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Proposals to Ensure the Availability of Federal Student Loans During an Economic Downturn: A Brief Overview of H.R. 5715 and S. 2815

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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 The FFEL program is the successor program to the guaranteed student loan (GSL) program, originally enacted under Title IV, Part B, of the HEA.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. Approximately four-fifths of non-Consolidation loans are made under the FFEL program, while approximately one-fifth are made under the DL program.

During the past several months, a large number of FFEL program lenders have 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). Concerns have been raised that if lender participation in the FFEL program decreases substantially or if a substantial portion of lenders cease lending to students who attend certain institutions of higher education (IHEs), large numbers of students may face difficulty in obtaining FFEL program loans. In addition, concerns have been 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.

Issues concerning federal student loans have been active during the 110th Congress. On October 27, 2007, the CCRAA was enacted, which made numerous changes to the federal student loan programs. Also in the 110th Congress, the House and the Senate have passed bills, H.R. 4137 and S. 1642, respectively, to amend and extend the HEA. On April 10, 2008, the House Committee on Education and Labor marked up H.R. 5715, the Ensuring Continued Access to Student Loans Act of 2008. This closely followed the introduction of S. 2815, the Strengthening Student Aid for All Act, in the Senate on April 3, 2008. This report examines proposals in H.R. 5715 and S. 2815 to amend the federal student loan programs. It will be updated to reflect legislative developments.

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Background

During the past several months, a large number of Federal Family Education Loan (FFEL) program lenders have 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 (P.L. 110-84).[1] Concerns have been raised that if lender participation in the FFEL program decreases substantially or if a substantial portion of lenders cease lending to students who attend certain institutions of higher education, large numbers of students may face difficulty in obtaining FFEL program loans. In addition, concerns have been 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.

Issues concerning federal student loans have been active during the 110th Congress. On October 27, 2007, the College Cost Reduction and Access Act of 2007 (CCRAA; P.L. 110-84) was enacted, which made numerous changes to the federal student loan programs. Also in the 110th Congress, the House and the Senate have passed bills, H.R. 4137 and S. 1642, respectively, to amend and extend the HEA.[2] On April 10, 2008, the House Committee on Education and Labor marked up H.R. 5715, the Ensuring Continued Access to Student Loans Act of 2008. This closely followed the 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 the continued availability of federal student loans.

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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 an examination of proposals to amend the HEA through H.R. 4137 and S. 1642, see CRS Report RL34283, *Higher Education Act Reauthorization in the 110th Congress: A Comparison of Major Proposals*, by Blake Alan Naughton, Rebecca R. Skinner, David P. Smole, Jeffrey J. Kuenzi, Richard N. Apling.

Overview of the Federal Student Loan Programs

The federal government operates two major student loan programs: the Federal Family Education Loan (FFEL) program, authorized under Title IV, Part B of the Higher Education Act (HEA), and the William D. Ford Federal Direct Loan (DL) program, authorized under Title IV, Part D of the HEA.[3] These programs make available loans to 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 FY2008, it is estimated that these programs will provide $70.3 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 parents of undergraduate dependent students, graduate and professional students; and Consolidation Loans through which borrowers may combine their loans into a single loan payable over a longer term, that 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 of Education (the Secretary) pays the interest that accrues on subsidized Stafford Loans while borrowers are in school, during a 6-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.

H.R. 5715 and S. 2815

Bills have been introduced in the House (H.R. 5715) and the Senate (S. 2815) to ensure the continued availability of federal student loans. These bills address a separate set of issues than bills passed by the House (H.R. 4137) and the Senate (S. 1642) to reauthorize the HEA. Both H.R. 5715 and S. 2815 would amend the HEA to address the continued availability of federal student loans. A number of amendments in both bills affect loans made under the FFEL and DL programs, while others apply only to the FFEL program. Both H.R. 5715 and S. 2815 would amend the HEA to:

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[3] A third federal student 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.

- 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 also would amend the HEA to establish a negative expected family contribution (EFC) for use in need analysis, a change which is intended to broaden student eligibility for need-based aid. (Thorough coverage of this change is beyond the scope of this report.) The remainder of this report provides a brief overview of proposals in H.R. 5715 and S. 2815, to amend the HEA to address the continued availability of access to federal student loans.

Increased Borrowing Limits for Unsubsidized Stafford Loans

The amounts students may borrow in subsidized (need-based) and unsubsidized (non-need-based) Stafford Loans are constrained by statutory and regulatory 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). 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.

Annual and aggregate loan limits for subsidized Stafford Loans and total Stafford Loans, under current law, and as proposed under H.R. 5715 and S. 2815, are presented in **Table 1**. Under current law, for dependent undergraduate students, the same annual subsidized Stafford Loan limits and total Stafford Loan limits apply for each comparable educational level. However, for independent undergraduate students and graduate students, annual total Stafford Loan limits are higher than the annual subsidized Stafford Loan limits for each comparable educational level. Most loan limits are specified in statute; however, aggregate total Stafford Loan limits for

[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 who meets 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.

independent undergraduate students, graduate students and professional students are set by the Secretary according to regulation.

