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The Ensuring Continued Access to Student Loans Act of 2008

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Summary

Federal student loans are made available under two major loan programs authorized under the Higher Education Act (HEA) of 1965, as amended: the Federal Family Education Loan (FFEL) program, authorized by Title IV, Part B, of the HEA; and the William D. Ford Federal Direct Loan (DL) program, authorized by Title IV, Part D, of the HEA. Under the FFEL program, private lenders make loans and the federal government guarantees lenders against loss due to borrower default, death, permanent disability, or, in limited instances, bankruptcy. Under the DL program, the federal government lends directly to students and their families, using federal capital (i.e., funds from the U.S. Treasury). The FFEL program is the successor program to the guaranteed student loan (GSL) program, originally enacted under Title IV, Part B, of the HEA. It is the older and larger of the two major federal student loan programs.

During the first several months of 2008, a number of FFEL program lenders curtailed or ceased their participation in the FFEL program, citing reasons that include difficulties in raising capital through the securitization of student loan debt and reductions in lender subsidies enacted under the College Cost Reduction and Access Act of 2007 (CCRAA; P.L. 110-84). Concerns were raised that if lender participation in the FFEL program decreased substantially or if a substantial portion of lenders ceased lending to students who attend certain institutions of higher education (IHEs), large numbers of students might face difficulty in obtaining FFEL program loans. In addition, concerns were raised about access to borrowing opportunities for students who have come to rely on private (non-federal) student loans because they had exhausted their eligibility for federal student loans.

Legislation pertaining to federal student loans was active in the 110th Congress. On October 27, 2007, the CCRAA was enacted, which made numerous changes to the federal student loan programs. On May 6, 2008, H.R. 5715, the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA; P.L. 110-227) was enacted to grant the Secretary of Education temporary authority, through July 1, 2009, to purchase student loans made under the FFEL program and to make other programmatic changes. On August 14, 2008, the HEA was amended and extended under the Higher Education Opportunity Act (HEOA; P.L. 110-315). The HEOA amended certain provisions that had been enacted under the ECASLA. The temporary authority of the Secretary of Education to purchase FFEL program loans was extended through July 1, 2010, under P.L. 110-350. The Secretary of Education has established several loan purchase programs under the authority granted by the ECASLA, as amended.

This report reviews changes to the federal student loan programs initiated under the ECASLA to address concerns about the continued availability of federal student loans. It will be updated as warranted.

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Background

During the first several months of 2008, a number of lenders curtailed or ceased their participation in the Federal Family Education Loan (FFEL) program, citing reasons that include difficulties in raising capital through the securitization of student loan debt and reductions in lender subsidies enacted under the College Cost Reduction and Access Act of 2007 (CCRAA; P.L. 110-84).[1] Concerns were raised that if lender participation in the FFEL program decreased substantially or if a substantial portion of lenders ceased lending to students who attend certain institutions of higher education, large numbers of students might face difficulty in obtaining FFEL program loans. Concerns were also raised about access to borrowing opportunities for students who have come to rely on private (non-federal) student loans because they have exhausted their eligibility for federal student loans.

Legislation pertaining to federal student loans was active in the 110th Congress. On October 27, 2007, the CCRAA was enacted, which made numerous changes to the federal student loan programs. On April 14, 2008, in response to concerns about the continued availability of FFEL program loans, the House Committee on Education and Labor reported H.R. 5715 (H.Rept. 110-583), the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA). On April 17, 2008, the bill was passed by the House of Representatives. Action on the House bill closely followed introduction of S. 2815, the Strengthening Student Aid for All Act, in the Senate on April 3, 2008. Both bills would amend the HEA to address concerns about the continued availability of federal student loans. On April 30, 2008, the Senate amended and passed H.R. 5715; and on May 1, 2008, the House approved H.R. 5715, as amended and passed by the Senate. On May 7, H.R. 5715 was enacted as P.L. 110-227. The ECASLA grants temporary authority to the Secretary of Education (the Secretary), until July 1, 2009, to purchase student loans previously made under the FFEL program. It also makes other changes to the FFEL, William D. Ford Federal Direct Loan (DL), and American Competitiveness Grant programs (discussed below).

Later in the 110th Congress, the Higher Education Opportunity Act (HEOA; P.L. 110-315) was enacted to amend, extend, and establish new programs under the Higher Education Act.[2] The HEOA includes several amendments to provisions that had been enacted under the ECASLA. Most recently, the temporary authority of the Secretary of Education to purchase FFEL program loans was extended through July 1, 2010, under P.L. 110-350.

Overview of the Federal Student Loan Programs

The federal government operates two major student loan programs: the FFEL program, authorized under Title IV, Part B of the Higher Education Act (HEA), and the DL program, authorized under Title IV, Part D of the HEA.[3] These programs make available loans to

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[1] For a brief overview of amendments to the HEA enacted under the CCRAA, see CRS Report RL34077, *Student Loans, Student Aid, and FY2008 Budget Reconciliation*, by Adam Stoll, David P. Smole, and Charmaine Mercer.

