HEA Reauthorization

TRADE

8. Chronicle of Higher Education
August 18, 1997

Education Dept. Weighs Big Changes in Federal Student-Aid Policies

By DOUGLAS LEDERMAN

The U.S. Education Department is weighing numerous changes in federal student-aid policies. Among them:

Changing how a family's assets are counted in gauging a student's need for assistance.

Making aid more available to students engaged in distance learning.

Giving more Pell Grant money to the neediest students as they enter their second year of college, to encourage them to continue their studies.

Those proposals — and dozens of other ideas for altering federal student-aid programs — were contained in a draft of the Clinton Administration's recommendations to Congress for legislation to extend the Higher Education Act of 1965, which is due to expire next month. Education Department officials held two meetings for college lobbyists last week to explain the Administration's proposals. The Chronicle obtained a copy of the plan.

The proposal that generated the most discussion and controversy at those meetings would factor into the calculation of a student's need a valuation of his or her family's assets based not on actual assets but on a formula using income and other factors. A median amount of assets would be calculated for each group. As a result, two families with similar taxable incomes and the same number of children would be assumed to have the same amount of money saved, even if they do not.

The Administration's proposal is aimed at encouraging families to save and to eliminate what federal officials say is unfair treatment of families that have saved and that are forced to pick up more of the cost of educating their children than are families that have not saved.

But many student-aid experts and college officials complained that while encouraging families to save is a noble goal, the Administration's proposal would punish students because their families did not save. A student from a family that had saved significantly less than the median for its income range would be expected to pay a greater share of the costs of educating the student than it is under the current system.

"You'd be essentially taxing people for something they don't have, and assuming they don't have it because they haven't managed their lives properly," said Bryan K. Fitzgerald, staff director of the Advisory Committee on Student Financial Aid, a panel of college officials and other financial-aid experts who advise Congress.

The Administration is also suggesting that the government use two-year-old financial information in calculating a student's need for federal aid, in an attempt to fix acknowledged problems in the current system.

Right now, a student reports his or her family's income from the prior year, and because the family has not yet filed tax forms for the year at the time the student applies for aid, the college cannot double-check the estimate to insure its accuracy. A study by the Education Department's Inspector General this spring found that about 4.5 per cent of Pell Grant recipients had misreported their income in ways that inflated the amount of aid they deserved.

By using information from a year earlier, and by getting it directly from the Internal Revenue Service, the Administration suggests, colleges could insure that the information they get is accurate.

Such a change would create new problems, however, some college officials said. Tables prepared by the Education Department show that the taxable income reported by many families fluctuates significantly from year to year, so that using two-year-old data would overstate the income of some families and understate the income of others.

In 1995, for instance, 288,795 student-aid recipients reported taxable incomes of zero to $10,000. In 1996, 62,935 of those students reported that their families' incomes had risen to between $10,001 and $20,000, and nearly 1,300 reported incomes of $50,001 to $60,000. Over all, about 45 per cent of the families of student-aid applicants changed income categories between 1995 and 1996.

If colleges were to use two-year-old data, critics say, about 1 in 8 students would qualify for less federal aid than they need and would have to appeal to their colleges for more. About 30 per cent would qualify for more federal aid than they deserve, Mr. Fitzgerald said.

College lobbyists who were briefed on the Administration's plan liked several of its other recommendations. They were intrigued by a proposal to give a $300 "Super-Pell" award to the neediest recipients of Pell Grants in their second year. The aim is to decrease the rate at which low-income students drop out of college at the end of their first year. The standard maximum Pell Grant will be $2,700 in the coming fiscal year and is set to rise to $3,000 in 1999 under spending bills now before Congress.

Educators also applauded the Administration for suggesting changes that would make student aid more available to students in distance-learning courses. The proposals call for awarding financial aid to students who are taking such classes toward certificate and other programs, rather than just toward associate's or bachelor's degrees, and for including the cost of a computer and possibly other expenses in calculating the "cost of attendance" for students in distance-learning classes.

But the Administration's package also contained many proposals that are likely to anger Republican lawmakers, lenders, or certain groups of colleges. Some of those proposals would:

Limit to six years the length of time in which full-time students can qualify for

Pell Grants. The Administration's proposal is aimed at encouraging undergraduates to complete their degrees in a timely fashion, but critics fear it will hurt needy students, who often take a long time to finish college because of financial hardship. There is no current limit on how many years a student may receive a Pell Grant.

Cut off federal aid for vocational programs of up to a year in length if fewer than 70 per cent of the students complete the program and fewer than 70 per cent of them get jobs after finishing it. Such a requirement is already in place for shorter-term vocational programs, but community-college officials say it would be unfair to impose it on all year-long programs.

Allow colleges to shift a greater share of the money they receive through the Perkins Loan Program to two other federal programs, Supplemental Educational Opportunity Grants and Federal Work Study. Colleges are now allowed to transfer as much as 25 per cent of their Perkins funds to the other programs. Many college officials fear that allowing further shifting between the programs could undercut support in Congress for Perkins Loans, by convincing lawmakers that colleges would prefer to use the money for other purposes.

Allow institutions to raise the limits on the amount of federal loans that a professional or graduate student may have, but require the institution to pay the Education Department a 10-per-cent "insurance" premium for the amount of loans over $18,500. The American Council on Education and other groups have opposed proposals that require colleges to share in the risk of insuring that loans will be repaid.

Impose a number of costly restrictions on guarantee agencies and lenders in the guaranteed student-loan program.

To the dismay of some college officials, the Administration did not offer any proposals for significantly changing the way the government delivers federal student-aid information to colleges, students, and their families. Several higher-education groups, and many Republicans in Congress, have suggested that the department's system be put in private hands. ■

9. Education Daily

August 18, 1997

ADVANCED TECHNOLOGY CENTERS ARE HOT HUB FOR TRAINING

Community colleges are increasingly developing advanced technology centers (ATCs) to serve as one-stop system for manufacturers.

"ATCs are becoming strong members of the partnership structure in welfare reform, one-stop service centers, and vocational centers for high schools," says a new report from the national ATC group.

Since January, the group has added 15 colleges to its list of 104 members, said Robert Auld, executive director of the nine-year-old National Coalition of Advanced Technology Centers (NCATC), a division of the Center for Occupational Research and Development in Waco, Texas.

Often housing the latest technology on loan from its developers and local companies, the centers train students for local manufacturing jobs, foster entrepreneurs and make a sizable profit for the school.

Most centers' services include.

* Credit and non-credit courses, short-term and custom training, and seminars.

* Demonstration of new technology, small business development and shared facilities with industrial partners.

and * Technical assistance to education partners, including high schools and colleges, and local businesses.

Kalamazoo Valley Community College in Michigan, for example, periodically holds an "education for employment" conference where teachers meet with vendors.

The school also allows local high schools to use its industrial laboratories in the morning.

Not Everyone's Happy But not all two-year public schools housing the centers had an easy time setting them up, said another NCATC report.

Many community college presidents had difficulty convincing faculty that training programs wouldn't sponge money from academics.

The presidents argued that once the centers had run for a few years, they would churn out profits shared with academic programs.

Curriculum Test With a $3 million, three-year grant from Lucent Technologies, NCATC is working with the Iacocca Institute at Lehigh University in Bethlehem, Pa., to create a curriculum that focuses on core competencies of manufacturing technology.

Five community colleges, along with eight Lucent plants, will test and evaluate the curriculum in early 1998, Auld said.

ATCs even got a pat on the back from Senate appropriators last month, who suggested that the federal Labor Department funnel some of its fiscal 1998 funds toward such projects.

"Planning and Developing the Advanced Technology Center" is $10 from National Coalition of Advanced Technology Centers, P.O. Box 21689, Waco, TX 76702-1689, (800)231-3015; e-mail, ncatc@cord.org. "Community Colleges and Economic Development" is $10 from the same address.

For more information, contact NCATC Executive Director Robert Auld at the above address, (817)772-8756; e-mail, rauld@cord.org. —Matthew Dembicki■

HEA Roth

SPECIAL

Total Pages: 9

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

Monday, November 10, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

Janet R. Forsgren

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

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

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

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

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

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SUBPART 3--FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

EXTENSION OF PROGRAM

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

SELECTION OF RECIPIENTS AND USE OF FUNDS

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

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

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

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

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

ALLOCATION OF FUNDS

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

(1) in subsection (a)--

(A) in paragraph (1)--

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

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

(B) in paragraph (2)--

(i) in subparagraph (A)--

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

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

(ii) in subparagraph (B) --

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

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

(iii) in subparagraph (C) --

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

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

(C) in paragraph (3)--

(i) in subparagraph (A)--

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

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

(ii) by striking out subparagraph (B);

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

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

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

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

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

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

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

FLEXIBLE USE OF FUNDS

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

"FLEXIBLE USE OF FUNDS

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

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

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

SUBPART 2--FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

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

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

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

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

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

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

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

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

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

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

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

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

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

SPECIAL

Total Pages: 8

LRM ID: CJB135

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

Monday, November 10, 1997

LEGISLATIVE REFERRAL MEMORANDUM

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

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

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

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

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

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

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Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: ______________________ (Date)
______________________ (Name)
______________________ (Agency)
______________________ (Telephone)

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

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _______

_____ Other: ____________________

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

PART C--FEDERAL WORK STUDY PROGRAM

EXTENSION OF PROGRAM

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

ALLOCATION OF FUNDS

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

(1) in subsection (a)--

(A) in paragraph (1)--

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

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

(B) in paragraph (2)--

(i) in subparagraph (A)--

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

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

(ii) in subparagraph (B) --

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

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

(iii) in subparagraph (C) --

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

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

(C) in paragraph (3)--

(i) in subparagraph (A)--

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

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

(ii) by striking out subparagraph (B).

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

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

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

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

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

USE OF FUNDS

SEC. 443. Section 443 is amended--

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

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

PART C—FEDERAL WORK-STUDY PROGRAM

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

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

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

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

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

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

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

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

Section 443. Section 443 of the bill would amend section 443(b)(3) of the Act to eliminate the requirement that an institution make at least 5 percent of its Work Study funds available to independent and less-than-full-time students, if such students account for at least 5 percent of the total financial need of all students attending the institution. This requirement causes an administrative hardship, because institutions must keep track of students to whom they offer aid based on these artificial categories, and carry out additional caluclations and reporting on students in these categories. Furthermore, many institutions are far exceeding the 5 percent minimum for these categories of students, not just in offers, but in actual expenditures. Instead, the current law requirement that funds be reasonably available to all eligible students in the institution in need thereof, would remain in effect without the additional 5 percent limitation. This change will remove the administrative burden, while still enabling the Secretary to take action against those few institutions that do not make funds reasonably available to all students, including independent and less-than-full-time students. A similar change is proposed to the FSEOG program in section 414(2) of the bill and to the Perkins Loan Program in section 464(2) of the bill.

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

SPECIAL

Total Pages: 20

LRM ID: CJB132

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

Monday, November 10, 1997

LEGISLATIVE REFERRAL MEMORANDUM

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

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

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

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

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

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

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

FROM: ______________________ (Date)
______________________ (Name)
______________________ (Agency)
______________________ (Telephone)

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

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _______

_____ Other: ______________________

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

PART E

FEDERAL PERKINS LOAN PROGRAM

EXTENSION OF PROGRAM

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

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

(2) in paragraph (2)--

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

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

ALLOCATION OF FUNDS

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

(1) in subsection (a)--

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

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

(B) in paragraph (2)--

(i) in subparagraph (A)--

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

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

(ii) in subparagraph (B) --

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

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

(iii) in subparagraph (C) --

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

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

(iv) by striking out subparagraph (D);

(C) in paragraph (3)--

(i) in subparagraph (A)--

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

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

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

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

subsection:

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

(3) in subsection (c)--

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

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

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

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

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

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

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

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

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

(6) in subsection (h)--

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

(B) in paragraph (3)--

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

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

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

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

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

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

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

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

AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION

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

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

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

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

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

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

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

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

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

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

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

TERMS OF LOANS

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

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

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

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

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

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

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

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

(2) in subsection (b)--

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

(B) by striking out paragraph (2);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and

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

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

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

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

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

DISTRIBUTION OF ASSETS

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

(1) in subsection (a)--

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

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

(2) in subsection (b)--

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

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

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

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

PART E--FEDERAL PERKINS LOAN PROGRAM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SPECIAL HEA Reauthorization

Total Pages: 4

LRM ID: CJB99

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

Friday, September 12, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

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

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

SUBJECT: **EDUCATION Draft Bill on Higher Education Act Reauthorization - Title IV, Part A, Subpart 5 -- Byrd Scholarships**

DEADLINE: **5:00 p.m. Wednesday, September 17, 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.**

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LRM ID: CJB99 **SUBJECT:** EDUCATION Draft Bill on Higher Education Act Reauthorization - Title IV, Part A, Subpart 5 -- Byrd Scholarships

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

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

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

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

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

The following is the 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

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 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".

(d) 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.

draft 9/4/97

SUBPART _--ROBERT C. BYRD HONORS SCHOLARSHIPS

Section 41_. Section 41_ of the bill would extend the Robert C. Byrd Honors Scholarship program in subpart 6 of part A of title IV of the Act for five years and make minor technical and conforming changes.

HEA Reauthorization

SPECIAL

Total Pages: 8

LRM ID: CJB98

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

Friday, September 12, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

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

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

SUBJECT: **EDUCATION Draft Bill on Higher Education Act Reauthorization - Title IV, Part A, Subpart 4 -- Institutional Retention Grants**

DEADLINE: noon Wednesday, Sept. 17, 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: CJB98 **SUBJECT:** EDUCATION Draft Bill on Higher Education Act Reauthorization - Title IV, Part A, Subpart 4 -- Institutional Retention Grants

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.

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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 9/12/97

SUBPART 4--INSTITUTIONAL RETENTION GRANTS

REPEALS;
NEW SUBPART

SEC. 415. (a) Subparts 4 and 8 of part A of title IV of the Act are repealed.

(b) Part A of title IV of the Act is further amended by inserting immediately after subpart 3 the following new subpart:

"SUBPART 4--INSTITUTIONAL RETENTION GRANTS

"INSTITUTIONAL RETENTION GRANTS

"SEC. 415. (a) IN GENERAL.--The Secretary is authorized to make retention grants to institutions that participate in the program under subpart 1 to reward them for improving their retention of Federal Pell Grant recipients with expected family contributions of zero (as determined under part F) until the recipients complete their degree programs.

"(b) GRANT REQUIREMENTS.--(1) APPLICATION REQUIREMENTS.--Each institution desiring to receive a retention grant under this subpart shall submit an application, at such time and containing such information as the Secretary may require, including information regarding the number of Federal Pell Grant recipients with expected family contributions of zero who enroll in degree programs at the institution and who complete their degree programs at the institution. At the request of an institution, the Secretary shall assist the institution in identifying the number of these recipients.

"(2) MINIMUM NUMBER OF FEDERAL PELL GRANT RECIPIENTS.--An institution may not receive a retention grant under this subpart unless at least 50 Federal Pell Grant recipients with expected family contributions of zero complete their degree programs at the institution in the year succeeding the base year.

"(3) PERMITTED USES OF GRANT.--An institution that receives a retention grant under this subpart shall use the grant for support services, such as remediation, academic counseling and guidance, tutorial services, personal and career counseling, or mentoring, to assist students in persisting in their studies to degree completion.

"(c) ALLOCATION OF FUNDS.--(1) From funds appropriated under subsection (e) for each fiscal year, the Secretary shall compute grant amounts for institutions with approved applications under subsection (b)(1) by--

"(A) determining the relative share of Federal Pell Grant recipients with an expected family contribution of zero who are--

"(i) enrolled in institutions that offer, as their most advanced undergraduate degree, programs of education or training that lead to an associate degree; and

"(ii) enrolled in institutions that offer, as their most advanced undergraduate degree, programs of education that lead to a baccalaureate degree;

"(B) apportioning the amount appropriated according to the relative shares for each type of institution described under subparagraph (A);

"(C) multiplying--

"(i) the number of Federal Pell Grant recipients with an expected family contribution of zero at each institution with an approved application who complete their respective degree programs in the year succeeding the base year identified by the Secretary; by

"(ii) the percentage by which that institution's degree completion rate for Federal Pell Grant recipients with an expected family contribution of zero increased from the base year to the succeeding year;

"(D) dividing the product obtained in subparagraph (C) for each institution with an approved application by the total of the products for all such institutions; and

"(E) multiplying, for each institution with an approved application, the quotient obtained in subparagraph (D) by that portion of the amount apportioned under subparagraph (B) that corresponds to that type of institution.

"(2) Notwithstanding paragraph (1)--

"(A) the Secretary shall establish for each fiscal year a minimum and maximum grant amount under this subpart; and

"(B) if the Secretary determines that there are excess funds in one portion of the amount apportioned under subparagraph (B), the Secretary may reapportion those funds to the other portion of that amount for grants to the corresponding type of institution

"(d) DEFINITIONS.--(1) DEGREE.--For purposes of this subpart, the term 'degree' means an associate or baccalaureate degree.

