary. In no case may a basic grant be awarded to an individual who is serving under a sentence of death, or serving a life sentence without eligibility for parole or release.";

(3) in subsection (c)--

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

"(1)(A) Except as provided in subparagraph (B), the period during which a student may receive basic grants under this subpart shall not exceed the full-time equivalent of 150 percent of the period normally required for the completion of each course of study in which the student is enrolled at the institution, as determined by the institution.

"(B)(i) Except as provided in clause (ii), in no case may a student receive basic grants for more than the full time equivalent of eight academic years in the aggregate.

"(ii) A student may receive grants for more than the full time equivalent of eight academic years in the aggregate to the extent the institution in which the student is enrolled determines necessary to accommodate the rights of students with disabilities under section 504 of the Rehabilitation Act of 1973."; and

(B) in paragraph (2)--

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

(ii) in the first sentence therein--

(I) by striking out "Nothing" and inserting in lieu thereof "Except as provided in subparagraph (B), nothing"; and

(II) by striking out "certificate" through the end thereof and inserting in lieu thereof "certificate.";

(iii) by striking out the second sentence therein; and

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

"(B)(i) A student may receive a basic grant to attend English language instruction that is a separate course of study only if--

"(I) students enrolled in such a course are required to take an independently administered standardized test of English language proficiency upon completion of the course; and

"(II) not less than a minimum percentage of such students achieve a passing score on that test.

"(ii) The Secretary shall specify in regulation one or more standardized tests of English language proficiency that will satisfy the requirements of clause (i), the minimum percentage of students who must achieve a passing score, and such other requirements as the Secretary determines are necessary to implement this subparagraph.";

(4) by striking out subsection (d);

(5) in subsection (e), by striking out the second and third sentences therein;

(6) by striking out subsection (f);

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

"(h) USE OF FUNDS.--Funds appropriated to carry out the purposes of this subpart shall remain available until expended."; and

(8) by redesignating subsections (e), (g), and (h) as subsections (d), (e), and (f), respectively.

PELL PERSISTENCE SUPPLEMENT

SEC. 402. Subpart 1 of part A of title IV of the Act is further amended by adding at the end thereof the following new section:

"PELL PERSISTENCE SUPPLEMENT

"SEC. 401A. (a) IN GENERAL.--The Secretary is authorized to award one persistence supplement, in the amount specified in subsection (c), to a student who--

"(1) is in the second academic year of a program of undergraduate education or training;

"(2) is eligible to receive a basic grant under section 401 for that award year; and

"(3) has an expected family contribution (as determined under part F) of zero for that award year.

"(c) AWARD AMOUNT.--(1) The amount of a persistence supplement under this section shall be--

"(A) $300 for award year 1999-2000; and

"(B) the amount established in the applicable appropriations Act for a succeeding award year.

"(d) NOTICE; DISTRIBUTION.--(1) The Secretary shall publicize the availability of persistence supplements to potential recipients.

"(2) Persistence supplements awarded under this section shall be distributed to students using the payment system established for purposes of distributing awards under section 401.

"(e) AUTHORIZATION OF APPROPRIATIONS.--There are authorized to be appropriated such sums as may be necessary for fiscal year 1999, and for each of the four succeeding fiscal years. No funds may be appropriated for the persistence supplement under this section for any fiscal year in which funds appropriated for grants awarded under section 401 are insufficient to fully fund all awards as calculated using the maximum grant established for that year in the applicable appropriations Act and the award rules under section 401.".

DRAFT
STILL UNDER REVIEW IN ED

PART A--GRANTS TO STUDENTS

SUBPART 1--PELL GRANTS

Section 401. Section 401 of the bill would amend section 401 of the Act to make several changes to the Federal Pell Grant program. Section 401(1) of the bill would amend section 401(a)(1) to extend the program through FY 2003, add a reference to a student's applying for, a Pell Grant that conforms with other changes proposed in this section of the bill, and modify the current requirement that the Secretary advance 85 percent of the funds requested by institutions to provide Pell Grants to their students prior to the start of each payment period. Because of variations in institutions' actual need for Pell Grant funds from one award year to the next, or even from one payment period to the next, the current requirement for advancing funds has resulted in mismatches between institutions' needs and the funding that they receive. Excess funds advanced to one institution must be reallocated by the Secretary to another institution that received insufficient advance funds, and this process is unnecessarily burdensome and inefficient. Although tightened reporting regulations and improved procedures have been implemented in recent years to reduce the level of undisbursed funds that institutions may have at any one time and reduce the delays in reallocating the de-obligated funds to other schools, advancing lump sums still leaves the potential for unnecessary burden and inefficiency in managing Pell Grant funds.

As amended by section 401(1)(B) of the bill, the requirement for advanced funds would continue in place only until the Secretary prescribes in regulation an electronic payment disbursement system. Under this student-specific, "just-in-time" payment disbursement system, institutions would submit requests for each recipient's Pell Grant payment, singly or in batches, prior to, or during, the payment period. Upon approval, the funds necessary to meet the payment request would then be electronically transferred from the Federal Government to the institution. The institution would then disburse the Pell Grant payment to the student. This approach would alleviate the "float" of undisbursed funds at institutions with no immediate need, and would allow Pell Grants funds to be directed efficiently and quickly to institutions based on their actual needs.

Section 401(2) of the bill would amend section 401(b) of the Act by replacing the current paragraph (1), which states that the purpose of the Pell Grant program is to provide a grant that, in combination with the expected family contribution, a Federal Supplemental Educational Opportunity Grant, and a State Student Incentive Grant, will meet at least 75 percent of a student's cost of attendance. This goal, while laudable, is not realistic given budgetary constraints. Instead, proposed new section 401(b)(1) of the Act would simply state that the amount of the Pell Grant would be the lowest of the amounts calculated under the award rules in section 401(b)(2), (3), and (4) of the Act.

Section 401(b)(2) of the Act would be amended to replace specific maximum Pell Grant amounts with a reference to the maximum being established for a given award year by the applicable appropriations act. This change acknowledges that the maximums in section 401(b) have ordinarily been overridden in appropriations acts.

A reference in section 401(b)(2)(B) of the Act to establishing a Pell Grant schedule of reductions by regulation and publication in the Federal Register would also be eliminated, because it is impractical to publish the schedule in this manner, given that the appropriation of program funds typically occurs just before the new fiscal year begins. It is much more efficient to provide the schedule of reductions through a "Dear Colleague" letter than in a regulation. Institutions need both the schedule of reductions and the full-time Pell Grant payment schedule (required by February 1 under the Master Calendar) in order to determine a student's Pell Grant disbursement for a given year and to put together the student's financial aid package.