[2] For information on changes made to the HEA by the HEOA, see CRS Report RL34654, *The Higher Education Opportunity Act: Reauthorization of the Higher Education Act*, by David P. Smole et al.

[3] For a more detailed discussion of the terms and conditions of FFEL and DL program loans, see CRS Report R40122, *Federal Student Loans Made Under the Federal Family Education Loan Program and the William D Ford Federal Direct Loan Program: Terms and Conditions for Borrowers*, by David P. Smole. In addition, a third federal student (continued...)

undergraduate, graduate and professional students, and the parents of undergraduate dependent students, to help them finance the costs of postsecondary education. Together, these programs constitute the largest source of direct aid supporting students' postsecondary educational pursuits. In award year (AY) 2008-2009, it is estimated that these programs will provide $72 billion in new loans to students and their parents.

Under the FFEL program, loan capital is provided by private lenders, and the federal government guarantees lenders against loss through borrower default, death, permanent disability, or, in limited instances, bankruptcy. Under the DL program, the federal government provides the loans to students and their families, using federal capital (i.e., funds from the U.S. Treasury). The two programs rely on different sources of capital and different administrative structures, but essentially disburse the same set of loans: Subsidized Stafford Loans and Unsubsidized Stafford Loans for undergraduate, graduate and professional students; PLUS Loans for graduate and professional students and parents of undergraduate dependent students; and Consolidation Loans through which borrowers may combine their federal student loans into a single loan payable over a longer term, which varies according to the combined loan balance.

The loans made through the FFEL and DL programs are low-interest loans, with maximum interest rates for each type of loan established by statute. Subsidized Stafford Loans are need-based loans and are only available to students demonstrating financial need. The Secretary pays the interest that accrues on Subsidized Stafford Loans while borrowers are in school, during a six-month grace period, and during authorized periods of deferment. Unsubsidized Stafford Loans and PLUS Loans are non-need-based loans and are available to borrowers without regard to their financial need. Borrowers are fully responsible for paying the interest that accrues on these loans.

H.R. 5715 and S. 2815

In the 110th Congress, bills were introduced in the Senate (S. 2815) and the House (H.R. 5715) to amend the HEA to ensure the continued availability of federal student loans. These bills were designed to address a separate set of issues than bills that had been passed by the Senate (S. 1642) and the House (H.R. 4137) to reauthorize the HEA. In both S. 2815 and H.R. 5715, a number of amendments would affect loans made under both the FFEL and DL programs, while other amendments would apply only to the FFEL program.

As introduced, both S. 2815 and H.R. 5715 would have amended the HEA to increase borrowing limits for Unsubsidized Stafford Loans; delay the start of repayment for parent borrowers of PLUS Loans; update procedures for ensuring the availability of lender-of-last-resort (LLR) loans under the FFEL program; and authorize the Secretary to purchase loans previously made under the FFEL program. S. 2815 would have also amended the HEA to establish a negative expected family contribution (EFC) for use in need analysis, a change intended to broaden student eligibility for need-based federal student aid. In contrast, H.R. 5715, as introduced in the House, contained language to amend the HEA to extend eligibility to borrow PLUS Loans, under extenuating circumstances, to individuals with adverse credit, if their adverse credit was the result of being no more than 180 days delinquent on home mortgage payments. Finally, H.R. 5715 also

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loan program, the Federal Perkins Loan program, is also authorized under the HEA, at Title IV, Part E. It is beyond the scope of this report.

expressed a sense of Congress that institutions such as the Federal Financing Bank, the Federal Reserve, and Federal Home Loan Banks, in consultation with the Secretaries of Education and the Treasury, should consider using available authorities to assist in ensuring continued access to federal student loans.

The Ensuring Continued Access to Student Loans Act

On May 7, 2008, H.R. 5715, the Ensuring Continued Access to Student Loans Act of 2008, was enacted as P.L. 110-227. It amends the HEA by

- increasing annual and aggregate borrowing limits for Unsubsidized Stafford Loans to undergraduate students;
- delaying the start of repayment for parent borrowers of PLUS Loans;
- extending eligibility for individuals with adverse credit to borrow PLUS Loans, under extenuating circumstances;
- revising procedures for ensuring the availability of lender-of-last-resort (LLR) loans under the FFEL program;
- temporarily authorizing the Secretary to purchase loans previously made under the FFEL program at no net cost to the federal government; and
- expanding eligibility for aid provided through American Competitiveness (AC) Grants and Science and Mathematics Access to Retain Talent (SMART) Grants.

