

Student Financial Aid Reform Legislation Moves Forward

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Prior to Congress beginning its month-long August recess and before members returned to their districts, the House Education and Labor Committee reported HR 3221—the Student Aid and Fiscal Responsibility Act of 2009—back to the full House of Representatives. The introduction and reporting of HR 3221 was the first step in the federal legislative process to reform the federal student loan programs. Although it was only the first step, in all likelihood, the final bill signed into law later this year will be very similar to HR 3221.

The full House of Representatives passed HR 3221 on September 17th by a 253–171 vote. The bill is now in the Senate Health, Education, Labor and Pensions (HELP) Committee, which will probably report a bill to the full Senate that is substantially similar to the House bill. The Senate may pass its version of a bill by early December. A House and Senate conference committee will then make adjustments for any differences between the two versions of HR 3221, which Congress will then pass and send to the president. In order to prevent a possible Senate filibuster (which requires 60 votes out of 100 senators), the Senate leadership may choose to consider HR 3221 under the budget reconciliation process, requiring only 50 votes to pass legislation (plus the vice president's vote to break a tie). In the event the final bill is not passed by both chambers by year's end, it will be taken up early next year by the Senate.

It is important to remember that the legislative process is both a permanent and continuing process. It is conceivable that legislators will propose amendments to the student loan provisions within the Higher Education Act (HEA) for years to come that seek to modify the program in any number of ways. Additionally, Congress will have the following issues to consider during the final two months of this initial session of the 111th Congress:

- Fiscal year (FY) 2010 appropriations bills: Twelve required FY 2010 appropriations bills need passing to fund federal agencies beginning October 1, 2009. Democrats will use the time to pass as many FY 2010 funding bills as possible through regular order rather than through a short-term continuing resolution and, eventually, an omnibus spending bill. The House has passed its versions of all 12 spending bills for the 2010 fiscal year, but the Senate has not, and is likely to complete its versions of all the bills in September.
- Health care reform legislation: Finance Chairman Max Baucus has set a mid-September deadline for reaching a deal with committee Republicans. Health care will have top billing on the House agenda.
- Unemployment insurance benefits: Legislation to extend funding for unemployment insurance benefits will demand congressional attention.
- Climate-change legislation: This is in line behind health care and will need enormous help to pass the Senate; the House has already passed its version.
- Immigration reform: The Democratic leadership has also suggested that immigration reform continue in the fall, but under an informal agreement, any such legislation will originate in the Senate.

Student Aid and Fiscal Responsibility Act of 2009 (H.R. 3221)

HR 3221 proposes to repeal the Family Federal Educational Loan Program (FFELP) and amend the Federal Perkins Loan Program, replacing them with the Federal Direct Loan Program and the Federal Perkins Direct Loan Program. The bill uses part of the Congressional Budget Office's estimated savings from repealing the FFELP to increase the mandatory appropriations to the Pell Grant program, allowing an annual maximum grant of \$5,500.

Federal Pell Grants

Proposed legislation provides that the amount of the Federal Pell Grant available to an eligible student will be the maximum grant award specified in the last appropriation act, plus a mandatory amount of \$490 for award years 2008–2009 and 2009–2010, or \$690 for the award year 2010–2011. For subsequent years, the amount will be determined by taking the greater of \$5,500 or the maximum Pell Grant for the previous year, increased by a percentage equal to the estimated percentage change in the Consumer Price Index plus 1%.

College Completion and Innovation Fund

The College Completion and Innovation Fund appropriates \$600 million for each fiscal year during the period 2010–2014 for a College Completion and Innovation Fund. Of this amount, 25% will be allocated to the previously authorized College Access Grant Challenge Program, 50% will be allocated to State Innovation Completion Grants, 24% will be allocated to innovation in national college access and completion activities, and 1% will be allocated for evaluation. The \$300 million for “State Innovative Completion Grants” will be awarded by the secretary to states on a competitive basis to promote college persistence and completion.