Section 401(2)(D) of the bill would clarify the interaction of the award rule in section 401(b)(3)(A) of the Act with the award rules in section 401(b)(2) and (4), and would add a reference to "fees" that was probably omitted from the current law inadvertently.

Section 401(2)(E) of the bill would amend section 401(b)(5) of the Act to change the minimum Pell Grant award to a true $400 minimum. Under current law, the minimum Pell Grant award is $400, but students qualifying for an award between $200 and $400 receive a $400 award without regard to need. The current provision, enacted in 1992, was part of an increase in the Pell Grant minimum from $200 to $400 that was intended to provide a higher, more meaningful, minimum Pell Grant, but not eliminate students who had received a Pell Grant in the prior year at the lower, earlier minimum award amount. However, this overbroad "grandfathering" results in doubling the awards of students who, under a normal application of the Pell Grant award rules, would receive only $200 Pell Grants. This increase is not warranted. Under the proposed amendment, a student qualifying for a Pell Grant award of less than $400 would not receive a Pell Grant. This change would makes the award rules consistent for all students.

Section 401(2)(F) would amend section 401(b)(8) of the Act to permit an individual who is incarcerated in a Federal or State penal institution to receive a Pell Grant if he or she exhibits good behavior, as determined in accordance with the regulations of the Secretary. Current law prohibits awarding Pell Grants to any individual incarcerated in a Federal or State penal instituion. However, a number of recent studies show that there is a positive relationship between correctional education programs and variables such as recidivism and post-release employment. As a result, the costs to taxpayers declines by providing incarcerated students access to Pell Grants, since the costs of incarceration are much higher than the cost of education and training for these individuals to become productive, and tax-paying, members of society. Those individuals exhibiting "good behavior" show the greatest promise of becoming productive members of society after their release, if given the necessary training and direction. The proposed amendment would continue the current prohibition against awarding Pell Grants to an individual serving under a death sentence, or serving a life sentence without eligibility for parole or release.

Section 401(3)(A) of the bill would amend section 401(c)(1) of the Act to set new limits on the period during which a student may receive Pell Grants. Current law limits the receipt of Pell Grants to a the period of time--no matter how long--required for the completion of the student's first undergraduate baccalaureate degree. As amended, a student could not receive Pell

Grants for more than the full-time equivalent of 150 percent of the period normally required for the completion of each course of study in which the student is enrolled, as determined by the instititution, with an overall maximum equal to the full time equivalent of eight academic years. (An institution would, however, be required to modify these limits to the extent necessary to accommodate the rights of students with disabilities under section 504 of the Rehabilitation Act of 1973.) These amendments are an attempt to seek a balance between allowing financially needy students time to successfully complete their course of study, while preventing abuse of the Pell Grant program by students dragging out their studies excessively (the so-called "professional student"). In addition to preventing the potential abuse, it is also hoped that time-limits will, in general, encourage students to finish their courses of study on a timely basis.

Section 401(3)(B) of the bill would amend section 401(c)(2) of the Act to address concerns with the effectiveness of, and potential for abuse in, some English as a Second Language (ESL) "stand-alone" programs that teach English exclusively and are not part of a larger program of study. (The Department is not considering any change with respect to remedial programs or ESL programs that are part of larger programs.). The proposed new section 401(c)(2)(B) of the Act would determine which programs are providing an adequate level of instruction for purposes of participation in the Pell Grant program, by requiring students who complete ESL stand-alone programs to take an independently-administered, standard exam, such as The College Board's Test of English as a Foreign Language (TOEFL), as a measure of minimal English language proficiency. The ESL program's eligibility for the Pell Grant program would be based on a minimum percentage of the program's graduates passing the standardized test. The Secretary would establish in regulation which standardized tests of English language proficiency may be used, the minimum percentage of students who must achieve a passing score, and other requirements necessary to implement this provision.

Section 401(4) of the bill would eliminate section 401(d) of the Act, concerning the submission of applications by students seeking to obtain a Pell Grant. This provision is unnecessary and duplicative of the requirements in section 483 of the Act.

Section 401(5) of the bill would eliminate language in section 401(e) of the Act that specifies the manner in which Pell Grants funds are to be credited to a student's account by the institution. The Department's cash management regulations, which are designed to clarify and consolidate current policies and requirements, improve the delivery of Title IV funds, reduce burden, and improve program accountability, include a streamlined policy on crediting a student's account at the institution. See 34 C.F.R. 668.164. The cash management regulations provide more flexibility to students and institutions to easily clear outstanding balances in the student's account that may otherwise endanger the student's continued attendance, and are thus preferable to the procedures currently described in section 401(e) of the Act.

Section 401(6) of the bill would eliminate section 401(f) of the Act, which contains processing and other requirements for the calculation of Pell Grant amounts, and which, apart from a few minor differences, duplicates the requirements of section 483 of the Act.

Section 401(7) of the bill would revised section 401(h) of the Act to state that funds appropriated for the Pell Grant program will remain available until expended. The current law treats of the use of excess Pell Grant appropriations differently depending upon the size of the surplus. A surplus of less than 15 percent of total Pell Grants disbursed is required to be carried over for use in next award year, but a larger surplus may only be used for the fiscal year concluded. Excess funds remaining after that are required to be returned to the Treasury Department.

The current law creates unnecessary complexity, because the actual percentage of excess funds cannot be known until some time after the conclusion of the fiscal year. The Pell Grant program is forward funded, so that the funds appropriated in a given fiscal year do not begin to be disbursed until three quarters of the fiscal year are past. For example, the FY 1996 appropriation for the Pell Grant program is for the 1996-97 award year, which began on July 1, 1996 and ends on June 30, 1997. Final accounting for total disbursements actually made during a year is completed several months after the conclusion of the award year, and approximately one year after the conclusion of the fiscal year. Additional Pell Grant funds may also be needed after the end of the award period, if, for example, in the course of a program review, it is discovered that students who should have received Pell Grants did not receive them, or that grant amounts were incorrectly calculated.

Appropriation funds lapse after a period of time unless a cumbersome and time-consuming process to reobligate these funds from one appropriations cycle to the next is performed. The proposed amendment would greatly simplify the treatment of excess Pell Grant funds, and eliminate the need for these burdensome procedures.

Section 402 of the bill would add a new section 401A to the Act to authorize the Secretary to award a persistence supplement to second-year students who are Pell Grant recipients and have an expected family contribution (EFC) of zero for that award year. The amount of a persistence supplement would be $300 for award year 1999-2000, and set in the appropriations process for succeeding award years. These persistence supplements would be distributed to students using the Pell Grant payment system, and the Secretary would publicize the availability of persistence supplements to potential recipients.

The bill would authorize such sums as may be necessary for FY 1999 and for each of the four succeeding fiscal years for persistence supplements, but no funds would be authorized for persistence supplements for a fiscal year if insufficient funds are appropriated for Pell Grants for that year.