The Ensuring Continued Access to Student Loans Act of 2008 also expresses a sense of Congress that institutions such as the Federal Financing Bank, the Federal Reserve, and Federal Home Loan Banks, in consultation with the Secretaries of Education and the Treasury, should consider using available authorities to assist in ensuring continued access to federal student loans for students and their families; and that any action taken by these entities should not limit the Secretary's authority with regard to the LLR program, nor the Secretary's authority to purchase loans previously made under the FFEL program. The ECASLA also requires the Government Accountability Office (GAO) to evaluate the impact that increases in federal student loan limits may have on tuition, fees, room and board, and on the borrowing of private (non-federal) student loans.

The remainder of this report provides a brief overview of amendments made to the HEA under the Ensuring Continued Access to Student Loans Act of 2008 to address the continued availability of access to federal student loans. The report also identifies instances in which ECASLA amendments were further amended by other laws (e.g., the HEOA).

Increased Borrowing Limits for Unsubsidized Stafford Loans to Undergraduate Students

The amounts students may borrow in need-based Subsidized Stafford Loans and non-need-based Unsubsidized Stafford Loans are constrained by statutory loan limits. One set of limits applies to the annual and aggregate amounts students may borrow in Subsidized Stafford Loans. Another set of limits applies to the total annual and aggregate amounts students my borrow in combined Subsidized Stafford Loans and Unsubsidized Stafford Loans (hereafter, referred to as total Stafford Loans). The terms and conditions for Subsidized Stafford Loans are more favorable to students than for Unsubsidized Stafford Loans. As a form of need-based aid, the eligibility of students to borrow Subsidized Stafford Loans is contingent on their demonstrating financial need. In contrast, students may qualify to borrow Unsubsidized Stafford Loans without regard to their financial need.

Both annual and aggregate loan limits vary by student dependency status and educational level.[4] In any year, a student may borrow Subsidized Stafford Loans in amounts up to the lesser of (a) the applicable annual Subsidized Stafford Loan limits, or (b) the student's unmet financial need. In any year, a student may borrow total Stafford Loans in amounts up to the lesser of (a) the applicable annual total Stafford Loan limits, or (b) the amount remaining after subtracting other financial assistance the student is expected to receive, from the cost of attendance (COA) at the school the student attends. Aggregate loan limits constrain the amounts students may borrow in Subsidized Stafford Loans and total Stafford Loans, overall.

Until the enactment of the ECASLA, the same annual Subsidized Stafford Loan limits and total Stafford Loan limits applied to dependent undergraduate students for each comparable educational level. However, annual total Stafford Loan limits that were higher than annual Subsidized Stafford Loan limits applied to independent undergraduate students, graduate and professional students, and dependent undergraduate students whose parents are unable to obtain PLUS Loans, for each comparable educational level. In most instances, loan limits were established by statute; however, aggregate total Stafford Loan limits for independent undergraduate students, graduate students and professional students had been set by the Secretary according to regulation.

The ECASLA amended annual and aggregate borrowing limits for total Stafford Loans for dependent undergraduate students, independent undergraduate students, and dependent undergraduate students whose parents are unable to obtain a PLUS Loan, effective for loans first disbursed on or after July 1, 2008. Technical changes to these amended loan limits were made under the HEOA.[5] Amended loan limits are presented in **Table 1**.

[4] For purposes of federal student aid, students may be classified as dependent on the financial support of their parents, or independent of parental support. A student meeting at least one of the following conditions is classified as an independent student: is 24 years of age or older by December 31st of the award year; is married; is enrolled in a graduate or professional program; has a dependent other than a spouse; is an orphan or a ward of the court (or the applicant was until age 18); or is a military veteran or active duty service member.

[5] P.L. 110-315, Higher Education Opportunity Act, § 428. These amendments are effective for loans first disbursed on or after July 1, 2008.

Table 1. Undergraduate Annual and Aggregate Stafford Loan Limits, by Student Type and Level: Prior Law and as Amended by the ECASLA and the HEOA

Student Type	Subsidized Stafford ($)	Total Stafford (sub. and unsub.)	
		Prior Law ($)	Current Law[a] ($)
Dependent Undergraduate			
Annual loan limits			
1st year	3,500	3,500	5,500
2nd year	4,500	4,500	6,500
3rd year and above	5,500	5,500	7,500
Preparatory coursework for undergraduate degree or certificate program	2,625	2,625	2,625
Preparatory coursework for graduate or professional program[b]	5,500	5,500	5,500
Teacher certification[b]	5,500	5,500	5,500
Aggregate loan limits[cd]			
In general	23,000	23,000	31,000
Independent Undergraduate[e]			
Annual loan limits			
1st year	3,500	7,500	9,500
2nd year	4,500	8,500	10,500
3rd year and above	5,500	10,500	12,500
Preparatory coursework for undergraduate degree or certificate program	2,625	6,625	8,625
Preparatory coursework for graduate or professional program[b]	5,500	12,500	12,500
Teacher certification[b]	5,500	12,500	12,500
Aggregate loan limits[cd]			
In general	23,000	46,000[f]	57,500[g]

