



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

APR 29 1993

Dear Colleague:

President Clinton is now sending two complementary pieces of legislation to Congress on national service and student loan reform. Many of you have been hearing misleading reports of these proposals, put out by organizations with a major financial stake in the status quo. I write to you today to clarify the student loan portion of this bill.

Our primary objective in revamping the student loan system is to serve students better. A new streamlined system will simplify the administrative tasks of educational institutions, make the system easier to understand, provide students with greater choice in repayment plans and lower costs to taxpayers and students.

Make no mistake about four central principles of our proposal:

- No school will be required to originate loans if it does not want to.
- The Department of Education will pay a fee for loan origination.
- Access to student loan capital will continue to be an entitlement.
- There will be no gaps in access to capital for any eligible student or parent.

President Clinton is deeply committed to increasing educational opportunity by providing young people with the chance to serve their country and their communities. In return for their commitment, he intends to help them meet the costs of a college education or job training. The National Service program will provide educational benefits in return for national service performed before, during and after college. The Department of Education will implement a direct student loan program that will provide all students with a range of flexible repayment options, including income contingent repayment. Under this program, students who choose to take low-paying community service jobs, whether part of the national service program or not, will be able to repay their loans as a small percentage of their income so that they will not be overburdened by debt.

The major savings from direct lending derives from using Federal borrowing for student loans rather than private capital guaranteed by the Federal government and eliminating the profits in the system. The cost estimates include a significant allowance for administrative costs to the Department of Education and educational institutions. Eligible schools will originate loans if they chose to do so, and they will receive a small fee from the Department of Education to help cover costs. Nonetheless, I understand that not every institution will be able to originate loans, and some will not want to. In these cases, an alternative originator will be available at no cost to the institution. We are confident that a new system will prove easier to use, more efficient for institutions and students, and much less costly than the current student loan structure.

Please take the time to read the enclosed background material, which addresses many of the specific issues raised by the opponents of direct lending. If I can be of further assistance, please contact the Department at (800)USA-LEARN.

We look forward to your support of this plan to serve students, families, and schools better.

Sincerely yours,


Richard W. Riley



April, 1993

Direct Lending

Background Material for Educational Institutions

Major Reasons For Direct Lending

Greater Efficiency and Simplicity

The current system of 7,800 lenders, 46 guarantee agencies, and numerous servicers and secondary markets is error-prone, hard to monitor, and cumbersome to borrowers and schools. Each of these lenders and agencies has its own forms and procedures, adding extra work for borrowers and schools. Under direct lending, the process would be greatly simplified and streamlined because students could arrange for all of their Federal financial assistance through their schools. They would have only one application form to fill out, and they would no longer be confused about who holds their loan notes or where to send repayments. The school, in turn, would no longer have to work within the current complicated web of banks and guarantee agencies. For example, schools would no longer face cash flow delays due to bank or guarantee agency approvals. Educational institutions would provide, in essence, one-stop shopping for students, which permits a school to offer better and more comprehensive service.

Cost Savings to Student Borrowers

Borrowers will continue to have access to as much loan capital as they have had in the past. Direct loan capital will not be limited by congressional appropriations. This program will be an entitlement for students, just like the guaranteed student loan program. Funds will flow promptly to schools, solely on the basis of borrower eligibility and needs. Once the system is fully implemented, a portion of the general cost savings from direct lending will be passed on to borrowers in the form of a reduction in the interest rate on their loans.

Flexible Repayment Options

All students who borrow money for school will have available a range of flexible repayment options to suit their financial needs. Under these options, any student who chooses to take a low-paying community service job, or any low-paying job, will not be overburdened with debt. Students who choose the income contingent repayment plan will repay their loans as a small percentage of their income. Other students will be able to choose a fixed, graduated, or extended repayment plan that fits their needs. Eventually, we plan to make repayment even easier by the use of payroll withholding through the tax system. Students in

community service jobs funded by the national service program will receive an educational benefit of up to \$6,500 for every year of service that they perform, up to two years. They can use this benefit to pay off loan debt or to pay tuition.

Cost Savings to Taxpayers

The expected savings from direct lending – estimated at roughly \$4 billion from FY 1994 to 1998 – will greatly reduce the costs of student loans to taxpayers. The Congressional Budget Office, the General Accounting Office, and the Department of Education agree that direct lending could save \$1 billion or more per year when fully implemented. Because of the government's relatively low cost of capital, the taxpayer's cost of providing interest subsidies to borrowers would be substantially reduced – by about 10 cents per dollar loaned.

Responses to Concerns Raised About Direct Lending

Despite the many reasons to move to direct lending, some opposition remains. This opposition has naturally come from those who have profited most from the current guaranteed loan program. Some of these concerns are valid, and we have designed our proposals to address them; other concerns are not.

Administrative Capacity at Educational Institutions

Many of you have heard that it will be complicated and expensive for schools to participate in direct lending. This is simply not true. According to the independent Advisory Committee on Student Financial Assistance, the burden on most institutions will be radically reduced because schools will only have to deal with one central application, one disbursement processing system, and electronic communication with one servicer. The new activity that direct lending requires is origination. While no school will be required to originate loans, those schools that choose to originate must perform two new functions: 1) ensure that students sign the promissory note to repay the loan and mail it to the servicer, and 2) after making the loan, reconcile with the servicer that all the money and documentation is accounted for. The Department of Education will provide software to accomplish both of these tasks. The software, as well as training to use it, will be available to institutions free of charge.

Most schools already have the technology and experience needed to participate in direct lending as loan originators. If your institution originates loans in the Perkins Loan program, it has the capacity to originate loans for direct lending. To ensure that institutions do not face

any additional costs, the Department of Education will pay them a small fee to help cover the costs of origination. Those schools that cannot or do not wish to originate loans will not be obligated to do so. The Department will pay an alternative originator to perform this task for these schools. Furthermore, educational institutions will not be expected to service or collect the loans (except for the routine tracking of student status which schools already do). The Department will contract with a number of organizations to perform servicing and collection of direct loans.

Administrative Capacity at the Department of Education

There is no question that the Department must strengthen its monitoring and review functions, but we must do so regardless of whether the current program continues or we move to direct lending. Loan servicing will be done by a small number of carefully selected and closely monitored contractors. The direct lending system would have fewer administrative participants and thus would be easier for the Department to monitor. We have made significant progress in some areas, including improved management and computer systems. The Department's delivery of direct loan funds will include many of the well-tested, successful, and increasingly automated data and financial systems now used for Pell Grants and campus-based Federal student aid programs. To ensure high quality, the Department is working on redesigning program integrity and monitoring efforts to focus on performance outcomes. This will lead to increased accountability and efficiency.

Serving Students During the Transition

Both during and after the transition to student loans, maintaining the availability of loans to students will be our number one priority. For a long time, lenders have maintained the status quo by using threats of pulling out and disrupting the flow of loans to students. The Department is aware of the challenges in moving to a new system and we are working to ensure a smooth transition. The legislation will provide the Department with authority to move quickly if capital shortages occur.

Public Law 103-66
103d Congress

An Act

Aug. 10, 1993
(H.R. 2264)

To provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994.

Omnibus Budget
Reconciliation
Act of 1993.*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Omnibus Budget Reconciliation Act of 1993".

SEC. 2. TABLE OF CONTENTS.

The table of contents is as follows:

TITLE I—AGRICULTURE AND RELATED PROVISIONS

TITLE II—ARMED SERVICES PROVISIONS

TITLE III—BANKING AND HOUSING PROVISIONS

TITLE IV—STUDENT LOANS AND ERISA PROVISIONS

TITLE V—TRANSPORTATION AND PUBLIC WORKS PROVISIONS

TITLE VI—COMMUNICATIONS LICENSING AND SPECTRUM ALLOCATION PROVISIONS

TITLE VII—NUCLEAR REGULATORY COMMISSION PROVISIONS

TITLE VIII—PATENT AND TRADEMARK OFFICE PROVISIONS

TITLE IX—MERCHANT MARINE PROVISIONS

TITLE X—NATURAL RESOURCES PROVISIONS

TITLE XI—CIVIL SERVICE AND POST OFFICE PROVISIONS

TITLE XII—VETERANS' AFFAIRS PROVISIONS

TITLE XIII—REVENUE, HEALTH CARE, HUMAN RESOURCES, INCOME SECURITY, CUSTOMS AND TRADE PROVISIONS; FOOD STAMP PROGRAM, AND TIMBER SALE PROVISIONS

TITLE XIV—BUDGET PROCESS PROVISIONS

~~TITLE I—AGRICULTURAL PROGRAMS~~

SEC. 1001. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Agricultural Reconciliation Act of 1993".

Agricultural
Reconciliation
Act of 1993.

7 USC 1421 note.

(b) TABLE OF CONTENTS.—The table of contents of this title is as follows:

Sec. 1001. Short title and table of contents.

Subtitle A—Commodity Programs

Sec. 1101. Upland cotton program.

Sec. 1102. Wheat program.

Sec. 1103. Feed grain program.

Sec. 1104. Rice program.

Sec. 1105. Dairy program.

Sec. 1106. Tobacco program.

Sec. 1107. Sugar program.

Sec. 1108. Oilseed program.

Sec. 1109. Peanut program.

Sec. 1110. Honey program.

Sec. 1111. Wool and mohair program.

Subtitle B—Rural Electrification

Sec. 1201. Refinancing and prepayment of FFB loans.

Subtitle C—Agricultural Trade

Sec. 1301. Acreage reduction requirements.

Sec. 1302. Market promotion program.

Subtitle D—Miscellaneous

Sec. 1401. Admission, entrance, and recreation fees.

Sec. 1402. Environmental conservation acreage reserve program amendments.

Sec. 1403. Federal crop insurance.

Subtitle A—Commodity Programs

SEC. 1101. UPLAND COTTON PROGRAM

(a) IN GENERAL.—Section 103B of the Agricultural Act of 1949 (7 U.S.C. 1444-2) is amended—

(1) in the section heading, by striking "1995" and inserting "1997";

(2) in subsections (a)(1), (b)(1), (c)(1)(A), (c)(1)(B)(ii), and (o), by striking "1995" each place it appears and inserting "1997";

(3) in subparagraphs (B)(i), (D)(i), (E)(i), and (F)(i) of subsection (a)(5), by striking "1996" each place it appears and inserting "1998";

(4) in subsection (c)(1)(D)—

(A) in the subparagraph heading, by striking "50/92 PROGRAM" and inserting "50/85 PROGRAM";

(B) by inserting after "8 percent" both places it appears the following: "for each of the 1991 through 1993 crops, and 15 percent for each of the 1994 through 1997 crops (except as provided in clause (v)(II));"; and

(C) in clause (v)—

(i) by striking "(v) PREVENTED PLANTING.—If" and inserting the following:

"(v) PREVENTED PLANTING AND REDUCED YIELDS.—

(I) 1991 THROUGH 1993 CROPS.—In the case of each of the 1991 through 1993 crops of upland cotton, if"; and

(ii) by adding at the end the following new subclause:

(II) 1994 THROUGH 1997 CROPS.—In the case of each of the 1994 through 1997 crops of upland

SEC. 3008. MUTUAL MORTGAGE INSURANCE FUND PREMIUMS.

To improve the actuarial soundness of the Mutual Mortgage Insurance Fund under the National Housing Act, the Secretary of Housing and Urban Development shall increase the rate at which the Secretary earns the single premium payment collected at the time of insurance of a mortgage that is an obligation of such Fund (with respect to the rate in effect on the date of the enactment of this Act). In establishing such increased rate, the Secretary shall consider any current audit findings and reserve analyses and information regarding the expected average duration of mortgages that are obligations of such Fund and may consider any other information that the Secretary determines to be appropriate.

TITLE IV—STUDENT LOAN AND ERISA PROVISIONS

SEC. 4001. TABLE OF CONTENTS.

The table of contents for this title is as follows:

TITLE IV—STUDENT LOAN AND ERISA PROVISIONS

Sec. 4001. Table of contents.

Subtitle A—Direct Student Loan Provisions

Sec. 4011. Short title; references.

CHAPTER 1—FEDERAL DIRECT STUDENT LOAN PROGRAM

Sec. 4021. Federal direct student loan program.

CHAPTER 2—CONFORMING AMENDMENTS TO THE HIGHER EDUCATION ACT OF 1965

Sec. 4041. Preserving loan access.

Sec. 4042. Guaranty agency reserves.

Sec. 4043. Terms of loans.

Sec. 4044. Assignment of loans.

Sec. 4045. Termination of guaranty agency agreements; assumption of guaranty agency functions by the Secretary.

Sec. 4046. Consolidation loans.

Sec. 4047. Consolidation of programs.

Subtitle B—Additional Savings from the Student Loan Programs

Sec. 4101. Reduction of borrower interest rates.

Sec. 4102. Reduction in loan fees paid by students.

Sec. 4103. Loan fees from lenders.

Sec. 4104. Offset fee.

Sec. 4105. Elimination of tax exempt floor.

Sec. 4106. Reduction in interest rate for consolidation loans; rebate fee.

Sec. 4107. Reinsurance fees and administrative cost allowances.

Sec. 4108. Risk sharing.

Sec. 4109. Plus loan disbursements.

Sec. 4110. Secretary's equitable share.

Sec. 4111. Reduction in the special allowance payment.

Sec. 4112. Supplemental preclaims assistance.

Subtitle C—Cost Sharing by States

Sec. 4201. Cost sharing by States.

Subtitle D—Group Health Plans

Sec. 4301. Standards for group health plan coverage.

Subtitle A—Direct Student Loan Provisions

SEC. 4011. SHORT TITLE; REFERENCES.

(a) **SHORT TITLE.**—This subtitle may be cited as the "Student Loan Reform Act of 1993".

(b) **REFERENCES.**—References in this subtitle and subtitles B and C to "the Act" are references to the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

20 USC 1001
note.

CHAPTER 1—FEDERAL DIRECT STUDENT LOAN PROGRAM

SEC. 4021. FEDERAL DIRECT STUDENT LOAN PROGRAM.

Part D of title IV (20 U.S.C. 1087a) is amended to read as follows:

"PART D—FEDERAL DIRECT STUDENT LOAN PROGRAM

"SEC. 451. PROGRAM AUTHORITY.

20 USC 1087a.

There are hereby made available, in accordance with the provisions of this part, such sums as may be necessary to make loans to all eligible students (and the eligible parents of such students) in attendance at participating institutions of higher education selected by the Secretary, to enable such students to pursue their courses of study at such institutions during the period beginning July 1, 1994. Such loans shall be made by participating institutions, or consortia thereof, that have agreements with the Secretary to originate loans, or by alternative originators designated by the Secretary to make loans for students in attendance at participating institutions (and their parents).

"SEC. 452. FUNDS FOR ORIENTATION OF DIRECT STUDENT LOANS.

20 USC 1087b.

"(a) **IN GENERAL.**—The Secretary shall provide, on the basis of the need and the eligibility of students at each participating institution, and parents of such students, for such loans, funds for student and parent loans under this part—

"(1) directly to an institution of higher education that has an agreement with the Secretary under section 454(a) to participate in the direct student loan programs under this part and that also has an agreement with the Secretary under section 454(b) to originate loans under this part; or

"(2) through an alternative originator designated by the Secretary to students (and parents of students) attending institutions of higher education that have an agreement with the Secretary under section 454(a) but that do not have an agreement with the Secretary under section 454(b).

"(b) **FEES FOR ORIENTATION SERVICES.**—

"(1) **FEES FOR INSTITUTIONS.**—The Secretary shall pay fees to institutions of higher education (or a consortium of such institutions) with agreements under section 454(b), in an amount established by the Secretary, to assist in meeting the costs of loan origination. Such fees—

"(A) shall be paid by the Secretary based on all the loans made under this part to a particular borrower in the same academic year;

"(B) shall be subject to a sliding scale that decreases the per borrower amount of such fees as the number of borrowers increases; and

"(C)(i) for academic year 1994-1995, shall not exceed a program-wide average of \$10 per borrower for all the loans made under this part to such borrower in the same academic year; and

"(ii) for succeeding academic years, shall not exceed such average fee as the Secretary shall establish pursuant to regulations.

"(2) FEES FOR ALTERNATIVE ORIGINATORS.—The Secretary shall pay fees for loan origination services to alternative originators of loans made under this part in an amount established by the Secretary in accordance with the terms of the contract described in section 456(b) between the Secretary and each such alternative originator.

"(c) NO ENTITLEMENT TO PARTICIPATE OR ORIGINATE.—No institution of higher education shall have a right to participate in the programs authorized by this part, to originate loans, or to perform any program function under this part. Nothing in this subsection shall be construed so as to limit the entitlement of an eligible student attending a participating institution (or the eligible parent of such student) to borrow under this part.