Since 1973, the Pell Grant program has been the cornerstone of the Federal Government's effort to provide access to postsecondary education for lower income families. However, as important as it is to provide access to postsecondary education for low-income students, it is also important to encourage them to complete their chosen courses of study. The purpose of the proposed new persistence supplements is to increase persistence and retention among Pell Grant recipients by targeting the supplement at that point in a student's academic career when it would have the greatest impact, the second year. Studies have consistently shown that the highest college dropout rate occurs between the first and second years. Thus, targeting second-year students would potentially have the greatest impact on increasing persistence and retention. To further ensure that these grants are targeted to the most needy, only those returning second-year students with EFCs of zero would receive a persistence supplement.

EXECUTIVE OFFICE OF THE PRESIDENT
Office of Management and Budget
Legislative Reference Division
Labor, Welfare and Personnel Branch
Washington, DC 20503

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* * * * * * * *

FROM: *Connie J. Bowers*

DATE: Fri Sep 26, 1997 3:55pm

No. of Pages (including transmittal sheet):

COMMENTS:

ED. DRAFT HEA PROPOSAL ON BYRD SCHOLARSHIPS

ED has revised, very slightly, its Byrd proposal. It contains a very minor clarification to section 419(g) that was not in the earlier version. I am sending it so that you have the correct language.

Please let me know when you have completed your review of Byrd. Thanks.

revised draft 9/26/97

SUBPART _--ROBERT C. BYRD HONORS SCHOLARSHIPS

EXTENSION OF PROGRAM; TECHNICAL AMENDMENTS

SEC. 41_. (a) Section 419C(b)(1) of the Act is amended--

(1) by striking out "section 419D(b)" and inserting in lieu thereof "section 419C(b)"; and

(2) by adding "and" at the end thereof.

(b) Section 419D of the Act is amended--

(1) in subsection (a), by striking out "section 419K" and "section 419E" and inserting in lieu thereof "section 419I" and "section 419D", respectively; and

(2) in subsection (d), by striking out "Public Law 95-1134" and inserting in lieu thereof "Public Law 95-134".

(c) Section 419G(b) of the Act is amended by striking out "selected from" and inserting in lieu thereof "selected for new scholarships each fiscal year".

(d) Section 419K of the Act is amended by striking out "$10,000,000 for fiscal year 1993 and such sums as may be necessary" through the end thereof and inserting in lieu thereof "such sums as may be necessary for fiscal year 1999 and".

(e) Subpart 6 of part A of title IV of the Act is further amended by redesignating sections 419C, 419D, 419E, 419F, 419G, 419H, 419J, and 419K as sections 419B, 419C, 419D, 419E, 419F, 419G, 419H, and 419I, respectively.

11/26

Agenda for HEA Reauthorization Meeting
Friday, November 21, 1997

1. Administrative funds for campus-based programs:

   - Attached is data on the average percent of campus-based funds used for administration. current law

   - Do we want a higher administrative percentage for schools that spend more than 10 percent of CWS funds on community service? Schools have argued that they are willing to expand their community service in CWS but that existing administrative resources are insufficient.

2. Student loan deferment for community service:

   - Whether to change the proposed definition of "community service". The original proposed definition and a possible revision are attached.

3. Independents and less-than-half-time students:

   - Attached are data on the current percentages of campus-based funds going to these types of students.

4. Expanded Lending Option:

   - Attached is a description of the Department's proposal to eliminate the Expanded Lending Option in the Perkins program.

5. Other Campus-Based changes not discussed:

   - Attached are other proposed simplifications to the campus-based programs that were not discussed at our last meeting.

6. Professional Judgment:

   - Attached is data regarding the current use of professional judgment and the executive summary of an OIG report on the subject.

7. FAFSA as the loan application.

8. Flexibility for the Secretary to use new technologies:

   - Attached are responses to questions about how the Department would use this authority.

9. Refund policy:

   - Attached are responses to questions about the timetable for implementation and the relationship between electronic payment and the disbursement schedule approach.

10. Quality Assurance Program:

    - Attached is a description of how the Department would like to broaden this program.

11. Pell Grant program. Attached are responses to the following questions:

    - When will the Department be ready to implement just-in-time funding method?

    - Has the Department reached the 15% excess funds requirement at any point in Pell history.

    - How could the Department increase the child care amount in the cost of attendance and the tuition sensitivity rule.

12. 85/15

    - Attached is available data on the effects of the 85/15 rule.

13. Pell eligibility for incarcerated students:

    - See attached white paper.

14. Distance learning:

    - See attached white paper.

15. ESL-only programs:

    - Are any ESL-only programs at schools that are not proprietary?

    - Attached is the executive summary of an OIG report on use of Pell Grants for ESL instruction.

16. 70/70

    - Attached is evidence of effectiveness of the 70/70 requirement.

    - JTRA bill.

17. Should the Secretary be authorized to pay other entities to provide data to the Department?

Campus-Based Administrative Cost Allowance

The average percent of campus-based funds used for administration was 4.18% in the 1995-96 award year.

The Department is not in favor of a proposal to allow all schools to use 4% of their funds for administration. The original proposal was intended to simplify the administration of the programs -- not to take benefits away from schools.

CAMPUS-BASED ADMINISTRATIVE COST ALLOWANCE SUMMARY 1995-96 AWARD YEAR

Administrative Cost Allowance Classification Tier	Number of Schools	Dollars Expended	ACA Allowed		ACA Awarded		ACA Not Utilized	
			Dollars	Percent	Dollars	Percent	Dollars	Percent
5% group - (under $2,750,000)	3,761	$1,473,204,412	$73,660,221	5.00%	$62,332,160	4.23%	$11,328,061	0.77%
4% group - ($2,750,000 to $5,499,999)	121	$456,271,931	$21,578,377	4.73%	$20,527,789	4.50%	$1,050,588	0.23%
3% group - (over $5,500,000)	68	$629,436,007	$24,493,080	3.89%	$24,159,326	3.84%	$333,754	0.05%
TOTALS	3,950	$2,558,912,350	$119,731,678	4.68%	$107,019,275	4.18%	$12,712,403	0.50%

EFFECTS OF PROPOSED FLAT 5% ADMINISTRATIVE COST ALLOWANCE ON 1995-96 SCHOOLS

Administrative Cost Allowance Classification Tier	Number of Schools	Dollars Expended	ACA Allowed		Proposed ACA		ACA Increase	
			Dollars	Percent	Dollars	Percent	Dollars	Percent
5% group - (under $2,750,000)	3,761	$1,473,204,412	$73,660,221	5.00%	$73,660,221	5.00%	$0	0.00%
4% group - ($2,750,000 to $5,499,999)	121	$456,271,931	$21,578,377	4.73%	$22,813,597	5.00%	$1,235,219	5.72%
3% group - (over $5,500,000)	68	$629,436,007	$24,493,080	3.89%	$31,471,800	5.00%	$6,978,720	28.49%
TOTALS	3,950	$2,558,912,350	$119,731,678	4.68%	$127,945,618	5.00%	$8,213,939	6.86%