Sources: HEA, §§ 428 and 428H; 34 CFR 682.204; and Department of Education, Office of Postsecondary Education, Dear Colleague Letter GEN-08-08.

a. Effective July 1, 2008.

b. For individuals who have obtained a baccalaureate degree.

c. Accrued interest and other charges that have not been capitalized do not count toward aggregate loan limits.

d. Stafford Loans that have been included in Consolidation Loans are attributed to the aggregate limits for Subsidized Stafford Loans and Total Stafford Loans according to their proportionate amount of the Consolidation Loan.

e. These loan limits also apply to dependent undergraduate students whose parents are unable to obtain PLUS Loans.

f. The statute previously directed the Secretary to prescribe an aggregate loan limit by regulation. The figure shown had been established by regulation.

g. Enacted statutory aggregate loan limit.

In general, effective July 1, 2008, annual total Stafford Loan limits were increased by $2,000 above previously applicable loan limits for undergraduate students enrolled in degree or certificate programs. With this change, annual total Stafford Loan limits were for the first time made greater than the corresponding annual Subsidized Stafford Loan limits for dependent undergraduate students enrolled in degree or certificate programs. Annual total Stafford Loan limits were also increased by $2,000 for independent undergraduate students enrolled in a preparatory coursework necessary for enrollment in an undergraduate degree or certificate program.[6]

Effective July 1, 2008, aggregate total Stafford Loan limits for undergraduate dependent students were increased by $8,000, from $23,000 to $31,000. For independent undergraduate students, and dependent undergraduate students whose parents are unable to obtain a PLUS Loan, the ECASLA established a statutory aggregate total Stafford Loan limit of $57,500, which is an increase of $11,500 above the previously applicable limit of $46,000, which had been specified by regulation.

Finally, the ECASLA requires the Comptroller General to conduct a five-year study to evaluate the impact of increases in federal student loan limits on prices for tuition, fees, room and board; and on the borrowing of private (non-federal) student loans. Interim and follow-up reports on results of the study must be provided to the House Committee on Education and Labor and the Senate Committee on Health, Education, Labor, and Pensions.

Repayment of Parent PLUS Loans

Prior to the enactment of the ECASLA, PLUS Loans made to parents, graduate students, and professional students entered repayment upon the loan being fully disbursed, with repayment commencing within 60 days. (In contrast, Stafford Loans enter repayment the day after six months following the borrower ceasing to be enrolled in school on at least a half-time basis, with the first payment being due within the next 60 days.) Nonetheless, borrowers of PLUS Loans have been eligible to defer repayment of their loans for a variety of reasons, to include while they are enrolled in school.[7] However, deferments have not been available to parent borrowers of PLUS Loans for the period while the dependent student on whose behalf the loan was made is enrolled in school.

The ECASLA amended the HEA to permit borrowers of parent PLUS Loans to extend the period between disbursement and the commencement of repayment. Effective July 1, 2008, parent borrowers of PLUS Loans were granted the option of delaying the commencement of repayment until six months after the date the dependent student on whose behalf the PLUS Loan was made ceases to carry at least a half-time workload. (In accordance with this amendment, deferments

[6] For information on the Department of Education's implementation of provisions enacted under P.L. 110-237, including changes to loan limits, see Department of Education, Office of Postsecondary Education, Dear Colleague Letter GEN-08-08, "The Ensuring Continued Access to Student Loans Act of 2008," June 18, 2008, at http://www.ifap.ed.gov/dpcletters/061908GEN0808.html; hereafter referred to as ED, Dear Colleague Letter GEN-08-08.

[7] For some borrowers of PLUS Loans, in-school deferments may be processed upon the lender's receipt of information confirming the borrower's enrollment status, while a deferment request with supporting documentation may be required for other borrowers. See for example, Department of Education, Direct Loan Bulletin, DLB-07-03, "In-School Deferments for Graduate/Professional Student Direct PLUS Loan Borrowers," March 5, 2007, at http://www.ifap.ed.gov/dlbulletins/0305DLB0703.html, visited April 14, 2008.

would remain available only during periods when the borrower, as opposed to the student on whose behalf the loan was made, meets the conditions required to qualify.) Under the HEOA, the terms and conditions of PLUS Loans were further amended to permit parent borrowers to request a deferment for any period during which the student on whose behalf the loan was borrowed would qualify for a deferment. This change applies to loans for which the first disbursement is made on or after July 1, 2008.

Interest begins accruing on PLUS Loans when the loan is first disbursed. Parent borrowers who delay the commencement of repayment have the option of paying the interest as it accrues or having accrued interest capitalized (i.e., added to the principal balance of the loan) no more frequently than quarterly. Failure to pay the interest as it accrues may increase the principal balance of a loan above the amount initially borrowed.