The federal share will amount to two thirds of the cost of activities and services carried out under the grant. The nonfederal share will be equal to one third of the cost of activities and services carried out under the grants. States must submit an application for each fiscal year for which they want to receive a grant. A state agency with jurisdiction over higher education or another agency designated by the governor or chief executive of the state will administer the grant program and submit an application to the secretary.

The application should include a description of the state’s plan for using the grant, particularly how the state will make special efforts to provide benefits to students from underrepresented groups. States receiving grants will use the funds for (1) financial literacy, education, and counseling for enrolled students; (2) programs to assist students with reducing the amount of loan debt; (3) making LEAP (Leveraging Educational Assistance Partnership) grants, and (4) making SLEAP (Special Leveraging Educational Assistance Partnership) grants. Funds cannot be used to promote any lender’s services, and activities must supplement, not supplant, state and private resources that would otherwise be expended. A state receiving a grant may elect to make a subgrant to one or more nonprofit organizations, including guaranty agencies in place on the date of enactment or a partnership of such organizations, provided the subgrantee was providing services related to promotion of persistence on the date of enactment. In awarding grants, the secretary will give priority to states that partner with philanthropic organizations and guaranty agencies in existence on the date of enactment.

Historically Black Colleges and Universities and Community Colleges

Proposed legislation provides an additional \$2.55 billion for historically black colleges and universities and minority-serving institutions to provide students with the support they need to stay in school and graduate. The bill also provides \$12 billion to the states to encourage partnerships between community colleges, states, businesses, job training, and adult education programs. The bill creates a new competitive grant program for community colleges to improve instruction; work with local employers; improve their student support services; and implement other innovative reforms that will lead to a college degree, certificate, or industry-recognized credential to help fulfill local workforce needs.

Student Loan Reform

Under the proposed legislation, no new FFELP loans will be made after June 30, 2010. Beginning July 1, 2010, a FFELP consolidation borrower who does not have a Direct Consolidation loan may obtain a subsequent Direct Consolidation loan. A revised special allowance formula becomes effective for special allowance payments for the calendar quarter ending December 31, 2009. Under this change, the special allowance for all loans disbursed after enactment of the bill (and before July 1, 2010) will be computed using the 1-month LIBOR (London Interbank Offered Rate) instead of the 3-month commercial paper (financial) rate, beginning with the special allowance payment for calendar quarter ending December 31, 2009.

Beginning with the special allowance payment for that quarter, lenders also have the option of being paid using this revised index on all loans disbursed on or after January 1, 2000, and before the date of enactment of the bill, if the lender waives all rights under the current formula. Such a waiver would apply to future payments on all loans disbursed in this time period held by any lender identification number associated with the lender, and applies to future payments on loans subsequently acquired by the lender.

Beginning January 1, 2010, the secretary's participant yield under the Ensuring Continued Access to Student Loans Act (ECASLA) loan participation program shall be determined by using the 1-month LIBOR in substitution for the index in the participation agreement. Direct loans for students and parents attending institutions located outside of the United States will be disbursed by a financial

institution designated by the secretary to serve as an agent of such institutions. The secretary, if practicable, will award multiple contracts through competitive bidding to entities, including not-for-profit servicers, to service Direct loans. The bidding process will take into account price, servicing capacity, and capability and may take into account the capacity and capability to provide default aversion services.

In any contract awarded for servicing of loans, the secretary will provide a job incentive payment, in an amount determined by the secretary, if the servicer agrees to give priority in hiring for positions created by the contract to those geographical locations at which the entity performed loan origination and servicing activities under the FFELP on the date of enactment. In addition, in determining allocation of loans to be serviced by entities awarded contracts, the secretary will consider the retention of highly qualified employees as a positive factor.

Not-for-profit servicers are specifically listed as entities with which the secretary may contract for services, along with guaranty agencies with which the secretary has agreements under sections 428(b) and (c) on the date of enactment, provided such servicers and agencies meet qualifications determined by the secretary. The legislation directs the secretary, to the extent practicable, to give special consideration to state agencies and not-for-profit servicers with a history of high quality performance and demonstrated integrity. Guaranty agencies and not-for-profit servicers can enter into consortium agreements for such contracts with the secretary.