Possible revised "community service" language for the loan deferral/HEA reauthorization package:

"(B) to be eligible for non-accrual of interest under subparagraph (A), the borrower shall--

"(i) serve in a community service position for--

"(I) a State, or a subdivision thereof;

"(II) a local government;

"(III) an Indian tribe;

"(IV) a public or private nonprofit organization; or

"(V) a Federal agency; and

"(ii) in that position, provide a service that--

"(I) addresses an unmet human, educational, environmental, or public safety need; and

"(II) primarily benefits the community at large, and ~~not~~ only the membership of a particular organization, [such as a labor, fraternal, or religious organization.]"

sector-by-sector

primarily benefit

- lender decides what is an unmet need...

Original
Definition of Community Service

"(B) To be eligible for the payment of interest under subparagraph (A), the borrower--

"(i) shall be serving in a community service position for--

"(I) a State (or subdivision thereof);

"(II) a local government;

"(III) an Indian tribe;

"(IV) a public or private nonprofit organization; or

"(V) a Federal agency;

"(ii) shall be providing community service that--

"(I) addresses an unmet human, educational, environmental, or public safety need; and

"(II) provides a direct benefit to the community in which the service is performed; and

"(iii) shall not be serving in a position with--

"(I) a business organized for profit;

"(II) a labor union;

"(III) a partisan political organization; or

"(IV) an organization engaged in religious activities (unless such service does not involve conducting worship services, providing instruction as part of a program that includes mandatory religious education or worship, the construction, operation, or maintenance of facilities devoted to religious instruction or worship, or any form of proselytization).".

Less-than-full-time in Campus-Based Programs

Essentially, the statute requires schools to award at least 5% of their program funds to less-than-full-time (LTFT) students IF data for such shese students are included in the determination of the school's allocation of federal funds. However, to the best of our knowledge, such students are included in the allocation computation for all schools:

For the 1995-96 award year (latest data available):

	All	LTFT		ALL INDEPENDENTS	
SEOG	1,082,851	187,858	17.3%	589,981	54.5%
WS	702,365	62,854	8.9%	200,895	28.6%
Perkins	687,697	65,459	9.5%	260,054	37.8%

Expanded Lending Option

Question: What is the Expanded Lending Option in the Perkins program and why are you proposing to change it?

Answer: The Expanded Lending Option was added in the '92 Amendments. It provides that, if a school increases its matching share with new Federal contributions, the school can apply for the Expanded Lending Option. If permitted to be in the program, the school could then make higher loan amounts. The intention was to provide flexibility in packaging to students and to eliminate the need for some students to take out multiple loans.

In practice, the program has not been successful. Less than 100 schools have applied to participate in the program. The Department believes that the current law is unfair, because a school with a small amount of new Federal money can easily provide the full match and get the increased maximums, while a school with a large Federal share might not. The Department believes that there should not be different loan amounts for different schools. Additionally, there is a significant amount of burden for the Department associated with monitoring schools in this program, and it is burdensome for schools to apply for this authority.

The Department is proposing to increase the student loan limits for all institutions so that nothing would be taken away from current expanded lending option schools. In this way, the Department could provide increased flexibility to all schools.

Other campus-based changes

students under the Federal Perkins Loan and FWS programs. If a policy of exclusion was discovered in a program review or audit, the "reasonably available" requirement can be enforced. Based on information collected by the Campus-Based Financial Operations Branch, institutions are far exceeding the 5 percent minimum for these categories in actual expenditures let alone offers. These changes will remove the administrative burden while allowing the Department to deal with the few institutions that do not make funds reasonably available to all students such as less-than-full-time students.

2. **Modify the allocation formulas for the campus-based programs to give the Secretary authority to determine an institutions need by using either the current method of delivering the Expected Family Contribution (EFC) data for students at the institutions based on income categories or actual EFC data.**

Current Law

Through the years, the HEA has required that we establish income categories for aid applicants for determining the institution's need for purposes of calculating a fair share under the allocation formula. Institutions are required to list the aid applicants according to income categories and the Department must establish EFCs for each category. An institution must add several items on the output documents containing an official EFC to place an aid applicant in the proper income category instead of just providing the EFC that is on the document. Further, many institutions get confused in adding the correct items. This causes an administrative burden on the institution when the Department only turns around and converts each income category into an EFC for purposes of running the allocation formula.

However, the Department needs the income information on aid applicants as well as recipients to do many planning and analysis functions that are not possible by just having the EFC and trying to convert that to an income figure. The Department needs specific student income information by institution and type of institution. This specific student income information by institution is not currently available from any other source.

Proposed Changes

1. In section 413D(d) revise paragraph (2) to allow the Secretary to use subparagraphs (A) and (B) to derive the EFC for each student or the actual EFC.

2. In section 442(d) revise paragraph (2) to allow the Secretary to use subparagraphs (A) and (B) to derive the EFC for each student or the actual EFC.

3. In section 462(d) revise paragraph (2) to allow the Secretary to use subparagraphs (A) and (B) to derive the EFC for each student or the actual EFC.

Reasons for Changes

These changes to the HEA will provide flexibility so that we can continue to collect the income information that is not available anywhere else at this time and derive EFCs for the allocation formula. However, as Project EASI develops, the Department should be able to have both the actual EFCs and the actual income for each student by institution. At that time we should be allowed under the HEA to use the actual EFCs to determine the institutional need for the formula instead of deriving the EFCs.

Federal Supplemental Educational Opportunity Grant (FSEOG) Program

3. **Delete the requirement that an institution must award FSEOG funds to students in lowest EFC order but maintain the requirement that FSEOGs must be awarded first to Federal Pell Grant recipients.**

Current Law

The Higher Education Amendments of 1986 added this requirement to the HEA that a specific EFC order and Federal Pell Grant priority be followed by institutions in selecting students for FSEOG awards. Prior to that change, the requirement was simply that the awards be made to students with a financial need. In reaction to a GAO report that indicated that a lot of middle income students were receiving FSEOG awards, Congress added this selection order requirement.

Proposed Change

In section 413C(c) revise paragraph (2) by removing the EFC ordering requirement. Modify the language on Pell Grants to state that the selection procedures for an institution will be designed to award supplemental grants first to students who receive Pell Grants and meet the requirements of section 484.