Extenuating Circumstances for Individuals with Adverse Credit to Borrow PLUS Loans

To be eligible to borrow PLUS Loans, individuals may not have an adverse credit history, as determined pursuant to regulations promulgated by the Department of Education (ED). Under regulations promulgated by ED prior to the enactment of the ECASLA, lenders were required to obtain at least one credit report on all applicants for PLUS Loans; and unless extenuating circumstances existed, lenders were required to consider an applicant to have an adverse credit history if the applicant was 90 days or more delinquent on a debt payment; or if, within the past five years, the applicant "has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a Title IV debt."[8] Regulations have also required lenders to retain a record of the basis for determining that extenuating circumstances existed for any borrower, such as an updated credit report, or documentation from the creditor that the borrower has made satisfactory arrangements to repay the debt.[9]

The ECASLA amended the HEA to specify certain extenuating circumstances under which eligible lenders may extend PLUS Loans to individuals who otherwise would have been determined to have adverse credit histories. This amendment permitted eligible lenders to determine that extenuating circumstances existed, if during the period from January 1, 2007, through December 31, 2009, an applicant was no more than 180 days delinquent on mortgage payments for a primary residence or medical bill payments; or if an applicant was no more than 89 days delinquent on any other debt payments. The HEOA further amended this provision, effective July 1, 2008, to specify that extenuating circumstances exist only if an applicant is no more than 180 days delinquent on mortgage payments for a primary residence or medical bills.

Lender-of-Last-Resort Loans

Eligible borrowers have long been regarded as having an entitlement to obtain Stafford Loans; although they have not been regarded as having an entitlement to borrow PLUS Loans due to the

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[8] 34 C.F.R. 682.201(c)(2)(ii) and 685.200(c)(2)(vii).

[9] 34 C.F.R. 682.201(c)(2)(v).

requirement to be credit-worthy.[10] State guaranty agencies must establish lender-of-last-resort programs through which loans must be made available to eligible students who are otherwise unable to obtain them from an eligible lender.[11] In general, students become eligible to borrow LLR loans upon their receipt of no more than two rejected loan applications from eligible lenders. Students applying for LLR loans must not be subject to any additional eligibility requirements beyond what is otherwise required under the FFEL program and must receive a response from the LLR lender within 60 days of filing an application.

A guaranty agency may designate an eligible lender as an LLR lender; or the guaranty agency itself may function as the lender-of-last-resort. An eligible lender serving as an LLR lender makes loans in the same manner it makes other FFEL program loans, using private capital. As an incentive for lenders to make LLR loans, the lender insurance percentage in the case of borrower default is 100% on LLR loans, as opposed to 97% in the case of other loans. A guaranty agency serving as an LLR lender may also make LLR loans using its available funds.

If a guaranty agency becomes unable to ensure that LLR loans are made available to eligible students—either by an LLR lender, or by making the loans itself—the HEA provides the Secretary with authority to take a range of actions to restore the availability of LLR loans. Prior to the enactment of the ECASLA, the HEA authorized the Secretary to make emergency advances of federal funds to guaranty agencies for purposes of making available LLR loans, if the Secretary determined that (a) borrowers eligible for Subsidized Stafford Loans were unable to obtain such loans; (b) that the guaranty agency had the capability to provide LLR loans, but could not do so without an advance of federal capital; and (c) that it would be cost-effective to advance such funds. The HEA also specified that the Secretary was authorized to make emergency advances of federal capital funds to another guaranty agency for purposes of making LLR loans, if the Secretary determined that the designated guaranty agency for a state did not have the capacity to make available LLR loans. However, while the statute authorized the Secretary to advance funds to guaranty agencies for purposes of making LLR loans, it did not clearly provide, nor identify, a source of funds for the Secretary to draw upon to make such advances. This ambiguity in the statute led to deliberation over the extent of the Secretary's authority to advance funds to guaranty agencies for purposes of making LLR loans.[12]

Under the ECASLA, several amendments were made to the LLR program. These are briefly described below.

Student Eligibility for LLR Loans

Previously, the HEA specified that guaranty agencies had an obligation to ensure that LLR loans would be made available to students eligible to borrow Subsidized Stafford Loans, but who were unable to obtain them. In accordance with Department of Education regulations implementing the LLR program, a lender-of-last-resort would be required to make Subsidized Stafford Loans and

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[10] Students and parents must be afforded the opportunity to request a loan from any lender that is eligible to make loans under the program; however, lenders are not required to make loans universally available, nor to serve students attending all institutions.

[11] Guaranty agencies are state or non-profit entities that administer the federal loan guaranty and perform additional administrative tasks in operation of the FFEL program.

[12] See for example, Paul Basken, "Spellings Sees Administration as Still Sorting Out Its Authority on Lender-of-Last-Resort Issue," *The Chronicle of Higher Education*, April 14, 2008.