"(2) DEGREE COMPLETION.--For purposes of this subpart, the term 'degree completion' means obtaining, within 150 percent of the time usually required (as determined by the institution), the academic credits necessary to receive the degree for which the student initially enrolled.

"(3) COMPLETION RATE.-- The Secretary shall define completion rate for the base year and the succeeding year in regulations.

"(e) AUTHORIZATION OF APPROPRIATIONS.--There are authorized to be appropriated for this subpart such sums as may be necessary for fiscal year 1999, and for each of the four succeeding fiscal years.".

9/12/97 draft SUBPART 4--INSTITUTIONAL RETENTION GRANTS

Section 415. Section 415(a) of the bill would repeal subpart 4, the State Student Incentive Grant (SSIG) program, and subpart 8, the Special Child Care Services for Disadvantaged College Students program. The SSIG program, which provides grants to States to assist them in providing need-based grant and work-study assistance to eligible postsecondary students, is no longer necessary because all States now have need-based student assistance programs and have committed a considerable level of funding to these programs, with most States overmatching the Federal contribution by a significant amount. The SSIG program has clearly achieved its purpose of encouraging States to provide financial aid to needy students, and has outlived its usefulness. The Special Child Care Services for Disadvantaged College Students program, which authorizes grants to institutions to cover the full cost of child care expenses of low-income students through vouchers, contracted services, or direct services, has never been funded.

Section 415(b) of the bill would create a new subpart 4 that would authorize the Secretary to to make retention grants to institutions that participate in the Federal Pell Grant program to reward them for retaining Federal Pell Grant recipients with expected family contributions (EFCs) of zero until they complete their degree programs.

Although the Department's primary focus regarding postsecondary education has historically been on providing access through student financial assistance, one of the National Education Goals articulated in 1990 was to increase substantially the number of qualified students, especially minority students, who enter college and complete their programs. The proposed retention grants for institutions, together with the persistence supplements for students proposed in section 402 of the bill, are the first large-scale programs designed specifically to improve student persistence.

For purposes of the proposed new retention grant program, the term "degree" would be defined as an associate or a baccalaureate degree. "Degree completion" would be defined as the student's obtaining, within 150 percent of the time usually required, the academic credits necessary to receive the degree for which the student initially enrolled. The Secretary would define completion rates in regulations.

Such sums as may be necessary to carry out the program for FY 1999 and each of the four succeeding fiscal years would be authorized. Based on the amount appropriated for a fiscal year, the Secretary would establish the minimum (below which an institution would not be able to receive an incentive grant) and maximum (which would cap the amount that an institution could receive under the formula) grant amounts for that fiscal year. Institutions that desired a retention grant would be required to meet the application requirements specified by the Secretary, and provide the information necessary to calculate their allocations. However, an institution with fewer than 50 Federal Pell Grant recipients with zero EFCs who completed their degree program at the institution in the year following the base year would not be eligible to receive a retention grant.

The allocation formula would first apportion the available funds between institutions that award associate degrees and institutions that award baccalaureate degrees, based on their relative share of Federal Pell Grant recipients with zero EFCs. This would ensure that institutions in both sectors have adequate opportunities to obtain retention grants, although if an insufficient number of institutions in one sector participate in the program, the Secretary would reapportion the excess funds to the portion available for the other sector. Next, the number of Federal Pell Grant recipients with zero EFCs that completed their degree programs at a particular institution in the year following the base year identified by the Secretary would be multiplied by the percentage by which that institution's degree completion rate for these students increased from the base year to the succeeding year. The result of this calculation would be used to determine the institution's relative share of the funds apportioned to institutions in that sector.

An institution that receives a retention grant would be required to use the grant for support services to assist students in persisting in their studies to degree completion to assist these students in persisting in their studies to degree completion, such as remediation, academic counseling and guidance, tutorial services, personal and career counseling, and mentoring. Since the awarding of retention grants would be based on the performance of institutions in retaining Federal Pell Grant recipients, the grants would also encourage other efforts by institutions to target retention efforts and support services to those students most likely to need extra help in order to complete their degrees. This approach would also complement the current Student Support Services program, which provides targeted support services to the most needy students.

SPECIAL

Total Pages: 4

LRM ID: CJB95

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

Thursday, August 21, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

Connie Bowers

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 Report on Proprietary Institutions -- Response to GAO audit report

DEADLINE: 5:00 p.m. Wednesday, August 27, 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: This draft report addresses a proposal that ED is considering as part o the Higher Education Act Reauthorization.

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LRM ID: CJB95 **SUBJECT:** EDUCATION Report on Proprietary Institutions -- Response to GAO audit report

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.

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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)

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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

Honorable Bob Livingston
Chairman
Committee on Appropriations
House of Representatives
Washington, DC 20515-1801

Dear Mr. Chairman:

Enclosed is the Department's response to the General Accounting Office (GAO) audit report entitled, "Proprietary Schools: Millions Spent to Train Students for Oversupplied Occupations" (GAO/HEHS-97-104), issued June 10, 1997. We appreciate the opportunity to comment on this report.

This report comes at an opportune time, as we are in the process of reauthorizing the Higher Education Act (HEA). We believe our reauthorization proposal will set the direction for federal support of higher education as we enter the next century. Our challenge is to maximize the effectiveness of our investment in postsecondary education.

The President has emphasized universal access to effective postsecondary education and lifelong learning as top priorities of his Administration. The Department is working to ensure that all students that invest in their futures are afforded the benefits of postsecondary education.

At regional hearings we have held around the country and throughout the process of developing a proposal for reauthorization, we have adhered to four critical principles: ensuring access; supporting high standards and high achievement; improving outreach to potential students and linkages to employment and to elementary and secondary education; and simplifying program delivery and improving management. In discussing ways to ensure that students are competently trained for existing jobs, all four principles come into play.

As we indicated in our response to GAO's draft audit report, this Administration has proposed and supported previous efforts to provide useful and helpful information about educational programs for students to use in making informed decisions about where to enroll -- and we will continue to do so. Regarding GAO's single report recommendation that we ensure prospective proprietary school students have access to employment and earnings projections relevant to their chosen training field and local area, we believe we have an idea that better addresses the concern of whether vocational programs provide a quality education to students. We are considering a proposal during reauthorization that would extend the so-called "70/70" outcome requirement provision to all vocational programs, not just those at proprietary institutions, that are one year or less in length.

The 1992 Amendments to the HEA legislated outcome measures for program eligibility of short-term vocational programs. Currently, 300-to-599 hour nondegree vocational programs -- programs that prepare students for gainful employment in a recognized occupation -- at proprietary and vocational institutions, must have a completion rate of 70 percent and a job placement rate (of those completers) of 70 percent for its students to be eligible to receive student loans.

The proposal we are considering, which is very similar to a proposal offered by the Department's Inspector General, would extend the 70/70 outcome requirement to a larger subset of programs that are statutorily defined to be in existence to serve the particular goal of preparing students for employment in the field for which the student was trained. The change would expand the requirement to more programs at more institutions, yet would still limit it to the institutions where concerns about the quality of education by GAO are most prevalent. If less than 70 percent of a vocational program's graduates fail to secure a job in a related occupation, then that program would be deemed ineligible for Title IV purposes. This proposal would ensure access for students at postsecondary institutions that are held accountable for operating effective educational programs.

We believe that this proposal would be a direct way to address the issues discussed in the report. An institution's placement rate, of which we will require an audit by a Certified Public Accountant as part of the institution's annual compliance audit, is more reliable than estimates of future employment and earnings. Furthermore, placement rates are more meaningful, as they better reflect an institution's ability to train students well in order to meet the needs of employers.

If you have any questions on our corrective action plan, please feel free to contact the Assistant Secretary for Postsecondary Education, David Longanecker, at (202) 708-5547.

Yours sincerely,

Richard W. Riley

HEA Reauth

URGENT

Total Pages: 13

LRM ID: CJB101

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

Friday, September 19, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

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

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

SUBJECT: **EDUCATION Draft Bill on Higher Education Act Reauthorization - Title IV, Part D -- Direct Loans**

DEADLINE: **5:00 p.m. Wednesday, September 24, 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:
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Diana -
FYI -
See pages
7-10 &
12-13
re: Community
Service
provisions.
- Bill

LRM ID: CJB101 **SUBJECT:** EDUCATION Draft Bill on Higher Education Act Reauthorization - Title IV, Part D -- Direct Loans

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

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

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
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Please include the LRM number shown above, and the subject shown below.

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

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

The following is the 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

Title IV

DRAFT 9/19/97 PART D -- DIRECT LOANS

TECHNICAL AMENDMENTS

SEC. 451. (a) Section 451(b) of the Act is amended to read as follows:

"(b) PROGRAM DESIGNATION.--The program established under this part shall be referred to as the 'William D. Ford Federal Direct Loan Program'.".

(b) Section 453 of the Act is amended--

(1) in subsection (a)--

(A) in paragraph (1), by striking out the third sentence therein; and

(B) in paragraph (2)(D), by striking out "the academic year that begins in fiscal year 1998," and inserting in lieu thereof "academic year 1998-1999 and succeeding academic years,"; and

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

"(c) SELECTION CRITERIA FOR ORIGINATION.--The Secretary and an institution (or consortium of institutions) that has an agreement under section 454(a) may include in that agreement provisions regarding the origination of loans if the institution (or consortium)--

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

"(2) meets the criteria established by the Secretary in regulation.".

(c) Section 455 of the Act is amended--

(1) in subsection (a)(2)--

(A) in subparagraph (A), by striking out "'Federal Direct Stafford Loans'" and inserting in lieu thereof "Federal Direct Stafford/Ford Loans'";

(B) in subparagraph (C), by striking out "'Federal Direct Unsubsidized

Stafford Loans'" and inserting in lieu thereof "Federal Direct Unsubsidized Loans'";

(2) in subsection (b)--

(A) in paragraph (1), in the matter preceding subparagraph (A), by striking out "Direct Stafford" and "Unsubsidized Stafford" and inserting in lieu thereof "Direct Stafford/Ford" and "Unsubsidized", respectively;

(B) in paragraph (2)(A), in the matter preceding clause (i), by striking out "Direct Stafford" and "Unsubsidized Stafford" and inserting in lieu thereof "Direct Stafford/Ford" and "Unsubsidized", respectively; and

(C) in paragraph (3), in the matter preceding subparagraph (A), by striking out "Direct Stafford" and "Unsubsidized Stafford" and inserting in lieu thereof "Direct Stafford/Ford" and "Unsubsidized", respectively; and

(3) in subsection (f)(1), by striking out "Direct Stafford" each place it appears and inserting in lieu thereof "Direct Stafford/Ford".

LOAN CERTIFICATION

SEC. 452. Section 454(a)(1)(C) of the Act is amended to read as follows:

"(C) provide a statement that certifies the eligibility of any student to receive a loan under this part that is not in excess of the annual or aggregate limit applicable to such loan, except that the institution may refuse to certify a statement that permits a student to receive a loan under this part, or to certify a loan amount that is less than the student's determination of need (as determined under part F)--

"(i) if the reason for such action is documented and provided in written form to each student so affected; or "(ii) in the case of a student who is in a category of students for which such institution has a policy (that is disclosed to students and to potential students as part of the institution's information dissemination activities under section 485(a)(1)) of refusing to certify, or certifying for a lesser amount, provided that such certification policy is consistent with section 421(a)(2).".

INTEREST RATE; CAPITALIZATION

SEC. 453. Section 455(b) of the Act is further amended--

(1) in paragraph (2)(B)--

(A) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively;

(B) by inserting immediately after the subparagraph designation the clause designation "(i)";

(C) by striking out "subparagraph (A)," and inserting in lieu thereof "subparagraph (A) and, except as provided in clause (ii),"; and

(D) by adding after clause (i) (as redesignated by subparagraph (B)) the following new clause:

"(ii) In the case of Federal Direct Stafford/Ford Loans or Federal Direct Unsubsidized Loans for which the first disbursement is made on or after July 1, 1999, for purposes of subparagraph (A), the rate determined under this subparagraph shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to the bond equivalent rate of the securities with a comparable maturity, as established by the Secretary, except that such rate shall not exceed 8.25 percent."; and

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

"(6) CAPITALIZATION OF INTEREST.--The Secretary may add unpaid accrued interest to the borrower's unpaid principal balance--

"(A) when the borrower enters repayment after the expiration of a grace period, in the case of a Federal Direct Unsubsidized Loan, a Federal Direct Consolidation Loan, or a Federal Direct PLUS Loan that qualifies for a grace period;

"(B) upon the expiration of a period of deferment, in the case of a Federal Direct Unsubsidized Loan, a Federal Direct PLUS Loan, or a Federal Direct Consolidation Loan;

"(C) upon the expiration of a period of forbearance;

"(D) annually, in the case of a borrower paying under an alternative or income contingent repayment plan, in accordance with subsection (d)(4) or (e), as the case may be, if the borrower's scheduled payments do not cover the interest that has accrued on the loan; and

"(E) when a borrower defaults on the loan.".

LOAN FEE

SEC. 454. Section 455(c) of the Act is amended--

(1) by striking out "The Secretary" and inserting in lieu thereof "(1) For loans made under this part before July 1, 1999, the Secretary";

(2) by striking out "of a loan made under this part"; and

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

"(2) For loans made under this part on or after July 1, 1999, the Secretary shall charge the borrower an origination fee of--

"(A) 2.0 percent of the principal amount of the loan, in the case of Federal Direct Stafford/Ford Loans; or

"(B) 3.0 percent of the principal amount of the loan, in the case of Federal Direct Unsubsidized Loans or Federal Direct PLUS Loans.".

REPAYMENT TERMS

SEC. 455. Section 455(d) of the Act is amended--

(1) in paragraph (1)--

(A) in subparagraph (B), by inserting immediately after "an extended period of time," the following: "not to exceed 30 years,"; and

(B) in subparagraph (C), by striking out "a fixed or extended period of time," and inserting in lieu thereof "an extended period of time, not to exceed 30 years,"; and

(2) in paragraph (2), by striking out "subparagraph (A), (B), or (C) of paragraph (1)." and inserting in lieu thereof "paragraph (1)(A).".

PAYMENT OF INTEREST FOR COMMUNITY SERVICE

SEC. 456. Section 455(f) of the Act is further amended--

(1) in paragraph (1)(B), by striking out "Unsubsidized Stafford Loan," and inserting in lieu thereof the following: "Unsubsidized Loan (except as provided in paragraph (5)),"; and

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

"(5) PAYMENT OF INTEREST FOR COMMUNITY SERVICE.--(A) In the case of a borrower of a Federal Direct Unsubsidized Loan who is receiving a deferment under paragraph (2)(C) for such loan while performing community service, as described in subparagraph (B), the interest on the loan that accrues while the borrower is receiving such deferment and is performing such community service shall be paid by the Secretary.

"(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).".

CONFORMING AMENDMENTS

SEC. 457. (a) Section 451(c) of the Act is amended by striking out "basic grants" and inserting in lieu thereof "Federal Pell Grants".

(b) Section 455 of the Act is further amended--

(1) in subsection (j)(2), by striking out "basic grants" and inserting in lieu thereof "Federal Pell Grants"; and

(2) in subsection (k)(3), by striking out "basic grants" and inserting in lieu thereof "Federal Pell Grants".

REPEAL

SEC. 458. Section 457 of the Act is repealed.

TAX TREATMENT OF CANCELLATION OF CERTAIN STUDENT LOANS

SEC. 459. Section 108(f)(1) of the Internal Revenue Code of 1986 is amended by striking ``any student loan if'' and all that follows through the end thereof and inserting in lieu thereof ``any student loan if--

``(A) such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers, or

``(B) in the case of a loan made under part D of title IV of the Higher Education Act of 1965 which has a repayment schedule established under section 455(e)(4) of such Act (relating to income contingent repayments), such discharge is after the maximum repayment period under such loan (as prescribed under such part).".

DRAFT 9/19/97 PART D -- DIRECT LOANS

Section 451. Section 451 of the bill would amend sections 451(b), 453(c) and 455 of the Act to eliminate inconsistent names for some types of direct loans that resulted from the renaming of the program in 1994, continue the loan volume goals for years after academic year 1998-1999, and remove outdated language concerning the initial year of the program.

Section 452. Section 452 of the bill would amend section 454(a)(1)(C) of the Act to permit institutions to refuse to certify loan applications, or to certify loan applications for lesser amounts for entire categories of borrowers, consistent with the certification policy of the institution, provided that the policy does not discriminate based on race, gender, color, religion, national origin, age, disability status, or income. Institutions also would continue to have the current authority to refuse to certify a loan application, or to certify the loan application for a lesser amount, for an individual student on a case-by-case basis, with appropriate documentation in the student's file. This amendment would reduce administrative burden on institutions, provide institutions with a greater ability to prevent overborrowing, and reduce defaults. A similar amendment is proposed for the FFEL program in section 425 of the bill.

