2.3

Information Item

Governmental Relations Committee

Federal Legislative Update and Reauthorization of the Higher Education Act

The House Education and the Workforce Committee held sessions (July 20 - 22, 2005)to mark-up its version of the Higher Education Act Reauthorization proposal – the "College Access and Opportunity Act" (HR 609).

On a party-line (27-to-20) vote, the Committee's work culminated with its passage of the bill. A vote by the full House is expected this fall. The Senate Health Education, Labor and Pensions Committee is expected to unveil its version of reauthorization legislation this month.

In addition, Congress continues discussion regarding the President's budget proposal towards reconciliation, other higher education legislation and other non-education bills.

Enclosed is detailed information regarding:

- Bush Administration's Proposals to Revamp the Higher Education Act;
- House Action on the Labor-Health and Human Services (HHS)-Education Appropriations Bill;
- Additional Information Regarding Congressional Action Towards Reauthorization; and
- Impact of Roberts Hearings and Potential Late Session of Congress.

Recommended Action: For information only. No action is required.

Responsible Staff: Janet McDuffie, Acting Chief
Federal Policy and Programs Division

Michael Bolden, Federal Policy Liaison
Federal Policy and Programs Division

FEDERAL LEGISLATIVE UPDATE

The U.S. Congress returned from recess on September 6, 2005. In the latest sign that Republican Congressional leaders have given up on trying to finish business by the beginning of October, Senate Majority Leader Bill Frist (R-TN) announced that the Senate will be in recess from October 9th through 17th, 2005.

With the announcement comes the implication that Congress will likely be in session until the beginning of November and possibly until Thanksgiving.

GENERAL INFORMATION

BUSH ADMINISTRATION SENDS PROPOSALS TO REVAMP HIGHER EDUCATION ACT TO CONGRESS

In June 2005, the Bush administration sent a set of recommendations for revamping the student-aid programs governed by the Higher Education Act to Congress.

The President's proposals called for changes to the federal student-loan programs that, over the next five years, would produce close to $12 billion in savings. Most of those savings would come from cuts in subsidies the government provides to lenders and guaranty agencies that participate in the Federal Family Education Loan (FFEL) Program.

Among the proposals, the Administration recommended that Congress spend nearly $5 billion of the savings to increase the maximum Pell Grant award, currently $4,050, by $100 each year for the next five years.

HOUSE PASSES LABOR-HEALTH AND HUMAN SERVICES (HHS)-EDUCATION APPROPRIATIONS BILL

On June 24, 2005 the House passed a $602 Billion Labor-HHS-Education (HR 3010) federal fiscal year (FFY) 2006 appropriations bill that adds $50 to the maximum Pell Grant award, eliminates a controversial subsidy to some student loan providers, and level funds most higher education programs.

The measure includes $13.38 billion for the Pell Grant program, an increase of $1 billion, or 8.2 percent, over FY 2005 funding. It also provides a $50 increase in the Pell Grant maximum grant to $4,100, half of the amount proposed by the President and recommended in the Congressional Budget Resolution. The bill also includes $4.3 billion to pay off the shortfall in the Pell Grant program.

Funding levels for select higher education programs include:

- Perkins Loan cancellations funded at $66.1 million, but no new capital will be added to the loan fund for the second consecutive year. The President's FY 2006 budget

proposed to eliminate the Perkins program and to recall the federal portion of revolving funds held by participating institutions.

- Supplemental Education Opportunity Grants (SEOG) flat-funded at $778.7 million, the same as in the President's FY 2006 budget.

- Federal Work-Study flat-funded at $990.3 million, the same as in the President's FY 2006 budget.

- TRIO programs flat-funded at $836.5 million. The FY 2006 budget request proposed to cut funding for the programs by $467.2 million or 56 percent from the FY 2005 level.

- Funding for both GEAR UP and Leveraging Educational Assistance Partnership (LEAP) funded at FY 2005 levels, $306.5 million and $65.6 million respectively. President Bush had proposed to eliminate both programs.

- Funding for the Robert C. Byrd Scholarship Program and the Thurgood Marshall Legal Education Opportunity Program eliminated.

Below is a chart depicting the change in appropriation from FFY 2005 in comparison to the President's budgetary proposal and the House FY 2006 mark.

House Appropriations budget provides minimal hike in student financial assistance

The **House Appropriations Committee** approved a budget that provides a slight increase in the maximum Pell Grant and restores several higher education programs **President Bush** had sought to eliminate.

