RSC Republican Study Committee

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Legislative Bulletin……………………………………April 17, 2008

Contents:

Order of Business:

H.R. 5715 is scheduled to be considered Thursday, April 17, 2008, subject to a structured rule (H. Res. 1107) that allows for one hour of general debate and ten minutes of debate on four amendments made in order. The rule would waive all points of order against consideration of the bill—except those for PAYGO and earmarks—and would waive all points of order against the bill itself—except those for earmarks. A self-enacting amendment printed in part A of the report of the Committee on Rules accompanying this resolution shall be considered as adopted in the House and in the Committee of the Whole. The bill, as amended, shall be considered as the original bill for the purpose of further amendment under the five-minute rule and shall be considered as read. The rule would make in order one motion to recommit (with or without instructions). A summary of the amendments made in order are included in this document.

Student Loan Programs Background:

The federal government provides subsidized and unsubsidized loans to parents and students for higher education (both undergraduate and graduate) using two major programs: the Federal Family Education Loan (FFEL) program and the Direct Loan (DL) program. The FFEL loan program offers subsidized loans provided to students from private lenders. Conversely, in the DL program, the federal government acts as the lender itself and provides the capital for all loans. In FY 2007, these programs provided $63.9 billion in new loans to students and their parents. In that year, the FFEL program provided 11,359,000 new loans averaging approximately $4,494 each, and the DL program provided 2,791,000 new loans averaging approximately $4,603 each.

For loans subsidized by the federal government, the government pays the interest while the student is enrolled as at least a part-time student. The government does not pay the interest on unsubsidized loans.

Impact of Recent Legislation on the Student Loan Market:

Last September, the President signed H.R. 2669, the College Cost Reduction and Access Act (CCRA), into law. H.R. 2669 is having serious effects in the market. The CCRA passed as financial markets were undergoing a "credit crunch" that raised the cost of borrowing for financial institutions. Among the effects of H.R. 2669, the burden of private lenders participating in the FFEL program has increased drastically. By reducing subsidies to lenders at a time when interest rates on the market were rising, the CCRA has made lenders' participation in the program less attractive, causing some to pull out of the program and creating access difficulties for students and institutions.

Many of the offsets in H.R. 2669—which were included to pay for large increases in mandatory spending—have increased the costs for lenders to provide loans through the program. As such, the legislation discouraged lenders from participating in the FFEL program.

Direct Loan Program vs. Federal Family Education Loan Program:

Some conservatives may be concerned that H.R. 5715 is part of a larger effort by some Democratic lawmakers to breathe new life into the Direct Loan (DL) program, and at the same time, stifle the Federal Family Education Loan (FFEL) program. Similar proposals have been made in the past, including Senator Kennedy's effort during the 109th Congress, S. 754, the Student Aid Reward Act of 2005, which sought to encourage universities to use the DL program, instead of participating in the FFEL program.

The FFEL program has been extremely successful in efficiently providing students with access to college loans. According to a report by America's Student Loan Providers, as of 2004, 83% of schools exclusively used the FFEL program to provide financial assistance to students. At that same time, only 11% of schools used only the DL program, while the remaining 6% utilized both. In addition, another report by American's Student Loan Providers shows that FFEL loans cost taxpayers significantly less than DL.

Financial aid administrators and school officials have been expressing concern that the cuts to the FFEL program enacted as part of CCRA will significantly increase the cost of college for students and families and will greatly diminish services to those students and families. School officials are also worried that participation in the cumbersome and costly government-run DL program will continue to cost students, families and taxpayers billions.

Summary of H.R. 5715:

Section 1. Establishes the name of the legislation as the "Ensuring Continued Access to Student Loans Act of 2008."

Section 2. The bill would increase unsubsidized Stafford loan limits for undergraduate and graduate students by $2,000. The bill caps maximum aggregate loan limits for dependent undergraduate students at $31,000, and $57,500 for independent undergraduate students (or dependent students whose parents are unable to borrow additional loans).

Section 3. H.R. 5715 would provide a grace period of six months deferment for parents of PLUS loans (loans given to parents only; PLUS Loans are available through both the FFEL and the DL programs).

Section 4. The bill also expands the extenuating circumstances provision for PLUS loans. H.R. 5715 allows a lender to determine that a borrower meets the extenuating circumstances requirement described by the Secretary if the borrower is 180 or fewer days delinquent on their home mortgage payments.

Section 5. The bill makes conforming changes to the Lender-of-Last-Resort (LLR) criteria. The bill clarifies that an institution can request guaranty agency designation for an institute-wide recognition under the LLR program.