"(d) DELIVERY OF LOAN FUNDS.—Loan funds shall be paid and delivered to an institution by the Secretary prior to the beginning of the payment period established by the Secretary in a manner that is consistent with payment and delivery of basic grants under subpart 1 of part A of this title.

20 USC 1087c.

"SEC. 453. SELECTION OF INSTITUTIONS FOR PARTICIPATION AND ORIGINATION.

"(a) PHASE-IN OF PROGRAM.—

"(1) GENERAL AUTHORITY.—The Secretary shall enter into agreements pursuant to section 454(a) with institutions of higher education to participate in the direct student loan program under this part, and agreements pursuant to section 454(b) with institutions of higher education, or consortia thereof, to originate loans in such program, for academic years beginning on or after July 1, 1994. Alternative origination services, through which an entity other than the participating institution at which the student is in attendance originates the loan, shall be provided by the Secretary, through 1 or more contracts under section 456(b) or such other means as the Secretary may provide, for students attending participating institutions that do not originate direct student loans under this part. Such agreements for the academic year 1994-1995 shall, to the extent feasible, be entered into not later than January 1, 1994.

"(2) TRANSITION PROVISIONS.—In order to ensure an expeditious but orderly transition from the loan programs under part B of this title to the direct student loan program under this part, the Secretary shall, in the exercise of the Secretary's discretion, determine the number of institutions with which the Secretary shall enter into agreements under subsections

Contracts.

(a) and (b) of section 454 for any academic year, except that the Secretary shall exercise such discretion so as to achieve the following goals:

"(A) for academic year 1994-1995, loans made under this part shall represent 5 percent of the new student loan volume for such year;

"(B) for academic year 1995-1996, loans made under this part shall represent 40 percent of the new student loan volume for such year;

"(C) for academic years 1996-1997 and 1997-1998, loans made under this part shall represent 60 percent of the new student loan volume for such years; and

"(D) for the academic year that begins in fiscal year 1998, loans made under this part shall represent 60 percent of the new student loan volume for such year.

"(3) EXCEPTION.—The Secretary may exceed the percentage goals described in subparagraphs (C) or (D) of paragraph (2) if the Secretary determines that a higher percentage is warranted by the number of institutions of higher education that desire to participate in the program under this part and that meet the eligibility requirements for such participation.

"(4) NEW STUDENT LOAN VOLUME.—For the purpose of this subsection, the term 'new student loan volume' means the estimated sum of all loans (other than consolidation loans) that will be made, insured or guaranteed under this part and part B in the year for which the determination is made. The Secretary shall base the estimate described in the preceding sentence on the most recent program data available.

"(b) SELECTION CRITERIA.—

"(1) APPLICATION.—Each institution of higher education desiring to participate in the direct student loan program under this part shall submit an application satisfactory to the Secretary containing such information and assurances as the Secretary may require.

"(2) SELECTION PROCEDURE.—The Secretary shall select institutions for participation in the direct student loan program under this part, and shall enter into agreements with such institutions under section 454(a), from among those institutions that submit the applications described in paragraph (1), and meet such other eligibility requirements as the Secretary shall prescribe, by, to the extent possible—

"(A)(i) categorizing such institutions according to anticipated loan volume, length of academic program, control of the institution, highest degree offered, size of student enrollment, geographic location, annual loan volume, and default experience; and

"(ii) beginning in academic year 1995-1996 selecting institutions that are reasonably representative of each of the categories described pursuant to clause (i); and

"(B) if the Secretary determines it necessary to carry out the purposes of this part, selecting additional institutions.

"(c) SELECTION CRITERIA FOR ORIGINATION.—

"(1) IN GENERAL.—The Secretary may enter into a supplemental agreement with an institution (or a consortium of such institutions) that—

"(A) has an agreement under subsection 454(a);

Contracts.

"(B) desires to originate loans under this part, and
 "(C) meets the criteria described in paragraph (2)."

"(2) TRANSITION SELECTION CRITERIA.—For academic year 1994–1995, the Secretary may approve an institution to originate loans only if such institution—

"(A) made loans under part E of this title in academic year 1993–1994 and did not exceed the applicable maximum default rate under section 462(g) for the most recent fiscal year for which data are available;

"(B) is not on the reimbursement system of payment for any of the programs under subpart 1 or 3 of part A, part C, or part E of this title;

"(C) is not overdue on program or financial reports or audits required under this title;

"(D) is not subject to an emergency action, or a limitation, suspension, or termination under section 428(b)(1)(T), 432(h), or 487(c);

"(E) in the opinion of the Secretary, has not had significant deficiencies identified by a State postsecondary review entity under subpart 1 of part H of this title;

"(F) in the opinion of the Secretary, has not had severe performance deficiencies for any of the programs under this title, including such deficiencies demonstrated by audits or program reviews submitted or conducted during the 5 calendar years immediately preceding the date of application;

"(G) provides an assurance that such institution has no delinquent outstanding debts to the Federal Government, unless such debts are being repaid under or in accordance with a repayment arrangement satisfactory to the Federal Government, or the Secretary in the Secretary's discretion determines that the existence or amount of such debts has not been finally determined by the cognizant Federal agency; and

"(H) meets such other criteria as the Secretary may establish to protect the financial interest of the United States and to promote the purposes of this part.

"(3) REGULATIONS GOVERNING APPROVAL AFTER TRANSITION.—For academic year 1995–1996 and subsequent academic years, the Secretary shall promulgate and publish in the Federal Register regulations governing the approval of institutions to originate loans under this part in accordance with section 457(a)(2).

"(d) ELIGIBLE INSTITUTIONS.—The Secretary may not select an institution of higher education for participation under this section unless such institution is an eligible institution under section 435(a).

"(e) CONSORTIA.—Subject to such requirements as the Secretary may prescribe, eligible institutions of higher education (as determined under subsection (d)) with agreements under section 454(a) may apply to the Secretary as consortia to originate loans under this part for students in attendance at such institutions. Each such institution shall be required to meet the requirements of subsection (c) with respect to loan origination.

"SEC. 454. AGREEMENTS WITH INSTITUTIONS.

"(a) PARTICIPATION AGREEMENTS.—An agreement with any institution of higher education for participation in the direct student loan program under this part shall—

"(1) provide for the establishment and maintenance of a direct student loan program at the institution under which the institution will—

"(A) identify eligible students who seek student financial assistance at such institution in accordance with section 484;

"(B) estimate the need of each such student as required by part F of this title for an academic year, except that, any loan obtained by a student under this part with the same terms as loans made under section 428H (except as otherwise provided in this part), or a loan obtained by a parent under this part with the same terms as loans made under section 428B (except as otherwise provided in this part), or obtained under any State-sponsored or private loan program, may be used to offset the expected family contribution of the student for that year;

"(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, in exceptional circumstances identified by the Secretary, refuse to certify a statement that permits a student to receive a loan under this part, or certify a loan amount that is less than the student's determination of need (as determined under part F of this title), if the reason for such action is documented and provided in written form to such student;

"(D) set forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 428G; and

"(E) provide timely and accurate information—

"(i) concerning the status of student borrowers (and students on whose behalf parents borrow under this part) while such students are in attendance at the institution and concerning any new information of which the institution becomes aware for such students (or their parents) after such borrowers leave the institution, to the Secretary for the servicing and collecting of loans made under this part; and

"(ii) if the institution does not have an agreement with the Secretary under subsection (b), concerning student eligibility and need, as determined under subparagraphs (A) and (B), to the Secretary as needed for the alternative origination of loans to eligible students and parents in accordance with this part;

"(2) provide assurances that the institution will comply with requirements established by the Secretary relating to student loan information with respect to loans made under this part;

"(3) provide that the institution accepts responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement;

"(4) provide that students at the institution and their parents (with respect to such students) will be eligible to partici-

pate in the programs under part B of this title at the discretion of the Secretary for the period during which such institution participates in the direct student loan program; under this part, except that a student or parent may not receive loans under both this part and part H for the same period of enrollment;

"(5) provide for the implementation of a quality assurance system, as established by the Secretary and developed in consultation with institutions of higher education, to ensure that the institution is complying with program requirements and meeting program objectives;

"(6) provide that the institution will not charge any fees of any kind, however described, to student or parent borrowers for origination activities or the provision of any information necessary for a student or parent to receive a loan under this part, or any benefits associated with such loan; and

"(7) include such other provisions as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of this part.

"(b) ORIGINATION.—An agreement with any institution of higher education, or consortia thereof, for the origination of loans under this part shall—

"(1) supplement the agreement entered into in accordance with subsection (a);

"(2) include provisions established by the Secretary that are similar to the participation agreement provisions described in paragraphs (1)(E)(ii), (2), (3), (4), (5), (6), and (7) of subsection (a), as modified to relate to the origination of loans by the institution or consortium;

"(3) provide that the institution or consortium will originate loans to eligible students and parents in accordance with this part; and

"(4) provide that the note or evidence of obligation on the loan shall be the property of the Secretary.

"(c) WITHDRAWAL AND TERMINATION PROCEDURES.—The Secretary shall establish procedures by which institutions or consortia may withdraw or be terminated from the program under this part.

"SEC. 456. TERMS AND CONDITIONS OF LOANS.

"(a) IN GENERAL.—

"(1) PARALLEL TERMS, CONDITIONS, BENEFITS, AND AMOUNTS.—Unless otherwise specified in this part, loans made to borrowers under this part shall have the same terms, conditions, and benefits, and be available in the same amounts, as loans made to borrowers under sections 428, 428B, and 428H of this title.

"(2) DESIGNATION OF LOANS.—Loans made to borrowers under this part that, except as otherwise specified in this part, have the same terms, conditions, and benefits as loans made to borrowers under—

"(A) section 428 shall be known as 'Federal Direct Stafford Loans';

"(B) section 428B shall be known as 'Federal Direct PLUS Loans'; and

"(C) section 428H shall be known as 'Federal Direct Unsubsidized Stafford Loans'.

"(b) INTEREST RATE.—

"(1) RATES FOR FDSL AND FDUSL.—For Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans for which the first disbursement is made on or after July 1, 1994, the applicable rate of interest 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—

"(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

"(B) 3.1 percent,

except that such rate shall not exceed 8.25 percent.

"(2) IN SCHOOL AND GRACE PERIOD RULES.—(A) Notwithstanding the provisions of paragraph (1), but subject to paragraph (3), with respect to any Federal Direct Stafford Loan or Federal Direct Unsubsidized Stafford Loan for which the first disbursement is made on or after July 1, 1995, the applicable rate of interest for interest which accrues—

"(i) prior to the beginning of the repayment period of the loan; or

"(ii) during the period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 428(b)(1)(M) or 427(a)(2)(C),

shall not exceed the rate determined under subparagraph (B).

"(B) For the purpose 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—

"(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction prior to such June 1; plus

"(ii) 2.5 percent,

except that such rate shall not exceed 8.25 percent.

"(3) OUT-YEAR RULE.—Notwithstanding paragraphs (1) and (2), for Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans made on or after July 1, 1998, the applicable rate of interest 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—

"(A) the bond equivalent rate of the security with a comparable maturity as established by the Secretary; plus

"(B) 1.0 percent,

except that such rate shall not exceed 8.25 percent.

"(4) RATES FOR FDPUS.—(A) For Federal Direct PLUS Loans for which the first disbursement is made on or after July 1, 1994, the applicable rate of interest 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—

"(i) the bond equivalent rate of 52-week Treasury bills auctioned at final auction held prior to such June 1; plus

"(ii) 3.1 percent,

except that such rate shall not exceed 9 percent.

"(B) For Federal Direct PLUS loans made on or after July 1, 1998, the applicable rate of interest 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—

"(i) the bond equivalent rate of the security with a comparable maturity as established by the Secretary; plus

"(ii) 2.1 percent, except that such rate shall not exceed 9 percent.

"(5) PUBLICATION.—The Secretary shall determine the applicable rates of interest under this subsection after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

"(c) LOAN FEE.—The Secretary shall charge the borrower of a loan made under this part an origination fee of 4.0 percent of the principal amount of loan.

"(d) REPAYMENT PLANS.—

"(1) DESIGN AND SELECTION.—Consistent with criteria established by the Secretary, the Secretary shall offer a borrower of a loan made under this part a variety of plans for repayment of such loan, including principal and interest on the loan. The borrower shall be entitled to accelerate, without penalty, repayment on the borrower's loans under this part. The borrower may choose—

"(A) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, consistent with subsection (a)(1) of this section;

"(B) an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, except that the borrower shall annually repay a minimum amount determined by the Secretary in accordance with section 428(b)(1)(L);

"(C) a graduated repayment plan, with annual repayment amounts established at 2 or more graduated levels and paid over a fixed or extended period of time, except that the borrower's scheduled payments shall not be less than 50 percent, nor more than 130 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 contingent repayment plan, with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years, except that the plan described in this subparagraph shall not be available to the borrower of a Federal Direct PLUS loan.

"(2) SELECTION BY SECRETARY.—If a borrower of a loan made under this part does not select a repayment plan described in paragraph (1), the Secretary may provide the borrower with a repayment plan described in subparagraph (A), (B), or (C) of paragraph (1).

"(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 Secretary's selection of a plan for the borrower under paragraph (2), as the case may be, under such terms and conditions as may be established by the Secretary.

"(4) ALTERNATIVE REPAYMENT PLANS.—The Secretary may provide, on a case by case basis, an alternative repayment plan to a borrower of a loan made under this part who demonstrates to the satisfaction of the Secretary that the terms and conditions of the repayment plans available under paragraph (1) are not adequate to accommodate the borrower's

exceptional circumstances. In designing such alternative repayment plans, the Secretary shall ensure that such plans do not exceed the cost to the Federal Government, as determined on the basis of the present value of future payments by such borrowers, of loans made using the plans available under paragraph (1).

"(5) REPAYMENT AFTER DEFAULT.—The Secretary may require any borrower who has defaulted on a loan made under this part to—

"(A) pay all reasonable collection costs associated with such loan; and

"(B) repay the loan pursuant to an income contingent repayment plan.

"(e) INCOME CONTINGENT REPAYMENT.—

"(1) INFORMATION AND PROCEDURES.—The Secretary may obtain such information as is reasonably necessary regarding the income of a borrower (and the borrower's spouse, if applicable) of a loan made under this part that is, or may be, repaid pursuant to income contingent repayment, for the purpose of determining the annual repayment obligation of the borrower. Returns and return information (as defined in section 6103 of the Internal Revenue Code of 1986) may be obtained under the preceding sentence only to the extent authorized by section 6103(i)(13) of such Code. The Secretary shall establish procedures for determining the borrower's repayment obligation on that loan for such year, and such other procedures as are necessary to implement effectively income contingent repayment.

"(2) REPAYMENT BASED ON ADJUSTED GROSS INCOME.—A repayment schedule for a loan made under this part and repaid pursuant to income contingent repayment shall be based on the adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986) of the borrower or, if the borrower is married and files a Federal income tax return jointly with the borrower's spouse, on the adjusted gross income of the borrower and the borrower's spouse.

"(3) ADDITIONAL DOCUMENTS.—A borrower who chooses, or is required, to repay a loan made under this part pursuant to income contingent repayment, and for whom adjusted gross income is unavailable or does not reasonably reflect the borrower's current income, shall provide to the Secretary other documentation of income satisfactory to the Secretary, which documentation the Secretary may use to determine an appropriate repayment schedule.

"(4) REPAYMENT SCHEDULES.—Income contingent repayment schedules shall be established by regulations promulgated by the Secretary and shall require payments that vary in relation to the appropriate portion of the annual income of the borrower (and the borrower's spouse, if applicable) as determined by the Secretary.

"(5) CALCULATION OF BALANCE DUE.—The balance due on a loan made under this part that is repaid pursuant to income contingent repayment shall equal the unpaid principal amount of the loan, any accrued interest, and any fees, such as late charges, assessed on such loan. The Secretary may promulgate regulations limiting the amount of interest that may be capitalized on such loan, and the timing of any such capitalization.

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"(6) NOTIFICATION TO BORROWERS.—The Secretary shall establish procedures under which a borrower of a loan made under this part who chooses or is required to repay such loan pursuant to income contingent repayment is notified of the terms and conditions of such plan, including notification of such borrower—

"(A) that the Internal Revenue Service will disclose to the Secretary tax return information as authorized under section 6103(i)(13) of the Internal Revenue Code of 1986; and

"(B) that if a borrower considers that special circumstances, such as a loss of employment by the borrower or the borrower's spouse, warrant an adjustment in the borrower's loan repayment as determined using the information described in subparagraph (A), or the alternative documentation described in paragraph (3), the borrower may contact the Secretary, who shall determine whether such adjustment is appropriate, in accordance with criteria established by the Secretary.