In each state in which one or more eligible not-for-profit servicer has its principal place of business, the secretary will contract with each servicer to service loans originated under this part on behalf of borrowers attending institutions located within such state. This assumes that the servicer demonstrates that it meets the standards for servicing federal assets and agrees to service the loans at a competitive market rate, as determined by the secretary. In determining such a competitive market rate, the secretary may take into account the volume of loans serviced by the servicer. Contracts awarded under this paragraph will be subject to the same requirements for quality, performance, and accountability as contracts awarded to other entities for similar activities.

In each state, the secretary will allocate to such not-for-profit servicers, on an annual basis, a minimum of the lesser of the loans for 100,000 borrowers or the loans of all borrowers who attended institutions located in the state. If there is more than one eligible not-for-profit servicer in a state, each gets an equal share of the servicing, to the extent there are not enough borrower accounts to give each 100,000 accounts. The secretary may allocate additional servicing rights to not-for-profit servicers based on performance, including performance in customer service and default aversion.

Notwithstanding these allocation rules, the secretary may transfer loans among servicers to ensure that the loans of a single borrower remain with a single servicer. Not later than three years after enactment, the secretary will prepare a report evaluating the performance of not-for-profit servicers. An eligible not-for-profit servicer is either: a) a not-for-profit holder defined in section 439(p) of the HEA (this is used for determining eligibility for the higher special allowance), or b) an affiliated not-for-profit entity.

The interest rate on Stafford loans made on or after July 1, 2012 is a variable annual rate equal to the 91-day Treasury bill rate determined at the last T-bill auction in May plus 2.5%, capped at 6.8%.

Perkins Loan Program

Under HR 3221, Section 455A was added to Part D to create a new program called Federal Direct Perkins loans. Unless otherwise specified, terms and conditions of unsubsidized Federal Direct Stafford loans apply to the new Federal Direct Perkins loans. Eligible borrowers include graduate and professional students attending eligible institutions. Annual and aggregate loans limits are unchanged, and aggregate limits include loans made under the current Perkins Loan Program.

Section 462A, entitled Federal Direct Perkins Allocations, was added to allocate funds going forward. This section:

- Authorizes loan authority not to exceed \$6 billion annually, from funds made available under part D, for Federal Direct Perkins loans.

- Directs the secretary to allocate not more than one half of funds to the adjusted self-help need amount of the institution; one fourth to the low tuition incentive amount of the institution; and one fourth of the amount based on the calculation of the Federal Pell Grant and degree-recipient amount of the institution. No amounts are made available to “non-participating institutions.”
- Defines average cost of attendance to include tuition and fees, standard living expenses, and books and supplies, all of which are defined in this new section.

Section 463 was amended to modify the allocation of recoveries of defaulted loans assigned to the secretary and allocation of payments on nondefaulted accounts voluntarily assigned to the secretary.

Section 463 was amended to set a new administrative expense of .5% of the outstanding principal and interest balance of Perkins loans made prior to July 1, 2010, that are being serviced by an institution as of September 30 of each fiscal year. The authority of institutions to compromise on the repayment of defaulted loans is repealed in its entirety.

Section 465 was amended to modify how an institution is reimbursed for cancellations based on public service. Section 466, Distribution of Assets from Student Loan Funds, was rewritten to establish the amount the secretary is paid in quarterly capital distributions. A provision is included to accommodate institutions that have made short-term, interest-free loans to the institution’s student loan fund prior to enactment of the Student Aid and Fiscal Responsibility Act.

The closing months of this session of Congress promise to be very active and contentious, with the majority party and administration needing a “win” prior to adjournment on those issues upon which the party successfully campaigned. Whether this win comes from student loan reform and increased mandatory funding for the need-based Pell Grant program, health insurance reform, financial services regulatory reform, or movement toward increasing environmental protection, passage of HR 3221 is essential for Democrats. The congressional Republicans see potential for weakening the majority by preventing action on these issues and, thereby, improving their chances of picking up congressional seats in next year’s midterm elections.