Reason for Change

Institutions have complained for years that this requirement is a burden, interferes with the ability of the aid officer to best handle the needs of students, and undoes the flexibility of a campus-based program. This requirement is cited by institutions as restricting the use of various packaging concepts to handle aid applications. The institutions claim that the major problem is the EFC ordering of FSEOG applicants from the lowest to the highest. This change will give a reasonable directive to have FSEOGs go to the most needy (Pell Grant recipients) without creating a major administrative burden on the institutions.

Federal Perkins Loan Program

4. **Eliminate the date for a capital distribution of the Federal Perkins Loan funds at each institution and provide the Secretary with a general authority to implement procedures to liquidate the Federal Perkins Loan funds if authorization lapses.**

Current Law

The HEA prior to the Higher Education Amendments of 1992 had mandated the liquidation of the Federal Perkins Loan funds at each institution by March 31, 1997. The date was not updated by the Higher Education Amendments of 1992. The Department's office of the General Counsel views this section as a termination provision for the Federal Perkins Loan Program. The "extention of duration" language contained in the General Provisions Act (section 422(a)) may be viewed as having the effect of extending the time for the liquidation of the Federal Perkins Loan funds and the duration of the program by one fiscal year. Since it is unlikely that the HEA will be reauthorized before March 31, 1998, the Department will need to add "express" language to the appropriations bill or some other bill in advance of reauthorization.

Proposed Change

Revise section 466(a) by removing any specific date and replace with a general authority to the Secretary to implement procedures to liquidate the Federal Perkins Loan funds at the institutions if authorization lapses.

Reason for Change

This change will eliminate the need for the Department to resolve future problems regarding a fixed date for the liquidation of Federal Perkins Loan funds at each institution when reauthorization does not occur before that specific date. The change will also provide institutions with adequate time to liquidate the funds, if necessary.

Suggested Improvements in the Campus-Based Programs
Policy Development Division
Student Financial Assistance Programs
September 16, 1997

Reallocation - Sections 413D(e), 443(e), and 462(j)

Proposal: Combine all returned funds from all the programs and reallocate them according to the current reallocation rules for Federal Work Study. That is, schools will only receive reallocated funds if they had spent at least 10% of their FWS allocation on community service. They also must spend all of the reallocated funds for community service.

Result: Would simplify reallocation process for both schools and the Department. It would put more funding into the community service component of the Federal Work Study Program. However, the effect would not be significant since most (almost 75%) of returned funding is in the FWS Program.

Note: We might want to investigate if there is any possibility that unexpended funds from one award year could not be reallocated into the next award year after September 30. If there were any way to do this, we could significantly increase the amount of funding available for reallocation while, at the same time, reducing the burden on both schools and the Department in reallocating these funds. Such a possibility would not change the recommendation above, it would just make implementing the current reallocation or the proposed reallocation a lot more beneficial and easier.

Suggested Improvements in the Campus-Based Programs
Policy Development Division
Student Financial Assistance Programs
September 16, 1997

no

Transferability - Section 488

Proposal: Change the transfer flexibility among the three campus-based programs as follows:

From FSEOG to FWS - Up to 10%
This change from no transfer to 10% would give schools end-of-year flexibility without seriously affecting the amount of grant funds available for needy students.

From: FSEOG to Perkins - No transfer allowed
This is current law

From FWS to FSEOG - Up to 25%
This is current law

From FWS to Perkins - No transfer allowed
This is current law

From Perkins to FSEOG and/or FWS - Up to 25%
This is current law.

Suggested Improvements in the Campus-Based Programs
Policy Development Division
Student Financial Assistance Programs
September 16, 1997

FSEOG: Carry Forward/Carry Back - Section 413

Proposal: Allow schools to carryback to the previous award year or forward to the upcoming award year, up to 10% of its FSEOG allocation. This flexibility, while available in the FWS Program does not currently exist in FSEOG.

Result: Schools would have the flexibility needed to handle minor shortfalls or excesses in the FSEOG program. It would eliminate the need for a school to "spend" FSEOG at the last minute. It also would eliminate the need for the school to cancel awards and/or cover FSEOG commitments with their own funds when they were slightly off on their award projections.

Suggested Improvements in the Campus-Based Programs
Policy Development Division
Student Financial Assistance Programs
September 16, 1997

FWS: Private For Profit Employment- Section 443(c)(2)

Proposal: Increase from 25% to 50% the amount of an institution's FWS allocation that can be used to pay the federal share for students employed at for-profit employers.

Result: Provides greater flexibility and more career related job opportunities for needy students. Note that the 50% matching rate would continue to apply to this type of employment.

Professional Judgment

Question: How frequently is professional judgment used? Do you have evidence of misuse?

Answer: Use of professional judgment for Federal purposes is minimal. Most often, it is used to change dependency status from dependent to independent. Last year (1996-97), financial aid administrators changed data elements for about 160,000 Federal student aid applicants -- 110,000 of those applications changed dependency status.

Program reviewers do not specifically document professional judgment deficiencies in the Department's database, but the following are related deficiencies found by program reviewers over the last two-year period (10/1/95-9/30/97):

1) Independent student status not documented -- 39 occurrences
2) FFEL cost of attendance adjustments not documented -- 10 occurrences
3) Adjustments to family contribution not documented -- 4 occurrences
4) FSEOG Exceptional need not met -- 27 occurrences
5) Need Analysis improper/not documented -- 45 occurrences

These deficiencies total 125, which is not a great amount of the total deficiencies, especially over a two-year period. (In comparison, the top ten deficiencies in a typical year total approximately 1400 for a single year.)

The Office of the Inspector General in Dallas did a study on professional judgment that is attached. The study was based on a very small number of schools and does not reflect a representative sample.

We cannot regulate in professional judgment areas at all based on section 479A(a). And, in effect, we also cannot regulate in need analysis areas except to do annual updates. Section 478(a)(2) states that we need Congressional approval within a short period of time in order to regulate in these areas.

— need authority to regulate...
[illegible] protections...

FINANCIAL AID ADMINISTRATORS' USE OF PROFESSIONAL JUDGMENT

FINAL AUDIT REPORT

Audit Control Number 06-60004

July 1997

U.S. DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL
Dallas, TX

Audit Services
(214) 767-3826

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL
1200 MAIN TOWER BUILDING, ROOM 2130
DALLAS, TEXAS 75202-5040

Investigation Services
(214) 767-3361

July 31, 1997

MEMORANDUM

TO : David A. Longanecker
Assistant Secretary
Office of Postsecondary Education

FROM : Daniel J. Thaens
Western Area Manager
Dallas, Texas

SUBJECT: Final Report Titled -- *Financial Aid Administrators' Use of Professional Judgment*
Audit Control Number 06-60004

You have been designated primary action official for this report. Please provide the Office of the Chief Financial Officer - Audit Follow-up Branch and the Office of Inspector General - General Operations Staff with semiannual reports on corrective actions until all such actions have been completed or continued follow-up is unnecessary. A Product Quality Survey form is also being transmitted with this report. We request that it be completed by the person(s) on your staff assigned to coordinate and track the resolution of this audit report. The completed form should be returned to Mr. Thomas Carter, Director, General Operations Staff, in the enclosed self-addressed envelope. Thank you for taking the time to provide us with feedback on our efforts to meet our customer's needs.