"(f) DEFERMENT.—

"(1) EFFECT ON PRINCIPAL AND INTEREST.—A borrower of a loan made under this part who meets the requirements described in paragraph (2) shall be eligible for a deferment, during which periodic installments of principal need not be paid, and interest—

"(A) shall not accrue, in the case of a—

"(i) Federal Direct Stafford Loan; or

"(ii) a Federal Direct Consolidation Loan that consolidated only Federal Direct Stafford Loans, or a combination of such loans and Federal Stafford Loans for which the student borrower received an interest subsidy under section 428; or

"(B) shall accrue and be capitalized or paid by the borrower, in the case of a Federal Direct PLUS Loan, a Federal Direct Unsubsidized Stafford Loan, or a Federal Direct Consolidation Loan not described in subparagraph (A)(i).

"(2) ELIGIBILITY.—A borrower of a loan made under this part shall be eligible for a deferment during any period—

"(A) during which the borrower—

"(i) is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible institution (as such term is defined in section 435(a)), the borrower is attending; or

"(ii) is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary, or pursuant to a rehabilitation training program for individuals with disabilities approved by the Secretary,

except that no borrower shall be eligible for a deferment under this subparagraph, or a loan made under this part (other than a Federal Direct PLUS Loan or a Federal Direct Consolidation Loan), while serving in a medical internship or residency program;

"(B) not in excess of 3 years during which the borrower is seeking and unable to find full-time employment;

"(C) not in excess of 3 years during which the Secretary determines, in accordance with regulations prescribed under section 435(c), that the borrower has experienced or will experience an economic hardship.

"(g) FEDERAL DIRECT CONSOLIDATION LOANS.—A borrower of a loan made under this part may consolidate such loan with the loans described in section 428C(a)(4) only under such terms and conditions as the Secretary shall establish pursuant to section 457(a)(1) or regulations promulgated under this part. Loans made under this subsection shall be known as 'Federal Direct Consolidation Loans'.

"(h) BORROWER DEFENSES.—Notwithstanding any other provision of State or Federal law, the Secretary shall specify in regulations (except as authorized under section 457(a)(1)) which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under this part, except that in no event may a borrower recover from the Secretary, in any action arising from or relating to a loan made under this part, an amount in excess of the amount such borrower has repaid on such loan.

"(i) LOAN APPLICATION AND PROMISSORY NOTE.—The common financial reporting form required in section 483(a)(1) shall constitute the application for loans made under this part (other than a Federal Direct PLUS loan). The Secretary shall develop, print, and distribute to participating institutions a standard promissory note and loan disclosure form.

"(j) LOAN DISBURSEMENT.—

"(1) IN GENERAL.—Proceeds of loans to students under this part shall be applied to the student's account for tuition and fees, and, in the case of institutionally owned housing, to room and board. Loan proceeds that remain after the application of the previous sentence shall be delivered to the borrower by check or other means that is payable to and requires the endorsement or other certification by such borrower.

"(2) PAYMENT PERIODS.—The Secretary shall establish periods for the payments described in paragraph (1) in a manner consistent with payment of basic grants under subpart 1 of part A of this title.

"(k) FISCAL CONTROL AND FUND ACCOUNTABILITY.—

"(1) IN GENERAL.—(A) An institution shall maintain financial records in a manner consistent with records maintained for other programs under this title.

"(B) Except as otherwise required by regulations of the Secretary, or in a notice under section 457(a)(1), an institution may maintain loan funds under this part in the same account as other Federal student financial assistance.

"(2) PAYMENTS AND REFUNDS.—Payments and refunds shall be reconciled in a manner consistent with the manner set forth for the submission of a payment summary report required of institutions participating in the program under subpart 1 of part A, except that nothing in this paragraph shall prevent such reconciliations on a monthly basis.

"(3) TRANSACTION HISTORIES.—All transaction histories under this part shall be maintained using the same system designated by the Secretary for the provision of basic grants under subpart 1 of part A of this title.

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*SEC. 456. CONTRACTS.

“(a) CONTRACTS FOR SUPPLIES AND SERVICES.—

“(1) IN GENERAL.—The Secretary shall, to the extent practicable, award contracts for origination, servicing, and collection described in subsection (b). In awarding such contracts, the Secretary shall ensure that such services and supplies are provided at competitive prices.

“(2) ENTITIES.—The entities with which the Secretary may enter into contracts shall include only entities which the Secretary determines are qualified to provide such services and supplies and will comply with the procedures applicable to the award of such contracts. In the case of awarding contracts for the origination, servicing, and collection of loans under this part, the Secretary shall enter into contracts only with entities that have extensive and relevant experience and demonstrated effectiveness. The entities with which the Secretary may enter into such contracts shall include, where practicable, agencies with agreements with the Secretary under sections 428(b) and (c), if such agencies meet the qualifications as determined by the Secretary under this subsection and if those agencies have such experience and demonstrated effectiveness. In awarding contracts to such State agencies, the Secretary shall, to the extent practicable and consistent with the purposes of this part, give special consideration to State agencies with a history of high quality performance to perform services for institutions of higher education within their State.

“(3) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as a limitation of the authority of any State agency to enter into an agreement for the purposes of this section as a member of a consortium of State agencies.

“(b) CONTRACTS FOR ORIGINATION, SERVICING, AND DATA SYSTEMS.—The Secretary may enter into contracts for—

“(1) the alternative origination of loans to students attending institutions of higher education with agreements to participate in the program under this part (or their parents), if such institutions do not have agreements with the Secretary under section 454(b);

“(2) the servicing and collection of loans made under this part;

“(3) the establishment and operation of 1 or more data systems for the maintenance of records on all loans made under this part;

“(4) services to assist in the orderly transition from the loan programs under part B to the direct student loan program under this part; and

“(5) such other aspects of the direct student loan program as the Secretary determines are necessary to ensure the successful operation of the program.

*SEC. 457. REGULATORY ACTIVITIES.

“(a) NOTICE IN LIEU OF REGULATIONS FOR FIRST YEAR OF PROGRAM.—

“(1) NOTICE IN LIEU OF REGULATIONS FOR FIRST YEAR OF PROGRAM.—The Secretary shall publish in the Federal Register whatever standards, criteria, and procedures, consistent with the provisions of this part, the Secretary, in consultation with members of the higher education community, determines are

reasonable and necessary to the successful implementation of the first year of the direct student loan program authorized by this part. Section 431 of the General Education Provisions Act shall not apply to the publication of such standards, criteria, and procedures.

“(2) NEGOTIATED RULEMAKING.—Beginning with academic year 1995–1996, all standards, criteria, procedures, and regulations implementing this part as amended by the Student Loan Reform Act of 1993 shall, to the extent practicable, be subject to negotiated rulemaking, including all such standards, criteria, procedures, and regulations promulgated from the date of enactment of such Act.

“(b) CLOSING DATE FOR APPLICATIONS FROM INSTITUTIONS.—

The Secretary shall establish a date not later than October 1, 1993, as the closing date for receiving applications from institutions of higher education desiring to participate in the first year of the direct loan program under this part.

“(c) PUBLICATION OF LIST OF PARTICIPATING INSTITUTIONS.—

Not later than January 1, 1994, the Secretary shall publish in the Federal Register a list of the institutions of higher education selected to participate in the first year of the direct loan program under this part.

*SEC. 458. FUNDS FOR ADMINISTRATIVE EXPENSES.

“(a) IN GENERAL.—Each fiscal year, there shall be available to the Secretary of Education from funds available pursuant to section 422(g) and from funds not otherwise appropriated, funds to be obligated for administrative costs under this part, including the costs of the transition from the loan programs under part B to the direct student loan programs under this part (including the costs of annually assessing the program under this part and the progress of the transition) and transition support (including administrative costs) for the expenses of guaranty agencies in servicing outstanding loans in their portfolios and in guaranteeing new loans, not to exceed (from such funds not otherwise appropriated) \$260,000,000 in fiscal year 1994, \$345,000,000 in fiscal year 1995, \$550,000,000 in fiscal year 1996, \$595,000,000 in fiscal year 1997, and \$750,000,000 in fiscal year 1998. If in any fiscal year the Secretary determines that additional funds for administrative expenses are needed as a result of such transition or the expansion of the direct student loan programs under this part, the Secretary is authorized to use funds available under this section for a subsequent fiscal year for such expenses, except that the total expenditures by the Secretary (from such funds not otherwise appropriated) shall not exceed \$2,500,000,000 in fiscal years 1994 through 1998. The Secretary is also authorized to carry over funds available under this section to a subsequent fiscal year.

“(b) AVAILABILITY.—Funds made available under subsection (a) shall remain available until expended.

“(c) BUDGET JUSTIFICATION.—No funds may be expended under this section unless the Secretary includes in the Department of Education's annual budget justification to Congress a detailed description of the specific activities for which the funds made available by this section have been used in the prior and current years (if applicable), the activities and costs planned for the budget year, and the projection of activities and costs for each remaining year

for which administrative expenses under this section are made available.

"(d) NOTIFICATION.—In the event the Secretary finds it necessary to use the authority provided to the Secretary under subsection (a) to draw funds for administrative expenses from a future year's funds, no funds may be expended under this section unless the Secretary immediately notifies the Committees on Appropriations of the Senate and of the House of Representatives, and the Labor and Human Resources Committee of the Senate and the Education and Labor Committee of the House of Representatives, of such action and explain the reasons for such action."

CHAPTER 2—CONFORMING AMENDMENTS TO THE HIGHER EDUCATION ACT OF 1965

SEC. 4041. PRESERVING LOAN ACCESS.

(a) ADVANCES TO GUARANTY AGENCIES FOR LENDER-OF-LAST-RESORT SERVICES.—

(1) AMENDMENT.—Section 428(j) of the Act (20 U.S.C. 1078(j)) is amended by striking paragraph (3) and inserting the following:

"(3) ADVANCES TO GUARANTY AGENCIES FOR LENDER-OF-LAST-RESORT SERVICES DURING TRANSITION TO DIRECT LENDING.—(A) In order to ensure the availability of loan capital during the transition from the Federal Family Education Loan Program under this part to the Federal Direct Student Loan Program under part D of this title, the Secretary is authorized to provide a guaranty agency with additional advance funds in accordance with section 422(c)(7), with such restrictions on the use of such funds as are determined appropriate by the Secretary, in order to ensure that the guaranty agency will make loans as the lender-of-last-resort. Such agency shall make such loans in accordance with this subsection and the requirements of the Secretary.

"(B) Notwithstanding any other provision in this part, a guaranty agency serving as a lender-of-last-resort under this paragraph shall be paid a fee, established by the Secretary, for making such loans in lieu of interest and special allowance subsidies, and shall be required to assign such loans to the Secretary on demand. Upon such assignment, the portion of the advance represented by the loans assigned shall be considered repaid by such guaranty agency."

(2) CONFORMING AMENDMENTS.—

(A) ADVANCES TO GUARANTEE AGENCIES.—Section 422(c)(7) of the Act (20 U.S.C. 1072(c)(7)) is amended by striking all beginning with "to a guaranty agency" through the period and inserting "to a guaranty agency—"

"(A) in accordance with section 428(j), in order to ensure that the guaranty agency shall make loans as the lender-of-last-resort during the transition from the Federal Family Education Loan Program under this part to the Federal Direct Student Loan Program under part D of this title; or

"(B) if the Secretary is seeking to terminate the guaranty agency's agreement, or assuming the guaranty agency's functions, in accordance with section 428(c)(10)(F)(v), in order to assist the agency in meeting its immediate

cash needs, ensure the uninterrupted payment of claims, or ensure that the guaranty agency shall make loans as described in subparagraph (A);"

(B) RULES AND OPERATING PROCEDURES.—Section 428(j)(2) of the Act (20 U.S.C. 1078(j)(2)) is amended—

(i) in subparagraph (A), by inserting before the semicolon at the end the following: "and ensure a response within 60 days after the student's original complete application is filed under this subsection";

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

(iii) by inserting after subparagraph (A) the following new subparagraph:

"(B) consistent with standards established by the Secretary, students applying for loans under this subsection shall not be subject to additional eligibility requirements or requests for additional information beyond what is required under this title in order to receive a loan under this part from an eligible lender, nor be required to receive more than two rejections from eligible lenders in order to obtain a loan under this subsection;"

(b) LENDER REFERRAL SERVICES.—Section 428(e) of the Act (20 U.S.C. 1078(e)) is amended—

(1) in paragraph (1)—

(A) by amending the paragraph heading to read as follows: "IN GENERAL; AGREEMENTS WITH GUARANTY AGENCIES.—";

(B) by inserting the subparagraph designation "(A)" immediately before "The Secretary";

(C) by striking "in any State" and inserting "with which the Secretary has an agreement under subparagraph (B)"; and

(D) by adding at the end the following new subparagraph:

"(B)(i) The Secretary may enter into agreements with guaranty agencies that meet standards established by the Secretary to provide lender referral services in geographic areas specified by the Secretary. Such guaranty agencies shall be paid in accordance with paragraph (3) for such services.

"(ii) The Secretary shall publish in the Federal Register whatever standards, criteria, and procedures, consistent with the provisions of this part and part D of this title, the Secretary determines are reasonable and necessary to provide lender referral services under this subsection and ensure loan access to student and parent borrowers during the transition from the loan programs under this part to the direct student loan programs under part D of this title. Section 431 of the General Education Provisions Act shall not apply to the publication of such standards, criteria, and procedures."

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A), by striking "in a State" and inserting "with which the Secretary has an agreement under paragraph (1)(B)";

(B) by amending subparagraph (A) to read as follows: "(A)(i) such student is either a resident of, or is accepted for enrollment in, or is attending, an eligible

institution located in a geographic area for which the Secretary (I) determines that loans are not available to all eligible students, and (II) has entered into an agreement with a guaranty agency under paragraph (1)(B) to provide lender referral services; and”;

(3) in paragraph (3), by striking “The” and inserting “From funds available for costs of transition under section 458 of the Act, the”; and

(4) by striking paragraph (5).

(c) **LENDER-OF-LAST-RESORT FUNCTIONS OF STUDENT LOAN MARKETING ASSOCIATION.**—Subsection (q) of section 439 of the Act (20 U.S.C. 1087-2(q)) is amended to read as follows:

“(q) **LENDER-OF-LAST-RESORT.**—

“(1) **ACTION AT REQUEST OF SECRETARY.**—(A) Whenever the Secretary determines that eligible borrowers are seeking and are unable to obtain loans under this part, the Association or its designated agent shall, not later than 90 days after the date of enactment of the Student Loan Reform Act of 1993, begin making loans to such eligible borrowers in accordance with this subsection at the request of the Secretary. The Secretary may request that the Association make loans to borrowers within a geographic area or for the benefit of students attending institutions of higher education that certify, in accordance with standards established by the Secretary, that their students are seeking and unable to obtain loans.

“(B) Loans made pursuant to this subsection shall be insurable by the Secretary under section 429 with a certificate of comprehensive insurance coverage provided for under section 429(b)(1) or by a guaranty agency under paragraph (2)(A) of this subsection.

“(2) **ISSUANCE AND COVERAGE OF LOANS.**—(A) Whenever the Secretary, after consultation with, and with the agreement of, representatives of the guaranty agency in a State, or an eligible lender in a State described in section 435(d)(1)(D), determines that a substantial portion of eligible borrowers in such State or within an area of such State are seeking and are unable to obtain loans under this part, the Association or its designated agent shall begin making such loans to borrowers in such State or within an area of such State in accordance with this subsection at the request of the Secretary.

“(B) Loans made pursuant to this subsection shall be insurable by the agency identified in subparagraph (A), having an agreement pursuant to section 428(b). For loans insured by such agency, the agency shall provide the Association, with a certificate of comprehensive insurance coverage, if the Association and the agency have mutually agreed upon a means to determine that the agency has not already guaranteed a loan under this part to a student which would cause a subsequent loan made by the Association to be in violation of any provision under this part.

“(3) **TERMINATION OF LENDING.**—The Association or its designated agent shall cease making loans under this subsection at such time as the Secretary determines that the conditions which caused the implementation of this subsection have ceased to exist.”.

SEC. 4042. GUARANTY AGENCY RESERVES.