Section 453. Section 453 of the bill would amend section 455(b) of the Act to reduce the applicable interest rate on subsidized and unsubsidized Direct Loans during in-school, grace, and deferment periods to the same rate as the Department of Education's own borrowing rate, although the interest rates would be capped at the same levels as in current law. This change would provide lower interest rates to borrowers of unsubsidized loans while they are in in-school, grace, or deferment periods. These amendments, and similar changes proposed for the FFEL program in section 42_ of the bill, would standardize interest subsidy costs for the FFEL and Direct Loan programs.

Section 453 of the bill would also place in the statute regulatory requirements concerning when interest may be capitalized on unsubsidized Direct Loans: when the loans enter repayment after the expiration of a grace period, at the expiration of a deferment or forbearance period, when a borrower defaults, and annually when a borrower chooses to repay under the alternative repayment plan and required payments are less than interest accrued. A similar amendment is proposed for unsubsidized FFELs in section 42_ of the bill.

Section 454. Section 454 of the bill would amend section 455(c) of the Act to reduce the loan fee from four percent to three percent for unsubsidized Direct Loans, and from four percent to two percent for subsidized Direct Loans. The loan fee for Direct Loans is designed to be the equivalent of the FFEL insurance premium plus the FFEL origination fee, and these amendments are proposed in conjunction with amendments in section 42_ of the bill that would eliminate the one percent insurance premium that may be charged to a FFEL borrower at the time his or her loan is originated and reduce FFEL origination fees on subsidized FFELs by one percent (i.e., from three percent to two percent).

These reductions in fees will provide significant benefits to all students, and will provide additional funds to borrowers up front, at the time that the loan funds are needed to pay for costs of attendance. The proposed changes would also assist in standardizing borrower benefits within the FFEL program as well as between the FFEL and Direct Loan programs, because lenders and guaranty agencies will no longer be able to selectively reduce costs for certain FFEL borrowers by waiving or paying the insurance premium on the borrower's behalf. The Secretary is not authorized to waive or lower loan fees under the Direct Loan program.

Section 455. Section 455 of the bill would amend section 455(d) of the bill to make certain minor conforming changes to the amendments proposed in section 42_ of the bill that would provide FFEL borrowers with the extended and graduated repayment options currently available only to Direct Loan borrowers.

X Section 456. Section 456 of the bill would add a new paragraph (5) to section 455(f) of the Act that would require the Secretary to pay the interest that accrues on an unsubsidized loan while the borrower is receiving an economic hardship deferment on the loan and performing community service. A similar amendment is proposed for Unsubsidized Stafford Loans in section 42_ of the bill. This proposal is part of the President's call to action to all Americans to serve their communities, and would allow individuals with student loans to take up to three years to serve their communities without accruing additional interest on their loans.

Many people performing community service qualify for deferments of their loans under an economic hardship deferment. During periods of economic hardship, interest is not paid by the borrower on subsidized loans, but interest continues to accrue on unsubsidized loans. This amendment would provide similar treatment of subsidized and unsubsidized loans, in these limited circumstances, in order to remove this financial obstacle to community service for borrowers who already satisfy economic hardship criteria.

Section 457. Section 457 of the bill would amend sections 455(j)(2) and (k)(3) of the Act to conform with changes proposed in section 401 of the bill that would update Federal Pell Grant program references from "basic grants" to "Federal Pell Grants."

Section 458. Section 458 of the bill would repeal section 457 of the Act, which pertains to regulatory and application requirements applicable to the first year of the Direct Loan program's operation, and is no longer necessary.

X Section 459. Section 459 of the bill would amend section 108(f)(1) of the Internal Revenue Code of 1986 to exclude from income any balances remaining on Direct Loans that are forgiven after the maximum number of years on the income-contingent repayment plan. Under current law, a taxpayer generally has income when all or part of a loan made to the taxpayer is forgiven. However, an exception is provided in section 108(f) of the Code for the forgiveness of certain student loans, under which loans made by the United States, a State or local government, or a public benefit corporation with control over a state, county, or municipal hospital to a student in order to support the student's attendance at an educational institution and all or part of the loan is subsequently forgiven, the income resulting from the cancellation of indebtedness is excluded from the student's income, provided the loan forgiveness is contingent on the student's working for a certain period of time in certain professions for any of a broad class of employers. In addition to the expansion of this provision to include income contingent Direct Loans, this provision would also be expanded to cover forgiveness of loans extended by nonprofit tax-exempt charitable or educational institutions to their students or graduates when the proceeds are to be used to repay outstanding student loans, provided the loan forgiveness is contingent on the student's working for a certain period of time in certain professions for any of a broad class of employers.

The Administration believes in encouraging Americans to use their education and training in community service. Providing tax relief in connection with the forgiveness of certain student loans will help make it possible for students with valuable professional skills to accept lower-paying jobs that serve the public.

URGENT

Total Pages: ___

LRM ID: CJB104

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

Friday, September 26, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

Janet R. Forsgren

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

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

SUBJECT: **EDUCATION Draft Bill on Higher Education Act Reauthorization - Title IV, Part B -- FFEL**

DEADLINE: **5:00 p.m. Wednesday, October 1, 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.**

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LRM ID: CJB104 **SUBJECT:** EDUCATION Draft Bill on Higher Education Act Reauthorization - Title IV, Part B -- FFEL

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:
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(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

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Office of Management and Budget
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The following is the reponse of our agency to your request for views on the above-captioned subject:

_____ **Concur**

_____ **No Objection**

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draft 9/25/97

PART B--FEDERAL FAMILY EDUCATION LOANS

MANAGEMENT AND RECOVERY OF RESERVES

SEC. 421. (a) Section 422 of the Act is amended--

(1) by amending subsection (g)(1) to read as follows:

"(1) MANAGEMENT AND RECOVERY OF RESERVES.--(A) Notwithstanding any other provision of law, the reserve funds of the guaranty agencies, and any assets purchased or developed with such reserve funds, regardless of who holds or controls the reserves or assets, are, and shall remain, the property of the United States.

"(B) The Secretary may direct a guaranty agency to require the return, to the guaranty agency or to the Secretary, of any reserve funds or assets held by, or under the control of, any other entity, that the Secretary determines are required--

"(i) to pay the program expenses and contingent liabilities of the guaranty agency;

"(ii) to satisfy the guaranty agency's requirements under subsection (h); or

"(iii) for the orderly termination of the guaranty agency's operations and the liquidation of its assets.

"(C) The Secretary may direct a guaranty agency, or such agency's officers or directors, to cease any activity involving expenditure, use, or transfer of the guaranty agency's reserve funds or assets that the Secretary determines is a misapplication, misuse, or improper expenditure of such funds or assets.";

(2) by amending subsection (h) to read as follows:--

"(h) RECALL OF RESERVES IN FISCAL YEARS 1999 THROUGH 2003.--(1)(A) Notwithstanding any other provision of law, the Secretary shall, except as otherwise provided in this subsection, recall from the reserve funds held by guaranty agencies (which for purposes of this subsection shall include any reserve funds held by, or under the control of, any other entity) not less than $1,000,000,000 in fiscal year 2002 and not less than $1,183,000,000 in fiscal year 2003.

"(B) Funds returned to the Secretary under this subsection shall be deposited in the Treasury.

"(C) The Secretary shall require each guaranty agency to return reserve funds under subparagraph (A) based on its proportionate share, as determined by the Secretary, of all reserve funds held by guaranty agencies as of September 30, 1996.

"(2)(A) Within 45 days of enactment of this subsection, reserve funds held by a guaranty agency in an amount that represents the guaranty agency's proportionate share of $2,110,000,000 as determined by the Secretary in accordance with paragraph (1)(C) shall be transferred by the guaranty agency to a restricted account (of a type specified by the Secretary) established by the guaranty agency, and be invested in United States Government securities specified by the Secretary. The manner and timeframe in which reserve funds so invested are recalled shall be specified by the Secretary, consistent with the requirements of this subsection.

"(B) Within the first 45 days of fiscal year 2003, reserve funds held by a guaranty agency in an amount that represents the guaranty agency's proportionate share of $73,494,548 as determined by the Secretary in accordance with paragraph (1)(C) shall be transferred by the guaranty agency to the restricted account described in subparagraph (A).

"(C) The guaranty agency shall not use the reserve funds in the restricted account, other than the earnings thereon, for any purpose without the express permission of the Secretary. The guaranty agency may use the earnings from its restricted account for each of the fiscal years 1998 through 2003 to assist in meeting its operational expenses for each such year.

"(3) In order to assist guaranty agencies in meeting program expenses, the Secretary shall permit the use of not more than an aggregate of $350,000,000 of the reserve funds, not included in the restricted accounts described in paragraph (2)(A), that are held by guaranty agencies with agreements under section 428(c), as working capital to be used for such purposes as the Secretary may specify. The Secretary shall specify the amount of reserve funds held by each guaranty agency that may be used as working capital, based on the guaranty agency's proportionate share of all borrower accounts outstanding on September 30, 1996. The amounts used as working capital shall remain reserve funds that are the property of the United States.

"(4) If, on September 1, 2002, and on September 1, 2003, the total amount in the restricted accounts described in paragraph (2) is less than the amount the Secretary is required to recall under paragraph (1)(A) in each of the fiscal years 2002 and 2003, respectively, the Secretary shall require the return of the amount of the shortage from other reserve funds held by guaranty agencies under procedures established by the Secretary. The Secretary shall first attempt to obtain the amount of such shortage from each guaranty agency that failed to transfer the agency's required share to the agency's restricted account in accordance with paragraph (2).

"(5)(A) The Secretary may take such reasonable measures, and require such information, as may be necessary to ensure that guaranty agencies comply with the requirements of this subsection.

"(B) If the Secretary determines that a guaranty agency has failed to transfer to a restricted account any portion of the agency's required share under this subsection, the agency may not receive any other funds under this part until the Secretary determines that the agency has so transferred the agency's required share.

"(C) The Secretary may waive the requirements of subparagraph (B) if the Secretary determines that there are extenuating circumstances beyond the control of the guaranty agency that justify such waiver.

"(6) Non-liquid reserve fund assets, such as buildings and equipment purchased or developed by the guaranty agency with reserve funds, and any reserve funds that continue to be held by a guaranty agency after the recalls in paragraph (1)(A), shall--

"(A) remain the property of the United States;

"(B) be used only for such purposes as the Secretary determines are appropriate; and

"(C) be subject to recall by the Secretary no later than the date on which such agency's agreement under section 428(c) ends (through resignation, expiration, or termination, as the case may be).".

PRORATION OF LOAN AMOUNTS

SEC. 422. (a) Section 425(a)(1)(A) of the Act is amended--

(1) in clause (i)--

(A) in subclause (I), by adding "or" at the end thereof;

(B) by striking out subclauses (II) and (III); and

(C) by adding at the end thereof the following new subclause:

"(II) if such student is enrolled in a program of undergraduate education whose length is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such program length measured in semester, trimester, quarter, or clock hours bears to one academic year;"; and

(2) by amending clause (iii) to read as follows:

"(iii) $5,500, in the case of a student at an eligible institution who has successfully completed the first and second years of a program of undergraduate education, but has not successfully completed the remainder of such program; and".

(b) Section 428(b)(1)(A) of the Act is amended--

(1) in clause (i)--

(A) in subclause (I), by adding "or" at the end thereof;

(B) by striking out subclauses (II) and (III); and

(C) by adding at the end thereof the following new subclause:

"(II) if such student is enrolled in a program of undergraduate education whose length is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such program length measured in semester, trimester, quarter, or clock hours bears to one academic year;"; and

(2) by amending clause (iii) to read as follows:

"(iii) $5,500, in the case of a student at an eligible institution who has successfully completed the first and second years of a program of undergraduate education, but has not successfully completed the remainder of such program; and";

(3) by striking out clause (iv);

(4) by redesignating clause (v) as clause (iv); and

(5) by amending the flush left language at the end thereof to read as follows: "except that the annual insurable limit per student shall not be deemed to be exceeded by a line of credit under which actual payments by the lender to the borrower will not be made in any years in excess of the annual limit, and that, in the case of a student who has received an associate or baccalaureate degree and is enrolled in an eligible program for which the institution requires such degree for admission, the number of years that a student has completed in a program of undergraduate education shall, for the purposes of clauses (ii) and (iii), include any prior enrollment in the eligible program of undergraduate education for which the student was awarded such degree;".

(c) Section 428H(d)(2) of the Act is amended--

(1) in subparagraph (A)--

(A) in clause (i), by adding "and" at the end thereof;

(B) by striking out clauses (ii) and (iii); and

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

"(ii) if such student is enrolled in a program of undergraduate education whose length is less than one academic year, or the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in clause (i) as such program length, or remainder, as the case may be, measured in semester, trimester, quarter, or clock hours bears to one academic year;";

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

"(B) $5,000, in the case of a student at an eligible institution who has successfully completed such first and second years but has not successfully completed the remainder of a program of undergraduate education; and"; and

(3) by striking out the flush left language at the end thereof.

REPAYMENT TERMS

SEC. 423. (a) Section 427 of the Act is amended--

(1) in subsection (a)(2)--

(A) in subparagraph (B), in the matter preceding clause (i), by striking "over a period" through "nor more than 10 years" and inserting "in accordance with the repayment plan selected under subsection (d),";

(B) in subparagraph (C), at the end of the subparagraph, by striking out "the 10-year period described in subparagraph (B);" and inserting the following: "the length of the repayment period under a repayment plan described in subsection (d);";

(C) by striking subparagraph (F);

(D) by redesignating subparagraphs (G), (H), and (I) as subparagraphs

(F), (G), and (H), respectively; and

(E) in subparagraph (G) (as redesignated by subparagraph (D)), by striking "the option" through the end of the subparagraph and inserting "the repayment options described in subsection (d); and";

(2) in subsection (c), by striking "in subsection (a)(2)(H)," and inserting the following: "by a repayment plan selected by the borrower under subparagraph (C) or (D) of subsection (d)(1),"; and

(3) by adding after subsection (c) the following new subsection:

"(d) REPAYMENT PLANS.--(1) DESIGN AND SELECTION.--In accordance with regulations of the Secretary, the lender shall offer a borrower of a loan made under this part the plans described in this subsection for repayment of such loan, including principal and interest thereon. Except as provided in subsection (c), no plan may require a borrower to repay a loan in less than five years. The borrower may choose from--

"(A) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, not to exceed ten years;

"(B) an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, not to exceed 30 years, except that the borrower shall repay annually a minimum amount determined in accordance with subsection (c);

"(C) a graduated repayment plan, with annual repayment amounts established at 2 or more graduated levels and paid over an extended period of time, not to exceed 30 years, except that the borrower's scheduled payments shall not be less than 50 percent, nor more than 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan; and

"(D) an income-sensitive repayment plan, with income-sensitive repayment amounts paid over a fixed period of time, not to exceed ten years.

"(2) LENDER SELECTION OF OPTION IF BORROWER DOES NOT SELECT.--If a borrower of a loan made under this part does not select a repayment plan described in paragraph (1), the lender shall provide the borrower with a repayment plan described in paragraph (1)(A).

"(3) CHANGES IN SELECTIONS.--The borrower of a loan made under this part may change the borrower's selection of a repayment plan under paragraph (1), or the lender's selection of a plan for the borrower under paragraph (2), as the case may be, under such conditions as may be prescribed by the Secretary in regulation.

"(4) ACCELERATION PERMITTED.--Under any of the plans described in this subsection, the borrower shall be entitled to accelerate, without penalty, repayment on the borrower's loans under this part.".

(b) Section 428(b) of the Act is amended--

(1) in paragraph (1)--

(A) in subparagraph (D), by striking the clause designation "(i)" and all that follows through the clause designation "(iii)";

(B) in subparagraph (E)--

(i) in clause (i)--

(I) by striking "or section 428A," and inserting "or section 428H,"; and

(II) by striking "the option" through the end of the clause and inserting "the repayment options described in paragraph (9); and"; and

(ii) in clause (ii)--

(I) by striking "over a period" through "nor more than 10 years" and inserting "in accordance with the repayment plan selected under paragraph (9), and"; and

(II) by striking "of this subsection;" at the end of clause (ii) and inserting a semicolon; and

(C) in subparagraph (L)(i), by inserting after the clause designation the following: "except as otherwise provided by a repayment plan selected by the borrower under paragraph (9)(A)(iii) or (iv),"; and

(2) by adding after paragraph (8) the following new paragraph:

"(9) REPAYMENT PLANS.--(A) DESIGN AND SELECTION.--In accordance with regulations of the Secretary, the lender shall offer a borrower of a loan made under this part the plans described in this subparagraph for repayment of such loan, including principal and interest thereon. Except as provided in paragraph (1)(L)(i), no plan may require a borrower to repay a loan in less than five years. The borrower may choose from--

"(i) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, not to exceed ten years;

"(ii) an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, not to exceed 30 years, except that the borrower shall repay annually a minimum amount determined in accordance with paragraph (2)(L);

"(iii) a graduated repayment plan, with annual repayment amounts established at 2 or more graduated levels and paid over an extended period of time, not to exceed 30 years, except that the borrower's scheduled payments shall not be less than 50 percent, nor more than 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan; and

"(iv) an income-sensitive repayment plan, with income-sensitive repayment amounts paid over a fixed period of time, not to exceed ten years.