In accordance with the Freedom of Information Act (Public Law 90-23), reports issued by the Office of Inspector General are made available, if requested, to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act. Copies of this audit report have been provided to the offices shown on the distribution list enclosed in the report.

We appreciate the cooperation given us during our review. If you have any questions concerning this report, please call me at 214-767-3826.

FINANCIAL AID ADMINISTRATORS' USE OF PROFESSIONAL JUDGMENT

EXECUTIVE SUMMARY

Some Financial Aid Administrators (FAAs) abused the use of professional judgment by allowing students or whole classes of students to reduce family incomes by certain expenses not included in the statutory needs analysis formula, including students from families with incomes in excess of $70,000 at one university. The FAA at this university stated that his professional judgment actions cannot be disputed because the parameters of professional judgment are not defined in the Higher Education Act of 1965, as amended (Act). The Act needs clarification to prohibit the FAAs from including nonessential expenses when using professional judgment. However, the current Act does not allow FAAs to use professional judgment to make whole classes of students eligible for additional Pell Grants while students with similar circumstances at other schools are held to a different standard.

We estimate from our sample reviews that unreasonable and inadequately documented professional judgment actions at the 19 schools visited resulted in 804 students receiving about $775,000 of additional Pell Grants for award years 1994-95 and 1995-96. We are not projecting the results of our review to the estimated $300 million net additional Pell Grant awards that resulted from professional judgment actions at all schools for the 2 years. However, based on our findings at the 19 schools, the amount could be significant.

The unreasonable use of professional judgment occurred because FAAs: a) deducted expenses from family income that were nonessential and benefitted whole classes of students, b) made allowances for living and other expenses even though those allowances had already been considered in the needs analysis system, and c) did not always adequately document their actions. The Act does not address whether additional expenses that FAAs could allow as reductions to income in order to increase Pell Grant eligibility were a function of choice or necessity by the student or parent. The Act also prohibits the Department from regulating the use of professional judgment. In our opinion, the lack of specific provisions in the Act and the inability of the Department to regulate professional judgment may have contributed to FAAs allowing nonessential expenses.

We are recommending that the Department seek changes in the current Act by adding a provision to prohibit FAAs from including nonessential expenses when adjusting data elements used in the Expected Family Contribution (EFC) calculation. Further, the Act should grant the Secretary the authority to regulate the professional judgment provisions. We are also recommending that the Department clarify professional judgment guidance provided to schools, and identify schools that use professional judgment frequently, classify them as high risk and use this information in its risk analysis when scheduling schools for monitoring.

Department officials did not agree with our recommendations to seek changes in the act or to obtain the authority to regulate the use of professional judgement. Department officials agreed with our recommendations to provide additional guidance and identify high risk schools. The full text of their response is attached to this report. We have not changed our conclusions and recommendations. Our work disclosed that systemic abuse occurred and that the current provisions of the Act are not sufficient to stop additional abuse.

FAFSA as the Loan Application

Question: If the FAFSA is used as the loan application in the FFEL program, how will students choose their lenders?

Answer: The Department will make provisions to insure that students could continue to choose their lenders. The specific ways to do this have not been worked out. Perhaps a question could be added to the FAFSA that would determine students' choice of lender.

Use of New Technologies

Question: How would you have used flexibility to use new technologies if you had had it in the past?

[illegible] clearly

Answer: Many of our reauthorization proposals are intended to allow us to use new technologies. For example: 1) elimination of 85% funding rule in Pell to further support the just-in-time funding model, 2) authority to ~~use a multi-year promissory note,~~ 3) authority to use prior-prior year data, and 4) authority to match income information with the IRS. If we had had more flexibility to develop these technologies earlier, we would have explored these options and worked with the community to consider these ideas.

+ elec. signature.

Question: How might you use this flexibility in the future?

Answer: Our systems staff would like to look at the possibility of two-year development cycles instead of the current annual development cycle. We would also like the authority to be more flexible in our approach to tailoring the application process to meet the needs of various customers. The University of California and California State University have proposals for a common admissions and aid application process that we may want to consider as an area of partnership between the Department and institutions.

not resolved

Refund Policy Questions

1) **Question:** What is the timetable for implementation of the Disbursement Schedule approach?

Answer: As drafted, the statutory language would be self-implementing and could be implemented upon passage of the statute. Clarification of certain terms could be made in regulations at a later date.

2) **Question:** How would a move to electronic payment affect the Disbursement Schedule approach?

Answer: The method of payment of Title IV Program funds would not affect the Disbursement Schedule approach. This approach will be used to determine the amount of Title IV aid a student has earned when he or she ceases attendance. If the amount of Title IV aid a student has received (no matter what the method of payment) at the time of withdrawal exceeds the amount earned, the excess Title IV funds must be returned. If the amount is less than the amount earned, a late disbursement will be made to make up the difference.

Quality Assurance

Schools in the QA Program already perform a rather comprehensive self assessment of their policies, procedures, and compliance in a number of key areas such as:

Institutional Participation (eligibility, responsibility)
Fiscal Management (accounting, auditing
Recipient Eligibility (verification)
Award Calculation & Disbursement
Reporting and Reconciliation (refunds, adjusting awards)
Other Administrative Practices.

Schools have identified how to address weaknesses and build on their strengths in these areas. Sometimes current regulatory requirements impede improvement actions because they are time consuming and don't apply to all institutions, though they must be enforced across the board. QA schools are ready to propose other, better ways of achieving the goals that the regs are meant to achieve, but often don't. Flexibility to these schools would be a low risk venture because measurement, data, and analysis are part of the QA process.

Several of the most logical areas for flexibility (not necessarily elimination) for QA schools are the areas in experimental sites such as entrance & exit loan counseling; multiple disbursement for single term loans; 30-day delay; and retaining the verification flexibility.

This does not mean that all schools would immediately take advantage of these flexibilities, just as some schools continue to maintain integrated verification in addition to the QA methodology.

However, it would be most beneficial to not limit the areas of flexibility by specifying all of them in the statute. But rather, continue to give the Secretary the ability to adapt them to the needs of the community by changing the QA Program details throughout the 5 or so years that the law would be in effect.

Currently, all changes to the QA methodology go through OMB for approval as part of the workbook clearance process.