Section 422 of the Act (20 U.S.C. 1072) is amended by adding at the end the following new subsection:

“(g) **PRESERVATION AND RECOVERY OF GUARANTY AGENCY RESERVES.**—

“(1) **AUTHORITY TO RECOVER FUNDS.**—Notwithstanding any other provision of law, the reserve funds of the guaranty agencies, and any assets purchased with such reserve funds, regardless of who holds or controls the reserves or assets, shall be considered to be the property of the United States to be used in the operation of the program authorized by this part or the program authorized by part D of this title. However, the Secretary may not require the return of all reserve funds of a guaranty agency to the Secretary unless the Secretary determines that such return is in the best interest of the operation of the program authorized by this part or the program authorized by part D of this title, or to ensure the proper maintenance of such agency's funds or assets or the orderly termination of the guaranty agency's operations and the liquidation of its assets. The reserves shall be maintained by each guaranty agency to pay program expenses and contingent liabilities, as authorized by the Secretary, except that—

“(A) the Secretary may direct a guaranty agency to return to the Secretary a portion of its reserve fund which the Secretary determines is unnecessary to pay the program expenses and contingent liabilities of the guaranty agency;

“(B) the Secretary may direct the 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, which the Secretary determines are necessary to pay the program expenses and contingent liabilities of the guaranty agency, or which are required 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 activities involving expenditure, use or transfer of the guaranty agency's reserve funds or assets which the Secretary determines is a misapplication, misuse, or improper expenditure of such funds or assets; and

“(D) any such determination under subparagraph (A) or (B) shall be based on standards prescribed by regulations that are developed through negotiated rulemaking and that include procedures for administrative due process.

“(2) **TERMINATION PROVISIONS IN CONTRACTS.**—(A) To ensure that the funds and assets of the guaranty agency are preserved, any contract with respect to the administration of a guaranty agency's reserve funds, or the administration of any assets purchased or acquired 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 this subsection 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

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otherwise inconsistent with the terms or purposes of this section.

"(B) The Secretary may direct a guaranty agency to suspend or cease activities under any contract entered into by or on behalf of such agency after January 1, 1993, if the Secretary determines that the misuse or improper expenditure of such guaranty agency's funds or assets or such contract provides unnecessary or improper benefits to such agency's officers or directors.

"(3) PENALTIES.—Violation of any direction issued by the Secretary under this subsection may be subject to the penalties described in section 490 of this Act.

"(4) AVAILABILITY OF FUNDS.—Any funds that are returned or otherwise recovered by the Secretary pursuant to this subsection shall be available for expenditure for expenses pursuant to section 458 of this Act."

SEC. 4043. TERMS OF LOANS.

(a) AMENDMENT.—Section 428 of the Act (20 U.S.C. 1078) is amended—

(1) in subsection (b)(1)(D), by striking "be subject to" through the semicolon and inserting "be subject to income contingent repayment in accordance with subsection (m);"; and
(2) in subsection (m)—

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

"(1) AUTHORITY OF SECRETARY TO REQUIRE.—The Secretary shall require at least 10 percent of the borrowers who have defaulted on loans made under this part that are assigned to the Secretary under subsection (c)(8) to repay those loans under an income contingent repayment plan, the terms and conditions of which shall be established by the Secretary and the same as, or similar to, an income contingent repayment plan established for purposes of part D of this title"; and

(B) by striking paragraphs (2), (3), and (4) and inserting the following new paragraph:

"(2) LOANS FOR WHICH INCOME CONTINGENT REPAYMENT MAY BE REQUIRED.—A loan made under this part may be required to be repaid under this subsection if the note or other evidence of the loan has been assigned to the Secretary pursuant to subsection (c)(8)."

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1994.

SEC. 4044. ASSIGNMENT OF LOANS.

Section 428(c)(8) of the Act (20 U.S.C. 1078(c)(8)) is amended—

(1) in the first sentence, by inserting the subparagraph designation "(A)" before "If the";

(2) by striking the second and third sentences; and

(3) by adding at the end the following new subparagraph:

"(B) An orderly transition from the Federal Family Education Loan Program under this part to the Federal Direct Student Loan Program under part D of this title shall be deemed to be in the Federal fiscal interest, and a guaranty agency shall promptly assign loans to the Secretary under this paragraph upon the Secretary's request."

SEC. 4045. TERMINATION OF GUARANTY AGENCY AGREEMENTS; ASSUMPTION OF GUARANTY AGENCY FUNCTIONS BY THE SECRETARY.

Section 428(c)(10) of the Act is amended—

(1) in subparagraph (C), by inserting ", as appropriate," after "the Secretary shall require";

(2) in subparagraph (D)—

(A) by inserting the clause designation "(i)" before "Each";

(B) by striking "Each" and inserting "If the Secretary is not seeking to terminate the guaranty agency's agreement under subparagraph (E), or assuming the guaranty agency's functions under subparagraph (F), a";

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

"(ii) If the Secretary is seeking to terminate the guaranty agency's agreement under subparagraph (E), or assuming the guaranty agency's functions under subparagraph (F), a management plan described in subparagraph (C) shall include the means by which the Secretary and the guaranty agency shall work together to ensure the orderly termination of the operations, and liquidation of the assets, of the guaranty agency.";

(3) in subparagraph (F)—

(A) in clause (ii), by striking "or" after the semicolon;
(B) in clause (iii), by striking the period and inserting a semicolon; and

(C) by adding at the end the following new clauses:

"(iv) the Secretary determines that such action is necessary to protect the Federal fiscal interest;

"(v) the Secretary determines that such action is necessary to ensure the continued availability of loans to student or parent borrowers; or

"(vi) the Secretary determines that such action is necessary to ensure an orderly transition from the loan programs under this part to the direct student loan programs under part D of this title.";

(4) in subparagraph (F)—

(A) in the matter preceding clause (i), by striking "Except as provided in subparagraph (G), if" and inserting "if";

(B) by amending clause (v) to read as follows:

"(v) provide the guaranty agency with additional advance funds in accordance with section 422(c)(7), with such restrictions on the use of such funds as is determined appropriate by the Secretary, in order to—

"(i) meet the immediate cash needs of the guaranty agency;

"(ii) ensure the uninterrupted payment of claims;

or

"(iii) ensure that the guaranty agency will make loans as the lender-of-last-resort, in accordance with subsection (j)."

(C) in clause (vi)—

(i) by striking "and to avoid" and inserting "to avoid";

(ii) by striking the period and inserting a comma and "and to ensure an orderly transition from the

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loan programs under this part to the direct student loan programs under part D of this title.”; and

(iii) by redesignating such clause as clause (vii); and

(D) by inserting after clause (v) the following new clause:

“(vi) use all funds and assets of the guaranty agency to assist in the activities undertaken in accordance with this subparagraph and take appropriate action to require the return, to the guaranty agency or the Secretary, of any funds or assets provided by the guaranty agency, under contract or otherwise, to any person or organization; or”;

(5) by striking subparagraph (G);

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

(7) by inserting after subparagraph (F) the following new subparagraphs:

“(G) Notwithstanding any other provision of Federal or State law, if the Secretary has terminated or is seeking to terminate a guaranty agency’s agreement under subparagraph (E), or has assumed a guaranty agency’s functions under subparagraph (F)—

“(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 a guaranty agency’s reserve funds, or the administration of any assets purchased or acquired 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 this subparagraph 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.

“(H) Notwithstanding any other provision of law, the Secretary’s liability for any outstanding liabilities of a guaranty agency (other than outstanding student loan guarantees under this part), the functions of which the Secretary has assumed, shall not exceed the fair market value of the reserves of the guaranty agency, minus any necessary liquidation or other administrative costs.”; and

(8) in subparagraph (K) (as redesignated by paragraph (5)), by striking all beginning with “system, together” through the period and inserting “system and the progress of the transition from the loan programs under this part to the direct student loan programs under part D of this title.”.

SEC. 4046. CONSOLIDATION LOANS.

(a) COST SAVINGS FROM CONSOLIDATION LOANS.—Section 428C of the Act (20 U.S.C. 1078-3) is amended—

(1) in subsection (a) by amending paragraph (3)(A) to read as follows:

“(3) DEFINITION OF ELIGIBLE BORROWERS.—(A) For the purpose of this section, the term ‘eligible borrower’ means a borrower who, at the time of application for a consolidation loan is in repayment status, or in a grace period preceding repayment, or is a delinquent or defaulted borrower who will reenter repayment through loan consolidation.”;

(2) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (A)(ii), by inserting “with income-sensitive repayment terms” after “obtain a consolidation loan”;

(ii) by redesignating subparagraph (E) as subparagraph (F); and

(iii) by inserting after subparagraph (D) the following new subparagraph:

“(E) that the lender shall offer an income-sensitive repayment schedule, established by the lender in accordance with the regulations promulgated by the Secretary, to the borrower of any consolidation loan made by the lender on or after July 1, 1994; and”;

(B) in paragraph (4), by amending subparagraph (C) to read as follows:

“(C)(i) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid in accordance with clause (ii), during any period for which the borrower would be eligible for a deferral under section 428(b)(1)(M), and that any such period shall not be included in determining the repayment schedule pursuant to subsection (c)(2) of this section; and

“(ii) provides that interest shall accrue and be paid—

“(I) by the Secretary, in the case of a consolidation loan that consolidated only Federal Stafford Loans for which the student borrower received an interest subsidy under section 428; or

“(II) by the borrower, or capitalized, in the case of a consolidation loan other than a loan described in subclause (I).”;

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

“(5) DIRECT LOANS.—In the event that a borrower is unable to obtain a consolidation loan from a lender with an agreement under subsection (a)(1), or is unable to obtain a consolidation loan with income-sensitive repayment terms acceptable to the borrower from such a lender, the Secretary shall offer any such borrower who applies for it, a direct consolidation loan. Such direct consolidation loan shall, as requested by the borrower, be repaid either pursuant to income contingent repayment under part D of this title or pursuant to any other repayment provision under this section. The Secretary shall not offer such loans if, in the Secretary’s judgment, the Department of Education does not have the necessary origination and servicing arrangements in place for such loans.”; and

(3) in subsection (c)—

(A) in paragraph (1), by amending subparagraphs (B) and (C) to read as follows:

Regulations.

"(B) A consolidation loan made before July 1, 1994, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the greater of—

"(i) the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent;

or

"(ii) 9 percent.

"(C) A consolidation loan made on or after July 1, 1994, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the weighted average of the interest rates on the loans consolidated, rounded upward to the nearest whole percent.";

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) in the matter preceding clause (i), by striking "income sensitive repayment schedules. Such repayment terms" and inserting "income-sensitive repayment schedules, established by the lender in accordance with the regulations of the Secretary. Except as required by such income-sensitive repayment schedules, or by the terms of repayment pursuant to income contingent repayment offered by the Secretary under subsection (b)(5), such repayment terms";

(II) by redesignating clauses (i), (ii), (iii), (iv), and (v) as clauses (ii), (iii), (iv), (v), and (vi), respectively; and

(III) by inserting before clause (ii) (as redesignated by subclause (II)) the following new clause:

"(i) is less than \$7,500, then such consolidation loan shall be repaid in not more than 10 years";

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraph (C) as subparagraph (B); and

(C) in paragraph (3)(B), by inserting "except as required by the terms of repayment pursuant to income contingent repayment offered by the Secretary under subsection (b)(5)," before "the lender".

(b) COHORT DEFAULT RATE CONFORMING AMENDMENTS.—

(1) AMENDMENTS TO DEFINITION.—Section 435(m)(1) of the Act (20 U.S.C. 1085) is amended—

(A) in subparagraph (A), by inserting "(or on the portion of a loan made under section 428C that is used to repay any such loans)" immediately after "on such loans";

(B) in subparagraph (C), by inserting "(or on the portion of a loan made under section 428C that is used to repay any such loans)" immediately after "on such loans"; and

(C) in subparagraph (D)—

(i) by inserting "(or the portion of a loan made under section 428C that is used to repay a loan made under such section)" after "section 428A" the first place it appears; and

(ii) by inserting "(or a loan made under section 428C a portion of which is used to repay a loan made under such section)" after "section 428A" the second place it appears.

(2) CONFORMING AMENDMENT.—Section 428C(a)(3)(B)(ii) of the Act (20 U.S.C. 1078-3(a)(3)(B)(ii)) is amended by striking the second sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1994, except that the amendments made by subsection (a)(2)(B) shall take effect upon enactment.

SEC. 4047. CONSOLIDATION OF PROGRAMS.

(a) IN GENERAL.—Section 428H of the Act (20 U.S.C. 1078-9) is amended—

(1) in the matter preceding paragraph (1) of subsection (b), by inserting "(including graduate and professional students as defined in regulations promulgated by the Secretary)" after "484";

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

"(d) LOAN LIMITS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the annual and aggregate limits for loans under this section shall be the same as those established under section 428(b)(1), less any amount received by such student pursuant to the subsidized loan program established under section 428.

"(2) ANNUAL LIMITS FOR INDEPENDENT, GRADUATE, AND PROFESSIONAL STUDENTS.—The maximum annual amount of loans under this section an independent student (or a student whose parents are unable to borrow under section 428B or the Federal Direct PLUS Loan Program) may borrow in any academic year or its equivalent or in any period of 7 consecutive months, whichever is longer, shall be the amount determined under paragraph (1), plus—

"(A) in the case of such a student attending an eligible institution who has not completed such student's first 2 years of undergraduate study—

"(i) \$4,000, if such student is enrolled in a program whose length is at least one academic year in length (as determined under section 481);

"(ii) \$2,500, if such student is enrolled in a program whose length is less than one academic year, but at least $\frac{3}{4}$ of such an academic year; and

"(iii) \$1,600, if such student is enrolled in a program whose length is less than $\frac{3}{4}$, but at least $\frac{1}{2}$, of such an academic year;

"(B) in the case of such a student attending an eligible institution who has completed the first 2 years of undergraduate study but who has not completed the remainder of a program of undergraduate study—

"(i) \$5,000, if such student is enrolled in a program whose length is at least one academic year in length (as determined under section 481);

"(ii) \$3,325, if such student is enrolled in a program whose length is less than one academic year, but at least $\frac{3}{4}$ of such an academic year; and

"(iii) \$1,675, if such student is enrolled in a program whose length is less than $\frac{3}{4}$, but at least $\frac{1}{2}$, of such an academic year; and

"(C) in the case of such a student who is a graduate or professional student attending an eligible institution, \$10,000.

20 USC 1078-3
note.

20 USC 1073-5.

Regulations.

"(3) AGGREGATE LIMITS FOR INDEPENDENT, GRADUATE, AND PROFESSIONAL STUDENTS.—The maximum aggregate amount of loans under this section a student described in paragraph (2) may borrow shall be the amount described in paragraph (1), adjusted to reflect the increased annual limits described in paragraph (2), as prescribed by the Secretary by regulation," and

(3) in subsection (e), by adding at the end the following new paragraphs:

"(5) AMORTIZATION.—The amount of the periodic payment, and the repayment schedule for any loan made pursuant to this section shall be established by assuming an interest rate equal to the applicable rate of interest at the time the repayment of the principal amount of the loan commences. At the option of the lender, the note or other written evidence of the loan may require that—

"(A) the amount of the periodic payment will be adjusted annually; or

"(B) the period of repayment of principal will be lengthened or shortened,

in order to reflect adjustments in interest rates occurring as a consequence of section 427A(c)(4).

"(6) REPAYMENT PERIOD.—For purposes of calculating the 10-year repayment period under section 428(b)(1)(D), such period shall commence at the time the first payment of principal is due from the borrower."

(b) REPEAL.—Section 428A of the Act is repealed.

(c) TERMS, CONDITIONS AND BENEFITS.—Notwithstanding the amendments made by this section, with respect to loans provided under sections 428A and 428H of the Act (as such sections existed on the date preceding the date of enactment of this Act) the terms, conditions and benefits applicable to such loans under such sections shall continue to apply to such loans after the date of enactment of this Act.

(d) EFFECTIVE DATE.—Except as otherwise provided herein, the amendments made by this section shall take effect on July 1, 1994.

~~Subtitle B—Additional Savings From The Student Loan Programs~~

SEC. 4101. REDUCTION OF BORROWER INTEREST RATES.

Section 427A of the Act (20 U.S.C. 1077a) is amended—

(1) in subsection (c)(4), by adding at the end the following new subparagraph:

"(E) Notwithstanding subparagraphs (A) and (D) for any loan made pursuant to section 428B for which the first disbursement is made on or after July 1, 1994—

"(i) subparagraph (B) shall be applied by substituting "3.1" for "3.25"; and

"(ii) the interest rate shall not exceed 3 percent."

(2) by redesignating subsections (f), (g), and (h) as subsections (i), (j), and (k) respectively;

(3) by adding after subsection (e) the following new subsections:

"(f) INTEREST RATES FOR NEW LOANS AFTER JULY 1, 1994.—

"(1) IN GENERAL.—Notwithstanding subsections (a), (b), (d), and (e) of this section, with respect to any loan made, insured, or guaranteed under this part (other than a loan made pursuant to section 428B or 428C) for which the first disbursement is made on or after July 1, 1994, the applicable rate of interest 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—

"(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

"(B) 3.10 percent,

except that such rate shall not exceed 8.25 percent.

"(2) CONSULTATION.—The Secretary shall determine the applicable rate of interest under paragraph (1) after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

"(g) IN SCHOOL AND GRACE PERIOD RULES.—

"(1) GENERAL RULE.—Notwithstanding the provisions of subsection (f), but subject to subsection (h), with respect to any loan under section 428 or 428H of this part for which the first disbursement is made on or after July 1, 1995, the applicable rate of interest for interest which accrues—

"(A) prior to the beginning of the repayment period of the loan; or

"(B) during the period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 428(b)(1)(M) or 427(a)(2)(C),

shall not exceed the rate determined under paragraph (2).