Unsubsidized Stafford Loans available to students eligible to receive Subsidized Stafford Loans; and would be permitted to make Unsubsidized Stafford Loans and PLUS Loans available to other eligible borrowers.[13] Under the ECASLA, the LLR program is amended to require guaranty agencies to make LLR loans available to students and parents who are eligible for, but unable to obtain, Subsidized Stafford Loans, Unsubsidized Stafford Loans, or PLUS Loans; or who attend an institution designated for institution-wide student qualification for LLR loans (described below).

Institution-Wide Student Qualification for LLR Loans

As noted above, under prior law, individual students became eligible to borrow LLR loans upon the receipt of two rejected loan applications. The ECASLA amended the LLR program to temporarily authorize the Secretary, through June 30, 2009, to also designate institutions for institution-wide participation in the LLR program, at an institution's request. P.L. 110-350 further extends this authority through June 30, 2010.

In order to designate an IHE for institution-wide participation, the Secretary may require an IHE to demonstrate that, despite due diligence, it has been unable to secure the commitment of FFEL program lenders to make loans to students attending the institution; demonstrate that the number or percentage of students attending the institution who are unable to obtain FFEL program loans exceeds a minimum threshold; and meet other requirements as determined appropriate by the Secretary. Institution-wide student qualification makes all students who attend the institution, and the parents of dependent students who attend the institution, eligible to borrow LLR loans.

In implementing this provision, ED is requiring institutions seeking designation for institution-wide student qualification for LLR loans to demonstrate that, through coordination with the guaranty agency designated for its state, the institution has made a minimum of three attempts to find eligible lenders willing to make conventional (non-LLR) FFEL program loans and that at least 80% of the students and parents of students at the institution have been unable to obtain conventional FFEL program loans. Institutions must provide documentation of this information to the guaranty agency. The guaranty agency will then forward this information, along with its opinion of the institution's eligibility, to ED, which will make a final determination.[14]

Requirements Applicable to LLR Lenders and Guaranty Agencies

Statutory and regulatory provisions of the FFEL program establish the maximum interest rates and fees that may be paid by borrowers. Lenders in the FFEL program have often competed for borrowers by offering different packages of interest rate and fee discounts. To attract borrowers, lenders may pay origination fees or default fees without passing on the cost to students. Similarly, to attract loan business, guaranty agencies may opt to pay the default fee. In accordance with the ECASLA amendments, LLR lenders are prohibited from offering any borrower benefits on LLR loans (e.g., waiving or reducing origination or default fees, or reducing interest rates) that are more favorable to borrowers than the maximum interest rates, origination fees and default fees, and other terms and conditions applicable to FFEL program loans.

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[13] 34 C.F.R. 682.401(c).

[14] ED, Dear Colleague Letter GEN-08-08.

Certain special requirements apply to guaranty agencies with respect to the operation of LLR program. Among these, guaranty agencies must ensure that information about the availability of LLR loans is provided to institutions of higher education in the states the guaranty agency serves. Also, under the LLR program, guaranty agencies are exempted from the otherwise applicable prohibition against providing inducements to FFEL program lenders to secure the designation of the guaranty agency as the insurer of its loans. The amendments to the LLR program enacted under the ECASLA make guaranty agencies and lenders subject to the prohibitions on inducements specified in the HEA at §§ 428(b)(3) and 435(d)(5), respectively.[15] The amendments also prohibit guaranty agencies and lenders that operate as lenders-of-last-resort from advertising, marketing or promoting LLR loans, other than the provision of required information about LLR loans, to IHEs.

The ECASLA also requires the Secretary to review the Department's regulations on prohibited inducements by guaranty agencies to lenders; and, as necessary, to revise them to ensure that guaranty agencies do not engage in improper inducements with respect to the operation of the LLR program. The review was required to be completed within 90 days of enactment; and a report provided to House Committee on Education and Labor, and the Senate Committee on Health, Education, Labor, and Pensions within 180 days of enactment.

Advances of Federal Capital to Guaranty Agencies for LLR Loans

As noted above, previously the Secretary was required to determine that certain conditions are met prior to advancing funds to guaranty agencies for purposes of making LLR loans. Under the ECASLA, provisions of the LLR program were revised to specify that the Secretary may advance funds to guaranty agencies for making LLR loans if (a) eligible borrowers are unable to obtain Subsidized Stafford Loans, Unsubsidized Stafford Loans, or PLUS Loans under the FFEL program, or an IHE has been designated for institution-wide qualification for LLR loans; (b) that the guaranty agency has the capability to provide LLR loans, but cannot do so without an advance of federal capital; and (c) that it would be cost-effective to advance such funds.

Mandatory Funding for LLR Advances to Guaranty Agencies

Effective with enactment of the ECASLA, mandatory appropriations are provided for the Secretary to make emergency advances of federal funds to guaranty agencies for purposes of making loans as lenders-of-last-resort.