"(B) LENDER SELECTION OF OPTION IF BORROWER DOES NOT SELECT.--If a borrower of a loan made under this part does not select a repayment plan described in subparagraph (A), the lender shall provide the borrower with a repayment plan described in subparagraph (A)(i).

"(C) CHANGES IN SELECTIONS.--The borrower of a loan made under this part may change the borrower's selection of a repayment plan under subparagraph (A), or the lender's selection of a plan for the borrower under subparagraph (B), as the case may be, under such conditions as may be prescribed by the Secretary in regulation.

"(D) ACCELERATION PERMITTED.--Under any of the plans described in this paragraph, the borrower shall be entitled to accelerate, without penalty, repayment on the borrower's loans under this part.

"(E) COMPARABLE FFEL AND DIRECT LOAN REPAYMENT PLANS.--The Secretary shall ensure that the repayment plans offered to borrowers under this part are comparable, to the extent practicable and not otherwise provided in statute, to the repayment plans offered under part D.".

(c) Section 428C of the Act is amended--

(1) in subsection (b)(3)(F), by striking "alternative"; and

(2) in subsection (c)--

(A) by amending paragraph (2) to read as follows:

"(2) REPAYMENT PLANS.--(A) DESIGN AND SELECTION.--In accordance with regulations of the Secretary, the lender shall offer a borrower of a loan made under this section the plans described in this subparagraph for repayment of such loan, including principal and interest thereon. Except as provided in section 428(b)(1)(L)(i) and paragraph (3), No plan may require a borrower to repay a loan in less than five years. The borrower may choose from--

"(i) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, not to exceed ten years;

"(ii) an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, not to exceed 30 years, except that the borrower shall repay annually a minimum amount determined in accordance with paragraph (3);

"(iii) a graduated repayment plan, with annual repayment amounts established at 2 or more graduated levels and paid over an extended period of time, not to exceed 30 years, except that the borrower's scheduled payments shall not be less than 50 percent, nor more than 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan; and

"(iv) an income-sensitive repayment plan, with income-sensitive repayment amounts paid over a fixed period of time, not to exceed ten years.

"(B) LENDER SELECTION OF OPTION IF BORROWER DOES NOT

SELECT.--If a borrower of a loan made under this section does not select a repayment plan described in subparagraph (A), the lender shall provide the borrower with a repayment plan described in subparagraph (A)(i).

"(C) CHANGES IN SELECTIONS.--The borrower of a loan made under this section may change the borrower's selection of a repayment plan under subparagraph (A), or the lender's selection of a plan for the borrower under subparagraph (B), as the case may be, under such conditions as may be prescribed by the Secretary in regulation.".

INTEREST RATES

SEC. 424. (a) Section 427A of the Act is amended--

(1) in subsection (g)(2)--

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

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(C) by striking "paragraph (1)," and inserting "paragraph (1), and except as provided in subparagraph (B),"; and

(D) by adding after subparagraph (A) (as redesignated by subparagraph (A)) the following new subparagraph:

"(B) In the case of loans made or insured under section 428 or 428H for which the first disbursement is made on or after July 1, 1999, for purposes of paragraph (1), the rate determined under this paragraph shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to the bond equivalent rate of the securities with a comparable maturity, as established by the Secretary, except that such rate shall not exceed 8.25 percent.";

(2) in subsection (h)(1), by striking out "(f), and (g)" and inserting in lieu thereof "and (f),"; and

(3) in subsection (i)(7)(B), by adding at the end the following: "Notwithstanding any other provision of law, the interest rate determined under this subparagraph shall be used solely to determine the rebate of excess interest required by this paragraph and shall not be used to calculate or pay special allowances under section 438.".

LOAN CERTIFICATION

SEC. 425. Section 428(a)(2)(F) of the Act is amended to read as follows:

"(F) An eligible institution may refuse to certify a statement that permits a student to receive a loan under this part, or may certify a loan amount that is less than the student's determination of need (as determined under part F)--

"(i) if the reason for such action is documented and provided in written form to each student so affected; or

"(ii) in the case of a student who is in a category of students for which such institution has a policy (that is disclosed to students and to potential students as part of the institution's information dissemination activities under section 485(a)(1)) of refusing to certify, or certifying for a lesser amount, provided that such certification policy is consistent with section 421(a)(2).".

TIMING OF INTEREST CHARGES

SEC. 426. (a) Section 428(a)(3)(A)(v) of the Act is amended to read as follows:

"(v) A lender may not receive interest on a loan, or any portion thereof, for any period that precedes the date that is--

"(I) in the case of a loan, or any portion thereof, disbursed by check, 10 days before the disbursement by the institution of the loan or that portion thereof, as the case may be; or

"(II) in the case of a loan, or any portion thereof, disbursed by electronic funds transfer, 3 days before the disbursement by the institution of the loan or that portion thereof, as the case may be.".

(b) Section 428B(d)(1) of the Act is amended--

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

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

"(B) COMMENCEMENT OF INTEREST CHARGES.--A lender may not receive interest on a loan made under this section, or any portion thereof, for any period that precedes the date that is--

"(i) in the case of a loan, or any portion thereof, disbursed by check, 10 days before the disbursement of the loan or that portion thereof, as the case may be; or

"(ii) in the case of a loan, or any portion thereof, disbursed by electronic funds transfer, 3 days before the disbursement of the loan or that portion thereof, as the case may be.".

(c) Section 428H(e)(1) of the Act is amended--

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

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

"(B) COMMENCEMENT OF INTEREST CHARGES.--A lender may not receive interest on a loan made under this section, or any portion thereof, for any period that precedes the date that is--

"(i) in the case of a loan, or any portion thereof, disbursed by check, 10 days before the disbursement of the loan or that portion thereof, as the case may be; or

"(ii) in the case of a loan, or any portion thereof, disbursed by electronic funds transfer, 3 days before the disbursement of the loan or that portion thereof, as the case may be.".

GRADUATE AND PROFESSIONAL STUDENT LOAN LIMITS

SEC. 427. (a) Section 428H(d) of the Act is amended--

(1) in paragraph (2), by amending subparagraph (C) to read as follows:

"(C) in the case of such a student who is a graduate or professional student attending an eligible institution,--

"(i) $10,000; or

"(ii) such higher amount (not to exceed the student's estimated cost of attendance minus other financial aid, as certified by the institution under section

428(a)(2)(A)) for which the institution agrees to share the risk of default by paying to the Secretary an insurance premium equal to ten percent of the amount that the loan exceeds the amount specified in clause (i)."; and

(2) in paragraph (3)--

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

(B) by striking out "The" and inserting in lieu thereof "Except as provided in subparagraph (B), the"; and

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

"(B) In order to reflect increased annual loan limits on loans made under paragraph (2)(C)(ii), the Secretary may increase the maximum aggregate amount under subparagraph (A) in an amount that exceeds the increased annual loan limits described in paragraph (2)(C)(i) by not more than $40,000.".

(b) Section 425(a) of the Act is amended--

(1) in paragraph (1)(B), by striking out the first sentence therein;

(2) in paragraph (2)--

(A) by striking out subparagraph (B);

(B) in subparagraph (A)--

(i) by striking out the subparagraph designation;

(ii) in clause (ii), by striking out the comma at the end thereof and inserting in lieu thereof a period;

(iii) by striking out the flush left language at the end thereof; and

(iv) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively.

(c) Section 428(b)(1)(B)--

(1) in clause (ii), by striking out the comma at the end thereof and inserting in lieu thereof a semicolon; and

(2) by striking out the flush left language at the end thereof.

LENDER AND HOLDER RISK SHARING

SEC. 428. Section 428(b)(1)(G) of the Act is amended by striking "not less than 98 percent" and inserting "95 percent".

FEES AND INSURANCE PREMIUMS

SEC. 430. (a) Section 428(b)(1)(H) of the Act is amended--

(1) by inserting the clause designation "(i)" following the subparagraph designation;

(2) by striking "the loan," and inserting "any loan made under section 428 or 428B before July 1, 1999,"; and

(3) after clause (i) (as redesignated by paragraph (1)), by adding "and" and the following new clause:

"(ii) provides that no insurance premiums shall be charged to the borrower of any loan made under section 428 or 428B on or after July 1, 1999;".

(b) Section 428H(h) of the Act is amended--

(1) by inserting the paragraph designation "(1)" following the subsection heading;

(2) by striking "under this section" and inserting "of a loan made under this section made before July 1, 1999"; and

(3) by adding at the end of paragraph (1) (as redesignated by paragraph (1)) the following new paragraph:

"(2) No insurance premium may be charged to the borrower on any loan made under this section made on or after July 1, 1999.".

(d) Section 438(c) of the Act is amended--

(1) in paragraph (2), by striking "paragraph (6)" and inserting "paragraphs (6) and (8)"; and

(2) by adding after paragraph (7) the following new paragraph:

"(8) ORIGINATION FEE ON SUBSIDIZED LOANS ON OR AFTER JULY 1, 1999.--In the case of any loan made or insured under section 428 on or after July 1, 1999, paragraph (2) shall be applied by substituting '2.0 percent' for '3.0 percent'.".

FUNCTIONS OF GUARANTY AGENCIES

SEC. 429. (a) Section 428 of the Act is further amended--

(1) in subsection (a)--

(A) in paragraph (1)(B)--

(i) in the matter preceding clause (i), by striking "which is insured" and inserting "which, before July 1, 1999, is insured"; and

(ii) in clause (ii), by inserting "as in effect the day before the day of enactment of this section," after "subsection (b),"; and

(B) in paragraph (3)--

(i) by striking subparagraph (B); and

(ii) in subparagraph (A)--

(I) in clause (ii), by striking "under any" through the end of the clause and inserting a period;

(II) by striking the subparagraph designation "(A)";

(III) by redesignating clauses (i), (ii), (iii), (iv), and (v) as subparagraphs (A), (B), (C), (D), and (E), respectively;

(IV) by redesignating subclauses (I) and (II) of subparagraph (A) (as redesignated by subclause (III)) as clauses (i) and (ii) of such subparagraph, respectively; and

(V) by redesignating subclauses (I) and (II) of subparagraph (E) (as redesignated by subclause (III)) as clauses (i) and (ii) of such subparagraph, respectively;

(2) in subsection (b)--

(A) by amending the heading to read as follows: "<u>REQUIREMENTS TO QUALIFY LOANS FOR INSURANCE AND INTEREST SUBSIDIES</u>.--";

(B) in paragraph (1)--

(i) by amending the heading to read as follows: <u>REQUIREMENTS</u>.--";

(ii) by amending the matter preceding subparagraph (A) to read as follows: "A loan by an eligible lender shall be insurable by the Secretary, and students who receive such loans shall be entitled to have made on their behalf the payments provided for in subsection (a), under a program of student loan insurance that--";

(iii) by amending subparagraph (K) to read as follows:

"(K) provides that the holder of any such loan will be required to submit to the Secretary, at such time or times and in such manner as the Secretary may prescribe, statements containing such information as may be required by regulation for the purpose of enabling the Secretary to determine the amount of the payment which must be made with respect to that loan;";

(iv) by amending subparagraph (O) to read as follows:

"(O) provides that, if the sale, assignment, or other transfer of a loan made under this part to another holder will result in a change in the identity of the party to whom a borrower who is in the grace period described in section 427(a)(2)(B) or 428(b)(7), or who is in repayment, must send subsequent payments or direct any communications concerning the loans, then--

"(i) the transferor and the transferee shall, not later than 45 days from the date the transferee acquires a legally enforceable right to receive payment from the borrower on such loan, either jointly or separately provide a notice to the borrower of--

"(I) the sale, assignment, or other transfer;

"(II) the identity of the transferee;

"(III) the name and address of the party to whom subsequent payments or communications must be sent; and

"(IV) the telephone numbers of both the transferor and the transferee; and

"(ii) the transferee shall notify the Secretary, and, upon the request of an institution of higher education, the Secretary shall notify the last such institution the student attended prior to the beginning of the repayment period of any loan made under this part, of--

"(I) any sale, assignment, or other transfer of the loan; and

"(II) the address and telephone number by which contact may be made with the new holder concerning repayment of the loan;

(v) in subparagraph (Q), by striking "guarantee" and "428A" and inserting "insurance" and "428H", respectively;

(vi) by amending subparagraph (R) to read as follows:

"(R) provides for the making of such reports, in such form and containing such information, including financial information, as the Secretary may reasonably require to carry out the Secretary's functions under this part and protect the financial interest of the United States, and for keeping such records and for affording such access thereto as the Secretary may find necessary to ensure the correctness and verification of such reports;";

(vii) by amending subparagraph (S) to read as follows:

"(S) provides that a lender shall pay a default prevention fee in accordance with subsection (g);

(viii) in subparagraph (T)--

(I) in clause (i), by inserting ", by the guaranty agency, in accordance with regulations prescribed by the Secretary," after "limitation";

(II) in clause (ii)--

(aa) in the matter preceding subclause (I), by inserting ", in accordance with regulations prescribed by the Secretary," after "institution";

(bb) by striking subclauses (I) and (II); and

(cc) redesignating subclauses (III), (IV), and (V) as subclauses (I), (II), and (III), respectively; and

(III) by adding "and" at the end thereof;

(ix) by amending subparagraph (U) to read as follows:

"(U) provides--

"(i) for such additional criteria concerning the eligibility of lenders described in section 435(d)(1) as may be permitted by the Secretary; and

"(ii) an assurance that the guaranty agency will report to the Secretary concerning changes in criteria under clause (i), including any procedures in effect under such program to take emergency action, limit, suspend, or terminate lenders."; and

(x) by striking subparagraphs (V), (W), and (X);

(C) by amending paragraph (2) to read as follows:

"(2) SKIP-TRACING REQUIREMENT.--In the case of a default claim based on an inability to locate the borrower, a lender shall certify to the Secretary, at the time of submission of the default claim, that diligent attempts have been made to locate the borrower through the use of reasonable skip-tracing techniques in accordance with regulations prescribed by the Secretary.";

(D) in paragraph (3)(B), by striking out the parenthetical through the end of the subparagraph and inserting in lieu thereof a semicolon; and

(E) by striking out paragraph (5) and inserting in lieu thereof the following new paragraph:

"(5) COMPLIANCE AUDITS.--(A) Except as provided in subparagraph (B) or by the Single Audit Act Amendments of 1996, an eligible lender that originates or holds more than $5,000,000 in loans made under this title during a fiscal year shall submit to the Secretary a compliance audit for that fiscal year that is conducted by a qualified, independent organization or person in accordance with the Government Auditing Standards issued by the Comptroller General, and the regulations of the Secretary.

"(B) The Secretary may permit a lender to submit the results of an audit conducted for other purposes if the Secretary determines that such other audit results provide the same information as required under subparagraph (A).";

(3) in subsection (c)--

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

(B) in paragraph (3)--

(i) in the matter preceding subparagraph (A), by striking out "A guaranty agreement" and inserting in lieu thereof "An agreement between the Secretary and a guaranty agency";

(ii) in the flush left language at the end of the paragraph, by striking out "Guaranty agencies" and inserting in lieu thereof "The Secretary"; and

(iii) by redesignating paragraph (3) as paragraph (11);

(C) by striking out paragraphs (1), (2), (4), and (5);

(D) by inserting after the subsection heading the following new paragraphs:

"(1) AUTHORITY TO ENTER INTO AGREEMENTS.--(A)(i) The Secretary may enter into an agreement with a guaranty agency, under which the Secretary shall insure loans made under this section through the guaranty agency as the agent of the Secretary.

"(ii) Any guaranty agency that had an agreement with the Secretary under section 428(b) as of the day before the date of enactment of the **[insert name of Act]** Act of 1997 may enter into an initial agreement with the Secretary under this subsection.

"(iii) An agreement under this subsection shall be five years in duration, and may be renewed by the Secretary for successive five-year periods.

"(iii) The Secretary may terminate the agreement prior to its expiration in accordance with paragraph (9).

"(2) EFFECT ON PRIOR GUARANTY AGREEMENTS AND LOAN INSURANCE BY GUARANTY AGENCIES.--(A) All guaranty agreements made under this subsection as it was in effect on the day before the date of enactment of the **[insert name of Act]** Act of 1997 shall terminate not later than 180 days after the date of enactment of that Act.

"(B) Notwithstanding any other provision of law--

"(i) to the extent that a guaranty agency had insured loans under this part, loan insurance by such guaranty agency that is outstanding as of the date of the termination under subparagraph (A) shall be replaced on such date by loan insurance issued by the Secretary, and the guaranty agency shall be relieved of any further liability thereon;

"(ii) the Secretary's liability for any outstanding liabilities of a guaranty agency (other than outstanding loan insurance under this part), shall not exceed the fair market value of the unrestricted funds of the guaranty agency, which shall consist of--

"(I) all accumulated earnings not otherwise placed in a restricted account in accordance with section 422(h)(2)(A); and

"(II) any reserves that may be used as working capital under section 422(h)(2)(B); and

"(iii) for the first year after the date of enactment of **the [insert name]** Act of 1997, the Secretary may specify such interim administrative measures as the Secretary determines to be necessary for the efficient transfer of the loan insurance function, and to carry out the purposes of this part.