Program	FY05 Enacted	President Bush FY06 Request	House Approp. FY06 Mark	House '06 Mark v. Bush Request
Higher education	$2.12 billion	$1.2 billion	$1.94 billion	+ $734.6 million
Student financial assistance total	$14.26 billion	$15.05 billion	$15.28 billion	+ $232.8 million
Pell Grant maximum	$4,050	$4,150	$4,100	- $50
Pell Grants total	$12.36 billion	$13.2 billion	$13.38 billion	+ $184 million
Enhanced Pell for State scholars	0	$33 million	0	- $33 million
Presidential math and science scholars	0	$50 million	0	- $50 million
Perkins Loans capital contributions	0	0	0	0
Perkins Loans cancellations	$66.13 million	0	$66.13 million	+ $66.13 million
SEOG	$778.7 million	$778.7 million	$778.7 million	0
Federal Work-Study	$990.3 million	$990.3 million	$990.3 million	0
TRIO	$836.5 million	$369.4 million	$836.5 million	+ $467.1 million
GEAR UP	$306.5 million	0	$306.5	+ $306.5 million
LEAP	$65.6 million	0	$65.6 million	+ $65.6 million
Byrd Scholarships	$40.67 million	0	0	0
Thurgood Marshall Legal Opp. Program	$3 million	0	0	0

FEDERAL LEGISLATIVE UPDATE

BUDGET RECONCILIATION AND CONGRESSIONAL ACTION

In late April, Congress approved the FY2006 Budget Resolution that sets government spending and revenue parameters for the congressional committees. These limitations are then incorporated into final appropriations and tax legislation. This year, the budget resolution also requires that the authorizing committees achieve specific amounts of savings, through the process known as "reconciliation." The reconciliation process requires authorizing committees to achieve these savings by making reductions in the mandatory spending programs that are under their jurisdictions, which is likely to significantly impact the federal FFEL and Direct Lending student loan programs.

These budget savings may be achieved by cuts to program funding, by changing the program's parameters, or by revenue raising measures (or a combination of these changes) to programs under each committee's jurisdiction. Committees are free to make whatever changes they wish to make as long as the budgetary savings target number is met. The reconciliation savings must be completed and reported to the appropriate chamber's Budget Committee by the affected authorizing committees by September 16, 2005

According to the FY2006 Budget Resolution (H Con Res 95), Congressional authorizing committees must achieve a total of $12.7 to $13.7 billion in reconciliation savings over the time period of FY2006-2010. At the time of the passage of the Budget Resolution, it was assumed that the committees would develop a savings package of about $7 billion from the student loan programs over that time or about half of the total required savings. It now appears that the prior assumption is incorrect and $11 to $12 billion (in the House) will come from student loan program savings. Currently, it is less clear whether the Senate committee will report approximately $7 billion in student loan savings or a number closer to the House number.

In addition, Congress is currently considering the FY2006 education funding measures (see chart on page 2). Both the House and Senate committee-approved versions of HR 3010—the FY2006 education appropriations bill—would eliminate and shortchange numerous programs at all levels. Both versions cut education funding more than 2 percent below current service levels despite record enrollment growth.

Since Congress returned from summer recess, a task of the full House and Senate will be to complete final work on the FY2006 federal budget.

FEDERAL LEGISLATIVE UPDATE

UPDATE ON REAUTHORIZATION OF THE HIGHER EDUCATION ACT

HOUSE COMMITTEE APPROVES HEA REAUTHORIZATION BILL

Finishing up work on a three-day marathon markup, the House Education and the Workforce Committee approved HR 609 on a party-line vote. While amendments and debate on the first day addressed school issues such as the proposed single definition of an institution of higher education (the impact of the change to a single definition was restricted), the 90/10 rule[1] (which was softened and made applicable to both for-profit and non-profit schools), and sense of Congress language on academic freedom, loan issues took up a good part of the second day.