Section 6. The bill would also clarify that existing law gives the Secretary of Education the authority to advance federal funds to guaranty agencies in the event that they do not have sufficient capital to originate new loans. The Secretary believes that this authority already exists. According to statements made by the Republican Education and Labor Committee staff,

> The Secretary has determined that she has the authority to issue mandatory advances of funds to guaranty agencies. The Secretary also announced that she plans to meet with the guaranty agencies to discuss the plans for implementation of the lender of last resort program.

Section 7. H.R. 5715 also gives the Secretary of Education the temporary authority to purchase loans from lenders in the federal guaranteed loan program (FFEL) and transfer these to Direct Loans.

Section 8. The bill also includes Sense of Congress language that states that during this time when the economy is fragile and higher education and retraining opportunities are more important than ever, that federal financial institutions, such as the Federal Financing Bank and the Federal Reserve, should consider using available authorities to assist in ensuring that students and families can access federal student loans.

AMENDMENTS MADE IN ORDER UNDER THE RULE

Note: The summaries below are based on RSC staff review of *actual amendment text*.

1. ***Miller (D-CA).*** The Manager's amendment, among making technical and conforming changes, states that loan limit increases available under this Act are available only to students meeting the requirements of section 484(a) of the HEA (students who are in most need). The amendment also clarifies that while an applicant may be 180 days delinquent on mortgage payments and still receive loans, they may not be more than 89 days delinquent on any other debt. In regard to school-wide lender-of-last-resort eligibility, the amendment specifies that the Secretary of Education shall determine whether a school qualifies and provides criteria for the Secretary to consider in making the determination. The amendment also specifies that funds received by lenders from loan sales be used to originate new loans. The amendment also clarifies that the Secretary has the authority to enter into forward commitments to purchase new loans and clarifies that, at the discretion of the Secretary, a loan purchased by the Secretary may continue to be serviced by the current lender.

2. **Petri (R-WI).** The amendment would require the Secretary of Education to review and revise as necessary the regulations concerning prohibited guaranty agency inducements to ensure that

such agencies do not engage in improper inducements as lenders-of-last resort. The Secretary shall submit a report to the relevant House and Senate committees of jurisdiction within 180 days of enactment. According to the sponsor's office:

> Currently, guaranty agencies are provided flexibility from the general lender prohibitions regarding inducements and exempted from others when they act as lenders-of-last resort. While this flexibility may be necessary, H.R. 5715 would expand the role of guaranty agencies acting as lenders-of-last resort, thus it is prudent to take another look at these regulations to be sure that students and taxpayers continue to be protected.

3. **Castle (R-DE)/*Welch (D-VT)*.** The amendment would require the General Accountability Office to conduct a study of the impact of raising loan limits on tuition, fees, and room and board at institutions of higher education and private loan borrowing for attendance at institutions of higher education.

4. ***Castor (D-FL)*.** The amendment temporarily classifies medical bill payment delinquencies of up to 180 days an extenuating circumstance which shall not interfere with parents' ability to receive PLUS loans for their children's tuition.

Conservative Concerns:

Many conservatives remain concerned that the CCRA cut lender subsidies by $21 billion in order to pay for new entitlement spending at a time when financial and credit markets were in significant turmoil. As an example, Texas-based Brazos Higher Education Service Corp. has become the latest student lender to stop making new loans to students through the Federal Family Education Loans (FFEL) program for the upcoming 2008-2009 academic year. According to FinAid.org, Brazos is just another private lender—topping a list of 26 others—which has stopped originating federal loans.

Some conservatives may be concerned that the Democrats' response to their ill-timed enactment of CCRA furthers government intervention and spending, by increasing federal loan limits and providing greater incentives for participation in DL programs.

According to a National Review article published after the CCRA passed, the effects of the CCRA were foreseen:

> Loan providers will certainly feel the pain of a $20 billion subsidy cut. If lots of lenders do leave the field, which they may, future student borrowers will also feel the pain. Unfortunately, CCRA doesn't justify those risks.
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> The excessive interest cuts and stingy grant-award raises [in CCRA] add up to, essentially, an expensive handout for the middle class. And it continues Congress's trend in reforming higher education aid: more for middle-class voters, and not nearly enough for the poor students for whom federal aid was designed.
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> On top of all this, CCRA doesn't put the screws on colleges to keep their tuition hikes in check, either. Economics 101 tells us that if colleges and universities can continue to count on the U.S. government to increase federal aid, tuition at those schools will also increase. That happens for several reasons, not least of which is that federal dollars will, in effect,