"(3) TERMS OF AGREEMENT.--The agreement between the Secretary and a guaranty agency shall include, but not be limited to--

"(A) provisions regarding the responsibilities of the guaranty agency for--

"(i) administering the issuance of insurance on loans made under this section on behalf of the Secretary;

"(ii) monitoring insurance commitments made under this section;

"(iii) default prevention activities;

"(iv) review of default claims made by lenders;

"(v) payment of default claims;

"(vi) collection of defaulted loans;

"(vii) adoption of internal systems of accounting and auditing that are acceptable to the Secretary, and reporting the result thereof to the Secretary on a timely, accurate, and auditable basis;

"(viii) timely and accurate collection and reporting of such other data as the Secretary may require to carry out the purposes of the programs under this title;

"(ix) monitoring of institutions and lenders participating in the program under this part; and

"(x) such other program functions as the Secretary may require of the guaranty agency;

"(B) provisions regarding the fees the Secretary shall pay to the guaranty agency under the agreement, and other revenues that the guaranty agency may receive thereunder, as described in paragraphs (4) and (6);

"(C) provisions requiring the guaranty agency to carry out its responsibilities under the agreement in accordance with paragraph (5);

"(D) provisions regarding the use, in accordance with paragraph (10), of net revenues in excess of the guaranty agency's need for working capital, as determined after compliance with section 422(h), for such other activities in support of postsecondary education as may be agreed to by the Secretary and the guaranty agency;

"(E) provisions regarding such other businesses, previously purchased or developed with reserve funds, that relate to the program under this part and in which the Secretary permits the guaranty agency to engage (as determined on a case-by-case basis);

"(F) provisions setting forth such administrative and fiscal procedures as may be necessary to protect the United States from the risk of unreasonable loss thereunder, and to ensure proper and efficient administration of the loan insurance program;

"(G) provisions regarding the submission of the results of audits of the guaranty agency that are conducted--

"(i) at least annually;

"(ii) by a qualified, independent organization or person in accordance with the standards established by the Comptroller General for the audit of governmental organizations, programs, and functions; and

"(iii) in accordance with the regulations of the Secretary;

"(H) provisions requiring the making of such reports, in such form and containing such information, including financial information, as the Secretary may reasonably require to carry out the Secretary's functions under this part and to protect the Federal fiscal interest, and for keeping such records and for affording such access thereto as the Secretary may find necessary or appropriate to ensure the correctness and verification of such reports;

"(I) adequate assurances that the guaranty agency will not engage in any pattern or practice which may result in a denial of a borrower's access to loans under this part because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular eligible institution, length of the borrower's educational program, or the borrower's academic year in school;

"(J) assurances that--

"(i) upon the request of an eligible institution, the guaranty agency shall, subject to clauses (ii) and (iii), furnish to the institution information with respect to students (including the names and addresses of such students) who received loans made or insured under this part for attendance at the eligible institution and for whom preclaims assistance activities have been requested under subsection (l);

"(ii) the guaranty agency shall require the payment by the institution of a reasonable fee (as determined in accordance with regulations prescribed by the Secretary) for such information; and

"(iii) the institution may use such information only to remind students of their obligation to repay student loans and may not disseminate the information for any other purpose; and

"(K) such other provisions as the Secretary may determine to be necessary to protect the United States from the risk of unreasonable loss and to promote the purposes of this part.

"(4) FEES AND OTHER REVENUES.--(A)(i) The Secretary shall pay to a guaranty agency with an agreement under this subsection the following uniform fees:

"(I) a one-time issuance fee for each new loan made under this part that is insured by the Secretary through the guaranty agency; and

"(II) an annual maintenance fee for each active borrower account.

"(ii) The fees described in clause (i) shall--

"(I) be paid on a quarterly basis;

"(II) be counted as part of the cost of a loan guarantee for purposes of the Federal Credit Reform Act; and

"(III) for fiscal year 1999, the one-time issuance fee shall be $23.80 per loan, and the annual maintenance fee shall be $5.00 per active borrower account;

"(IV) for succeeding fiscal years, the Secretary is authorized to adjust the amounts specified in subclause (III) after consultation with guaranty agencies with agreements under this subsection and consideration of the guaranty agencies' expenses in carrying out their responsibilities under this part, alternate sources of revenue for the guaranty agencies and the amount of administrative cost allowances provided to guaranty agencies for fiscal year 1997.

"(B) A guaranty agency with an agreement under this subsection also may receive revenues derived from--

"(i) a default prevention fee paid by lenders in accordance with subsection (g);

"(ii) the collection retention allowance under paragraph (6);

"(iii) the interest earned on funds in the restricted account established under section 422(h);

"(iv) the interest earned on reserves that the Secretary permits the guaranty agency to use as temporary working capital under section 422(h);

"(iv) such other businesses, previously purchased or developed with reserve funds, that relate to the program under this part and in which the Secretary permits the guaranty agency to engage (as determined on a case-by-case basis); and

"(v) such other fees as may be authorized under this part.

"(5) PERFORMANCE REQUIREMENTS.--(A) A guaranty agency with an agreement under this subsection shall carry out its responsibilities thereunder in accordance with such measurable performance-based standards as the Secretary may specify, and shall submit such timely and accurate data to the Secretary in support of its performance, as the Secretary may require.

"(B) The Secretary shall apply the performance standards uniformly to guaranty agencies with agreements under this subsection.

"(C) The Secretary shall assess the performance of each guaranty agency on the basis of the audits required under paragraph (3)(G), and shall compare such guaranty agency's performance against the performance of other such guaranty agencies and publicly disseminate such comparison.

"(D) The Secretary may impose a fine, in accordance with the terms of the agreement, on a guaranty agency that fails to achieve a specified level of performance on one or more performance standards. If the guaranty agency's failure to achieve such performance level results in a financial loss to the United States, the guaranty agency shall indemnify the Secretary for such loss.";

(E) by amending paragraph (6) to read as follows:

"(6) COLLECTION RETENTION ALLOWANCE.--(A) If, after the Secretary has paid a claim on a loan made under this title, any payments are made in discharge of the obligation incurred by the borrower with respect to such loan (including any payments of interest accruing on such loan after the payment of the default claim by the Secretary), the guaranty agency shall pay to the Secretary that portion of the payments remaining after the guaranty agency with which the Secretary has an agreement under this subsection has deducted from such payments an amount for costs related to the student loan insurance program that--

"(i) shall be specified by the Secretary on the basis of the Secretary's review of payments for similar services in a competitive environment; and

"(ii) in no case shall exceed 18.5 percent of such payments (subject to subparagraph (B)).

"(B) If the liability on a loan made under this title is discharged by payment of the proceeds of a consolidation loan under this part or under part D after the Secretary has paid a claim on the loan discharged, the guaranty agency may not deduct the amount specified in subparagraph (A), but may charge the borrower an amount specified by the Secretary and not to exceed 18.5% of the principal amount of the defaulted loan at the time of consolidation, to defray the guaranty agency's collection costs on the defaulted loan to be consolidated.";

(F) by amending paragraph (7) to read as follows:

"(7) SECRETARY AUTHORIZED TO RENEW OR MAKE ALTERNATE AGREEMENTS.--Notwithstanding any other provision of law, once the initial agreement with a guaranty agency entered into after the date of enactment of the **[insert name]** Act of 1997 has ended (through its expiration, the termination of the guaranty agency agreement by the Secretary in accordance with paragraph (9), or the resignation of the guaranty agency, as the case may be), the Secretary, in his discretion, may enter into--

"(A) another agreement with the guaranty agency;

"(B) an alternate agreement under which the functions previously performed by the guaranty agency shall be performed by another State or private nonprofit agency with which the Secretary has an agreement under this subsection; or

"(C) a contract under section 428E.";

(G) by amending paragraph (9) to read as follows:

"(9) TERMINATION OF GUARANTY AGENCY AGREEMENTS.--(A) A guaranty agency's agreement under this subsection may be ended in advance of its expiration date in accordance with subparagraph (B) or (C). If its agreement is so ended, the guaranty agency shall immediately--

"(i) cease to be an agent of the Secretary for purposes of the program under this part; and

"(ii) surrender all remaining liquid and non-liquid reserve funds, and assets purchased or developed with reserve funds, still held by the guaranty agency (including reserves held by, or under the control of, any other entity) to the Secretary or the Secretary's designated agent.

"(B) A guaranty agency's agreement under this subsection shall be void, and the Secretary shall immediately so notify such guaranty agency, if--

"(i) the guaranty agency fails to comply in a timely manner with the recall of reserve requirements of section 422(h);

"(ii) the guaranty agency fails to increase the amount of funds in its unrestricted account (as measured by comparing the amount of funds in such account at the beginning and end of a year) for each of two years (that may or may not be consecutive) in the five year period of the agreement under this subsection;

"(iii) any other agreement that the guaranty agency has with the

Secretary is terminated;

"(iv) the guaranty agency becomes insolvent or declares bankruptcy; or

"(v) there is any legal impediment to the guaranty agency substantially performing its responsibilities under the agreement.

"(C) The Secretary shall, after notice and opportunity for a hearing, terminate a guaranty agency that has substantially failed to achieve an acceptable level of performance under its agreement with the Secretary. A substantial performance failure under this subparagraph may include the existence of material internal control weaknesses relating to data quality in the guaranty agency's audits for each of two years (that may or may not be consecutive) in the five year period of the agreement under this subsection.

"(D) Notwithstanding any other provision of Federal or State law, if the Secretary has terminated or is seeking to terminate a guaranty agency's agreement in advance of its expiration date--

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

"(ii) any contract with respect to the administration of reserve funds held by a guaranty agency, or the administration of any assets purchased or developed with the reserve funds of the guaranty agency, that is entered into, or extended, by the guaranty agency, or any other party on behalf of, or with the concurrence of, the guaranty agency, after the date of enactment of the **[insert name]** Act of 1997 shall provide that the contract is terminable by the Secretary upon 30 days notice to the contracting parties if the Secretary determines that such contract includes an impermissible transfer of the reserve funds or assets, or is otherwise inconsistent with the terms or purposes of this section; and

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

(H) by adding after paragraph (9) the following new paragraph:

"(10) USE OF SURPLUS FUNDS.--(A) A guaranty agency with an agreement under this subsection may retain the amount determined in accordance with subparagraph (B) for activities in support of postsecondary education that are approved by the Secretary.

"(B)(i) A guaranty agency may retain 50 percent of its net revenues for fiscal year 1999 in excess of the guaranty agency's need for working capital for such year, as determined after compliance with section 422(h), for approved activities.

"(ii) A guaranty agency may retain for approved activities for fiscal year 1999 and succeeding fiscal years the lesser of--

"(I) 50 percent of its net revenues for such year in excess of its need for working capital, as determined after compliance with section 422(h); or

"(II) the amount of its net revenues for such year in excess of its need for working capital, as determined after compliance with section 422(h), that is equal to a uniform percentage, established annually by the Secretary, of federal revenues received by the guaranty agency for the preceding year. In determining such percentage, the Secretary shall take into account all guaranty agencies' revenues and costs for the preceding year to determine an adequate level of economic incentive for guaranty agencies to maximize their efficiency.";

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

"(g) DEFAULT PREVENTION FEE PAID BY LENDERS.--(1) An eligible lender shall pay a guaranty agency, to which such lender referred a delinquent loan, a default prevention fee set by the Secretary, but not to exceed $100 per borrower account if the guaranty agency succeeds in bringing such loan into current repayment status.

"(2) The Secretary shall prescribe in regulations the circumstances in which a lender may obtain a refund of a default prevention fee if the borrower of a loan on which such fee was paid subsequently defaults on such loan."; and

(5) in subsection (l)--

(A) in paragraph (1), by striking out the paragraph designation and the paragraph heading; and

(B) by striking out paragraph (2).

(b) Section 432 of the Act is amended--

(1) in subsection (e), by striking out "having a guaranty agreement under section 428(c)(1)," and inserting in lieu thereof a comma; and

(2) in subsection (f)(1), by amending subparagraph (A) to read as follows:

"(A) any guaranty agency, as defined in section 435(j);".

(c) Section 435(j) of the Act is amended by striking out "section 428(b)." and inserting in lieu thereof "section 428(c).".

LENDER REFERRAL SERVICES

SEC. 431. Section 428 of the Act is further amended by striking out subsection (e).

LENDER OF LAST RESORT; LOAN ACCESS

SEC. 432. Section 428(j) of the Act is amended--

(1) in paragraph (1), in the first sentence therein, by striking out "eligible to receive interest benefits paid on their behalf under subsection (a) of this section" and inserting in lieu thereof "eligible to borrow a loan made under section 427, 428, or 428H,";

(2) in paragraph (3), by adding at the end thereof the following new subparagraph:

"(C) Notwithstanding any other provision of law, the Secretary may provide advance funds under this subsection directly to an eligible lender serving as a lender-of-last-resort, and the requirements of subparagraphs (A) and (B) applicable to a guaranty agency shall apply to such lender."; and

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

"(4) ACCESS TO DIRECT LOANS.--If the Secretary determines that a significant number of students attending an eligible institution do not have adequate access to loans under this part, the Secretary may deem such institution eligible to participate in the direct student loan program under part D. If the Secretary makes such a determination, the institution shall be eligible to participate in the programs under this part and under part D at the same time, or, if the Secretary and the institution agree, to participate only in the program under part D, and may begin its participation in the program under part D at any time during the academic year.".

REPEAL OF STATE SHARE OF DEFAULT COSTS

SEC. 433. Section 428 of the Act is further amended by striking out subsection (n).

PLUS LOAN DATA VERIFICATION

SEC. 434. Section 428B is further amended by adding after subsection (e) the following new subsection:

"(f) VERIFICATION OF IMMIGRATION STATUS AND SOCIAL SECURITY NUMBER.--Notwithstanding any other provision of law, a parent who borrows funds under this section shall be subject to verification of his or her--

"(1) immigration status in accordance with the requirements of section 484(g); and

"(2) social security number in accordance with the requirements of section 484(n).".

CONSOLIDATION LOANS

SEC. 435. (a) Section 428C of the Act is further amended--

(1) in subsection (a)(3)--

(A) in subparagraph (A), by inserting "in an in-school period," after "for a consolidation loan is";

(B) in subparagraph (B), by amending clause (i) to read as follows:

"(i) Eligible student loans received by the eligible borrower may be added to a consolidation loan during the 180-day period following the making of such consolidation loan."; and

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

"(D) A borrower of a loan made under this part may consolidate such loan under this section only under such terms and conditions as the Secretary shall establish in regulation."

(2) in subsection (b)(4)(C), by amending clause (ii) to read as follows:

"(ii) provides that interest shall accrue and be paid--

"(I) by the Secretary, in the case of a consolidation loan made before July 1, 1999 that consolidated only Federal Stafford Loans for which the student borrower received an interest subsidy under section 428;

"(II) by the Secretary, in the case of a consolidation loan made on or after July 1, 1999, except that the Secretary shall pay such interest only on that portion of the loan that repays Federal Stafford Loans for which the student borrower received an interest subsidy under section 428; and

"(III) by the borrower, or capitalized, in the case of a consolidation loan, or portion thereof, other than one described in subclause (I) or (II);"; and

(3) in subsection (c)--

(A) in paragraph (1)--

(i) in subparagraph (A), by striking out "subparagraph (B) or (C)." and inserting in lieu thereof "subparagraph (B), (C), (D), or (E), and subject to subparagraph (F).";

(ii) in subparagraph (C), by striking out "after July 1, 1994," and inserting in lieu thereof "after July 1, 1994 and before July 1, 1999,"; and

(iii) by adding after subparagraph (C) the following new subparagraphs:

"(D) A consolidation loan made on or after July 1, 1999, that repays loans made under section 428 or 428H, or a combination thereof, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to--

"(i) the rate specified in section 427A(g), in the case of a borrower in an in-school or grace period; or

"(ii) the rate specified in section 427A(h)(1) in all other cases.

"(E) A consolidation loan made on or after July 1, 1999, that repays loans made under section 428B shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the rate specified in section 427A(h)(2).

"(F) Notwithstanding any other provision of this section, the Secretary may prescribe in regulation such procedures as may be necessary to ensure that--

"(i) a borrower of a consolidation loan that repays a combination of loans eligible to be consolidated under this section, shall continue to receive, after consolidation, any interest subsidy benefits associated with a particular loan, without extending such benefits to any other loans consolidated that do not have interest subsidy benefits;

"(ii) in the case of a consolidation loan that repays a combination of loans described in subparagraphs (D) and (E), the interest rate on such consolidation loan shall be calculated in a manner that reflects the interest rate applicable to loans made under each such subparagraph; and

"(iii) in the case of a consolidation loan that repays a loan eligible to be consolidated under this section other than those described in subparagraphs (D) and (E), the interest rate applicable to such other loan shall be the interest rate described in subparagraph (D) if such other loan is considered by the Secretary to be subsidized, and the interest rate described in subparagraph (E) if such other loan is considered by the Secretary to be unsubsidized."; and

(B) in paragraph (4)--

(i) by striking out "Repayment" and inserting in lieu thereof "(A) Except as provided in subparagraph (B), repayment"; and

(ii) by adding after subparagraph (A) (as designated by clause (i)) the following new subparagraph:

"(B) In the case of a consolidation loan that repays a loan made under this part for which the borrower is in an in-school period at the time the consolidation application is received, the repayment period for such consolidation loan shall commence after the completion of a grace period, as described in section 428(b)(7)(i).".