Table 1. Annual and Aggregate Stafford Loan Limits, by Student Type: Current Law; and Under H.R. 5715 and S. 2815

Student Type	Subsidized Stafford	Total (subsidized and unsubsidized) Stafford		
	Current law	Current law	H.R. 5715	S. 2815
Dependent Undergraduate				
1st year	$3,500	$3,500	$5,500	$4,500
2nd year	$4,500	$4,500	$6,500	$5,500
3rd year and above	$5,500	$5,500	$7,500	$6,500
Aggregate	$23,000	$23,000	$31,000	$29,500
Independent Undergraduate				
1st year	$3,500	$7,500	$9,500	$9,500
2nd year	$4,500	$8,500	$10,500	$10,500
3rd year and above	$5,500	$10,500	$12,500	$12,500
Aggregate	$23,000	$46,000[a]	$57,500[b]	$57,500[b]
Graduate and Professional Students				
Annual	$8,500	$20,500	$22,500	No change
Aggregate	$65,500	$138,500[a]	No change[a]	No change[a]

Sources: HEA, §§ 428 and 428H; 34 CFR 682.204; H.R. 5715; and S. 2815.

a. The statute directs the Secretary to prescribe an aggregate loan limit by regulation. Figures shown are those which have been established by the Secretary.
b. Proposed statutory aggregate loan limit.

Both H.R. 5715 and S. 2815 would increase annual and aggregate borrowing limits for total Stafford Loans for dependent undergraduate students, independent undergraduate students, graduate students and professional students. Both bills, for the first time, raise the annual total Stafford Loan limit above the annual subsidized Stafford Loan limit for dependent undergraduate students. For dependent undergraduate students, H.R. 5715 raises the annual total Stafford Loan limits for students at each educational level by $2,000, while S. 2815 raises annual total Stafford Loan limits for students at each educational level by $1,000. For independent undergraduate students, both bills raise the annual total Stafford Loan limits for students at each educational level by $2,000. For graduate and professional students, H.R. 5715, but not S. 2815, raises the annual total Stafford Loan limit by $2,000.

Both H.R. 5715 and S. 2815 would increase aggregate total Stafford Loan limits. For dependent undergraduate students, H.R. 5715 raises the aggregate total Stafford Loan limit by $8,000, from $23,000 to $31,000; while S. 2815 raises the aggregate limit by $6,500, to $29,500. For independent undergraduate students, both bills specify a statutory aggregate total Stafford Loan limit of $57,500, which is an increase of $11,500 above the current limit of $46,000, established by regulation. Both bills retain current law directing the Secretary to establish aggregate total Stafford Loan limits by regulation for graduate and professional students.

Repayment of Parent PLUS Loans

Under current law, the repayment of PLUS Loans to parents, graduate students, and professional students commences not later 60 days after the last disbursement of the loan is made. This is in contrast to the repayment of Stafford Loans, for which repayment does not commence until the day after six months following the borrower ceasing to be enrolled in school on at least a half-time basis. Borrowers of PLUS Loans may be eligible to defer repayment of their loans for a variety of reasons, to include while they are enrolled in school.[5] However, deferments are not 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.

H.R. 5715 and S. 2815 would permit borrowers of parent PLUS Loans to extend the period between disbursement and the commencement of repayment. H.R. 5715 permits parent borrowers of PLUS Loans the option to delay the commencement of repayment until six months after the date the dependent student on whose behalf the loan was made ceases to carry at least a half-time workload. S. 2815 permits parent borrowers of PLUS Loans to defer repayment of a PLUS Loan until the dependent student on whose behalf the loan was made ceases to be enrolled in an undergraduate program of study on at least a half-time basis. It appears that the parent borrower would still need to request a deferment under the provision proposed in S. 2815. Under both bills, the interest that accrues during the extended period before the beginning of repayment may be paid monthly or quarterly, or added to the principal balance of the loan not more frequently than quarterly.

Credit Check for Eligibility to Borrow PLUS Loans

Individuals must be credit-worthy to be eligible to borrow PLUS Loans. In accordance with Department of Education regulations, lenders are required to obtain at least one credit report on all applicants for PLUS Loans. Unless extenuating

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[5] 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, U.S. 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.

circumstances exist, lenders are required to consider an applicant to have an adverse credit history if the applicant is 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."[6] Regulations for the FFEL program require lenders to retain a record of the basis for determining that extenuating circumstances exist 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.[7]

H.R. 5715 specifies that for PLUS Loans made between July 1, 2008, and June 30, 2009, lenders may make a determination that extenuating circumstances exist for applicants with adverse credit histories, if they are 180 or fewer days delinquent on their home mortgage payments. S. 2815 does not address rules for the credit-worthiness of PLUS Loan applicants.