"(2) RATE DETERMINATION.—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—

"(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction prior to such June 1; plus

"(B) 2.5 percent,

except that such rate shall not exceed 8.25 percent.

"(3) CONSULTATION.—The Secretary shall determine the applicable rate of interest under this subsection after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

"(h) INTEREST RATES FOR NEW LOANS AFTER JULY 1, 1998.—

"(1) IN GENERAL.—Notwithstanding subsections (a), (b), (d), (e), (f), and (g) of this section, with respect to any loan made, insured, or guaranteed under this part (other than a loan made pursuant to sections 428B and 428C) for which the first disbursement is made on or after July 1, 1998, the applicable rate of interest 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—

"(A) the bond equivalent rate of the securities with a comparable maturity as established by the Secretary; plus

"(B) 1.0 percent,

20 USC 1078-1.
20 USC 1078-8
note.

20 USC 1078-8
note.

Federal
Register,
publication.



UNITED STATES DEPARTMENT OF EDUCATION

PUBLIC AFFAIRS

WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

INDIVIDUAL EDUCATION ACCOUNT BACKGROUND INFORMATION

What Is the Individual Education Account?

- On August 10, 1993, President Clinton signed the Student Loan Reform Act, which authorized the implementation of the William D. Ford Federal Direct Loan Program.
- Already, more than 300,000 students have received these new student loans, also known as Individual Education Accounts.
- The Individual Education Account represents a restructuring of the Federal student loan program, providing streamlined procedures for students, parents and schools and saving the American taxpayer \$4.3 billion over a 5-year period. This is the biggest major change in the financial aid program since 1973 when the Pell Grant Program began.
- The program eliminates all of the middlemen in the existing loan system. Loans are made directly by the Federal government to students through their schools rather than through a maze of lenders, guaranty agencies and secondary markets as is currently the case.
- The program provides a mechanism to move quickly and easily to an electronic exchange of information leading to greater efficiencies and enhanced program integrity.
- There are four types of Individual Education Accounts--Direct Stafford Loans, Direct Unsubsidized Loans, Direct PLUS Loans (for parents) and Direct Consolidation Loans. Annually, the interest rate is recomputed for all direct loans. The rate is variable, not to exceed 8.25 percent for student loans and 9 percent for parent loans.
- For 1994-95, the interest rate on student Direct Loans is 7.43 percent; for parent loans it is 8.38 percent. Loan fees are 4 percent, except there is no fee for Direct Consolidation Loans.
- The law required an implementation phase-in: 5 percent of the total loan volume in 1994-95, 40 percent in 1995-96, 50 percent in 1996-97 and 1997-98, and 60 percent in 1998-99. (The percentages for the first two years are limitations; for 1996-97 and beyond, the percentages are goals.)
- 104 schools are participating in the 1994-95 academic year. To date, the Federal government has originated more than \$1.2 billion in student loans to more than 300,000 students at these schools. This makes the Federal government one of the largest lenders in the country.
- The loan program has been successfully implemented by the participating schools with virtually no increase in staff.
- Schools are still being selected for the 1995-96 academic year. It is expected that approximately 1500 schools will participate, accounting for over \$11 billion in new student loan volume.
- The new program addresses the problems of loan defaults by providing better customer service

and offering more flexible and reasonable loan repayment options.

- The Department of Education has used Direct Loans as its own "reinvention lab." The student aid community has been actively involved in all phases of development of software, systems, processes, forms, materials, and formal customer service components.

What Are A Borrower's Repayment Options?

- Under the Individual Education Account, student borrowers have a variety of flexible repayment options available to them: Standard, Extended, Graduated, and Income Contingent. In addition, all student borrowers have the option to prepay their loan without penalty at any time.
- The Standard Repayment Plan requires a borrower to pay the same amount each month (not less than \$50) and repay the loan over 10 years. For many borrowers, especially those with small debt levels, this provides a satisfactory mechanism for repaying their loans.
- The Extended Repayment Plan requires the borrower to make equal monthly payments (less than would be required under the Standard Plan) for a period of time between 12 and 30 years, depending on the amount borrowed. Borrowers who complete their educations with very high student loan debts (\$100,000 or more is typical for medical students, for example) will be able to extend the period of time available for them to repay their loans.
- The Graduated Repayment Plan allows the borrower to make lower payments initially and the payments will increase every two years. The payments can never be less than 50 percent nor more than 150 percent of what they would be under the Standard plan. The repayment period is between 12 and 30 years, depending on the amount borrowed. The Graduated Repayment Plan is available for students who may have a high debt level but who are in jobs where the salary earned in the earlier years is relatively low and will increase as time goes on.
- Under the Income Contingent Repayment Plan, the monthly repayment amount will vary with the borrower's income and the amount of the debt. Borrowers may choose to accept lower-paying public service jobs. The plan also will allow borrowers to adjust their payments to their income while they are launching a new business or working less to focus on family responsibilities or other individual situations.
- Borrowers are free to change their repayment plan to best suit their needs as their financial and personal situations change. However, they should recognize that total payments under these last three plans are likely to be greater than under the Standard Repayment Plan.
- These repayment options will enable borrowers to manage their debt more effectively, thereby significantly reducing the incidence of loan default. Recent studies of student loan defaulters indicate that the vast majority of students default because they are unable to repay their loans on a reasonable schedule of payments. These new loan repayment options allow potential defaulters to select a repayment plan that meets their own personal and financial needs.
- Borrowers will be able to get counseling and assistance in determining the best option for them through the Direct Loan Servicing Center.
- Servicing Center staff also will be able to assist borrowers in applying for deferments and forbearance if they are temporarily unable to make payments on their loans due to unemployment,

economic hardship or other factors that make it impossible for normal payments to be made.

Can Borrowers Consolidate Their Old Loans To Take Advantage of Direct Loan Repayment Options?

- Borrowers who have loans under the FFELP may consolidate these Federal loans through a Direct Consolidation Loan if they are unable to negotiate satisfactory, income-sensitive repayment terms with their current loan servicers. The borrower determines whether or not he or she is satisfied with the repayment terms offered by the loan servicer. The toll free number for loan consolidation information is 1-800-455-5889. For all other information on student financial aid, call 1-800-4FEDAID.
- Borrowers who have Direct Loans and other Federal student loans (such as FFELP, Perkins, and those administered by the Public Health Service) may consolidate all of their loans into a single Individual Education Account, leaving the borrower with only one, affordable payment to make each month.
- Defaulted borrowers may also consolidate their loans and benefit from the Income Contingent Repayment Plan.
- Direct Consolidation Loans are subject to the same terms and conditions as regular Direct Loans; the interest rate for student loans is variable and cannot exceed 8.25 percent and the interest rate for parent loans cannot exceed 9 percent. There are no fees charged.
- Borrowers may consolidate any or all of their student loans and are able to take advantage of the range of repayment options available under Direct Loans.
- There is no minimum or maximum loan amount that can be consolidated through a Direct Consolidation Loan.

THE WHITE HOUSE
OFFICE OF THE PRESS SECRETARY

October 21, 1994

REMARKS BY PRESIDENT CLINTON IN PRESS CONFERENCE

on the

INDIVIDUAL EDUCATION ACCOUNT PROGRAM

THE PRESIDENT: Good afternoon. Ladies and gentlemen, when I became President, I did so with a commitment to help more Americans seek a higher education, because it was important for our people and important for our long-term economy.

A big part of the problem of getting more Americans into college and having them stay there has been the broken federal college loan program. It's too expensive; it did not provide eligibility for too many middle-class people; and there were too many people who didn't go to college or, having gone to college, dropped out, because they never thought they could meet their repayment obligations. There were others who were frustrated because they thought they couldn't take a job they might want because they simply wouldn't earn enough money to meet their repayment obligations.

Today, I want to talk about what we have done to fix that system. We already give Americans looking forward to their retirement the chance to save in what we called an Individual Retirement Account. Now, we offer people at the beginning of their careers the chance to pay for college in what we call Individual Education Accounts. Here's how it works.

The Individual Education Account enables you to borrow money for college and then to determine how best to pay it back in the way that best fits each individual's needs as their work life changes. There will be four ways to repay the accounts, and people will be able to switch back and forth among payment options at any time and at no cost, depending on what's best for them.

Under one option, you can simply pay a fixed amount back on your loan over 10 years. Two other options will permit people with very high debts to spread their repayments over a longer period of time. And as I promised during our campaign, people will be able to pay back their debts as a percentage of their incomes for the life of the loan.

This income contingent repayment, or pay-as-you-can option will give people the chance to start a business, do community service, work as teachers, police officers or in other public service-oriented employment, and make payments in smaller amounts in the early years if their wages are lower.

Our plan eliminates the middle man in the student loan process, who used to impose enormous and inefficient transactions costs and, in so doing, to save \$4.3 billion for U.S. taxpayers and \$1 billion for students in lower loan fees. It means that more people will be able to borrow in a simple, fair and affordable way.

Over the next few years, as part of our larger school reform, named for Congressman Bill Ford, who's retiring this year,

Every American will be eligible for an Individual Education Account. Already, 300,000 students have taken out these new college loans. By next year, 40 percent of all of our colleges, some 1,500 of them, will be enrolled. In January, we'll announce a phased-in plan to allow millions of people who have already borrowed for their educations, to consolidate loans into an individual education account and get the benefits of these new repayment options.

As more and more middle-income Americans will discover, this is a very good deal, which is a very important part of America's long-term strategy for economic health.

Unfortunately, there are those who don't support this approach and want to take us back to the days when working families couldn't afford to send their children to college. Every single one of our political opponents voted against the college loan reform plan. Most of them have now signed a contract telling us what they would do if they controlled Congress. They would give a \$200 billion tax cut to the wealthiest Americans. They would explode the deficit and, to help pay for their promises, they have made a specific pledge to cut the student loan programs for three million American student borrowers every year. Well, our contract is with the future. I don't want to go back, and I don't believe the American people will support this approach.

Ten days ago I got a letter that shows how important this issue is. A 16-year-old boy named Artur Orkisz, who immigrated here from Poland just four years ago, attends Elk Grove School in Des Plaines, Illinois -- here's what he wrote me about his dream of going to college.

"Since I came to the United States my dream has been to attend a school like Harvard or Stanford. I rank number one in my class, but I know for a fact my parents are not going to be able to pay my tuition if I should get accepted to a good university. I'd like to know if students not as rich as others will get the opportunity to fulfill the American Dream and graduate from a great university."

Well, Artur, if you're listening, I got your message and the Individual Education Account will help you get your wish.



UNITED STATES DEPARTMENT OF EDUCATION

PUBLIC AFFAIRS

William D. Ford Federal Direct Loan Program

Individual Education Accounts

The Individual Education Account will make the American dream of an affordable college education a reality for many more young people and their families who thought it was beyond their financial reach.

In the last fifty years, ever since the GI Bill, millions of Americans who never would have gone to college have been given an opportunity to get an advanced education. The creation of the Individual Education Account follows in this tradition of ensuring that every generation of Americans gets the help it needs for a first-rate postsecondary education.

The rising cost of an education in the last decade has led many more Americans to borrow in order to go to college. But many borrowers feel "saddled" with the large "fixed" monthly repayment requirement in the first months and years after they graduate.

The newly-created Individual Education Account, part of the William D. Ford Federal Direct Loan Program proposed by President Clinton and passed by Congress, offers flexibility and security, streamlines the loan process, saves taxpayers money, and gives borrowers more control over their career choices. And, it's family-friendly.

Just like a home mortgage, the program gives borrowers a variety of repayment options designed to fit the individual's financial situation. For example, if students want to pursue a public service career or start a business, the Individual Education Account can help them manage their payments to make these career choices possible.

I. BENEFITS OF THE INDIVIDUAL EDUCATION ACCOUNT:

1. CHOICE AND FLEXIBILITY FOR BORROWERS: The Individual Education Account allows borrowers the choice and flexibility they need to repay their loans in the way that best fits their career paths and individual needs. The Individual Education Account allows students options to pay back their Direct Loans in one of four ways -- and to switch plans throughout their work life as their financial situations change. The four repayment options are as follows:

- **Pay-As-You-Can Plan:** Under this plan, a borrower's monthly payment is based on his or her annual income and loan amount. Since the repayment is a fixed percentage, repayments rise when income goes

up and decline when income decreases.

- **Standard Repayment Plan:** Borrowers can still choose the standard fixed payments over ten years.
- **Extended Repayment Plan:** Under this plan, borrowers can extend their repayments over 12-30 years depending on loan amounts.
- **Graduated Repayment Plan:** Under this plan, borrowers have lower monthly payments initially, with payments increasing every two years over a period of 12-30 years.

2. NEW PAY-AS-YOU-CAN PLAN: During the campaign, the President promised to create a new option to pay back loans either through community service or as a percentage of a borrower's income. Americorps fulfills one-half of this commitment, the Individual Education Account fulfills the other half. The Pay-As-You-Can Plan -- or income-contingent repayment plan -- allows borrowers to take risks and start their own business, accept lower-paying community service jobs, or take time off to care for a child or sick relative. If a borrower does not repay the loan within 25 years, the remaining balance would be forgiven.

3. AFFORDABILITY: The Individual Education Account is part of the William D. Ford Federal Direct Loan Program, passed in the President's economic plan. This program lowered fees and interest rates for all borrowers both with an Individual Education Account and in the traditional student loan programs. Indeed, loan fees have been lowered from as high as 8 percent to 4 percent, saving students more than \$2 billion. The interest rate of the Individual Education Account varies depending on market interest rates. Currently, the rate for student borrowers is 7.43 percent. It can go up or down, but cannot be higher than 8.25 percent. It is estimated that millions of former students currently have student loans with interest rates higher than 7.43 percent or 8.25 percent. These borrowers will have the opportunity to convert or consolidate their loans into Individual Education Accounts.

4. MORE DIRECT AND SIMPLE BORROWING: Borrowers obtain loans directly through schools and deal with only one servicer. The current confusing and costly system of banks, guaranty agencies, secondary markets and loan servicers frequently leaves students adrift in a bewildering sea of red tape. With an Individual Education Account, the borrower receives the loan directly through his or her school and makes one payment to one servicer for all of his or her student loans. And, the borrower receives only one monthly statement.

II. NATIONAL EFFORT TO ENCOURAGE POSTSECONDARY OPPORTUNITIES:

Study after study documents that the ability to seek a postsecondary education is critical to the lifetime earnings and opportunities of Americans. Yet, too few young people do not fully understand their existing opportunities -- no less the new opportunities offered by the William D. Ford Federal Direct Loan Program and the new Individual Education Accounts. As a result, Secretary Richard Riley and Deputy Secretary Madeleine Kunin will lead an effort to promote new postsecondary education opportunities. These efforts will include a 1-800 number; newspaper and television campaigns addressed at young people; and mailings to guidance and financial aid counselors at high schools and postsecondary institutions regarding financing opportunities.

III. HOW DO PEOPLE GET INDIVIDUAL EDUCATION ACCOUNTS?

There are two ways borrowers will be able to get an Individual Education Account. First, they can get a new loan from one of the schools participating in the William D. Ford Federal Direct Loan Program. This year, 104 colleges and schools are participating in the program, and more than 300,000 students are receiving these loans totalling \$1.2 billion. Next year, approximately 1,500 colleges and schools will participate in the Direct Loan Program, amounting to about 40 percent of new student loan volume. Over the next five years, every college and school and over 20 million Americans will have the opportunity to pay back their student loans through an Individual Education Account.

The second way that borrowers can get an Individual Education Account is by converting or consolidating their existing student loans that are in repayment into the new program. The President has asked the Secretary of Education to work with Congress to devise a plan by January 31, 1995 that will ensure that consolidation opportunities are offered in a way that is efficient, manageable, and prudent.

Contact: Kathryn Kahler, 401-3026.

FOR RELEASE: a.m. papers
September 2, 1994

Contact: Stephanie Baby
(202) 401-2311
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Jane Glickman
(202) 401-1307

STUDENT LOAN DEFAULTS DECLINING, RILEY SAYS

The costs associated with defaulted student loans have declined for the third straight year, reducing taxpayers' burden by millions of dollars, U.S. Secretary of Education Richard W. Riley announced today.

National default rates also have dropped substantially, from 22.4 percent in fiscal year 1990 to 15.0 percent in 1992, he said. The FY 1992 default rates are the most current data available and represent a snapshot in time of borrowers scheduled to begin loan payments in FY 1992 and who defaulted in either that year or the following year.