CONTRACTS WITH OTHER ENTITIES

SEC. 436. Part B of title IV of the Act is amended by inserting after section 428D the following new section:

"CONTRACT AUTHORITY

"SEC. 428E. The Secretary may enter into one or more contracts to carry out any of the functions that otherwise would be carried out by a guaranty agency with an agreement under section 428(c).".

CAPITALIZATION OF INTEREST;
PAYMENT OF INTEREST FOR COMMUNITY SERVICE

SEC. 437. (a) Section 428H(e) of the Act is amended--

(1) by amending paragraph (2) to read as follows:

"(2) CAPITALIZATION OF INTEREST.--Except as provided in paragraph (8), interest on a loan made under this section for which payments of principal are not required during the in-school and grace periods, or for which payments are deferred under section 427(a)(2)(C) and 428(b)(1)(M), shall, as agreed upon by the borrower and the lender--

"(A) be paid monthly or quarterly; or

"(B) be added to the principal amount of the loan only--

"(i) when the loan enters repayment;

"(ii) at the expiration of a grace period, in the case of a loan that qualifies for a grace period;

"(ii) at the expiration of a period of deferment or forbearance on the loan; and

"(iii) when the borrower defaults on the loan.";

(2) in paragraph (3), by striking out "No" and inserting in lieu thereof "Except as provided in paragraph (8), no"; and

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

"(8) PAYMENT OF INTEREST FOR COMMUNITY SERVICE.--(A) In the case of a borrower of a loan made under this section who is receiving a deferment under section 428(b)(1)(m)(iii) for such loan while performing community service, as described in subparagraph (B), the interest on the loan made under this section that accrues while the borrower is receiving such deferment and is performing such community service shall be paid by the Secretary.

"(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 (if such service involves 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).".*[looking into DOJ/OLC comment on this issue]

(b) Section 427(a)(1)(E) of the Act is amended to read as follows:

"(E) provides that the lender--

"(i) will not collect, or attempt to collect, from the borrower any portion of the interest on the note which is payable by the Secretary under this part;

"(ii) may add unpaid accrued interest to the borrower's unpaid principal balance only--

"(I) upon the expiration of a period of forbearance; and

"(II) when the borrower defaults on the loan; and

"(iii) will enter into such agreements with the Secretary as may be necessary for the purpose of section 437;".

(c) Section 428(b)(1)(F) of the Act is amended--

(1) by inserting the clause designation "(i)" immediately following "authorizes"; and

(2) by adding at the end thereof "and" and the following new clause:

"(ii) the addition of unpaid accrued interest to the borrower's unpaid principal balance only--

"(I) upon the expiration of a period of forbearance; or

"(II) when the borrower defaults on the loan;".

(d) Section 428B(d)(2) of the Act is amended to read as follows:

"(2) <u>CAPITALIZATION OF INTEREST</u>.--(A) Interest on loans made under this section for which payments of principal are deferred pursuant to paragraph (1) shall, as agreed upon by the borrower and the lender--

"(i) be paid monthly or quarterly; or

"(ii) be added to the principal amount of the loan only--

"(I) when the borrower enters repayment;

"(II) at the expiration of a period of deferment or forbearance on the loan; or

"(II) when the borrower defaults on the loan.".

"(B) Capitalization of interest under this paragraph shall not be deemed to exceed the annual insurable limit on account of the borrower.".

(c) Section 428C(c)(1) of the Act is amended by ending at the end thereof the following new paragraph:

"(D) CAPITALIZATION OF INTEREST.--A lender may add unpaid accrued interest to the borrower's unpaid principal balance only--

"(i) when the borrower enters repayment;

"(i) at the expiration of a grace period, in the case of a loan that qualifies for a grace period;

"(iii) upon the expiration of a period of forbearance or deferment; or

"(iv) when the borrower defaults on the loan.".

CREDIT REPORTING

SEC. 438. Section 430A(f) of the Act is amended by striking out "until--" through the end thereof and inserting in lieu thereof the following: "until the loan is paid in full. The

Secretary may develop criteria under which guaranty agencies and lenders may cease reporting such information before the loan is paid in full.".

FINES;
AUTHORITY OF THE SECRETARY TO EVALUATE TRANSACTIONS

SEC. 439. Section 432 of the Act is further amended--

(1) in subsection (g)--

(A) in paragraph (1), in the flush left language after subparagraph (B), by striking out "of not to exceed $25,000";

(B) by striking out paragraphs (2), (3), (4), (5), and (6); and

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

"(2) AMOUNT OF PENALTY; COMPROMISE.-- Any civil penalty under this subsection may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the Secretary shall consider the appropriateness of the penalty to the resources of the lender or guaranty agency subject to the determination; the gravity of the violation, failure, or misrepresentation; the frequency and persistence of the violation, failure, or misrepresentation; and the amount of any losses resulting from the violation, failure, or misrepresentation. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the lender or guaranty agency charged."; and

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

"(q) REVIEW OF SUBSTANCE OF TRANSACTIONS.--Notwithstanding any other provision of law, the Secretary is authorized to review all program-related activities of lenders, guaranty agencies, eligible institutions, and third-party servicers for substantive, as well as technical, compliance with the purposes and requirements of this part, and to take such action as the Secretary determines to be necessary to ensure such substantive compliance.".

DEFINITIONS

SEC. 439A. Section 435 of the Act is amended--

(1) in subsection (a)--

(A) in paragraph (2)--

(i) in subparagraph (A), by adding at the end thereof the following: "If an institution continues to participate in a program under this part, and its appeal of the loss of eligibility is unsuccessful, the institution shall be required to pay to the Secretary an amount equal to the amount of interest, special allowance, reinsurance, and any related payments made by the Secretary (or which the Secretary is obligated to make) with respect to loans made under this part to students attending, or planning to attend, that institution during the pendency of such appeal. In order to continue to participate during an appeal under this paragraph, the institution shall provide a letter of credit in favor of the Secretary or other third-party financial guarantees satisfactory to the Secretary in an amount determined by the Secretary to be sufficient to satisfy the institution's potential liability on such loans under the preceding sentence.";

(ii) by amending subparagraph (C) to read as follows:

"(C)(i) This paragraph shall not apply to any institution described in clause (ii)--

"(I) until July 1, 2000; and

"(II) until July 1, 2003, provided that such institution demonstrates sufficient improvements in its cohort default rate, as determined in accordance with the regulations of the Secretary.

"(ii) An institution is subject to clause (i) if it is--

"(I) a part B institution within the meaning of section 322(2) of this Act;

"(II) a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978; or

"(III) a Navajo Community College under the Navajo Community College Act."; and

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

"(D) Notwithstanding any other provision of law, if an institution outside of the United States that meets the requirements of section 481(a)(1)(B)(ii), has a cohort default rate for the three most recent years for which data are available that equals or exceeds five percent, such institution shall not be eligible to participate in a program under this part for the fiscal year for which the determination is made and for the two succeeding fiscal years.";

(B) in paragraph (3), in the flush left language following subparagraph (C), by striking out "of the affected guaranty agencies and loan servicers" and inserting in lieu thereof "used by a guaranty agency in determining to pay a claim on a defaulted loan ,";

(2) in subsection (d)--

(A) in paragraph (1)--

(i) in the matter preceding subparagraph (A), by striking out "(6)," and inserting in lieu thereof "(7),";

(ii) by striking out subparagraph (C);

(iii) by amending subparagraph (E) to read as follows:

"(E) For purposes of making loans to students attending that eligible institution, only to the extent that the Secretary determines necessary to ensure adequate loan access to such students, an eligible institution that meets the requirements of paragraphs (2) through (5);"; and

(iv) by redesignating subparagraphs (D), (E), (F), (G), (H), (I), and (J) as subparagraphs (C), (D), (E), (F), (G), (H), and (I), respectively; and

(B) by adding after paragraph (6) the following new paragraph:

"(7) UNIFORM TERMS AND CONDITIONS.--Subject to such exceptions as the Secretary may prescribe in regulations, the term 'eligible lender' shall not include any lender that offers different terms and conditions to different borrowers of the same type of loan made or insured under this part."; and

(3) in subsection (m)(1), by amending subsection (B) to read as follows:

"(B)(i) In determining the number of students who default before the end of such fiscal year, the Secretary shall include only loans for which the Secretary or a guaranty agency has paid claims for insurance.

"(ii) In considering appeals with respect to cohort default rates pursuant to subsection (a)(3), the Secretary shall exclude, from the calculation of the number of students who entered repayment and the calculation of the number of students who default, any loans which, due to improper servicing or collection, would, as demonstrated by the evidence submitted in support of the institution's timely appeal to the Secretary, result in an inaccurate or incomplete calculation of such cohort default rate.".

BANKRUPTCY

SEC. 439B. Section 437(b) of the Act is amended--

(1) in the matter preceding paragraph (1), by inserting immediately after "a loan" the following: "made before July 1, 1999 and";

(2) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(3) by inserting immediately following the subsection heading the paragraph designation "(1)"; and

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

"(2) Notwithstanding any other provision of law, no loan made, insured or guaranteed under title IV of the Higher Education Act of 1965 on or after July 1, 1999 shall be released by a discharge in bankruptcy under any chapter of Title 11, United States Code.".

SPECIAL ALLOWANCE

SEC. 439C. (a) Section 438 of the Act is amended--

(1) in subsection (a)(3), by striking out "quarterly rate" each place it appears and inserting in lieu thereof "rate"; and

(2) in subsection (b)--

(A) in paragraph (2)--

(i) in subparagraph (A), by striking out "subparagraphs (B), (C), (D), (E), and (F)" and inserting in lieu thereof "subparagraphs (B), (C), (D), (E), (F), and (G)";

(ii) in subparagraph (B), by adding at the end thereof the following new clause:

"(v) Notwithstanding clauses (ii) and (iv), the rate of the special allowance for holders of loans that are financed on or after October 1, 1999, with funds obtained by the holder from the issuance of obligations, regardless of when originally issued, the income from which is excluded from gross income under the Internal Revenue Code of 1986, shall be one half of the rate of the special allowance established under subparagraph (G). Such rate shall also apply to holders of loans which were made or purchased on or after October 1, 1999 with funds obtained by the holder from collections, or default reimbursements, on, or interest or other income pertaining to, eligible loans made or purchased with funds described in the preceding sentence of this subparagraph or from income on the investment of such funds."; and

(iii) by adding after subparagraph (F) the following new subparagraph:

"(G)(i) Notwithstanding any other provision of this section, in the case of loans made or insured under this part for which the first disbursement is made on or after July 1, 1999, the special allowance paid pursuant to this subsection shall be computed for any 12-month period beginning on July 1 and ending on June 30 by--

"(I) determining the bond equivalent rate on the preceding

June 1 of the securities with a comparable maturity, as established by the Secretary; and

"(II) subtracting the applicable interest rate on such loans from such amount.

"(ii) The amount of special allowance computed under clause (i) shall be paid in quarterly increments for the 3-month periods described in paragraph (1)."; and

(B) in paragraph (3), in the second sentence, by striking out "determined for any such 3-month period shall be paid promptly after the close of such period," and inserting in lieu thereof "calculated under this subsection shall be paid promptly after the close of the 3-month period for which such special allowance payment is due,";

(3) in subsection (d), by amending paragraph (1) to read as follows:

"(1) <u>DIRECT COLLECTION OF LOAN FEES OR DEDUCTION FROM INTEREST AND SPECIAL ALLOWANCE SUBSIDIES</u>.--(A) Notwithstanding subsection (b), the Secretary shall collect a loan fee in an amount determined in accordance with paragraph (2)--

"(i) directly from the holder of a loan; or

"(ii) by reducing the total amount of interest and special allowance payable under section 428(a)(3)(A) and subsection (b) of this section, respectively, to any holder of a loan.

"(B) If the Secretary chooses to collect the loan fee under this subsection through the reduction of interest and special allowance, and the total amount of interest and special allowance payable under section 428(a)(3)(A) and subsection (b) of this section, respectively, is less than the amount of such loan fee, the Secretary shall deduct from the amount of interest and special allowance that would otherwise be payable in subsequent quarterly increments until the total amount has been deducted."; and

(4) in subsection (e)--

(A) by striking out paragraph (1);

(B) in paragraph (2)--

(i) by amending the heading to read as follows: "ELIGIBILITY FOR SPECIAL ALLOWANCES.--"; and

(ii) by amending the matter preceding subparagraph (A) to read as follows: "A holder of loans, any portion of which were made or purchased with funds obtained by the holder from an Authority issuing obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1986, shall be eligible to receive a special allowance under subsection (b)(2) if--"; and

(C) by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(b) Section 432(f)(1)(D) of the Act is amended by striking out "required" through the end thereof and inserting in lieu thereof "that meets the requirements of section 438(e).".

STUDENT LOAN MARKETING ASSOCIATION OFFSET FEE

SEC. 439D. Section 439(h)(7) of the Act is amended by adding after subparagraph (C) the following new subparagraph:

"(D) The calculation of the fee required under subparagraph (A) or (B), as the case may be, shall be determined on the basis of the principal amount of all loans (except for loans made under sections 428C, 439(o), or 439(q))--

"(i) owned, in whole or in part, by the Association, any subsidiary of the Association, or any company, trust, or other entity owned by, or controlled by, the Association; or

"(ii) held by a trust (including by a trustee on behalf of a trust), or by any other entity in which the Association, or any subsidiary, holds more than a minimal beneficial interest (as determined by the Secretary).".

REPEALS

SEC. 440. Part B of the Act is further amended by repealing sections 428I, 428J, and 436.

draft 9/24/97

PART B--FEDERAL FAMILY EDUCATION LOANS

Section 421. Section 421 of the bill would rewrite subsection (h) of 422 of the Act, and make conforming changes to subsection (g) of that section. Under new section 422(h), the Secretary would recall from the reserve funds held by guaranty agencies at least $1,000,000,000 in fiscal year 2002 (the amount in current section 422(h)), and at least $1,183,000,000 in fiscal year 2003. The amounts recalled from each guaranty agency each year would be in proportion to its share of the total reserve funds held by guaranty agencies as of September 30, 1996, and recalled funds would be deposited in the Treasury.

Each guaranty agency would be required, within 45 days of the date of enactment of this provision, to transfer an amount of reserve funds that represents the guaranty agency's proportionate share of $2,110,000,000, as determined by the Secretary, to a restricted account and invest those funds in United States Government securities specified by the Secretary. Within the first 45 days of fiscal year 2003, each guaranty agency woudl be required to transfer to the restricted account its proportionate share of $73,494,548 as determined by the Secretary. The guaranty agency could not use any restricted account funds for any purpose without the express permission of the Secretary, but may use the earnings from its restricted account for each of the fiscal years 1998 through 2003 to assist in meeting its operational expenses.

The Secretary would permit the use of up to $350,000,000 in the aggregate of reserve funds, that guaranty agencies hold outside of the restricted accounts, for working capital to assist with guaranty agency operating expenses. A guaranty agency's share of working capital would be based on its proportionate share of all borrower accounts outstanding on September 30, 1996. Working capital provided to the guaranty agency would continue to be part of the reserve funds held by the guaranty agency and the property of the United States.

Next, the provisions from current section 422(h) of the Act regarding the Secretary's authority in the event of a shortage in the restricted accounts, or a failure by the guaranty agency to transfer reserve funds to the restricted accounts, would be included in proposed new section 422(h) of the Act.

Finally, new subsection 422(h) would specify that non-liquid reserve fund assets, such as buildings and equipment purchased or developed by the guaranty agency with reserve funds, as well as any reserve funds held by a guaranty agency after the recalls, would remain the property of the United States, could only be used for purposes that the Secretary determines are appropriate, and would be subject to recall by the Secretary no later than the date on which the guaranty agency's agreement under section 428(c) ends.

The proposed recall of reserves is consistent with the legal status of those reserves as Federal property, as well as the current role of the guaranty agency in the Federal Family Education Loan (FFEL) program, as well as the changes proposed in section 226 of the bill, described below. Section 432(o) of the Act, which was added by the Higher Education

Amendments of 1992 (P.L. 102-325), clarified that the Secretary is the ultimate insurer of all FFEL guarantees. Thus, guaranty agencies function more like loan servicers than guarantors, and their need for reserve funds is currently limited to their 2 percent risk-sharing requirement, which also comes from Federal funds. The changes proposed in section 226 of the bill would eliminate any need for a guaranty agency to hold capital in excess of their working capital requirements.

Section 422. Section 422 of the bill would amend sections 425(a), 428(b), and 428H(d)(2) to require all proration of loan limits to be done proportionally. Currently, a school must calculate loan proration under two formulas. The formula that is used depends on the program length, type of loan, and whether the borrower is in a final period of enrollment in his or her academic program. The current proration requirements are difficult for schools to understand and administer.