Lender-of-Last-Resort Loans

Eligible borrowers are regarded as having an entitlement to obtain Stafford Loans (but, not PLUS Loans).[8] Under the FFEL program, state guaranty agencies are required to establish lender-of-last-resort programs through which loans are made available to students eligible to borrow subsidized Stafford Loans, but who are otherwise unable to obtain them from an eligible lender.[9] 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 make LLR loans using 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

[6] 34 C.F.R. 682.201(c)(2)(ii) and 685.200(c)(2)(vii).

[7] 34 C.F.R. 682.201(c)(2)(v).

[8] 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.

[9] 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.

to restore the availability of LLR loans. The HEA authorizes the Secretary to make emergency advances of federal funds to guaranty agencies for purposes of making available LLR loans, if the Secretary determines that (a) borrowers eligible for subsidized Stafford Loans are unable to obtain such 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. Alternatively, the HEA authorizes the Secretary to make emergency advances of federal capital funds to another guaranty agency for purposes of making LLR loans, if the Secretary determines that the designated guaranty agency for a state does not have the capacity to make available LLR loans. However, while the statute authorizes the Secretary to advance funds to guaranty agencies for purposes of making LLR loans, it does not clearly provide, nor identify, a source of funds for the Secretary to draw upon to make such advances. This ambiguity in the statute has led to deliberation over the extent of the Secretary's authority to advance funds to guaranty agencies for purposes of making LLR loans.[10]

H.R. 5715 and S. 2815 would make several changes to the LLR program. These are briefly described below.

Student Eligibility for LLR Loans. Under current law, guaranty agencies have an obligation to ensure that LLR loans are made available to students eligible to borrow subsidized Stafford Loans, but who are unable to obtain them. In accordance with Department of Education regulations implementing the LLR program, a lender-of-last-resort must make subsidized and unsubsidized Stafford Loans available to students eligible to receive subsidized Stafford Loans; and may make unsubsidized Stafford Loans and PLUS Loans available to other eligible borrowers.[11] H.R. 5715 amends the LLR provisions 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). S. 2815 amends the LLR provisions to require guaranty agencies to also make LLR loans available to students (but not the parents of students) who attend an institution in the State designated by the Secretary for institution-wide student qualification for LLR loans.

Institution-Wide Student Qualification for LLR Loans. As noted above, under current law, individual students are required to receive two rejected loan applications to become eligible to borrow LLR loans. H.R. 5715 amends the LLR program to grant guaranty agencies the authority (pursuant to standards developed by the Secretary), to designate institutions for participation in the LLR program, if the institution requests it. S. 2815 amends the LLR program to grant the Secretary the authority to designate institutions for participation in the LLR program, if the institution requests it. Under H.R. 5715, institution-wide student qualification designation makes all students and parents of students who attend the institution

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[10] 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.

[11] 34 C.F.R. 682.401(c).

eligible for LLR loans. Under the S. 2815, this designations makes only students attending the institution eligible for LLR loans.

Advances of Federal Capital to Guaranty Agencies for LLR Loans. As noted above, under current law the Secretary is required to determine that certain conditions are met prior to advancing funds to guaranty agencies for purposes of making LLR loans — among them, determining that borrowers eligible for subsidized Stafford Loans are unable to obtain such loans. H.R. 5715 amends LLR provisions to authorize the Secretary to also advance funds to guaranty agencies for purposes of making LLR loans if the guaranty agency has designated an institution in the state for institution-wide student participation in the LLR program.

Mandatory Funding for LLR Advances to Guaranty Agencies. Both H.R. 5715 and S. 2815 would make available mandatory appropriations for the Secretary to make emergency advances of federal funds to guaranty agencies for purposes of making loans as lenders-of-last-resort. Both bills make funds available, effective the date of enactment.

Authority for the Secretary to Purchase FFEL Program Loans

Both H.R. 5715 and S. 2815 would grant the Secretary authority to purchase loans previously made under the FFEL program. H.R. 5715 amends the DL program to authorize funding for the Secretary, in consultation with the Secretary of the Treasury, to purchase subsidized Stafford Loans, unsubsidized Stafford Loans, and PLUS Loans originated on or after October 1, 2003, upon making a determination that there is an inadequate availability of capital to meet demand for new loans. H.R. 5715 requires the purchase of loans to be made in the best interest of the United States and to result in no cost to the Federal Government. Lenders must use the proceeds from the purchase of loans to ensure their continued participation as lenders under the FFEL program. The authority for the Secretary to purchase FFEL program loans expires July 1, 2009.

S. 2815 amends the FFEL program to establish a secondary market of last resort for FFEL program loans, effective the date of enactment. In the secondary market of last resort, the Secretary is required to purchase any loans a FFEL program lender wishes to sell at a price equal to 100% of the outstanding principal and any accrued unpaid interest, plus a premium equal to the cost of originating an equivalent loan under the DL program. The Secretary must hold and service purchased FFEL program loans in the same manner as DL program loans. Lenders wishing to sell only a portion of their portfolio of loans must offer to sell a representative subset of their loans. The authority for the Secretary to purchase FFEL program loans expires July 1, 2009.