Just In Time Funding Method

Q. Why can't we implement the Just In Time Funding Method now.

A. The Department believes successful implementation of such a major change in SFAP processes depends on giving schools, and other organizations involved in the delivery of student financial assistance, as much advance notice as possible, preferably at least 12 months. ED cannot successfully implement major system changes without internal consensus on the requirements for the interfaces with our external partner schools. Insufficient time now remains before the start of the 1998-99 school year to give adequate notice so schools can plan and implement significant changes to their Pell systems and procedures. ED needs sufficient time to publicize and provide training to schools on this new Just In Time Method. ED plans to implement this new Just In Time Method once schools have had ample time to use "common" reporting (Origination/Disbursement, like Direct Loan Origination) without putting payment of Pell Grants to their students at risk.

Excess Funds Provision

Question: 15% excess funds requirement -- have we ever reached the 15% at any point in Pell history?

Answer: In 1995-96, the amount of the estimated cumulative surplus was approximately 24% of the actual amount of Pell Grant funds ultimately disbursed in a given award year. Other years in which the surplus exceeded the actual disbursements by 15% were 1973-74, 1975-76, 1977-78, and 1978-79.

Child Care Allowance

Question: OMB would like to increase the child care amount in the cost of attendance and the tuition sensitivity rule. They think this will be a symbolic change with little cost. Can we up the child care amount without great cost?

Answer: The current law establishes an allowance of $750 for dependent care expenses or disability related expenses in the tuition-sensitive award rule for Pell Grants. For the computation of cost of attendance for all title IV student aid programs, the current law leaves it the institution to determine a reasonable amount, if any, of dependent care expenses to be added to the total cost of attendance. The institution also determines the amount of an allowance for expenses related to the student's disability.

Two approaches are possible:

a) In the tuition-sensitive Pell Grant award rule, use the amount of the allowances the institution has already determined for inclusion in the total cost of attendance for dependent child care expenses and/or disability-related expenses. The approach provides consistency between the Pell Grant award rules with the general cost of attendance rules.

b) Raise the amount to the average of these expenses incurred by students. The College Board estimates that the average amount for "other" expenses for commuting four-year public students in 1997-98 was $1,465. We could round this amount to $1,500, exactly twice the current $750 amount. We would also specify that this amount should be updated annually based on the Consumer Price Index.

Either approach will have negligible effect on program cost at current maximum Pell Grant award levels.

85/15 How many cases?

Question: Why are you adding a transition period of 85/15 compliance for institutions seeking a status change from proprietary to nonprofit?

Answer: Because nonprofit institutions and public institutions have no 85/15 requirement in the HEA, it is only proprietary institutions that, to qualify for Title IV participation, must ensure that no more than 85% of income is from federal student aid sources. As a result, some proprietary schools seek to avoid the requirement by changing to nonprofit status. Anecdotal information obtained by IPOS financial analysts confirms this, sometimes even through direct and frank conversations with school accountants openly stating a school's intention to avoid 85/15 by changing to nonprofit status. In response, ED is proposing the transition period during which 85/15 would remain in effect for schools seeking to change from profit to nonprofit status.

While ED has not issued specific termination actions for 85/15 violations, partly because the regs have not been in effect for long, and partly because our internal systems are still being refined for efficient tracking of the relevant financial statements and 85/15 certification statements, it is clear to our recertification specialists that many proprietary schools failed to respond to or complete the recent recertification process because they know they would not successfully pass the 85/15 analysis.

Incarcerated Students and the Federal Pell Grant Program

Background

From the inception of the Federal Pell Grant Program in 1972 to the passage of the Higher Education Amendments of 1992, incarcerated students were eligible to receive Pell Grants. They were subject to the same conditions of eligibility as all students. The only restriction on incarcerated students was a regulatory one limiting their cost of education for purposes of determining the amount of the Pell Grant to only tuition and fees and an allowance for books and miscellaneous expenses with no allowance, understandably, for room and board (this latter prohibition was removed by the Higher Education Amendments of 1986 and left to the financial aid administrator's professional judgment).

The initial language of the Higher Education Amendments of 1992 -- Title IV, Part A, Subpart 1, Section 401(8) -- denied Pell Grant eligibility only to incarcerated students serving under sentence of death or any life sentence without parole. The original amendment language also prohibited the inclusion of room and board in an incarcerated student's cost of education. The law also sought to encourage states to maintain their levels of spending for postsecondary education for incarcerated students by allowing incarcerated students to receive Pell Grants only in states that had maintained their levels of spending on prisoner higher education to at least Fiscal 1988 levels. The language of the Higher Education Amendments of 1992 as originally passed was:

> "...(A) No basic grant shall be awarded to an incarcerated student under this subpart that exceeds the sum of the amount of tuition and fees normally assessed by the institution of higher education for the course of study such student is pursuing plus an allowance (determined in accordance with regulations issued by the Secretary) for books and supplies associated with such course of study, except that no basic grant shall be awarded to any incarcerated student serving under sentence of death or any life sentence without eligibility for parole or release;
>
> (B) Basic grants under this subpart shall only be awarded to incarcerated to individuals in a State if such grants are used to supplement and not supplant the level of postsecondary education assistance provided by such State to incarcerated individuals in fiscal year 1988;..."

Thus, except the prohibitions on incarcerated students serving death or life without sentences and in states that failed to maintain their funding levels, Pell Grant eligibility requirements for incarcerated students continued to be essentially the same as for all other students.

Section 20411 of the Violent Crime Control and Law Enforcement Act of 1994 made major changes to the eligibility of incarcerated students for Pell Grants. This act amended the Higher Education Act and removed the eligibility of students incarcerated in Federal or State penal institutions if the student enrolled after September 13, 1994. The amendment also removed the language affecting room and board though the exclusion of the room and board allowance in the cost of education of incarcerated students for any Federal student aid contained in Part F, Section 472(6) of the Higher Education Act of 1965 applies to Pell Grants as well. The new 1994 legislation also removed the requirement that states maintain their funding for prisoner postsecondary education at no less than fiscal year 1988 levels.

After the passage of the Violent Crime Control and Law Enforcement Act of 1994, the language of the Higher Education Act of 1965, Title IV, Part A, Subpart 1, Section 401(8), now reads:

"...No basic grant shall be awarded under this subpart to any individual who is incarcerated in any Federal or State penal institution."

As a result, the only incarcerated students currently eligible for students are those incarcerated in local penal institutions, such as those under the jurisdiction of city or county governments. The cost of education of these students for Federal student aid purposes is limited to tuition and fees, books, and supplies.

Numbers of Pell Grant Recipients

In the 1993-94 award year, prior to the passage of the Violent Crime Control and Law Enforcement Act of 1994, which prohibited incarcerated students in Federal and State penal institutions from receiving Pell Grants, approximately 28,000 incarcerated students received a total of $36 million in grants. This represented approximately 0.75 percent of all 1993-94 Pell Grant recipients and 0.64 percent of total grant dollars.

