

## **Major provisions on H.R. 3221, the “Student Aid and Fiscal Responsibility Act”**

On July 15<sup>th</sup>, House Education and Labor Committee Chairman George Miller (D-CA) and 22 Democratic co-sponsors introduced the “Student Aid and Fiscal Responsibility Act” (referred herein as “SAFRA”). The Committee says the bill saves \$87 billion over ten years by eliminating the FFEL Program. The bill would spend \$40 billion on an increase in Pell Grants, devote \$10 billion for deficit reduction, and spend the rest on several new higher education and Pre-K-12 programs and on keeping the subsidized Stafford Loan interest rate from rising in 2012.

This summary does not follow the order of the provisions in SAFRA.

The following is a summary of the major provisions on the bill:

### **Federal Perkins Direct Loan Program**

- Section 455A added to Part D (the Direct Loan section) to create a new program called Federal Direct Perkins Loans. The new program replaces the existing Federal Perkins Loan program and is intended to provide a substitute source of funding for students who might otherwise use non-federal student loans to meet educational costs.
- Perkins Loans would not be made after June 30, 2010. Loans made through that date would have current terms and conditions and would retain those terms and conditions until they are repaid.
- Eligible borrowers include graduate and professional students attending eligible institutions.
- The terms and conditions of Federal Direct Unsubsidized Stafford Loans apply to the new Federal Direct Perkins Loans in almost all respects. Thus, all existing loan forgiveness programs in the current Perkins Loan program are ended (but borrowers of new Perkins Loan would have access to all Direct Loan borrower benefits).
- Interest remains at a 5 percent fixed rate, BUT is charged during the in-school and grace periods with an option to make payments or let the interest capitalize.
- The grace period is reduced from nine months to six months.
- Institutions are required to pay “matching funds” in an unspecified amount agreed to by the institution and the Secretary into an escrow account “for the purpose of providing loan benefits to borrowers.”

- Borrowers of Perkins Loans made before July 1, 2010 would have access to the current cancellation benefits for loans borrowed until then.
- Annual and aggregate loans limits are unchanged from the current Perkins Loan program and aggregate limits include loans made under the current Perkins Loan Program.
- A new section 462A is added, entitled “Federal Direct Perkins Allocations,” to allocate funds going forward. This section:
  - Authorizes loan authority not to exceed \$6 billion annually, from funds made available under part D, for Federal Direct Perkins Loans.
    - Directs the Secretary to allocate not more than ½ of funds to the adjusted self-help need amount of the institution as would be calculated for schools in the Perkins Loan program currently; Institutions currently participating in the Perkins Loan Program are guaranteed funds at least equal to the average of their annual loan volume over the past five years.
  - ¼ of the funds would be used as an incentive to discourage net increases in tuition and fees. It would be allocated among institutions whose average tuition and fees, minus average institutional aid/discounts, was less than the average for the institution’s sector. Sectors are the same as those used for current cost comparisons.
  - ¼ of the funds would be allocated to encourage institutions to accept Pell-Grant-eligible students. The allocation would be based on how many Pell Grant recipients an institution graduates relative to all institutions in its sector. A Pell recipient is a student who received a grant any time during their higher education career.
  - Defines average cost of attendance to include tuition and fees, standard living expenses and books and supplies, all of which are defined in this new section.
- Several changes are made to the existing Federal Perkins Loan program. These changes include:
  - Section 463 is amended to permit voluntary assignment of loans to the Secretary and permits the institution to keep its share of the assigned funds.
  - Section 463 is amended to set a new administrative expense of 0.50 percent of the outstanding principal and interest balance of Perkins Loans

made prior to July 1, 2010 that are being serviced by an institution as of September 30 of each fiscal year.

- The authority of institutions to compromise on the repayment of defaulted loans is repealed in its entirety.
- The word “knowingly” is deleted from Section 463(a) -- so that the Department can require assignment of a Perkins Loan if the institution has failed to maintain an acceptable collection record, knowingly or not.
- Section 465 is amended to modify how an institution is reimbursed for cancellations based on public service for loans made before July 1, 2010. The institution will receive the institutional share of the cancelled loan amount from the government.
- Section 466, Distribution of Assets from Student Loan Funds, is rewritten to establish the method for sending repaid loan amounts and any existing revolving fund balances to the Secretary. The institution on a quarterly basis will forward the federal share of its revolving fund to the government, retaining the institutional share, as calculated by the Department. A provision is included to provide that institutions which have made short-term, interest free loans to the institution’s student loan fund prior to enactment of the SAFRA would be eligible for full reimbursement of those amounts.