In releasing default rates for each of the 8,504 schools that participate in federal student aid programs, Riley said, "After years of rising defaults, it's going the other way. We can see substantial progress through the cooperative efforts of Congress, schools and the Education Department. Yet, more progress needs to be made."

The U.S. Treasury will pay out an estimated \$2 billion to cover defaulted student loan costs in the current fiscal year (FY 1994). Default costs hit an all-time high of \$3.6 billion in FY 1991, but have dropped steadily each year since.

A substantial increase in collections this year should help reduce costs further, Riley said. In FY 1994, the department will collect more than \$500 million on both old and newly defaulted loans, a 189 percent increase over last year's collections (\$173 million). As a result, the net default costs will be an estimated \$1.41 billion this year.

Increased collections are attributed to more effective collection methods, reflected by indicators such as a four-fold increase in the amount of money collected from federal income tax refunds withheld. This year, the department also began collections on many of the 1 million accounts assumed from the now-defunct Higher Education Assistance Foundation (HEAF), once the largest guarantor of student loans.

Riley attributed the decline in defaults to a number of factors, including tougher oversight and the department's default reduction initiatives. For example, schools are required to discourage defaults through efforts such as providing borrowers with financial counseling. Penalties for default also are tougher.

The department has statutory authority to take sanctions against schools with high default rates; schools have the right to appeal. The Higher Education Amendments of 1992 (P.L. 102-325) mandate that schools with default rates of 25 percent or greater for three consecutive years face loss of eligibility in the Federal Family Education Loan Programs. This year, 447 schools are affected by this

provision. Historically Black Colleges and Universities are exempt from sanctions until July 1998.

In addition, under department regulations, a total of 376 schools with FY 1992 default rates greater than 45 percent, or greater than 40 percent without a reduction of at least 5 percentage points from the previous year, may have their eligibility to participate in all federal student aid programs, including the Federal Pell Grant Program, restricted or terminated.

Riley said President Clinton's direct loan initiative will make it easier for borrowers to avoid default through a range of flexible repayment options, including one based on income. More than 100 schools now offer direct loans, and more than 1,000 additional schools have been accepted into the program for the next academic year.

Defaulters also face serious sanctions. In addition to federal income tax refund offset, they become ineligible for further federal student aid (both loans and grants), risk being denied credit cards or other loans, and may have their wages garnished.





Speeches and Testimony

Contact: Jane Glickman (202)
401-1307
Stephanie Babyak (202) 401-
2311

**Statement by
U.S. Secretary of Education Richard W.
Riley**

**On the Student Loan Default
Rate**

**Washington, D.C.
October 2, 2000**

Today, I have great news for education and great news for America's taxpayers. I am happy to report that for the eighth consecutive year, the student loan cohort default rate has declined, and it is now at its lowest point ever.

The national loan default rate was 6.9 percent for fiscal year 1998, down from 8.8 percent in the previous fiscal year. This new default rate represents the most current data available. It represents the cohort of borrowers whose first loan repayments came due on or after October 1, 1997, and who defaulted before October 1, 1999.

Eight years ago, the default rate hit a peak of 22.4 percent. Every year this administration has held office, the default rate has declined and in this final year of our tenure, the default rate has hit an all-time low. That means that over these eight years, we cut the default rate by more than two-thirds, and that's really something to celebrate.

And that's not all. American taxpayers have saved \$7 billion as a result of the decline in the default rate, another \$7 billion as a result of our default collection efforts, and an additional \$4 billion from reductions in interest rates and fees on direct loans. That adds up to \$18 billion in savings for taxpayers.

I want to point out that amendments to the Higher

Education Act of 1998 changed the way we determine when a borrower is in default. Previously, a borrower who went more than 180 days without a payment was in default. Now, a borrower who goes more than 270 days without a payment is in default. This accounts for about half of the reduction in the default rate. But even if we used the old definition, the default rate would still be at its lowest point ever.

The record low default rate means that the overwhelming majority of students are meeting their responsibilities to repay their loans. And the U. S. Department of Education is meeting its responsibility to be vigilant in our stewardship of the taxpayers' money. We are serious about helping Americans go to college, and we are serious about protecting every precious taxpayer dollar.

A number of factors account for the decline in the default rate:

- o The U. S. Department of Education has helped borrowers to devise workable plans so that they can make their payments and avoid default.
- o The economy is healthy and the unemployment rate is at a 30-year low. That means more people are working and able to pay back their loans.
- o We have not been shy about using the powerful tools authorized by Congress to collect on defaults and remove schools from the program that are not willing to fulfill their responsibilities. In fiscal year 1998, we recovered \$4 billion on defaulted loans, compared with only \$1 billion in fiscal year 1992. And during the Clinton-Gore administration, we have removed over 1,300 schools from the loan programs--850 because of high default rates and 500 due to loss of accreditation or other violations. In fiscal year 1998, only 11 schools were subject to sanctions as a result of high default rates. I guess some folks have gotten our message about being serious.
- o Our partners in the student loan programs--colleges, trade schools, lenders, and guarantors--have also been vigilant in their collections and outreach

- efforts to ensure that borrowers understand and meet their obligation.
- o The Clinton-Gore administration's initiatives to make college more affordable have helped to limit the amount of debt that students have after they graduate and have helped families pay for college. These initiatives include Hope and Lifetime Learning tax credits, more work-study slots, and, if our budget request is met or exceeded by Congress, more than a 50 percent increase in Pell Grants, bringing them to a record high level. Together, these initiatives have helped to lower the default rate while increasing educational opportunities.
 - o Since 1993, we have cut student loan origination fees in half and reduced the interest rates on all student loans. And for students in the direct loan program, we have cut origination fees further. The administration has launched a number of other incentives to lower the cost of borrowing and help students prevent default. These include lower interest rates for direct loan borrowers who repay through electronic debit accounts; rebates for direct loan borrowers who make their loan payments on time; and a discounted interest rate to students who consolidate their loans with the direct lending program and repay on time. Many lenders in the Family Federal Education Loan Program also offer incentives for on-time payments.
 - o Finally, we have given borrowers more repayment options, such as the income-contingent repayment plan, which makes it easier for borrowers to meet their responsibilities.

These are all important improvements, and they are part of the real progress that we are seeing in American education.

SAT math scores have hit a 30-year high. More Americans are going to college than ever before. The highest percentage ever of low-income high school graduates are going to college. There is a surge in college-going among African-Americans,

and more than one-fourth of all students in higher education represent racial and ethnic minorities.

In addition, in 1999 we had the highest percentage of 25-29 year-olds with at least some college, the highest percentage of citizens having completed a bachelor's degree or higher, and the highest percentage of students enrolling in college directly after high school.

The American people have made education their number one priority. Now it is Congress's turn. I call upon the Congress to pass a budget that will fully fund the president's request for GEAR UP to ensure that more young people plan for college, that will reduce class size, hire new teachers, relieve overcrowding in our schools, expand after-school opportunities, and help working families pay for college.

This is an historic moment. We must not lose it.

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Federal Register

Thursday,
February 10, 2000

Part III

Department of Education

Office of Elementary and Secondary
Education—Advanced Placement
Incentive Program; Notice Inviting
Applications for New Awards for Fiscal
Year (FY) 2000; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.330]

Office of Elementary and Secondary Education—Advanced Placement Incentive Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: The Advanced Placement Incentive Program provides grants to States, including consortia of States, to enable them to pay advanced placement test fees on behalf of eligible low-income individuals, and to undertake activities designed to increase the participation of low-income students in advanced placement courses and tests. For FY 2000, we encourage applicants to design projects that meet the invitational priority in the PRIORITIES section of this application notice.

Eligible Applicants: State educational agencies (SEAs) in any State, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Deadline for Transmittal of Applications: March 27, 2000.

Deadline for Intergovernmental Review: April 26, 2000.

Applications Available: February 10, 2000.

Estimated Available Funds: \$15,000,000.

Estimated Range of Awards: \$50,000 to \$1,200,000 per year.

Estimated Average Size of Awards: \$375,000 per year.

Estimated Number of Awards: 40.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Allowable Activities

States receiving grants under this program may use the grant funds to pay part or all of the cost of advanced placement test fees for low-income individuals who (1) are enrolled in an advanced placement class; and (2) plan to take an advanced placement test. In addition, SEAs in States in which no eligible low-income individual is required to pay more than a nominal fee to take advanced placement tests in core subjects may use grant funds for activities directly related to increasing (a) the enrollment of low-income individuals in advanced placement courses; (b) the participation of low-income individuals in advanced

placement tests; and (c) the availability of advanced placement courses in schools serving high-poverty areas (hereinafter referred to as "section 810(d)(1) activities"). Examples of section 810(d)(1) activities may include, but are not limited to, projects that provide student access to advanced placement courses online, and professional development institutes designed to prepare teachers to teach advanced placement courses. An SEA may apply for funds under this program both to assist it in meeting the requirement that no eligible low-income student in the State be required to pay more than a nominal fee to take advanced placement tests in core subjects and for section 810(d)(1) activities.

Priorities

(a) **Absolute Priority.** The Department is establishing an absolute priority for proposals to use grant funds to pay advanced placement test fees on behalf of eligible low-income individuals. We have chosen this priority from the allowable activities specified in the program statute (see 34 CFR 75.105(b)(2)(v) and section 810(a) of Title VIII, Part B of the Higher Education Amendments of 1998 (20 U.S.C. 1070a-11, note)).

To implement this priority, the Department intends to fund, at some level, all applications (1) meeting the minimum REQUIREMENTS FOR APPROVAL OF APPLICATIONS, described in the application package; and (2) proposing to use grant funds for the purpose of paying part or all of the cost of advanced placement test fees on behalf of eligible low-income individuals in the State. For applications that propose to use grant funds to pay advanced placement test fees and to support section 810(d)(1) activities, the section of the application proposing to use grant funds for section 810(d)(1) activities will be evaluated based on the SELECTION CRITERIA described in the application package (see 34 CFR 75.105(c)(3)).

(b) **Invitational Priority.** The Department is particularly interested in applications from consortia, or groups, of States to undertake section 810(d)(1) activities. The consortium may be comprised of SEAs from any combination of States. Under 34 CFR 75.105(c)(1), the Department does not give an application that meets this invitational priority a competitive or absolute preference over applications that do not meet the invitational priority.

Allocation of Funds

The Department intends to allocate approximately \$4 million of the funds available under this program to States for the purpose of paying advanced placement test fees on behalf of eligible low-income individuals. The Department intends to allocate approximately \$11 million to States to support section 810(d)(1) activities. In determining grant award amounts, the Department will consider, among other things, the number of children in the State eligible to be counted under section 1124(c) of the Elementary and Secondary Education Act of 1985, in relation to the number of such children in all States.

Selection Criteria

The Secretary uses the selection criteria published in 34 CFR 75.209 and 75.210 to evaluate the section of the application that proposes to use grant funds to support section 810(d)(1) activities. The application package includes the SELECTION CRITERIA and the points assigned to each criterion.

Applicable Regulations and Statute

The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, 86, and 99, Title VIII, Part B of the Higher Education Amendments of 1998 (1998 Amendments), 20 U.S.C. 1070a-11, note.

The following definitions and other provisions are taken from the Advanced Placement Incentive Program authorizing statute, in Title VIII, Part B of the 1998 Amendments. They are repeated in this application notice for the convenience of the applicant.

Definitions

As used in this section:

(a) The term *advanced placement test* includes only an advanced placement test approved by the Secretary of Education for the purposes of this program.

Note: To date, the Secretary has approved advanced placement tests administered by The College Board and International Baccalaureate Organisation. As part of the grant application process, applicants may request approval of tests from other educational entities that provide comparable programs of rigorous academic courses and testing through which students may earn college credit.

(b) The term *low-income individual* has the meaning given the term in section 402A(g)(2) of the Higher Education Act of 1965 (HEA) (20 U.S.C. 1070a-11(g)(2)).

Note: Under section 402A(g)(2) of the HEA, the term *low-income individual* means an

individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census (20 U.S.C. 1070a-11(g)(2)).

Information Dissemination

The SEA shall disseminate information regarding the availability of test fee payments under this program to eligible individuals through secondary school teachers and guidance counselors (20 U.S.C. 1070a-11, note (b)).

Supplement, Not Supplant, Rule

Funds provided under this program must be used to supplement and not supplant other non-Federal funds that are available to assist low-income individuals in paying advanced placement test fees (20 U.S.C. 1070a-11, note (d)(2)).

For Applications or Information Contact: Frank B. Robinson, U.S. Department of Education, School Improvement Programs, 400 Maryland Avenue, SW., Room 3C153.

Washington, DC 20202-6140.
Telephone (202) 260-2669. Internet address: frank-robinson@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) upon request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 1070a-11, note.

Dated: February 7, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00-3980 Filed 2-9-00; 8:45 am]

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Remarks as prepared for delivery by
U.S. Secretary of Education Richard W. Riley

Annual Back to School Address National Press Club

Washington, D.C.,
September 15, 1998

The Challenge for America: A High Quality Teacher in Every Classroom

Webcast of the Secretary's speech.

Good afternoon. At the beginning of every school year, I have the good fortune to come to the National Press Club to give my "Back to School" address. I have been traveling from Georgia to the Pacific Northwest as part of my annual back to school push, and I can tell you that America's schools are overflowing with children. It is an exciting time for children and parents; but in too many cases our schools are overcrowded, wearing out and in desperate need of modernization.

As I noted in our annual report on the "baby-boom echo" which we released last week, we are once again breaking the national enrollment record. There are currently 52.7 million young people in school and more on the way. And in the next ten years we will need to recruit 2.2 million teachers to teach them.

This is why I believe that the education of our children should be this nation's number one national priority in this time of peace and prosperity. I also believe that this is the patriotic thing to do as well.

Like many of you I had the opportunity to see the movie, "Saving Private Ryan." It is a wonderful movie that acknowledges the sacrifice of a generation of Americans who did their duty in World War II. Tom Hanks plays Captain Miller, an English teacher, who does what he has to do, even at the risk of his own life. I believe that the new patriots of our time will be those Americans, young and old, who go into teaching to educate this generation of children.

And I will tell you this -- as I travel around the country, parents tell

me again and again that they have very clear priorities about what we should be doing here in Washington. They want safe schools, our help in building new schools and modernizing old ones, smaller classes, and the assurance that there is a good teacher in every classroom. This is the nation's business and we need to get on with it.

If Congress is serious about getting dollars to the classrooms, I urge them to enact our legislation to modernize our schools and reduce class size by hiring 100,000 new teachers. Rearranging existing programs, which seems to be the intent of the Congress, does nothing to address the real challenges facing schools today. In addition, Congress should fully fund the President's initiatives in the Appropriations bill that they are now considering.

The focus of my speech is on what we must do to prepare the next generation of teachers and this is why I am releasing a report today entitled, "Promising Practices" which highlights new ways that we can improve teacher quality. This publication was developed following a national search for models of excellence that address the needs at every stage of a teacher's career.

In preparing my remarks I have had the good advice of three members of my staff -- two former National Teachers of the Year -- Terry Dozier and Mary Beth Blögen -- as well as that of Paul Schwarz, the former principal of a nationally recognized high school -- Central Park East in New York City. Like all good teachers Terry, Mary Beth and Paul have clear opinions about how we can improve American education. In other words, they do not mince words. So I won't either.

Missing the Mark in Recruiting New Teachers

I am concerned that we are missing the mark when it comes to preparing the next generation of teachers. We do not seem to recognize the magnitude of the task ahead. In the next ten years, we need to recruit 2.2 million teachers. One-half to two-thirds of these teachers will be first time teachers.

We have more than a million veteran teachers on the verge of retiring. The first chart attached to my speech makes this point very vividly. By my reckoning, we are about five years away from a very dramatic change in our teaching force.

The vast majority of these experienced teachers who are about to retire are women. This, in fact, may be the last generation of women who went into teaching because there were limited opportunities in other fields. In 1998, women have many more career options -- and that is a very good thing for our nation. These new opportunities for women will require us, then, to work

much, much harder to recruit and train a new generation of teachers.

Many people ask me whether we have a teacher shortage. My answer is yes. We face a shortage of high quality teachers. We are already seeing spot shortages developing in specific fields of expertise -- math, science, special education and bilingual education. The recent news that New York City recruited math teachers from Austria highlights this growing dynamic.

School districts usually find a way to put somebody in front of every classroom, and that is the problem. Too many school districts are sacrificing quality for quantity to meet the immediate demand of putting a warm body in front of a classroom. This is a mistake. Even now, too many school districts are issuing emergency licenses.

Many of these emergency teachers are dedicated and want to do their best. But I have heard about and read too many horror stories about provisional teachers who are teaching by the seat of their pants with no preparation and no guidance:

The coming wave of retirements has enormous implications in our continuing effort to raise standards, to develop successful recruitment strategies, and prepare new teachers. We also need to recognize that the teaching profession is dramatically changing -- the use of computers, teaching in teams, and the recognition that children learn in many different ways -- are just three of the many factors reshaping this demanding profession.