Temporary Authority for the Secretary to Purchase FFEL Program Loans

The ECASLA amends the HEA to grant the Secretary temporary authority to purchase loans previously made under the FFEL program. The DL program is amended to authorize funding for the Secretary, in consultation with the Secretary of the Treasury, to purchase, or enter into forward commitments to purchase, Subsidized Stafford Loans, Unsubsidized Stafford Loans, and PLUS

[15] The provisions at HEA, §§ 428(b)(3) and 435(d)(5) were subsequently amended by the HEOA. For information on these changes, see CRS Report RL34654, *The Higher Education Opportunity Act: Reauthorization of the Higher Education Act*.

Loans (but not Consolidation Loans) first disbursed on or after October 1, 2003, and before July 1, 2009, upon arriving at a determination that there is an inadequate availability of capital to meet demand for new loans.[16] P.L. 110-350 extends this temporary authority to apply to loans disbursed on or after October 1, 2003, and before July 1, 2010.

The Secretary may purchase loans only if doing so is determined to be in the best interest of the United States. In addition, the purchase of FFEL program loans, and the cost of servicing such loans, must be determined jointly by the Secretaries of Education and the Treasury, and the Director of the Office of Management and Budget (OMB) to result in no net cost to the federal government. The Secretaries of Education and the Treasury, and the Director of OMB are required to jointly publish a notice in the *Federal Register* that establishes the terms and conditions for purchasing FFEL program loans, that outlines the methodology and factors considered in determining the purchase price of loans, and that describes how loans will be purchased at a price that will result in no net cost to the government. The HEOA further amends the terms of purchase to specify that upon the purchase of loans by the Secretary, guaranty agencies shall cease to have any obligations, responsibilities or rights with respect to such loans, and the federal guarantee shall cease to be in effect with respect to defaults that occur on such loans after the date of purchase.

Lenders selling loans to the Secretary must use the proceeds from the sale to ensure their continued participation as lenders under the FFEL program and to originate new FFEL program loans. The Secretary may also enter into a contract with lenders to continue servicing loans purchased, if the cost of doing so would not exceed the cost to the government of otherwise servicing the loans, and if it is determined to be in the best interest of borrowers.

On May 21, 2008, the Secretary of Education issued a "Dear Colleague" letter briefly outlining the Secretary's initial plans to implement the authority granted under the ECASLA to purchase loans made under the FFEL program.[17] The Secretary initially identified two options. Under the first option, the Loan Purchase Commitment program, ED would enter into agreements by July 1, 2009, to purchase FFEL program loans originated for the 2008-2009 academic year. ED would purchase loans "at a price equal to the sum of (i) par value, (ii) accrued interest (net of Special Allowance Payments), (iii) the 1% origination fee paid to the Department, and (iv) a fixed amount of $75 per loan (used to defray the lender's estimated administrative costs)."[18] Lenders entering into agreements with ED for the purchase of their loans would have until September 30, 2009, to complete the sale. Upon completion of the sale of loans, ED would obtain control over loan servicing. This option has also come to be referred to as the Loan Purchase ("Put") program.

Under the second option, the Loan Participation Purchase program, ED would purchase "participation interests" in short-term trusts comprised of pools of FFEL program loans originated for the 2008-2009 academic year. The price of participation interests would be established at an amount determined to provide ED a yield equal to the commercial paper rate plus 50 basis points. ED would hold participation interests in short-term trusts of FFEL program loans until September 30, 2009, at the latest. Afterwards, trusts could refinance the loans in the private market, or sell

[16] HEA, § 459A.

[17] Department of Education, "Dear Colleague" Letter from Secretary of Education Margaret Spellings, May 21, 2008, at http://www.ifap.ed.gov/eannouncements/attachments/052108FFELPMonitoring.pdf, visited May 21, 2008.

[18] Ibid, p. 2.

the loans to ED under the first option. This option has also come to be referred to as the Purchase of Participation Interests (PPI) program.

On July 1, 2008, the Department of Education, the Department of the Treasury, and OMB published a notice in the *Federal Register* outlining the terms and conditions of the Department's authority to purchase loans under the ECASLA.[19] This notice presents summaries of the terms and conditions of the Loan Purchase Commitment program and the Loan Participation Purchase program as well as an explanation of the methodology used to determine that the programs will result in no net cost to the government. On November 10, 2008, the Secretary announced the continuation of the Put and PPI programs for the 2009-2010 academic year.

Also on November 10, 2008, the Secretary announced plans to establish a program making all fully disbursed FFEL program loans made for the period between October 1, 2003, and July 1, 2009 (other than Consolidation Loans), eligible for transfer to Asset-Backed Commercial Paper (ABCP) Conduits.[20] Under the ABCP Conduit program, an eligible lender trustee would create a pool of loans, called a conduit, into which other lenders would transfer ownership of their loans. Commercial paper, backed by the loans in the pool, would then be sold to private investors and the proceeds of the sale would be used to repay the lenders that had transferred their loans to the conduit. In order to ensure liquidity to the purchasers of the student loan ABCP, the Department of Education would enter into a forward purchase commitment, or "Put" option, with the eligible lender trustees that create ABCP Conduits. By entering into a forward purchase commitment, the Department would promise to purchase student loans held in the ABCP Conduit at a future date for a pre-arranged price. The terms and conditions, and pricing structure for the ABCP Conduit program are forthcoming and will be published by the Department in the *Federal Register*.