This amendment would require proration for programs of less than one academic year in length and for remaining periods of enrollment in programs that are greater than one but less than two academic years in length, and eliminate proration requirements for programs of study greater than two academic years in length for any remaining periods of enrollment. As in current law, no proration would be required for PLUS or loans to graduate and professional students. This change will simplify the proration requirements. Requiring proportional proration for all loans will be more beneficial and equitable to students and may reduce "course stretching" by institutions. The amendment would retain proration for short-term programs that have a higher risk of default and closure, while reducing burden for institutions with longer-term programs that have a lower risk of default and closure.

Section 423. Section 423 of the bill would amend sections 427, 428(b), and 428Cof the Act to provide FFEL borrowers with the extended and graduated repayment options currently available only to Direct Loan borrowers. These new options would be in addition to the standard and income sensitive repayment plans currently available to FFEL borrowers (a more limited form of graduated repayment is also currently available to FFEL borrowers), and would provide far greater flexibility to FFEL borrowers in managing their loan obligations, and therefore may avoid defaults. As with Direct Loan repayment, a FFEL borrower would also have the ability to change repayment plans. The Secretary would also be required to ensure that, to the extent practicable and not otherwise provided in statute, the repayment plans offered to FFEL borrowers are comparable to Direct Loan repayment plans. A similar amendment to section 455(d) of the Act is proposed in section 453 of the bill.

Section 424. Section 424 of the bill would amend section 427A of the Act to reduce the applicable interest rate on all subsidized and unsubsidized FFELs during in-school, grace, and deferment periods to the same rate as the Department of Education's own borrowing rate, although the interest rates would be capped at the same levels as in current law. This change would reduce Federal costs by reducing excess profits to lenders during times when there are few servicing costs associated with subsidized loans, but the highest profit margins. It would also provide lower interest rates to borrowers of unsubsidized loans while they are in in-school, grace, or deferment periods. A similar amendment is proposed for the Direct Loan program in section 45_ of the bill. These amendments would standardize interest subsidy costs for the FFEL and Direct Loan programs.

In addition, section 424 of the bill would clarify that the interest rate used to determine the rebate of excess interest under section 427A(i)(7)(B) of the Act was not intended to be used to change special allowance payments for the period affected by the rebate. This change would correct a recent contrary court decision.

Section 425. Section 425 of the bill would amend section 428(a)(2)(F) of the Act to permit institutions to refuse to certify loan applications or to certify loan applications for lesser amounts for entire categories of borrowers, consistent with the certification policy established by the institution and provided to its students, provided that the policy does not discriminate based on race, national origin, religion, sex, marital status, age, or disability status. Institutions also would continue to have the current authority to refuse to certify a loan application, or to certify the loan application for a lesser amount, for an individual student on a case-by-case basis, with appropriate documentation in the student's file. This amendment would reduce administrative burden on institutions, provide institutions with a greater ability to prevent overborrowing, and reduce defaults. A similar amendment is proposed for Direct Loans in section 45_ of the bill.

Section 426. Section 426 of the bill would amend sections 428(a)(3)(v), 428B(d)(1), and 428H(e)(1) of the Act to provide that a lender may not charge interest to the Federal Government or to the borrowers any earlier than a 3 or 10-day period (depending on whether the loan is disbursed by electronic funds transfer or by check) before the institutions credit the student's account with any disbursement of the loan funds. Current law prohibits lenders from billing the Federal Government for interest prior to that time on with respect to the first disbursement of subsidized Stafford loans, and lenders are free to bill students and parents for interest on all disbursements of unsubsidized loans prior to that time as well. These amendments would provide for comparable treatment between subsidized and unsubsidized Stafford loans, as well as for PLUS loans, and would ensure that borrowers are not required to pay interest on an unsubsidized loan until they have effective use of the funds.

Section 427. Section 427 of the bill would amend amend section 428H(d)(2)(C) to increase unsubsidized loan limits for students enrolled in graduate and professional programs at institutions that are willing to share the default cost. Currently, graduate and professional students may borrow $8,500 of subsidized FFELs and an additional $10,000 of unsubsidized FFELs. Aggregate limits for subsidized loans are $65,500 and are prescribed by the Secretary for unsubsidized loans in accordance with section 428H(d)(3). (The total subsidized and unsubsidized aggregate loan limits for graduate and professional students is $138,500; see 34 CFR 682.204(e)). In addition, sections 425(a)(1)(B) and 425(a)(2)(B) of the Act authorize the Secretary to increase the annual and aggregate loan limits for students with exceptionally high costs of education.

The amendment would require an institution, if it wished to certify a loan greater than $18,500 for a graduate or professional student, to pay to the Secretary an insurance premium equal to ten percent of the amount greater than $18,500. No student could borrow more than the student's estimated cost of attendance minus other financial aid, as certified by the eligible institution. The aggregate loan limits for unsubsidized loans would be increased by $40,000 for loans in which the institution is sharing in the default risk, and the authority for the Secretary to raise loan limits for high cost programs would be eliminated.

These amendments are designed to assist graduate students by meeting financial need that cannot be met under current loan limits. In the past, the HEAL program, administered by the Department of Health and Human Services, loaned additional funds to graduate students in health professions. This program has not been funded for two years, and future funding is uncertain. Through Secretarial discretion, annual loan limits in the FFEL and Direct Loan programs have been increased for former HEAL borrowers. Other graduate programs have sought similar increases in loan limits.

Section 428. Section 428 of the bill would amend section 428(b)(1)(G) of the Act by reducing lenders' insurance rate from 98 to 95 percent. This change would give lenders a greater economic incentive to prevent loan defaults.

Section 429. Section 429 of the bill would amend sections 428(b)(1)(H), 428H(h), and 438(c) of the Act to eliminate the one percent insurance premium that may be charged to a FFEL borrower at the time his or her loan is originated, and to reduce FFEL origination fees on subsidized FFELs by one percent (i.e., from three percent to two percent). A similar provision in section 452 of the bill would reduce comparably the loan fee charged on Direct Loans.

These reductions in fees will provide significant benefits to all students, and will provide additional funds to borrowers up front, at the time that the loan funds are needed to pay for costs of attendance. The proposed changes would also assist in standardizing borrower benefits within the FFEL program as well as between the FFEL and Direct Loan programs, because lenders and guaranty agencies will no longer be able to selectively reduce costs for certain FFEL borrowers by waiving or paying the insurance premium on the borrower's behalf. The Secretary is not authorized to waive or lower loan fees under the Direct Loan program.

Section 430. Section 430 of the bill would substantially revise section 428 of the Act to reflect more accurately the current role of the guaranty agency in the FFEL program, and to affirmatively recognize that the Secretary is the sole guarantor of FFELs. Section 432(o) of the Act, which was added by the Higher Education Amendments of 1992 (P.L. 102-325), clarified that the Secretary is the ultimate insurer of all FFEL guarantees. Thus, in practice, guaranty agencies actually function more like loan servicers than guarantors. The changes proposed in section 430 of the bill would treat guaranty agencies in a manner more consistent with their current program functions.

Subsections (a) and (b) of section 428 would be modified and reorganized to reflect the substantive changes proposed primarily to section 428(c) of the Act. Under these changes, the Secretary would be authorized to enter into an agreement with a guaranty agency, under which the Secretary would insure loans with the guaranty agency acting as the agent of the Secretary. Any guaranty agency that had an agreement with the Secretary under section 428(b) on the day before the date of enactment of this bill could enter into an initial agreement with the Secretary, and all existing guaranty agency agreements would expire within 180 days of the date of enactment. Outstanding loan insurance issued by the guaranty agency would be replaced by loan insurance issued by the Secretary, and the guaranty agency would, in general, be relieved of any further liability on the loans. To help ensure a smooth transition, for the first year after the date of enactment the Secretary could specify interim administrative measures necessary for the efficient transfer of the loan insurance function.

The new guaranty agreements would be for five years, renewable by the Secretary for successive five-year periods, although the Secretary could terminate the agreements prior to expiration in certain circumstances. After the initial agreement with a guaranty agency entered into after the date of enactment has ended (through its expiration, the termination of the guaranty agency agreement by the Secretary, or the resignation of the guaranty agency), the Secretary, in his discretion, may enter into another agreement with that guaranty agency, an alternate agreement under with a different guaranty agency, or one or more contracts under section 428E (as added by section 436 of the bill) under which contractors would carry out one or more of the functions formerly performed by the guaranty agency.

The agreement between the Secretary and a guaranty agency would specify the responsibilities of the guaranty agency, if any, for: administering the issuance of insurance on FFELs on behalf of the Secretary; monitoring insurance commitments made under this section; default prevention activities; review of default claims made by lenders; payment of default claims; collection of defaulted loans; adoption of internal systems of accounting and auditing that are acceptable to the Secretary; reporting requirements; and monitoring of participating institutions and lenders. The Secretary could also permit the guaranty agency, on a case-by-case basis, to engage in such other businesses, previously purchased or developed with reserve funds, that relate to the FFEL program.

Under the agreement, guaranty agencies would receive the following fees and revenues: a one-time issuance fee for each new FFEL insured by the Secretary through the guaranty agency; an annual maintenance fee for each active borrower account; a default prevention fee, paid by lenders, of not to exceed $100 per borrower account if the guaranty agency succeeds in bringing a loan into current repayment status; a collection retention allowance of not to exceed 18.5 percent, determined on the basis of the Secretary's review of payments for similar services in a competitive environment; the interest earned on funds in the restricted account; the interest earned on reserves that the Secretary permits the guaranty agency to use as working capital provide under proposed new section 422(h) (as amended by section 421 of the bill); and revenues derived from other FFEL-related businesses in which the Secretary permits the guaranty agency to engage. The amount of the issuance fee and maintenance fee that a guaranty agency shall receive shall be $23.80 and $5.00, respectively, for fiscal year 1999. For succeeding fiscal years, the amount of the fees would be determined by the Secretary, after consultation with guaranty agencies with agreements under this subsection, and consideration of the guaranty agencies' expenses in carrying out their responsibilities under this part, their alternate sources of revenue for the guaranty agencies; and the amount formerly received as an administrative cost allowance.

In addition to restructuring guaranty agency agreements, the changes proposed in section 430 of the bill would provide guaranty agencies with an incentive to improve their efficiency by permitting them to retain a share of their net revenues for activities, approved by the Secretary, in support of postsecondary education. The share that guaranty agencies may retain and use for this purpose would be calculated by the Secretary after determining an adequate level of economic incentive for guaranty agencies to maximize their efficiency, in an amounts not to exceed 50 percent of guaranty agency net revenues.

A guaranty agency would be required to carry out its responsibilities under the agreement in accordance with performance standards specified by the Secretary, which would be uniformly applied to all guaranty agencies. The Secretary would compare the performance of the guaranty agencies with one another, and publicly disseminate the comparison. A guaranty agency that fails to achieve a specified level of performance on one or more performance standards could be fined, and if its failure resulted in a financial loss to the United States, the guaranty agency would be required to indemnify the Secretary for that loss.

A guaranty agency's agreement could be ended in advance of its expiration date, either because its agreement becomes automatically void under certain circumstances, or because the Secretary, after notice and opportunity for a hearing, terminates the guaranty agency for substantially failing to achieve an acceptable level of performance under its agreement.

Finally, while most of the changes proposed in this section of the bill pertain to guaranty agencies and their functions, section 430(a)(2)(E) of the bill would require only eligible lenders that originates or holds more than $5,000,000 in FFELs during an annual audit period to submit to the Secretary a compliance audit for that audit period. This change is similar to exemptions provided in recent Appropriation Acts, and would alleviate the burden and disproportionate expense that annual compliance audits impose on lenders with small FFEL portfolios.

Section 431. Section 431 of the bill would eliminate section 428(e) of the Act, which provides payments to guaranty agencies for referring students to lenders. This provision has never been implemented, and is unnecessary, as guaranty agencies are already required to serve as lenders of last resort, or to find other lenders to act in that capacity

Section 432. Section 432 of the bill would make a series of changes to section 428(j) of the Act designed to strengthen the current system for ensuring loan access, which uses a combination of private lenders, the FFEL lender-of-last-resort (LLR) program under sections 428(j) and 439(q) of the Act, and the potential availability of Direct Loans for institutions that cannot obtain service under the FFEL program. In addition, secondary markets using tax exempt financing are currently required by section 438(e)(2) of the Act to deal with all eligible lenders in their service areas on the same terms and conditions. Within the limits of their capital, they are also required to purchase all eligible loans involving students or schools within those areas.

Section 432(1) of the bill would amend section 428(j)(1) of the Act to make LLR provisions applicable to unsubsidized as well as subsidized loans. Section 432(2) of the bill would add a new subparagraph (C) to section 428(j)(3) of the Act that would authorize the Secretary to make advances directly to lenders for LLR loans. Section 428(j)(3) of the Act currently requires that guaranty agencies be used as intermediaries for LLR loans, an unnecessary additional complexity. Finally, a new paragraph (4) would be added to section 428(j) of the Act to provide that, if the Secretary determines that a significant number of students attending an eligible institution do not have adequate access to loans under the FFEL program, the Secretary may deem the institution eligible to participate in the Direct Loan program. The institution would be able to participate in both the FFEL and Direct Loan programs at the same time, or, if the Secretary and the institution agree, to participate only in the Direct Loan program. In order to ensure that there are no gaps in loan access for students at the institutition, the institution would be able to begin participating in the Direct Loan program at any time during the academic year.

Section 433. Section 433 of the bill would repeal section 428(n) of the Act, which requires a State to pay to the Secretary an annual amount that represents the State's share of risk for high default rates at institutions within the State. This provision has never been implemented.

Section 434. Section 434 of the bill would amend section 428B of the Act to require the same systematic verifications of immigration status or social security numbers for PLUS loan applicants as currently apply to the student loan programs. This would greatly improve the monitoring of PLUS borrower eligibility

Section 435. Section 435 of the bill would make a number of changes to section 428C of the Act pertaining to FFEL consolidation loans that would make the terms of these loans more comparable to Direct consolidation loans. (Changes to repayment terms for FFEL consolidation loans are proposed in section 422 of the bill.) Section 435 of the bill would permit borrowers to obtain a FFEL consolidation loan while they are in "in-school" status, and to consolidate FFEL consolidation loans into new FFEL consolidation loans.

Section 435(a)(1)(C) of the bill would also add a new subparagraph (D) to section 428C(a)(3) of the Act to provide that a FFEL borrower may consolidate his or her FFELs only under the terms and conditions established by the Secretary in regulation. The Secretary currently has the authority in the Direct Loan program to prohibit the consolidation of loans in particular circumstances; there is no parallel authority in the FFEL program. The Secretary is planning to prohibit consolidation of loans in the Direct Loan program for which the borrower has exhibited an unwillingness to pay and the Federal Government has had to expend time and resources in order to secure a judgment or place the borrower under wage garnishment. This change would allow the Secretary to do the same in the FFEL program.

Under the amendments proposed by section 435 of the bill, lenders would also retain the interest subsidy on the portion of a FFEL consolidation loan that repays subsidized loans, and the interest rate on FFEL consolidation loans would be changed to a variable rate comparable to the rate applicable to Direct consolidation loans. By extending favorable terms currently available only to borrowers of Direct consolidation loans to borrowers of FFEL consolidation loans, these amendments would reduce costs for, and provide greater flexibility to, these FFEL borrowers, particularly those FFEL borrowers with loans from multiple lenders who have not consolidated these loans because they would lose the benefits associated with the separate loans.

Section 436. Section 436 of the bill would add a new section 428E to part B of Title IV of the Act that would authorize the Secretary to enter into one or more contracts to carry out any of the functions that otherwise would be carried out by a guaranty agency. This amendment is consistent with the changes to guaranty agency functions that are proposed in section 430 of the bill.

Section 437. Section 437(a)(1) of the bill would amend sections 428H(e)(2)of the Act to require FFEL lenders to capitalize interest only when unsubsidized loans enter repayment, at the expiration of a grace period (if any), at the expiration of a deferment or forbearance period, when a borrower defaults, and annually when a borrower chooses to repay under the alternative repayment plan and required payments are less than interest accrued. This would be a major benefit to FFEL borrowers, and would make statutory what is already available to Direct Loan borrowers in regulation, ensuring consistency across programs. In addition, the statute would be clarified as to when interest may be capitalized on subsidized FFELs, PLUS Loans, and Consolidation Loans.

Section 437(a)(3) of the bill would add a new paragraph (8) to section 428H(e) of the Act that would require the Secretary to pay the interest that accrues on an unsubsidized loan while the borrower is receiving an economic hardship deferment on the loan and performing community service. This proposal is part of the President's call to action to all Americans to serve their communities, and would allow individuals with student loans to take up to three years to serve their communities without accruing additional interest on their loans.

Many people performing community service qualify for deferments of their loans under the economic hardship deferment in section 428(b)(1)(M)(iii) of the Act. "Economic hardship" is defined in section 435(o) of the Act on the basis of income and debt to income ratio. During periods of economic hardship, interest is not paid by the borrower on subsidized loans, but interest continues to accrue on unsubsidized loans. This amendment would provide similar treatment of subsidized and unsubsidized loans, in only these limited circumstances, in order to remove this financial obstacle to community service for borrowers who already satisfy economic hardship criteria.