Among the amendments accepted were:

- An amendment offered by Rep. Petri (R-WI) to permit consolidation borrowers to choose between a variable and fixed interest rate. The variable rate would be the current repayment rate on Stafford loans, while the fixed rate would be the bond equivalent rate of 91-day Treasury bills at the final May auction before the date the application is received by the lender plus 3.3% (capped at 8.25%). In essence, this means that the interest rate spread between the fixed rate and the initial variable rate would be 1%. Rates on both variable and fixed rated loans would be .80% higher if all the loans being consolidated are PLUS loans (and the cap would be 9.0%). In addition, there is provision for a .50% origination fee if the borrower chooses a fixed rate. Representative Miller introduced a second degree amendment, which failed, to reduce to the fixed interest rate by .50%.
- Rep. Petri (R-WI) offered an amendment to increase current lender and guarantor risk sharing by 2%. The proposal includes place-holding language to revise the exceptional performer authorization. There was some discussion about the guarantor risk sharing piece, particularly because Petri acknowledged that this provision does not generate any savings. Chairman Boehner (R-OH) agreed to continue to look at this.
- Rep. Miller (D-CA) introduced a second degree amendment, which was defeated, to increase the risk sharing for both lenders and guaranty agencies by another 1% (as provided in the President's budget).
- Rep. Kildee (D-MI) offered an amendment to further limit and regulate the ability of schools to act as lenders.
- Rep. Robert Menendez (D-NJ) offered an amendment to extend college loan forgiveness to first responders, educators and social workers.
- The School-as-Lender Program (HR 555) was retained, but the House Committee agreed without objection to include an amendment to HR 609 proposed by Rep. Chris Van Hollen (D-MD) and Dale Kildee (D-MI). The most

[1] The 90-10 rule requires for-profit institutions to derive at least 10% of their tuition revenues from non-Title IV sources.

significant provision was that a School-as-Lender school must use any proceeds from special allowance payments and interest payments from borrowers, interest subsidies received from USED, and any proceeds from a sale or other disposition of loans, for need-based grants.

Among the amendments defeated were:

- An amendment offered by Ranking Member George Miller (D-CA) to redirect the bill's $11 billion in savings from deficit reduction under budget reconciliation to increasing the Pell grant by $500 (as provided in the President's budget), providing a 6.8% cap on student loan interest rates and allowing consolidation borrowers to choose between a variable and fixed interest rate.
- Rep. Petri introduced an amendment to reduce guaranty agency collection retention to 16%. Chairman Boehner opposed this amendment, mentioning that this ultimately will be more costly for the government.
- Rep. Van Hollen (D-MD) introduced an amendment to strike the provision in the bill which would require guaranty agencies to charge a 1% guarantee fee.
- Rep. Davis (D-CA) offered an amendment to adjust Direct Loan origination fees so that the fees are not raised (the bill reduces up-front fees in both FFEL and DL in lock step, but prohibits DL from offering repayment incentives before the beginning of the repayment period).
- Rep. Wu (D-OR) offered an amendment permitting current consolidation borrowers to refinance their loans at a variable rate (with a 6.8% cap). Rep. McKeon (R-CA) said reconsolidation is bad public policy.
- Rep. Petri (R-WI) and Rep. Miller (D-CA) offered the Student Aid Rewards (STAR) Act (HR 1425) amendment. The amendment was defeated by a 26 to 20 on a largely party-line vote, with Republicans voting against the measure.

A summary of key provisions included in the House reauthorization bill (HR 609) is provided in Attachment A.

9.5 PERCENT SUBSIDY CLOSED

As part of the $602 billion Labor-HHS-Education appropriations bill, the House agreed to fully and permanently close the loophole for FFY 2006. Rep. Van Hollen (D-MD) introduced an amendment that would prohibit USED from paying student loan lenders a 9.5 percent return on student loans that have been financed with certain tax-exempt bonds.

With interest rates on student loans running at historically low levels, the subsidy has generated as much as $1 billion per year for the lending industry according to Government Accountability Office (GAO) estimates.

Rep. Van Hollen added that the bill will provide funding for students (est. at $13 billion). A recorded vote was taken and the amendment passed by a vote of 224 to 178. More than 40 Republicans voted for the amendment. The bill which passed by a vote of 250-151, provides more than $56.6 billion for USED, the highest level in the agency's history.

FEDERAL LEGISLATIVE UPDATE

STUDENT FINANCIAL AID SIMPLIFICATION

A one-year study mandated by Congress in January 2004, conducted by the Advisory Committee on Student Financial Assistance, has culminated in legislation that would simplify student aid forms and processes for all families if implemented. The Committee's report, *"The Student Aid Gauntlet"* received bipartisan backing from members of the House Committee on Education and the Workforce during its markup of the Higher Education Act. Many of the recommendations in the report were included in an amendment offered by Reps. Howard P. 'Buck' McKeon (R-CA), Tim Ryan (D-OH), and John F. Tierney (D-MA) that was agreed to by a unanimous voice vote.