On November 18, 2008, as an additional measure to assist in ensuring the continued availability of student loans, the Secretary announced the short-term extension of the Loan Purchase ("Put") program to loans made for the 2007-2008 academic year.[21] Under the program, the Department will purchase certain fully disbursed FFEL program loans (other than Consolidation Loans) made for the 2007-2008 academic year. Details of the extension of the Loan Purchase program will be published in the *Federal Register*; however, in general, the Department will purchase these loans for 97% of the amount of principal and interest owed by the borrower. The Department intends to purchase up to $500 million in eligible loans made for the 2007-2008 academic year each week until the earlier of the implementation of the ABCP Conduit, or February 28, 2009.

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[19] Department of Education, Department of the Treasury, and Office of Management and Budget, "Notice of terms and conditions of purchase of loans under the Ensuring Continued Access to Student Loans Act of 2008," 73 *Federal Register* 37422, Jul. 1, 2008 .http://federalstudentaid.ed.gov/ffelp/library/OfficialFedRegister_070108.pdf. Technical Corrections were made to this notice in 73 *Federal Register* 41048, Jul. 17, 2008.

[20] For additional information on the ABCP Conduit program, see U.S. Department of Education, "Letter from Education Secretary Margaret Spellings regarding the extension of the Ensuring Continued Access to Student Loans Act," at http://ifap.ed.gov/eannouncements/attachments/111008DCLHR6889Final.pdf.

[21] For additional information on the extension of the Loan Purchase program, see U.S. Department of Education, "Letter from Education Secretary Margaret Spellings regarding the continued implementation of the Ensuring Continued Access to Student Loans Act, Nov. 20, 2008, at http://ifap.ed.gov/eannouncements/attachments/EDImplementAccessLoanAct2008.pdf.

Sense of Congress on Access to Student Loans

The ECASLA expresses a sense of Congress that institutions such as the Federal Financing Bank, the Federal Reserve, and Federal Home Loan Banks, in consultation with the Secretaries of Education and the Treasury, should consider using available authorities to assist in ensuring continued access to federal student loans.[22] It also states that any action taken by such entities should not limit nor delay the Secretary's authority to implement the LLR program or the authority to purchase loans previously made under the FFEL program.

Academic Competitiveness and SMART Grants

The ECASLA requires all savings generated by the act to be used for Academic Competitiveness Grants, which are provided to students who are eligible for Pell Grants and who meet certain academic requirements. These grants, first established by the Deficit Reduction Act of 2005 (P.L. 109-171),[23] are comprised of two award types: Academic Competitiveness (AC) Grants for first- and second- year undergraduates who have completed a rigorous secondary school program; and SMART Grants for third- and fourth- year undergraduates majoring in certain fields of science, mathematics, or a critical foreign language.

Effective July 1, 2009, the AC Grant and SMART Grant programs are amended to expand eligibility.[24] For both programs, students will no longer be required to be United States citizens as a condition for eligibility. Also, students enrolled at least half-time will become eligible for both AC Grants and SMART Grants. (Prior to July 1, 2009, students must be enrolled full-time). For both programs, grants will be required to be awarded in the same manner as Pell Grants, and eligibility for awards will be based on a student's grade level as opposed to academic year.

The ECASLA amendments authorize AC Grants to be awarded to students enrolled in certificate programs at two-year and four-year degree-granting institutions. They also clarify eligibility requirements for awarding first-year AC Grants to students who attended private secondary schools or were home-schooled, as well as those who obtained college credit while in high school. The amendments make students eligible to receive SMART Grants for the fifth year of enrollment in five-year undergraduate programs. Finally, the amendments extend eligibility for SMART Grants to students who attend institutions that offer a single liberal arts curriculum leading to a baccalaureate degree under which students are not permitted by the institution to declare a major in a particular subject area, if their coursework and grade point average meet certain criteria.[25]

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[22] This provision might be interpreted as being applicable to related aspects of the student loan marketplace, for instance student loan asset-backed securities (SLARS). For additional information on SLARS, see CRS Report RL34672, *Auction-Rate Securities*, by D. Andrew Austin.

[23] For more information on these grants, see CRS Report RL33457, *Academic Competitiveness Grants: Background, Description, and Selected Issues*, by Charmaine Mercer.

[24] Under the ECASLA, the effective date of these amendments was January 1, 2009. The HEOA changed the effective date to July 1, 2009.

[25] Additional amendments to the AC Grant and SMART Grant programs were made under the HEOA.

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