The amendment would also describe what community service may qualify the borrower for this interest payment on his or her behalf. To be performing "community service", the borrower must be working in a position that is carried out by a state, a subdivision of a state, a local government, an Indian tribe, a public or private nonprofit organization, or a federal agency. Additionally, the service must address an unmet human, educational, environmental, or public safety need through services that provide a direct benefit to the community in which the service is performed. Examples of service which would be eligible include such fields as health care, child care, literacy training, education, welfare, social services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, rural development, and community improvements. Participants receiving tuition assistance or loan forgiveness under the National and Community Services Act of 1990 are eligible for this deferment, as are VISTA volunteers under Title 1 of the Domestic Volunteer Service Act of 1973. Service with for-profit businesses, labor unions, partisan political organizations, and organizations engaged in some types of religious activities would not meet this definition of community service. A similar change is proposed for Direct Loans in section 453 of the bill.

Section 438. Section 438 of the bill would amend section 430A(f) of the Act to eliminate the current seven year limitation on reporting defaulted FFEL and Direct Loans as negative credit information beyond seven years. This amendment would require that guaranty agencies and lenders report negative information to credit bureau organizations until a loan is paid in full, except that the Secretary would be authorized to develop criteria under which guaranty agencies and lenders may cease reporting that information before the loan is fully repaid. This amendment is necessary for consistency between the reporting of negative credit information and the 1991elimination of the statute of limitations on the collection of student loan debts. Under current law, student loans are generally collectible throughout the student's lifetime, but information about these debts cannot be reported on the borrower's credit report after seven years. The reporting of defaulted student loans to credit bureaus is an effective and important tool that should be available for the entire time that the Department is permitted to collect on the loan. A similar change is proposed for Perkins Loans in section 46_.

Section 439. Section 439 of the bill would amend the Secretary's powers under section 432 of the Act. First, section 439(1) of the bill would amend section 432(g) to provide the Secretary with the ability to impose fines that is more comparable to the Secretary's ability to fine institutions of higher education. Under current law, the Secretary may impose a penalty of up to $25,000 on a lender or guaranty agency, but all violations relating to the same practice or policy must be treated as a single violation. Additionally, the Secretary is required to show that the violation is material, and that the lender or guaranty agency knew or should have known that it was violating the law. Finally, no fine may be imposed under current law if the lender or guaranty agency corrects the violation prior to receiving notice from the Department that it intends to levy a civil penalty, even if the correction occurs only after knowledge that the

Department is preparing an action against the lender or guaranty agency.

The current limitations on the Secretary's authority to impose civil penalties unduly hinder the exercise of the Secretary's ability to administer the FFEL program. For example, because all violations relating to the same practice or policy must be treated as a single violation, the Secretary is limited to a $25,000 fine even though millions of dollars and a large number of borrowers are involved. This provides no disincentive for lenders and guaranty agencies to engage in prohibited practices.

Under the proposed amendment, these limitations would be removed, and the Secretary, in determining the amount of a penalty would consider the appropriateness of the penalty to the resources of the lender or guaranty agency to be penalized; the gravity of the violation, failure, or misrepresentation; the frequency and persistence of the violation, failure, or misrepresentation; and the amount of any losses resulting from the violation, failure, or misrepresentation. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the lender or guaranty agency charged.

Next, section 439(2) of the bill would add a new subsection (q) to section 432 of the Act that would explicitly authorize the Secretary to review all program-related activities of lenders, guaranty agencies, eligible institutions, and third-party servicers for substantive, as well as technical, compliance with the purposes and requirements of part B of title IV of the Act, and to take actions that the Secretary determines to be necessary to ensure substantive compliance. Although the Secretary already has implicit authority to evaluate transactions and arrangements on the basis of their substance, an explicit statement of this authority in the statute would reduce time-consuming legal challenges to the Secretary's ability to examine the substance of lender and guaranty agency transactions and arrangements rather than their form. The purposes of the FFEL program would be better served if these transactions and arrangements could be more readily examined to ensure that they do not merely pay "lip service" to program requirements.

Section 439A. Section 439A of the bill would amend the definitions in section 435 of the Act. First, section 439A(1)(A)(i) of the bill would amend section 435(a)(2)(A) of the Act to require institutions that unsuccessfully appeal high cohort default rates and that choose to receive loans during the appeal process to be held liable for loans made during the appeal process and to post surety in an amount sufficient to cover these costs.

Resolution of cohort default rate appeals has required substantial Departmental resources. Consideration of appeals requires a detailed review of school, guaranty agency, and loan servicing records. Schools often have an incentive to file default rate appeals because they generally remain eligible during the appeal process and consideration of those appeals is a time-consuming process during which the schools continue to receive loan proceeds. A surety requirement would reduce the number of frivolous appeals and eliminate the current incentive that schools have to file appeals even if there is no reasonable basis for the appeal. Frequently, schools that lose appeals close soon after the decision and their students' loans are discharged under the closed school discharge provision in section 437(c) of the Act. A letter of credit would at least partially protect the government from the costs that result. The General Accounting Office recommended this type of amendment in a report to Congress in June, 1995.

Next section 439A(1)(A)(ii) of the bill would amend section 435(a)(2)(C) of the Act to extend the exemption from the elimination on the basis of high default rates for Historically Black Colleges and Universities, Tribally Controlled Community Colleges, and Navajo Community Colleges. This institutional exemption, which is currently due to expire on July 1, 1998, was intended to recognize the particular challenges of enrolling high risk students at institutions of higher education which have limited administrative resources. The bill would extend this exemption until July 1, 2000 (in order to provide time to adapt to the proposed new requirements) for all of the institutions described above, and until July 1, 2003 for those institutions that demonstrate sufficient improvements in their cohort default rates, as determined in accordance with the regulations of the Secretary. The Department is committed to ensuring access for all disadvantaged students, but an institution should not be allowed to avoid penalties from high default rates simply because it enrolls a high percentage of those students. This amendment would not penalize these institutions for high cohort default rates if they are working to make them lower and can demonstrate progress.

Section 439A(1)(A)(iii) of the bill would amend section 435(a)(2) of the Act to add a new subparagraph (D) that would eliminate a foreign institution from participating in the FFEL program for the fiscal year for which the determination is made, and for the two succeeding fiscal years, if its cohort default rate is five percent or more. While the overall default rate for all foreign institutions is consistently quite low (between five and six percent), the administrative, diplomatic, and logistical difficulties inherent in monitoring these institutions dictate a more stringent approach in dealing with default rates at these institutions. Approximately 140 foreign institutions could have their eligibility eliminated under this amendment.

Section 439A(1)(B) of the bill would amend section 435(a)(3) of the Act to clarify that the records to which an institution appealing its loss of participation in the FFEL program on the basis of allegation of improper loan servicing may have access are those records on which the guaranty agency decided whether the lender satisfied the loan servicing requirements for payment of a default claim on the loan. Some institutions have claimed that they need access to loan servicer records that were not submitted to the guaranty agency to determine if the loan servicer properly performed collection activities. However, the only loans included as defaulted loans in the cohort default rate are those on which the guaranty agency has paid a claim, and the specific loan servicing requirements which are reviewed as part of a loan servicing appeal are reflected in the records received by the guaranty agency in deciding whether to pay that claim. Records maintained by loan servicers may provide additional detail regarding the collection activities on the loan but are not relevant to a determination of whether the loan servicing activities relevant to the cohort default rate appeal process were performed. This amendment would reduce confusion in, and eliminate some means for protracting, the appeal process.

Next, section 439A of the bill would amend the definition of an eligible lender in section 435(d) of the Act by prohibiting institutions from acting as lenders, except where the Secretary determines it necessary to ensure adequate loan access to students, and would remove insurance companies from the list of eligible lenders. The FFEL program has experienced numerous problems with insurance companies acting as lenders, and the regulatory system for insurance companies is not sufficient for a consumer loan business. In addition, the authority for institutions to act as lenders is no longer necessary. Institutions can currently opt to participate in both the FFEL and Direct Loan programs, which should provide sufficient access to students at all eligible institutions. Furthermore, lending is not an appropriate role for institutions. Institutions must counsel their students about their loans both before and after they borrow, and when an institution has a direct financial interest in the loan, it has a serious conflict of interest in performing its counseling role. When the Secretary does determine that a institution may act as a lender, the current limitations in section 435 of the Act would continue to apply.

Section 439A(2)(B) of the bill would add a new paragraph (7) to the definition of an eligible lender in section 435(d) of the Act to require lenders to offer uniform terms and conditions to all borrowers taking out the same type of FFEL loans (for example, Unsubsidized or Consolidaton Loans). The Secretary would be authorized to prescribe regulatory exceptions to this requirement.

Section 439A(3) of the bill would amend section 435(m)(1)(B) of the Act to specifically provide that improperly serviced loans will be eliminated entirely from the calculation of the school's cohort default rate. The cohort default rate is the percentage of a institution's borrowers who enter repayment in one fiscal year and default on their loan on or before the end of the next fiscal year. It is generally expressed as a fraction with the number of defaulters as the numerator and the number of borrowers as the denominator. Section 435(m)(1)(B) of the Act provides that, in considering cohort default rate appeals, the Department shall exclude from the calculation of the rate any loans on which the institution can show there was improper loan servicing. The Department interprets the statute to mean that the improperly serviced loans are eliminated from both the numerator and denominator of the calculation. A number of schools and school organizations have argued that improperly serviced loans should be eliminated only from the numerator of the calculation. The purpose of the loan servicing appeal is to ensure that schools are not harmed by loan servicing that does not meet certain standards and that could result in an incomplete or inaccurate calculation of the cohort default rate. Elimination of improperly serviced loans from both aspects of the cohort default rate calculation serves that purpose; elimination of improperly serviced loans from the numerator but not the denominator of the calculation would allow schools to benefit from improper servicing by artificially reducing the rate. The proposed change would clarify Congressional intent.

Section 439B. Section 439B of the bill would amend section 437(b) of the Act to eliminate the bankruptcy discharge for loans certified on or after July 1, 1999. Section 437(b) of the Act currently provides that under certain circumstances, borrowers may have their loans discharged when they file for bankruptcy. However, in recent years this discharge has been rendered unnecessary by the greatly increased availability of income contingent and income-sensitive repayment plans, deferments, and forbearances that allow borrowers to make affordable payments, or to make no payments, when they are experiencing financial problems. Furthermore, the 1991 elimination of the statute of limitations on the collection of student loan debts also argues against the continued availability of the bankruptcy discharge. Elimination of the discharge will save Departmental resources and equalize treatment of borrowers.

Section 439C. Section 439C of the bill would amend section 438 of the Act to provide for the computation of special allowance rates at the same time and in the same manner as student loan interest rates (annually rather than quarterly), to eliminate the potential for special allowance payments merely because the rates are calculated on a different cycle.

Section 439C(a)(2) of the bill would also amend section 438(b) of the Act to partially restore the special allowance treatment for lenders using tax-exempt financing that was in effect prior to 1993. The special allowance rate for loans financed on or after October 1, 1999 with tax-exempt funds (regardless of when the obligations generating the tax-exempt funds were originally issued) would be one-half of the rate used for other loans. There would be no floor on the reduced payment, which was the feature in the earlier version of this provision that resulted in increased program costs. Lenders using tax-exempt financing have a substantially lower cost of obtaining funds than other lenders, and should be compensated accordingly.

Section 439C(a)(3) of the bill would amend section 438(d)(1) of the Act to provide the Secretary with discretion to collect lender fees directly or through reduction of interest and special allowance owed to the lender. Current law requires the Secretary to deduct lender fees from payments of interest and special allowance from the Department to the lender and prohibits the direct collection of these fees. There is no reason to relieve lenders of the obligation to pay lender fees (or postpone that obligation) on highly subsidized FFEL loans simply because there are no Federal funds coming in to the lender for the Secretary to offset, whether because there is no special allowance paid for that period or because the lender does not have a sufficient number of borrowers still in school or in a grace period. This amendment would enable the Secretary to collect fees from these lenders directly and would allow the Secretary to develop a system in the future that would ensure that fees are collected in the quarter in which they are incurred.

Finally, sections 439C(a)(4) and (b) of the bill would amend section 438(e) of the Act, and make a conforming amendment to section 432(f)(1)(D) of the Act, that would eliminate the requirement that a secondary market prepare a plan for doing business plans. The substantive requirements of the assurances secondary markets would have otherwise provided in those plans would be retained. Apart from these assurances, the plans contain little useful information, and the review of these plans is not an efficient use of the Department's limited resources.

Section 439D. Section 439D of the bill would amend section 439(h)(7) of the Act to reflect congressional intent that the Student Loan Marketing Association (Sallie Mae) not be able to circumvent the requirement that it pay an offset fee on loans it holds by "securitizing" loans upon which it would otherwise be required to pay the offset fee. This provision would also remedy a recent, partially adverse, court decision and would be effective retroactively to August 10, 1993, the date of enactment of the Sallie Mae offset fee requirement, but would not apply to the privatized entity that may be created as a result of the Student Loan Marketing Association Reorganization Act of 1996.

Section 440. Section 440 of the bill would repeal 428I, 428J, and 436 of the Act. Section 428I allows for 100 percent insurance for lenders and servicers whose compliance performance rate exceeds 97 percent. This provision has never been implemented, and other incentives are sufficient to encourage high compliance and performance. Section 428J provides loan forgiveness for teachers, individuals performing national community service, and nurses, but has never been funded. Section 436 authorizes the estabishment of a guaranty agency for the District of Columbia. A guaranty agency for the District of Columbia does not currently exist and is unnecessary, because FFEL loans in the District of Columbia are guaranteed by the Massachusetts guaranty agency.

William R. Kincaid
07/08/97 02:48:54 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Michael Cohen/OPD/EOP
Subject: HEA Reauthorization/clinical programs

The Department of Education's Higher Education Act reauthorization package currently includes a proposal to consolidate several graduate education programs (some funded, others not) into a single program that would provide incentives and support for U.S. citizens, especially from underrepresented populations, to complete grad programs leading to academic careers in areas of national need. One piece eliminated from the current HEA would be a grant program designed to encourage law schools to establish clinical programs..

The Department states that in 1994, the White House intervened with OMB to restore funding for the program, but other than that the Administration has consistently requested no funds. It is unfunded for FY 1997 and we requested no funds for FY 1998. (A more detailed funding history of the program is below).

The Department argues that the program was originally intended to encourage law schools to establish clinical programs--basically to build capacity-- but now all schools must have clinical programs to be accredited, and so the HEA funding can be ended.

It's my sense that most law schools do have clinical programs now, but I also have the impression that they sometimes operate close to the edge financially, and that a large number have a focus on providing legal services for the poor. Especially given the First Lady's long-term interest in this area -- both her involvement with the Legal Services Corporation and the fact that she battled to get the first legal clinic opened at the U of A law school -- do you feel that we need to explore the fate of the clinical program more carefully? With the current Congress, as a practical matter, it may not matter anyway, because such a program might not be reauthorized or funded regardless of the approach we take. On the other hand, the program is already on the books, and symbolically it might say something for us to make a Higher Ed Act proposal that would explicitly end it.

Please let me know what you think. As you know, the Department is trying to move these smaller provisions of the HEA on a fast track and get them up to the Hill ASAP.

Thanks.

Funding history:

	Request	Appropriation
1991	0	$5.9 million
1992	0	$8.0 million
1993	0	$9.9 million
1994	$9.9 million	$9.9 million
1995	0	$13,2 million
1996	0	$5.5 million
1997	0	0
1998	0	NA

Maureen_McLaughlin @ ed.gov
07/07/97 08:38:00 AM

Record Type: Record

To: William R. Kincaid, Robert M. Shireman

cc:
Subject: Re[2]: law school clinical

Bill--here is the info you requested on law school clinical. Maureen

______________________________ Forward Header ______________________________
Subject: Re[2]: law school clinical
Author: David Bergeron at WDCA07
Date: 7/7/97 8:32 AM

The Administration has been fairly consistent in its efforts to eliminate the law school clinical experience program. In 1994, the Administration sought funding for the program but since then the request has been 0. In fact, 1994 was the only year in which an administration has sought funding since 1980! My recollection is that the White House intervened with OMB to restore the funding for the program in 1994 but seemed to loss interest since that time.

	Request	Appropriation
1991	0	$5.9 million
1992	0	$8.0 million
1993	0	$9.9 million
1994	$9.9 million	$9.9 million
1995	0	$13,2 million
1996	0	$5.5 million
1997	0	0
1998	0	NA

The program was intended to encourage law schools to establish clinical programs. Our understanding is that all law schools must have clinical programs to be accredited. We have argued, therefore, that the program has been successfully accomplished its purpose. I understand why some in the White House might like to see the program resurrected but we would need a new mission -- like assuring that law schools provide legal services to those who can not afford them. This would be a very different kind of program since the prior program was designed to build capacity.

Reply Separator