> subsidize tuition hikes, making them less costly to consumers than they actually would be. Middle-class students have more financial wiggle room — plus, they often receive generous merit-based aid packages from colleges desperate to attract talented youngsters. Poor kids lose out …

Some conservatives may also be concerned that giving the Secretary the authority to purchase and transfer major portions of the FFEL program to be serviced directly by the Department represents a significant expansion of the federal government's scope and role in the student loan marketplace. Some conservatives may also be concerned that the Department may not be technically equipped to handle such a rapid increase in direct student lending, potentially resulting in increased costs for the Department. In addition, with the upcoming school year and the need for loans to be made in the next few months, this change in management could create confusion for borrowers whose loan servicing may suddenly been transferred into federal hands.

Regarding the expansion of the 'extenuative circumstances' provision, some conservatives may be concerned that given the current credit crisis, it may appear to be counterintuitive to encourage lenders (including the federal government) to make loans to individuals who are delinquent on their mortgages—effectively aiding them in obtaining more credit through their student loans.

Some conservatives may also be concerned that H.R. 5715 does not address issues regarding the 90/10 provision—a provision which would be affected due to the increased loan limits authorized in H.R. 5715. The 90/10 provision requires proprietary schools to receive at least 10% of their revenues from non-Title IV sources. Under current law, any school which violates the 90/10 rule loses their student aid. With the increased loan limits authorized by H.R. 5715, many proprietary schools will end up receiving more than 90% of their revenues from Title IV funds. This leaves proprietary schools with the option to either increase tuition to offset the increased loan limits, stop targeting low-income students who primarily utilize the loans, or risk losing eligibility of federal Title IV funding, jeopardizing their business model. Some conservatives may be concerned that increasing loan limits without addressing the impact on the 90/10 rule is unnecessarily discriminatory toward proprietary schools, and will likely encourage schools to raise tuition.

During the mark-up of H.R. 5715 on April 9, 2008, a colloquy took place between Representative Rob Andrews, Chairman Miller and Ranking Member McKeon, in which they discussed the impact of the loan increases on proprietary institutional eligibility under the 90/10 Rule. Representative Andrews was recognized and expressed concerns with the impact of this legislation on proprietary institutions, who, given all of the new Title IV resources available to students, would quite likely find themselves out of compliance with the 90/10 Rule. Ranking Member McKeon picked up on this concern, suggesting that it put institutions in the untenable situation where they would have to either raise tuition (to maintain a ratio of 10% of revenues from non-Title IV sources) or face loss of eligibility simply because of the population served.

Finally, since the Department of Education already considers that it has existing authority to advance federal funds to guaranty agencies in the event that they do not have sufficient capital to originate new loans, conservatives may be concerned that the only effects of H.R. 5715 would be to increase the federal government's involvement in the student loan market, and create a bias toward more costly DL programs. Many conservatives may be concerned that turning the Department of Education into a national secondary market for student loans does not accurately address the liquidity issues in the student loan market.

Committee Action: H.R. 5715 was introduced on April 8, 2008, and referred to the Committee on Education and Labor. On April 9, 2008, the Committee held a mark-up and ordered the bill reported by voice vote.

Cost to Taxpayers: While H.R. 5715 as reported was subject to a violation of PAYGO rules, this violation is, according to the Republican Education and Labor Committee staff, resolved through a self-enacting amendment, which clarifies the authority of the Secretary of Education to purchase loans, and includes language requiring that loan purchases will result in no net cost to the federal government. According to a revised CBO score (not yet shown on the Legislative Information System), H.R. 5715 as reported—with the self-enacting amendment—would save $455 million over five years and $645 million over 10 years. In addition, CBO has also scored the Manager's Amendment, which would save an additional $135 million over five years, and $440 over 10 years. However, it is unclear whether and how the Treasury will be able to implement a system of loan purchases that guarantees no net cost to the government. Therefore, some conservatives may be concerned that this provision represents a vague and unenforceable gimmick to avoid PAYGO requirements under House rules.

Does the Bill Expand the Size and Scope of the Federal Government? Yes, the bill would grant the Secretary of Education the authority to purchase loans from lenders in the federal guaranteed loan program (FFEL) and transfer these to Direct Loans, creating a larger role of the federal government in the student loan market.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The Committee on Education and Labor, in House Report 110-583, asserts that, "H.R. 5715 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI."

Constitutional Authority: The Committee on Education and Labor, in House Report 110-583, cites constitutional authority in Article I, section 8, clause 18 of the U.S. Constitution (the "necessary and proper" clause).

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