In the 1994-95 award year, after passage of the new legislation restricting to Pell Grant eligibility to student in local penal institutions, approximately, approximately 1,200 incarcerated students received $1.6 million in total grants. This represented approximately 0.03 percent of all Pell Grant recipients and total grant dollars in 1994-95, respectively. This constitutes a 95 percent drop in the number of incarcerated students receiving Pell Grants from 1993-94 to 1994-95.

From this data, it is clear that the participation of incarcerated students has been a very small component of the Pell Grant Program, before and after passage of the Violent Crime Control and Law Enforcement Act of 1994, especially as a percentage of the total Pell Grant recipient population.

It is also clear that the numbers of incarcerated students receiving Pell Grants is a very small percentage of the total incarcerated population in the United States. In 1993, for example, it was estimated by the Justice Department that over 900,000 persons were incarcerated in Federal or state penal institutions, with a further 226,000 convicted individuals in local jails. The 28,000 incarcerated students receiving Pell Grants at this time represented approximately 2.5 percent of the estimated total incarcerated population.

Nevertheless, the Department of Education is on record as favoring the continuation of Pell Grant eligibility for incarcerated students. Secretary Riley, in his testimony on the Violent Crime Control and Law Enforcement bill, opposed exclusion of otherwise eligible incarcerated students from the Pell Grant Program. The Department's position has been that various studies have shown that the recidivism rate of incarcerated students who acquire postsecondary education is far less than the rate for prisoners without any postsecondary education. As a result, the costs to taxpayers declines by providing incarcerated students access to Pell Grants, since the costs of incarceration are higher.

Studies

A number of studies have been performed that suggest that there exists a positive relationship between correctional education programs and variables such as recidivism and post-release employment. Below is a summary of several studies:

- Recidivism rates are inversely related to educational program participation while in prison. The more educational programs successfully completed for each six months in prison, the lower the recidivism rate. For inmates completing one or more courses per each six months of their prison term, the recidivism rate declined by about ten percent. (Harer, 1994)

- A study in Texas examined the effect of vocational training on offenders who left the system during a six month period from 1990 and 1991. Three years after release, findings demonstrated a substantially lower recidivism rate for participants in the training. The recidivism rate for those who received both a GED certificate and completed a vocational trade was over 20 percent lower than for those who did not reach either educational milestone. (State of Texas, 1994)

- A study in New York analyzed the rate of return to prison of inmate college program participants. Three years after earning a degree in 1986 and 1987, degree offenders were significantly less likely to recidivate (26 percent) than non-degree inmates (45 percent). (New York State Department of Correctional Services, 1991).

- Adult releases who had vocational/academic training while incarcerated were tracked over a 12-month period, and compared to releases who had not participated in such programs. The study found that the groups with vocational/academic training had the highest employment rates, lower unemployment rates, and lower criminal activity rates, as compared to the control group. (Schumaker, et. al., 1990)

- A study in Texas in 1991, five years after release, findings showed a twelve percent difference in recidivism between those offenders who had a high school diploma or GED and those who did not have a high school credential. (Texas Department of Corrections, 1991)

- The Post Release Employment Project was conducted to analyze the differences in recidivism rates between federal offenders who received vocational training or industrial work experience while incarcerated and those who did not. Study group subjects were released between 1984 and 1986 and were analyzed through 1987. Findings showed reduced recidivism rates one year after release, higher rates of employment, and higher earnings among those offenders who received vocational training. (Federal Bureau of Prisons, 1991)

Options

There are three options concerning the eligibility of incarcerated students for the Federal Pell Grant Program: to retain the current treatment of incarcerateds, to expand eligibility to encompass all incarcerated students who otherwise qualify for a Pell Grant, or to eliminate all incarcerated students from Pell Grant eligibility, including students in local jails.

Option 1 -- Status quo

Pros

1. No legislative change would be required.
2. No additional program costs required to account for a new (albeit relatively small) group of additional Pell Grant recipients.
3. This option minimizes possible criticism from groups opposed to student aid for prisoners.

Cons

1. The current treatment is logically flawed, since individuals incarerated in local institutions are less likely to enroll in postsecondary institutions, due to the short period of incarceration.

2. The current approach does not sufficiently address the positive effects of education and training on reducing recidivism.

Option 2 -- Expand Pell Grant eligibility to include all qualifying incarcerated students.

Pros

1. Studies have shown that prisoners who engage in academic or vocational training while in prison reduce their chance of recidivism and increase their employability upon release. It is a net savings to society to provide these students with education opportunities while in college, improving their later chances of success, rather than incur the expense of incarcerating these individuals at a later point.

2. The cost of providing Pell Grants to all incarcerated students is relatively small when compared to the total cost of the Program. Assuming that incarcerated students continue to receive roughly the same percent of total Pell Grant dollars as they did in 1992-93 (0.64 percent), total grants to incarcerated students in 1998-99 would rise to approximately $50 million at the higher maximum award level ($3,000).

Cons

1. There is little political support for providing education funding for prisoners. Misperception and distortion has been common in the debate over this issue. Some see it as wasteful and prone to abuse, others believe it takes money from law-abiding students, and others believe it to be more of the responsibility of state and local government, rather than a Federal role.

2. During the period when Pell Grants were available to all otherwise eligible prisoners, only a small portion of the incarcerated population, approximately 2 percent, were receiving Pell Grants. This indicates that the vast numbers of prisoners either were not engaged in educational or vocational pursuits while incarcerated, or were in programs that were not postsecondary in nature or that were ineligible for Federal student aid programs. It may be that training at adult basic or secondary education levels would be more appropriate for most of the prisoner population. If so, the Pell Grant Program is not, and never has been, the appropriate vehicle to provide that opportunity.

Option 3 -- Eliminate all incarcerated students, including those in local penal institutions, from eligibility for Pell Grants.

Pros

1. It is inconsistent to continue to allow individuals incarcerated in local penal institutions to receive Pell Grants while denying grants to students and Federal and state prisons.

2. The time spent by most prisoners in local jails is hardly sufficient to obtain meaningful postsecondary training. The average period of incarceration in local jails is estimated to be 85.5 days, compared to an average length of stay for State prisoners of 27 months.

3. Very few locally incarcerated students, approximately 1,200, remain in the Pell Grant Program. Therefore, the effect on funding for prisoner education, in general terms, would not be great, so there would be pressure on other Federal, state, or local education programs to fill the vacuum.

Cons

Few opportunities exist under other programs for indigent inmates to obtain funding for postsecondary level education or vocational training. Few, if any, institutions provide Federal Work-Study or Federal Supplemental Educational Opportunity Grant funds to incarcerated students, and these students are not eligible for Federal student loans.