Three other dynamics also require our attention: the increasing diversity of our classrooms and the lack of diversity of our teaching force; the increasing number of special education children and Limited English Proficient (LEP) children in the regular classroom and teachers who lack the training to teach them; and the need for many more incentives to keep veteran teachers up-to-date and in the classroom.

What is Wrong with the System

I believe we also need to take a hard look at the very structure of our current teaching system and get on with the task of modernizing it as well. We cannot allow an outdated teaching system to frustrate and even destroy the hopes and dreams of too many teachers.

The task is multi-dimensional. For example, too many teacher education programs are focused on theory and not enough on clinical experience.

Also, the current certification process is a cumbersome obstacle course that has little to do with excellence and much more to do with filling out paperwork.

And once a new teacher enters the classroom we allow a perverse "sink or swim" approach to define the first years in teaching. New teachers are usually assigned the most difficult classes in addition to all the extra-curricular activities that no one else wants to supervise. Then we wonder why we lose 22% of new teachers in the first three years -- and close to 50% in our urban areas.

This churning process and over-reliance on emergency teachers just doesn't cut it in my opinion. Imagine the outcry if a quarter of all new doctors left the profession after their first three years. This is why I encourage local school districts to develop some type of long-term induction or mentoring program to help new teachers stay in the profession.

Creating a National Partnership

Education, as I have said many times before, is a state responsibility, a local function and a national priority. We cannot address the task at hand in a piecemeal fashion. We need a nationwide partnership among K-12 leaders, our higher education community, and political leaders at all levels.

Now a great deal of effort has gone into improving and supporting the teaching profession in the last decade. The National Commission on Teaching led by Governor Jim Hunt of North Carolina and Linda Darling Hammond has provided an excellent "road map" to improve the teaching profession. This is all to the good. But now we need to make things happen and go to a new level of intensity.

And I assure you -- we will place a very strong emphasis on teacher quality when we ask the Congress to reauthorize the Elementary and Secondary Education Act next year. The bipartisan leaders of the Congressional education committee understand that need, and we will be working with them to shape that legislation.

Improving Recruitment

There are other steps we can take now to encourage more Americans to enter the teaching profession.

The Clinton Administration strongly supports the Feinstein-Boxer Amendment to the Higher Education Act that will provide Pell

Grants for a fifth year to those college students who want to become teachers and need another year to meet state fifth year requirements. This is particularly important to the state of California which has the daunting task of recruiting 250,000 teachers in the next decade.

I am pleased that strong support is developing in the Congress for improvements in teacher education and standards. The Administration will continue to press the Congress to pass our proposal to recruit nearly 35,000 teachers over the next five years for underserved areas. As members meet today to advance this higher education legislation, I urge them to support our recruitment proposals.

This important piece of legislation will almost certainly include valuable new teacher loan forgiveness provisions that have been championed by Senator Kennedy.

I also urge Congress to fund the President's initiative to train new teachers in technology.

I support the creation of some type of national job bank to match teachers with districts with a growing shortage of quality teachers. There are wide regional variations in the need for teachers. We can do a lot to help get teachers in different parts of the country matched with school districts in other regions that are facing growing shortages.

At the same time, the increasing mobility of Americans is going to require states and school districts to take a serious look at the portability of teacher credentials, their years in service, and pensions. We do not need artificial shortages developing because states have not brought their policies up-to-date.

Our federal efforts to enlist millions of Americans to go into teaching can have an impact. Our best hope, however, is the strong encouragement of parents and grandparents whose lives have been touched by good teachers. I get distressed when I hear stories about parents discouraging their children from going into teaching. Teaching is about serving your country and being patriotic.

I also challenge the myth that teaching is only for those who can't cut it in other professions. Anyone who has ever spent an hour in a classroom full of demanding second graders or had the challenge of motivating a group of teenagers knows how difficult the job can be.

America's teachers are some of the most idealistic and patriotic Americans in this country. I am extremely proud of them. So many

of them have entered teaching because they want to change the world and many of them do.

What are our other challenges?

Challenges to America's Higher Education Community

I challenge the leaders of America's great colleges and universities to make teacher education a much higher day-to-day priority. Teaching teachers has to be the mission of the entire university. Our nation's colleges of education can no longer be quiet backwaters that get a mere mention in the annual report to university trustees. College administrators who complain about the high cost of remedial classes would do well to pay more attention to how they prepare teachers. Here several suggestions come to mind.

First, colleges of education should give basic skills tests to students entering teacher education programs prior to their acceptance and at the same time hold themselves more accountable for their graduates. This is why I endorse the thrust for accountability by Senator Bingaman and Representative George Miller.

Second, stronger links must be developed between our colleges of arts and sciences and colleges of education. Future teachers should major in the subject they want to teach, and that type of course work takes place in the colleges of arts and sciences.

Third, I urge teacher prep programs to put a much stronger focus on giving future teachers rigorous grounding in developing the skills they need to teach. It is harder than you think. Knowing your content is not enough. There is a skill and a craft to it all, and that is especially true when it comes to teaching reading. This is why I believe that every teacher who is seeking a certificate in elementary education should have solid preparation in reading.

One of the major aspects of the reading bill now up in the Congress is strong support for increased professional development for reading. I support this effort and ask the Congress to pass this needed legislation. We will never raise standards if we just stay with the status quo when it comes to improving literacy.

Fourth, colleges of education need to recognize that our special education and LEP populations are growing and deserve much more of their attention as they prepare teachers.

Finally, I urge colleges and universities to develop much stronger

links with local schools. The El Paso school district, which we feature in our report "Promising Practices," has dramatically improved its test scores by working hand-in-hand with the University of Texas in El Paso to improve teacher education.

Challenges to State Government and Local School Districts

State governments and local school districts have a powerful role to play in reshaping the teaching profession.

This is why I challenge every state to create a demanding but flexible certification process. Becoming a teacher should not be an endurance test that requires future teachers to overcome a bureaucratic maze of hoops and paperwork.

I believe a much stronger focus should be placed on assessing the knowledge and skills of future teachers however they got them. This is why I support rigorous alternative pathways to teaching which can be so helpful in recruiting mid-career professionals to the teaching profession.

I challenge every state to eliminate the practice of granting emergency licenses within the next five years. You cannot set standards and then immediately discard them when the need for another warm body arises. New York State has taken the lead in doing away with emergency licenses and other states should follow this good example.

At the same time, we cannot challenge high poverty schools to raise their standards and then shortchange them by doing nothing to help them recruit the best teachers. This is why we are pushing the Congress to pass our strong teacher recruitment initiative. At the same time, our nation's urban areas have to do their part as well. Outdated hiring practices sometimes seem to be the reason that they are losing good candidates for teaching positions to suburban school districts.

State and local school districts must also end the practice of teaching "out of field." (Over 30% of all math teachers, for example, are now teaching out of field.) I believe that every teacher, at a minimum, should have a minor in the subject that they teach.

I cannot even begin to tell you how baffled foreign education ministers are who visit me when I explain our unusual habit of allowing teachers to teach "out of field."

Incentives for Veteran Teachers

As we seek to raise standards for our students, we need to work much harder at giving veteran teachers the opportunity to keep on learning. Current professional development courses with their emphasis on workshops that put a premium on "seat time" really need to become a thing of the past.

We are developing more and more evidence that school districts that invest in quality professional development for their teachers see positive results in the classroom. The good work of Tony Alvarado in District 2 in New York City, who made sure learning new skills was an everyday experience for his teachers is a wonderful national model.

We need other incentives as well. The current system of providing salary increases for credits earned seems flawed. There is often no connection between the credits earned by a teacher and what he or she actually teaches in the classroom. And, there is little incentive to encourage teachers to gain more knowledge or improve specific skills for their classrooms. Excellence, in a word, is not rewarded.

Only 14 states, for example, currently provide salary supplements to those teachers who set out to become master teachers through the National Board Certification process. As a result many of the best teachers leave the classroom to get a bigger paycheck as a school administrator.

teachers leave the classroom to get a bigger paycheck as a school administrator.

This is why I ask states and local school districts to take a good look at a new and developing concept called "knowledge and skill-based pay." Put simply, teachers are paid extra for new skills and knowledge they acquire. Teachers under this system get rewarded for specific skills and knowledge that help a school reach its own established goals.

Now, a word about teacher salaries. As I have said many times before, we cannot expect to get good teachers on the cheap. Mary Beth Blegen, the national teacher of the year in 1996, was being paid a \$36,000 salary with 30 years of experience -- a fraction of what she deserved -- and what other professionals expect after years in service.

If we are going to entice more Americans to enter teaching we need to offer them fair and competitive salaries. And, if we are going to ask teachers to meet new and demanding standards we also need to pay them for their effort.

States like Connecticut and North Carolina have had the good

sense to raise standards for teachers and raise salaries at the same time. The results in the classroom are promising. I believe every state would be wise to follow their good example.

If we really want to recruit and retain good teachers we need to let them teach in first class school buildings. What kind of message do we send our children and our teachers when we ask them to go to a run down school building just a mile down the road from an immaculate prison? President Clinton has proposed a very strong school construction initiative. Congress needs to get off the dime and pass it.

In this speech, I have challenged many different groups to come forward and join a national partnership for excellence in teaching. It seems appropriate to end my remarks by taking a moment to talk to America's teachers. You are the heart and soul of the renaissance of American education. As I travel throughout the country, I have the opportunity to meet many of you. Each time I am struck by how important, yet how difficult, your job is.

As teachers, you are being asked to know more and do more than ever before. Please continue your good work and go out of your way to recruit new teachers. Let others know the joy you get from teaching. Help the struggling teacher to improve -- and help to counsel out of the profession those who cannot. And make the effort to measure yourselves against the best.

I end now with a quote from an old friend of mine from South Carolina, the writer Pat Conroy. This quote is from his novel *Prince of Tides*. In this passage, Tom, a teacher who is the main character of the book is asked why he chose to "sell himself short" when he was so talented and could have done anything in his life.

Tom's reply goes like this, "There's no word in the language that I revere more than "teacher." None. "My heart sings" he says, "when a kid refers to me as his teacher and it always has. I've honored myself and the entire family of man by becoming a teacher."

With that I thank all teachers on behalf of the American people. Thank you.

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Briefing on the Office for Civil Rights Major Issues
for Secretary Richard W. Riley
January 23, 1993

Introduction - The Office for Civil Rights (OCR) is a law enforcement agency charged with protecting the rights of students to an equal educational opportunity without regard to race, color, national origin, sex, age or disability. In enforcing the laws, OCR investigates discrimination complaints; conducts self-initiated compliance reviews; and provides technical assistance (TA) to help schools and colleges voluntarily comply with the laws and to inform people of their rights. OCR continues to face major challenges in carrying out its important mission.

I. Major Challenges and Opportunities

A. Challenges

1. Complaint Receipts - Discrimination complaints has increased 125 percent since 1987. Last year, 4,432 were filed, the highest in OCR's history, and the caseload shows no signs of abating. We project over 5,500 complaints by 1994. *Most growth in disability but in all areas*
2. Budget - There has been a lack of adequate fiscal and staff resources to keep up with the complaint workload. OCR's staff ceiling remained at 820 from 1987-1991. This resulted in few substantive OCR-initiated compliance reviews and a marked decline in TA.

B. Opportunities

1. NATIONAL ENFORCEMENT STRATEGY - To effectively utilize its ever decreasing discretionary resources, OCR has applied strategic planning to identify priority issues. Thus, self-initiated compliance reviews and TA focus on the NES issues. The selection of the NES issues provide an important opportunity for the Secretary and the Assistant Secretary to further their educational goals and priorities.
2. Educating Limited English Proficient Students - OCR issued an Enforcement Policy Update in September 1991 and the clarification allowed OCR to conduct 28 compliance reviews in 1991 and 1992, and 28 new reviews are planned in 1993. This would account for 30 percent of all 1993 compliance reviews. A model presentation was developed for TA activity; a pamphlet was issued last week and is being reprinted in Spanish. We are conducting one joint compliance review with Justice and are considering others. Possibility for continuing joint efforts is high.
3. Vocational Education - OCR has established a firm basis for a cooperative working relationship for furthering vocational education with each state through agreements, Methods of Administration (MOA). We need to determine whether minority and women and the qualified disabled are able to achieve admittance to technical and industrial education program and to apprenticeship training. Possibility for joint efforts with Labor Department is high. *Real assessment of opportunity in this area.*
4. Racial Harassment and Conflict Resolution - Will discuss further under pending guidance. Opportunity exists to clarify policy on this important issue and to provide leadership in the nation on this growing problem.
5. Sexual Harassment - We are seeing heightened public concern over the extensiveness of this problem. One example is a well publicized complaint against the Eden Prairie Schools (Minn.). The complainant made a recent guest appearance

on the Sally Jessy Raphael talk show. Compliance standards are being drafted for E&S; updated policy is being drafted for PS. Opportunity exists for issuing these documents. *A region II - case very active*

6. Gender Equity - Title IX has helped bring profound changes in American education and improved educational opportunities for millions of female students. Yet, gender equity issues remain. OCR will be offering extensive TA to address underrepresentation of and improve the interest and achievement of female students in math and science. In Intercollegiate Athletics, the NCAA has convened a Task Force, on which OCR is an advisory member, to address the question of what is a fair measurement of gender equity. *20th Anniversary of Title IX would come next*

II. Major Pending Regulations and Policy Guidance

A. Age Regulation - Final regulation transmitted to OMB on December 17, 1992. ED is trying to resolve OMB's concerns; ED also was seeking exception to existing moratorium on Federal regulations since regulation does not impede economic growth. This is now moot since President Clinton has rescinding the order. OCR continues to enforce Age Discrimination Act under the 1979 governmentwide regulation.

B. Race-Based Scholarships - At issue is whether ED should publish policy on student financial aid designated exclusively for members of a particular racial or ethnic group. Proposed policy guidance, issued on December 10, 1991, is viewed by higher education community as restrictive. Citizen's Commission on Civil Rights is urging the President to reverse the proposed policy and return to the former situation. Congress has commissioned a GAO Report on the general topic.

C. Ability Grouping - OCR developed policy guidance because of the large number of racially identifiable classes in school districts nationwide. The issue is sensitive because of the debate within the educational community whether ability grouping is an educationally sound strategy. OCR is reviewing completed compliance reviews to respond to concerns raised by other ED components when reviewing the draft policy.

D. Racial Harassment - Issuance of final guidance was delayed to allow us to review the 1992 Supreme Court decision in R.A.V. v. City of St. Paul and the effect of First Amendment considerations on the draft policy. OCR's draft guidance is not directed at content of speech. OCR currently is negotiating with Centinela Valley School District (in So. Central L.A.), which we found to have subjected students and employees to a racially hostile environment in contravention of Title VI. Continuation of TA promises to help prevent incidents at all school levels. Recently, an anti-racial harassment poster was sent to the 100 largest school districts and a similar poster will be sent to colleges. We have instituted a rapid response system to intervene where major incidents are reported in the press and are implementing a new MOU with DOJ to coordinate voluntary resolution of racial incidents. A TA document is now available to help schools learn of effective programs and strategies to address racial and ethnic conflict and a monograph reporting on a Roundtable OCR hosted for experts in conflict management and prejudice reduction was published on Tuesday, January 19. Opportunity exists to clarify policy.

E. Standards of Review - Higher Education Desegregation - Supreme Court decision in

June 1992 articulated standards for states required to desegregate their higher education systems. Decision will impact on four states that OCR is now evaluating -- Kentucky, Maryland, Pennsylvania, and Texas.

III. Major Legal Actions; High Interest OCR Cases; Grant Cycles

A. Court Actions

1. Podberesky v. Kirwan - The issue is whether ED should participate as an amicus in this case, which concerns whether the University of Maryland can establish Banneker Scholarships restricted to African American students as a valid desegregation measure.
2. Washington Legal Foundation v. Alexander - Appellants sought declaratory judgment that Title VI prohibits recipients from awarding or administering race-exclusive scholarships and an injunction requiring ED to establish a nationwide program to enforce a prohibition against such scholarships. District Court dismissed case and appellants filed appeal. Oral argument was held on December 11, 1992, before U.S. Court of Appeals for the District of Columbia.

B. Administrative Actions

1. Chicago Public Schools - Chicago has failed to meet terms of a stay and a settlement to ensure disabled students are evaluated, properly placed and re-evaluated. The number of unserved students is large and a major proportion are minority students. The stay on the administrative proceedings for fund termination has been lifted. We must decide whether to continue proceeding to fund termination and imposing a deferral on new funds to Chicago.