#### **Termination of FFEL Program and Other Student Loan Program Changes:**

- Prohibition on new FFEL lending after June 30, 2010. This is one month earlier than under President Obama’s proposal.
- The bill includes no specific or guaranteed role for existing FFEL guarantors. These entities are eligible to compete for servicing and are given a preference in securing grants under the College Completion and Innovation Fund (see below).
- SAFRA fixes the FFEL special allowance problem on outstanding loans for quarters beginning on or after January 1, 2010 by permitting lenders the option of “opting-in” to a rate using 30-day LIBOR as an index instead of 90-day Commercial Paper. This is designed to deal with the disruptions that were caused by federal intervention in the commercial paper market in 2008. Lenders opting into the 1-month LIBOR rate must accept 1 month LIBOR for all applicable loans held by the lender (loans disbursed between January 1, 2000 and the date of enactment), directly or as an eligible lender trustee on behalf of another party. Unofficial estimates suggest there are no budgetary costs associated with this change.

- The bill authorizes, but apparently does not require, a new procurement for direct and Perkins loan servicing. Under SAFRA, the Secretary shall, if practicable, award multiple contracts through competitive bidding to entities, including not-for-profit servicers, to service Direct Loans. The bidding process shall take into account price, servicing capacity, and capability, and may also take into account the capacity and capability to provide default aversion services. This provision would appear to allow an opportunity to bid on Direct Loan (including Direct Perkins Loan) servicing contracts if the Secretary proceeds with a new procurement. The language of the bill includes no date for a new RFP to be issued and is silent on the status of the four new Direct Loan servicing contracts just issued by the Department.
- Preferences are granted for “not-for-profit servicers.” Also made eligible to provide services to the Department pursuant to contract are FFEL guaranty agencies, provided such servicers and agencies meet qualifications determined by the Secretary. The legislation directs the Secretary, to the extent practicable, to give “special consideration” to state agencies and not-for-profit servicers with a “history of high quality performance and demonstrated integrity,” but also permits guarantors and not-for-profit servicers to use consortium agreements for such agreements with the Secretary. Thus, entities with no existing servicing platform may get a servicing contract with the Secretary through such an agreement.
- SAFRA appears to award servicing franchises to not-for-profit servicers. In each state where one or more eligible not-for-profit servicer has its principal place of business, the Secretary shall contract with each such servicer to service loans originated under this part on behalf of borrowers attending institutions located within such State, provided that the servicer demonstrates that it meets the standards for servicing Federal assets and agrees to service the loans at a “competitive market rate,” as determined by the Secretary. In determining such a competitive market rate, the Secretary may take into account the volume of loans serviced by the servicer. Contracts awarded under this paragraph shall be subject to the same requirements for quality, performance, and accountability as contracts awarded to other entities for similar activities.
- The Secretary would be required to award to the not-for-profit servicers in each state, on an annual basis, a minimum of the lesser of the loans for 100,000 borrowers or the loans of all borrowers who attended institutions located in the state. If there is more than one eligible not-for-profit servicer in a state, each servicer gets an equal share of the servicing. Under this provision, it is unlikely that the four new Direct Loan servicers will receive any servicing volume from a number of smaller states.
- SAFRA authorizes the Secretary to transfer loans among servicers to ensure that the loans of a single borrower remain with a single servicer. Loan transfer fees are not mentioned.

- Not later than 3 years after enactment, the Secretary shall prepare a report evaluating the performance of not-for-profit servicers.
- An eligible not-for-profit servicer is defined as “a not-for-profit holder defined in section 439(p) of the HEA” or an affiliated not-for-profit entity. The language specifically attempts to preclude a not-for-profit servicer from receiving an award for work to be performed by a for-profit affiliate.
- An amendment being offered in the Committee markup by Chairman Miller will modify the legislation to keep graduate and professional students to receive subsidized Stafford Loans. The original version of the bill ended their eligibility as of July 1, 2015.
- To address the issue of loans made on or after July 1, 2012 (when subsidized Stafford interest rates are scheduled to rise to 6.8 percent), SAFRA sets the interest rate on subsidized Stafford loans made on or after July 1, 2012 at a variable annual rate equal to the 91-day Treasury bill rate determined at the last T-Bill auction in May plus 2.3 percent, capped at 6.8 percent.
- As of July 1, 2010, a FFEL consolidation borrower who does not have a Direct Consolidation Loan may obtain a subsequent Direct Consolidation Loan.
- Because foreign postsecondary institutions do not participate in the Department’s Common Origination and Disbursement (COD) system, Direct loans for students and parents attending such institutions will be disbursed by a US financial institution designated by the Secretary to serve as his agent.