Congress charged the Advisory Committee to conduct the short-turnaround study to identify ways in the current reauthorization to streamline the financial aid system and make it easier, more responsive, and fairer for students and families. Eight of the report's ten recommendations were cost-neutral, meeting the study's major challenge of identifying improvements that did not require increases in program costs including creating a paper "EZ FAFSA" and expanding eligibility for simplified financial aid forms for low-income students to improve the financial aid process for all families.

The Advisory Committee will continue to provide assistance to Congress as student aid simplification is revisited by the full House during debate on reauthorization this fall. Advisory Committee recommendations have also garnered bipartisan support in the Senate.

SENATE HEALTH, EDUCATION, LABOR AND PENSIONS COMMITTEE COMMITTED TO MOVING PENSION REFORM AND HIGHER EDUCATION BILLS IN EARLY SEPTEMBER

Senator Mike Enzi (R-WY), Chairman of the Senate Health, Education, Labor and Pensions (HELP) Committee and Senator Edward M. Kennedy (D-MA), the Committee's Ranking Member, have indicated that they will be ready to mark up a comprehensive pension system overhaul and a reauthorization of the Higher Education Act this month. During recess (August), both Senators Enzi and Kennedy have listened to stakeholders and completed the hard negotiations that both issues deserve.

The Budget Resolution for Fiscal Year 2006 instructs the HELP Committee to produce savings of $13.6 billion over five years. Senate budget reconciliation procedures will require those savings to come from the pension and higher education bills. Both Senator Enzi and Kennedy have stated that additional spending and deficit reduction data that their staffs review will be important in helping determine the scope of both the pension and higher education proposals.

The objective of both Senators regarding higher education includes ensuring that students have access to an affordable college education by increasing grant aid, supporting quality programs and accountability for results so that higher education leads

to job opportunities after graduation and well into the future. To achieve those goals, Senator Enzi and Kennedy will push to include provisions that will increase high school graduation rates, reduce remedial education at the postsecondary level, increase student retention and completion rates for college students, and reduce barriers to adult worker participation in postsecondary education and training.

Additionally, they will look for ways to increase support for first generation and disadvantaged students to ensure they succeed in college and have the opportunity to obtain graduate degrees and successfully participate in the workforce. Finally, both Senators have agreed to promote math and science education to ensure that the United States remains competitive in the global economy.

IMPACT OF ROBERTS HEARINGS AND POTENTIAL LATE SESSION OF CONGRESS

With the announcement of the President's Supreme Court Judicial nominee comes the implication that Congress will likely be in session until the beginning of November and possibly until Thanksgiving.

When the President nominated John Roberts to the U.S. Supreme Court in July, House Majority Leader Tom DeLay (R-TX) joked that the president "took care of" the projected adjournment date with that move. The Senate Judiciary Committee announced it would begin publicly vetting the nomination of U.S. Circuit Judge John Roberts to be the next member of the Supreme Court this month.

However, Judge Roberts, whom Senate Majority Leader Bill Frist (R-TN) hopes to confirm before the Supreme Court's term begins on Oct. 3, is not the only obstacle preventing the Senate from adjourning by October. While the House passed all 11 of its annual spending bills before the July 4th recess, the Senate still has seven of its 12 spending bills to pass. These must then be reconciled with the House-passed versions before Congress can adjourn for the year.

Because Roberts' nomination will likely take a week or more of Senate floor time during September, government agencies may have to wait well into October, and possibly November before they receive a new cash-flow from appropriations bills.

Though no decision has been made yet on the House's October schedule, the Chamber's leaders are accustomed to the fact that the Senate typically takes much longer to complete its work than the House does, making an October session something of a foregone conclusion.

SUMMARY OF THE COLLEGE ACCESS AND OPPORTUNITY ACT – HR 609

A summary of key items included in the House Committee's reauthorization legislation includes provisions regarding:

Interest Rates

- Retains variable interest rates for Stafford and PLUS Loans after July 1, 2006, based on the same formula used today

Loan Limits

- For new loans made on or after July 1, 2007:
  - Increases 1st year limit from $2,625 to $3,500;
  - Increases 2nd year limit from $3,500 to $4,500;
  - Increases unsubsidized annual limits for graduate borrowers from $10,000 to $12,000; and
  - No change to aggregate limits.