C. High Interest OCR Cases

1. P.S. 137 (New York City) The issue is whether a classroom for "at-risk" students containing only minority boys is legal. Case is complicated and pending over a year and likely to generate press attention when LOF issued.
2. Equal Opportunity in Postsecondary Admissions - There are 14 pending cases involving affirmative action admissions programs or admissions of Asian Americans. LOF's were issued in compliance review of Harvard, UCLA (Graduate), and UC at Berkeley School of Law (Boalt Hall).

D. Grant Cycles --Magnet Schools - OCR must certify that an applicant has an approved desegregation plan containing an acceptable magnet school component and is likely to carry out the nondiscrimination assurances submitted in its applications. OCR expects to review 130 applicant school districts, which OESE will forward around March 1.

IV. Administrative and Personnel Concerns

A. SES - OCR has the lowest proportion of employees in the GM and SES series; OCR has about 20 percent of Ed employees but has only 3 percent of SES positions (3 SES positions); allocation of SES positions to OCR is inequitable when compared with other ED components.

V. Budget

A. 1993 Budget - \$56.4 million and 867 positions (current FTE - 858)

B. 1994 ED Budget Request - \$66.7 million and 902 positions (35 additional positions).
Proposes an OCR field office in Los Angeles - high number of complaints in Southern California - 70 percent of California's minority students reside in southern California -- desirability of a Federal civil rights presence

B. EEO Complaints - While about 20 percent of ED's total staff, OCR accounts for 40 percent of the EEO cases.

M E M O R A N D U M

Via FAX

January 15, 1993

TO: Governor Richard Riley, through Margaret McKenna
FROM: David S. Tatel *DT*
RE: Office for Civil Rights

The briefing book prepared by the Transition staff identifies the "hot button" civil rights issues that you will face during your first few months in office. This memorandum focuses on longer range civil rights issues that will require your attention and the attention of the Assistant Secretary for Civil Rights. The memorandum is divided into three sections: policy issues; internal OCR management; and inter-governmental relations.

I. POLICY ISSUESA. Higher Education and K-12 Desegregation

As a result of last June's Supreme Court decision in U.S. v. Fordice, OCR will have to review the desegregation status of the higher education systems of Texas, Maryland, Pennsylvania and Kentucky. Other southern states may also have to be reviewed. These reviews will raise extremely difficult and politically sensitive questions, including the future of historically black colleges and universities. The Department of Education has issued no policies interpreting Fordice or indicating how it will be applied.

At the same time, hundreds of school districts throughout the country continue to operate under desegregation plans negotiated by OCR in the 1970's. Most school districts, however, do not know whether they remain subject to such plans or what their obligations are under them, and OCR has provided them with no guidance.

A high priority for OCR should be the development of legally and educationally sound policies to govern the continued desegregation process at both the K-12 and higher education levels. These policies should

- be developed jointly with the Justice Department which has four Fordice cases of its own as well as hundreds of school districts under court order;
- be developed in close consultation with a broad range of civil rights and education organizations. In this regard, the Secretary should consider invoking the Alternative Dispute Resolution Act which authorizes the use of mediation in the development of federal policies and regulations;
- require that K-12 and higher education desegregation plans improve educational opportunities for minority students, as well as promote desegregation. Including educational programs in desegregation plans is well supported in the case law and will enable OCR's desegregation efforts to be linked to the Administration's school reform agenda; and
- in the case of Fordice, explore the possibility of providing financial assistance to help the states comply. The Emergency School Aid Act made such funds available in the 1970's to desegregating school systems, and the argument for post-Fordice higher education funding is just as powerful today.

B. Race-Sensitive Programs

School districts, colleges and universities operate a variety of race-sensitive programs that present difficult constitutional and Title VI issues. Minority scholarships are just one example; there are also affirmative action plans, faculty desegregation programs, magnet schools and majority-minority transfer programs. Recent Supreme Court decisions have altered the legal standards applicable to such programs, but OCR has provided educational institutions with absolutely no guidance. OCR should proceed expeditiously to issue such guidance which should be developed jointly with the Justice Department and in close cooperation with civil rights and education organizations, possibly through the procedures of the Alternative Dispute Resolution Act.

C. Other Policy Issues

Many other Title VI, as well as Title IX and Section 504 issues, apparently remain unresolved by OCR. This is unfortunate because clear policy guidance is critical to the effectiveness of the civil rights statutes enforced by OCR since they depend heavily on voluntary compliance. The Secretary should direct OCR to produce an inventory of unresolved policy issues and a schedule for resolving them in order of priority. This entire process should be undertaken in broad consultation with civil rights groups, education organizations and other relevant federal agencies.

II. OCR MANAGEMENT ISSUES

A. Complaint Processing

1. Timeframes

After the Adams litigation was dismissed in the late 1980's, OCR apparently abandoned the use of timeframes. This is ridiculous; whether the Adams timeframes were the correct ones or not, it makes no sense to run a complaint processing agency without timeframes. The Secretary should direct OCR to develop them expeditiously. Once developed, they should be monitored by the Assistant Secretary for Management; the Secretary needs to be sure that those who believe they have been discriminated against get an expeditious resolution of their complaints and that school districts, colleges and universities are not subjected to endless and unnecessarily expensive investigations. "Justice delayed is Justice denied," and this applies to both the complainant and the education institution.

2. Other Complaint Issues

Other aspects of OCR's complaint processing require careful review to be sure they are cost-effective. For example: is OCR limiting complaint investigations to the issue raised by the complainant and avoiding expanding complaint investigations into compliance reviews (See sub-1 B. below)? Is OCR trying to resolve complaints informally by mediation before initiating investigations?

B. Compliance Reviews

Compliance reviews give OCR the biggest bang for its buck; compliance reviews are much more likely than complaint investigations to uncover violations of civil rights laws. For that reason, the Secretary should review OCR's procedures for selecting compliance reviews to be sure they are targeting the most critical equity issues in education. How, for example, is OCR deciding which issues to review and which institutions to investigate? Are compliance reviews focusing on issues not raised in complaint investigations? Are its decisions supported by careful research, and is it consulting civil rights and education institutions?

At the elementary and secondary level, the Secretary should determine whether the school districts' survey is conducted frequently enough, and whether its sampling techniques are adequate. Does the survey ask the right questions, and is OCR effectively using its results to target issues and identify institutions to be reviewed? Should other surveys be conducted?

C. Other Management Issues that Relate to Both Complaint Processing and Compliance Reviews

1. Is it appropriate for OCR to resolve complaint and compliance review matters after the investigation but before the Letter of Findings is issued? This practice, which was apparently adopted in the 1980's, is controversial.

2. Does OCR have adequate quality control procedures in place? Is it hiring the right people, and is it training them effectively? Does it have procedures to ensure that the results of complaint investigations and compliance reviews are consistent with legal standards?

3. Is OCR doing everything it can to bring about voluntary compliance with the civil rights laws it enforces? Is it, for example, providing technical assistance to recipients of Department funds and does it conduct any public information activities?

4. How is OCR reporting its effectiveness as an agency? Traditionally, it measures its success by how many complaints and compliance reviews it conducts. The agency, however, would be more effective and its political support enhanced if it went beyond these process measures and reported its effectiveness in terms of its accomplishments for victims of discrimination. The Secretary should direct it to develop

internal data collection systems that enable it to report, for example, the number of handicapped children it helped, the extent to which it improved athletic opportunities for girls and women, the number of minority children removed from segregated settings, etc.

III. INTER-GOVERNMENTAL RELATIONS

A. Department of Education

OCR should not be viewed as the only agency within the Department that is responsible for ensuring that recipients of Department funds comply with the civil rights laws. Every Assistant Secretary should be responsible for ensuring civil rights compliance, and the Assistant Secretary for Civil Rights should be responsible for working with the other Assistant Secretaries to develop procedures to correct civil rights problems during the grant-making stage. It is easier and less controversial to correct a civil rights deficiency before a grant is made than to terminate funds later.

B. Other Federal Government Agencies

The Civil Rights Division of the Justice Department has government-wide Title VI coordinating responsibility. Other agencies also have civil rights compliance programs, and several, such as HHS, HUD, Transportation and Labor, fund programs that, if properly coordinated with education and other institutions, can help facilitate civil rights compliance. The Secretary should work with the Secretaries of these other departments to ensure that all relevant civil rights programs are effectively coordinated.

C. State Agencies

All states have civil rights compliance programs, but most are ineffective. OCR should work with the states to help strengthen their civil rights programs and develop incentives to encourage them to do so. Enlisting the aid of the states will greatly enhance the effectiveness of federal civil rights laws because OCR does not and never will have the resources it needs to resolve every complaint of discrimination. Also, resolving civil rights problems at the state level can sometimes be more effective and less controversial than at the federal level.

MEMORANDUM

TO: Governor Riley

FROM: Gordon M. Ambach 

DATE: January 17, 1993

RE: Comment about the Education Department - Office of Civil Rights (OCR) by Cindy Brown, former Director of the Office in the Carter Administration

Attached is a very thoughtful and important set of observations about the OCR by Cindy Brown. Cindy has worked with CCSSO for seven years. She was the second Director of OCR, succeeding David Tatel during the Carter Administration.

I recommend you review Cindy's comments in relation to your plans for the Office and, especially, for your determination on the Assistant Secretary for that office.

cc: Billy Webster
Terry Peterson

Attachment



COUNCIL OF CHIEF STATE SCHOOL OFFICERS

One Massachusetts Avenue, NW, Suite 700, Washington, DC 20001-1431 • 202/408-5505 • FAX 202/408-8072
Resource Center on Educational Equity State Education Assessment Center

MEMORANDUM

TO: Secretary-Designate Richard Riley

FROM: Cynthia G. Brown *Cindy Brown*
Director, Resource Center on Educational Equity
Council of Chief State School Officers

RE: Mission and Operation of the Office for Civil Rights in
the U.S. Department of Education

DATE: January 14, 1993

As you know, the precursor of today's Office for Civil Rights (OCR) was created in 1965 to initiate enforcement of Title VI of the Civil Rights Act of 1964. Its primary work throughout the 1960's was to promote southern desegregation as required by law. By the end of the 1970s, its mission had expanded to the enforcement of laws modeled after Title VI that prohibit discrimination on the basis of gender, disability, and age as well as additional targets of discrimination on the basis of race, color, and national origin.

OCR has a proud history and its actions have resulted in substantially improved education for America's students from preschool through the postsecondary level. But its recent history is shameful. Lack of political will to enforce civil rights laws over the past 12 years is the most visible problem. However, OCR's operational shortcomings also severely undermine its ability to carry out its primary law enforcement mission and to lead in developing an appropriate federal equity agenda for the next century. These shortcomings have roots preceding the Reagan Administration. And many long time civil rights advocates, like myself, must take some responsibility for shaping OCR in a way that has little relevance to the equity challenges faced today by too many of America's young people.

Below is a brief listing and discussion of OCR problem areas and a beginning list of procedural and substantive recommendations for resolving them. As you will see, I believe OCR needs a major overhaul that must be undertaken at a time of increased pressure for quick action on numerous equity grievances that have built up over many years of national inattention. This is a daunting challenge.

President BILL HONIG, California Superintendent of Public Instruction • President Elect ALAN D. MORGAN, New Mexico Superintendent of Public Instruction • Vice President WERNER ROGERS, Georgia Superintendent of Schools • Directors ROBERT E. BARTMAN, Missouri Commissioner of Education • JUDITH A. BILLINGS, Washington Superintendent of Public Instruction • BETTY CASTOR, Florida Commissioner of Education • WILLIAM L. LEPLEY, Iowa Director of Education • HENRY R. MAROCKIE, West Virginia Superintendent of Schools • EUGENE T. PASLOV, Nevada Superintendent of Public Instruction
Executive Director GORDON M. AMBACI

Furthermore, as you well know, there is growing consensus about the national need to address vigorously the well documented, severe, complex, and often seemingly intractable inequities in student outcomes. OCR should play a major role in the Department's strategy to address inequity, at a minimum helping to "level the playing field" so that extra federal and state resources can be truly supplemental for those youngsters with extra educational needs. Finally, OCR should assist in the discussion of equity in all new federal education initiatives, e.g. the development of "delivery standards" and measurement tools.

I would welcome the opportunity to discuss these matters in more detail with you and your staff.

OCR Operational Problems

- 1) Because of its extraordinarily heavy focus on complaint investigations, OCR efforts are directed primarily to middle-income rather than low-income victims of discrimination.

Most of OCR's enforcement activities are in response to written complaints of discrimination. The majority of complaints concern individual victims, and the majority allege discrimination on the basis of disability. Most complaint writers are middle-income people with knowledge of their rights and their children's rights, with sufficient education to compose a letter, with English-speaking and writing ability, and with enough security to risk psychological pressure or possibly overt retaliation.

- 2) OCR virtually ignores, i.e. does not investigate, instances of discrimination that harm large classes or groups of children. Such discrimination has been well documented in the popular media and by researchers. Jonathan Kozol's Savage Inequalities is only the most publicized of numerous reports on education inequities.
- 3) OCR is structurally obsolete, in that it virtually excludes a state role, rather than forming deep (not paper) state partnerships in the achievement of federal equity goals.
- 4) OCR does not provide adequate legal policy guidance to the Department grantees charged with obeying the laws OCR enforces. What little guidance OCR provides is never timely. Guidance is desperately needed, for example, about both postsecondary and elementary and secondary education desegregation requirements under current law.

- 5) OCR fails to engage in regular internal study, policy renewal, research and staff development about national educational goals, strategies, and new understandings about the nature of student learning and school (and other institutional) organization. Deep understanding of these issues is central to the national effort to achieve high educational outcomes for all students -- the crux of equity. OCR historically has had little, if any, voice in the identification and development of federal education goals, objectives, and implementation strategies.
- 6) Despite the constant change in legal rulings and research knowledge directly related to equity issues, OCR has no regular training program for its own employees, let alone other employees of the Department or its grantees, all of whom would gain from training about civil rights responsibilities.
- 7) OCR concentrates on narrow litigation strategies, rather than multi-strategy approaches that use various kinds of technical assistance methods or dispute resolution techniques to encourage voluntary civil rights compliance.
- 8) OCR is charged with responsibilities that overlap with and duplicate other federal agencies inside and outside of the Department of Education.

This is especially common with regard to allegations of discrimination against disabled school children, prohibited under both Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA). There are also duplication issues concerning complaints of employment discrimination.

OCR Improvement Steps

If the Department of Education is to lead in the national effort to provide an equitable education resulting in high-performance outcomes for all students, the role of OCR in contributing to this goal must be totally reconceptualized. A new policy context and administrative framework is needed in the federal effort to enforce civil rights laws.

You and the new Assistant Secretary for Civil Rights should lead the reconceptualization initiative. It should be undertaken through a formal and extensive public discussion among representatives of organizations concerned with protection for victims of discrimination, institutions obligated to comply with civil rights laws, experts from law and educational research, and

other interested parties. Though it will make this effort more difficult, the reconceptualization and change process for OCR will have to occur simultaneously with efforts to reinvigorate its current mission.

Below are my initial additional recommendations for change in OCR.

- 1) OCR needs to systematically identify and examine, with the help of outside experts, the most severe and extensive examples of education inequities in this country, determine its authority to address them (applying new, creative approaches, if necessary), establish priorities among them, and initiate an appropriate enforcement program.
- 2) OCR must establish a first-rate legal policy guidance system, technical assistance program, and staff training operation. The design of the enhanced technical assistance program should be undertaken in conjunction with a department-wide examination and integrated application of equity-related technical assistance programs.
- 3) OCR should establish, on an experimental basis initially, a voluntary federal-state partnership in civil rights enforcement. Elements of this partnership should include:
 - formal agreements to engage in compliance and enforcement activities, including resolution of complaints referred by OCR, that are voluntary, individually tailored, legally binding, and mutually renewable every few years;
 - financial and other incentives that build upon and encourage new state equity programs;
 - strong accountability and quality control measures that assure the civil rights of all individuals and groups are fully protected; and
 - establishment of an OCR state relations unit to work with its regional offices in negotiating, implementing, monitoring, and evaluating the OCR-state agency agreements.
- 4) Through appropriate regulatory action, you should require the Office of Special Education and Rehabilitation Services to accept referrals from OCR of Section 504 complaints that are also complaints under IDEA.

- 5) OCR should concentrate its own investigative activities on areas of serious inequity and cases that are very complex, very expensive to investigate, and/or involve complex legal issues. It should substantially increase the number of OCR-initiated investigations of discrimination against groups of children and other individuals.

I must end with a word about help for poor people. We are a nation that values justice and fairness. Basic fairness requires that all people subject to illegal discrimination have their problems addressed through established enforcement processes. Middle-income as well as low-income people suffer discrimination. But basic fairness also requires that enforcement of anti-discrimination requirements not favor one group -- such as the more knowledgeable, better educated, and fluent English-speaking -- over another. The current OCR operation shows such favoritism and is least helpful to those with the most serious problems. This must change.