### **Pell Grant Provisions:**

- Unlike in President Obama’s original student loan/Pell Grant proposal, Pell Grants are not made into an entitlement. Under SAFRA, however, the same maximum grant levels as called for by the President are included. The bill specifies that the amount of the Federal Pell Grant available to an eligible student will be the maximum grant award specified in the last appropriated Act. The mandatory funding level under SAFRA is the amount necessary to pay for the difference between the appropriated maximum grant level and \$4860 or the previous year’s appropriated maximum grant, whichever is greater. The mandatory funding levels in the bill are: \$490 for award years 2008-2009 and 2009-2010; and \$690 for the award year 2010-2011.
- SAFRA also adopts the CPI plus one percent automatic indexing as proposed by the President, but does not provide the assurance of entitlement status for the resulting maximum grant award levels. Under the bill, the inflation-adjusted amounts for award year 2011-2012 is \$5,550 or the total maximum Federal Pell Grant (on the mandatory side) for the preceding award year (whichever is greater)

and increased by one percentage point above the estimated percentage change in the Consumer Price Index for award year 2011-2012.

- Pell Grant allocations would continue using this model for award year 2012-2013 and subsequent years.

### **College Completion and Innovation Fund:**

- SAFRA provides \$600 million annually for the period of FY 2010 through 2014 for a “College Completion and Innovation Fund.” The activities and services authorized to be supported under the Fund are not specified but are described as intended to improve college persistence rates.
- For each year, \$300 million of the annual funding shall be used for “State Innovative Completion Grants.” Such grants are to be allocated toward carrying out state innovation and completion grants awarded by the Secretary to states on a competitive basis to promote college persistence and completion.
- Federal funding of grants in this program is limited to 2/3 of the cost of activities and services carried out – a one-third match is required, in other words.
- To receive funds, states must submit an application for each fiscal year for which they want to receive a grant. Provisions of the application include:
  - A requirement that a state agency with jurisdiction over higher education or a related agency designated by the Governor or Chief Executive of the state will administer the grant program and submit an application to the Secretary.
  - Application are to include a description of the state’s plan for using the grant, particularly how the state will make special efforts to provide benefits to students in the state who are from underrepresented groups.
  - Other required provisions include:
    - A description of how the state will provide for the non-federal share of the grant (i.e. from state resources, private contributions or both.)
    - An explanation of the administrative system that the state has in place to administer services or the plans to develop such a system.
    - A description of the data system that the state has or will have in place to measure performance and progress.
  - States must submit an Access and Completion Plan by no later than July 1, 2011 to include various information about annual and long-term goals, information on various postsecondary measures (enrollment, persistence,

completion, etc.) and evidence of targeting education and training programs to address labor market needs of the state, among others.

- SAFRA authorizes subgrants to nonprofit organizations, including FFEL guarantors. Guarantors are specifically authorized to receive funding or partnerships of guarantors to increase persistence in and completion of postsecondary education which may include (1) financial literacy, education and counseling to enrolled students; (2) programs to assist students with reducing the amount of loan debt; (3) making LEAP grants; (4) making SLEAP grants.

### **Community College Initiative:**

- SAFRA adopts President Obama’s recently announced community college initiative in its entirety. The bill creates a new competitive grant program for community colleges to “improve instruction, work with local employers, improve student support services, and implement innovative reforms supportive of producing graduates to help fill local workforce needs.”
- The bill authorizes the Department to make competitive grants to eligible institutions to support workforce programs.
- The bill includes \$2.5 billion in funding for modernization and construction of community college facilities.

### **Other Provisions:**

- The bill includes \$5 billion for modernization, renovation and repair of public and tribally controlled elementary and secondary school facilities.
- The bill includes an “Early Learning Challenge Grant Program” to make competitive grants to States that implement a “standards-based birth-to-five early learning system that will improve early education standards and classroom environments.”
- Historically Black Colleges and Universities and Minority-Serving Institutions are to receive \$1.2 billion in the bill “to provide students with the support they need to stay in school and graduate.”
- The bill provides \$10 billion in “savings” to “help pay down the deficit.”