Loan Fees

- Phase down of origination fees in the FFEL Program:
  - 2.0% as of July 1, 2006;
  - 1.5% as of July 1, 2007;
  - 1.0% as of July 1, 2008;
  - 0.5% as of July 1, 2009;
  - 0.0% as of July 1, 2010;
- Institutes mandatory 1% Federal default fee (formerly insurance premium) that must be charged by all guarantors, including those with VFA's;
- Loan fee phase down in the federal DL Program:
  - 3.0% as of July 1, 2006;
  - 2.5% as of July 1, 2007;
  - 2.0% as of July 1, 2008;
  - 1.5% as of July 1, 2009;
  - 1.0% as of July 1, 2010; and
- Prohibits the Secretary from "waiving any amount of the loan fee as part of a repayment incentive" or "providing any repayment incentive before the borrower enters repayment."

Repayment

- Introduces a two-year interest only repayment option;
- Reinstates the three-year deferment option for active military duty;
- Eases burden on borrowers seeking a total and permanent disability charge; and
- Eliminates the three-time rule for graduated repayment plans

Consolidation Loans

- Permits consolidation borrowers to choose between a variable and fixed rate;
- Variable rate – current repayment rate on Stafford Loans;
- Fixed rate – calculated at the 91-day T-bill plus 3.3% (capped at 8.25%) and a .50% fixed rate offset charge;
- Rates on both variable and fixed rate loans would be .80% higher if all loans being consolidated are PLUS Loans (cap would be 9.0%);
- Repeals in-school consolidation;
- Equalizes eligibility requirements for FFEL and DL;
- Repeals single holder rule for applications received on or after July 1, 2006 and adds:
    - Borrower must notify holder, if loans are held by a single holder, if the borrower is seeking to consolidate;
    - Consolidation lender must disclose to the borrower specific consequences of consolidation "with a clear and conspicuous notice";
- Tightens Direct Loan consolidation of FFEL Stafford, PLUS and consolidation loans; and
- Encourages rehabilitation rather than consolidation of defaulted loans:
    - Limits collection charges for guaranty agencies on loans consolidated out of default to 10%, with 8.5% remitted to the Treasury;
    - For rehabilitated loans, guaranty agencies may retain the full 18.5%; and
    - Lowers threshold for loan rehabilitation from 12 to 9 consecutive payments made within 10 months – none of which can be more than 20 days past due.

Risk Sharing

- Reduces insurance payments made to lenders from 98% to 96%;
- Reduces reinsurance payments to guaranty agencies from 95% to 93%;
- Limits Exceptional Performer to servicers that (i) are in top 5% of the industry, and (ii) demonstrate improved performance over the past three years; and
- Qualified Exceptional Performers receive 98% insurance.

9.5% Loans

- Limitations on 9.5% loans passed in the Taxpayer Teacher Protection Act are extended permanently; and
- Repeals ability to bill 9.5% on recycled loans as of October 1, 2005.

Floor Income

- Loans made on or after July 1, 2006, require the return of excess interest when the lender rate is lower than the borrower rate.

School-As-Lender

- Clarifies that School As Lender (SAL) only applies to Stafford and Unsubsidized Stafford Loans (not PLUS) and only to graduate and professional students enrolled at that institution;
- Clarifies that all funds derived from the SAL program must be applied to need-based aid at that institution;
- States that origination fees and/or interest rates offered must be less than that required within the HEA; and
- School lenders must submit contracts for financing, servicing and administration to competitive bidding and must complete an annual compliance audit.

Additional Provisions:

- Increases authorization level for the annual maximum Pell Grant to $6,000;
- Provides year-round Pell Grants to students attending eligible institutions;
- Limits a student's receipt of a Pell Grant to a total of 18 semesters;
- Provides a reallocation formula for campus-based funds;
- Simplifies the financial aid process for needy students and families by expanding eligibility for use of the "simplified needs test";
- Requires that a special effort be made to notify students and parents who qualify for free lunch, food stamps or other means-tested programs of their potential eligibility for a maximum Pell Grant;
- Excludes small business assets from need analysis;
- Institutes a single definition of "institution" for higher education institutions;
- Repeals the 50% rule for distance education;
- Introduces a college cost index;
- Includes provisions on transfer of credit;
- Reinstates waivers of 30-day delayed disbursement for freshmen and multiple disbursement for single academic periods for schools with default rates below 10% for three consecutive years;
- Extends college loan forgiveness to first responders, educators and social workers; and
- Requires lenders to report to all national credit bureaus.