The original documents are located in Box 47, folder "6/30/76 SJR203 Higher Education Emergency Technical Provisions Act of 1976" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

APPROVED
JUN 30 1976

6/30/76

THE WHITE HOUSE

WASHINGTON

ACTION

June 29, 1976

Last Day: July 3

Postal 6/30

J. Archive 6/30

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: S.J. Res. 203 - Higher Education Emergency Technical Provisions Act of 1976

Attached for your consideration is S.J. Res. 203, sponsored by Senator Pell.

The enrolled bill extends for three months, from June 30, 1976 to September 30, 1976, the authority for the Guaranteed Student Loan program; corrects a technical problem created in the College Work Study program by the shift to the new fiscal year; and exempts institutions from the requirements of the Privacy Act of 1974 in their capacity as disbursing agents under the Basic Educational Opportunity Grant program.

A detailed discussion of the provisions of the bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign S.J. Res. 203 at Tab B.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUN 26 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Resolution - S.J.Res. 203 - Higher Education Emergency Technical Provisions Act of 1976
Sponsor - Sen. Pell (D) R.I.

Last Day for Action

July 3, 1976 - Saturday — Recommend action before June 30, 1976 to avoid interruption of guaranteed student loan program.

Purpose

Extends for 3 months, from June 30, 1976 to September 30, 1976, the authority for the Guaranteed Student Loan program; corrects a technical problem created in the College Work-Study program by the shift to the new fiscal year; and exempts institutions from the requirements of the Privacy Act of 1974 in their capacity as disbursing agents under the Basic Educational Opportunity Grant program.

Agency Recommendations

Office of Management and Budget	Approval
Department of Health, Education, and Welfare	Approval
Domestic Council Committee on Right of Privacy	Approval ("privacy" provision)
Department of the Treasury	No objection

Discussion

S.J.Res. 203 would make three changes in education laws recommended to the Congress by the Department of Health, Education, and Welfare (HEW).

Guaranteed Student Loan program. The Higher Education Act of 1965 is due to expire on June 30, 1976. While the authorizations for appropriations for most of the programs established under that Act have been extended through September 30, 1976, the basic statutory authorities for the Office of Education to insure loans and to pay interest subsidies and special allowances to lenders under the Guaranteed Student Loan program will expire on June 30, 1976, with respect to those students who have not received such a loan prior to that time.

S.J.Res. 203 would extend these authorities through September 30, 1976, by which time it is expected that final action to extend the Higher Education Act will have occurred. HEW strongly supports this interim measure, noting that even a short lapse in the program would have adverse consequences, since new loan volume activity is traditionally highest at this time of the year.

College Work-Study program. The Higher Education Act of 1965 authorizes the Commissioner of Education to reallot unused funds awarded to institutions of higher education under the College Work-Study program to other institutions within the same State. Under the law, such funds remain available for reallotment until the close of the fiscal year following the year for which they were appropriated. A problem has arisen as a result of a provision in the Fiscal Year Transition Act (P.L. 94-274) which designates the transition quarter as a separate fiscal year for purposes of the College Work-Study program. This provision has the effect of requiring the Commissioner to make all reallotments for the 1976-1977 award period not later than September 30, 1976.

HEW reports that because of the many steps which must occur in order for institutions to close their books and prepare reports, and for HEW to determine the unused amounts and make the supplemental awards, the reallocation of these funds cannot be completed by September 30, 1976. To overcome this problem, S.J.Res. 203 would amend the law to consider the transition quarter as part of fiscal year 1977 for purposes of the College Work-Study program, thereby giving the Department fifteen instead of three months to make the reallocations.

Basic Educational Opportunity Grant (BEOG) program. The final provision of the enrolled resolution would amend the BEOG statute to provide that institutions of higher education which enter into agreements with HEW to act as BEOG disbursing agents will not be deemed to be "contractors maintaining a system of records to accomplish a function of the Commissioner." The effect of this provision is to exempt the institutions from the requirements of the Privacy Act of 1974 in their capacity as BEOG disbursing agents.

The problem which has given rise to this amendment is explained in detail in the attached views letter from HEW. Briefly, HEW has determined that higher education institutions are contractors under the BEOG program; such institutions are grantees for purposes of other student assistance programs, such as the Supplemental Educational Opportunity Grant program and the College Work-Study program. As grantees, the institutions are required under the Family Educational Rights and Privacy Act of 1974 (the so-called Buckley Amendments) to adopt comprehensive procedures to protect the privacy of information in their files relating to students. HEW believes that a substantial additional burden would be placed on the institutions if they were required to comply with the Privacy Act under the BEOG program.

The Department believes the Buckley Amendment provisions provide adequate safeguards to protect the rights of students and their families with regard to student financial aid information, and that the additional imposition of the Privacy Act requirements for the BEOG records solely because institutions agree to assist in the disbursement of BEOG funds is unnecessary. The Domestic Council Committee on the Right of Privacy generally concurs in this view.

In light of complaints received from institutions, HEW is concerned that the additional burdens may cause them to withdraw from BEOG agreements, and thereby require the Federal Government to disburse the funds directly with attendant substantially increased costs.

As in the case of the other provisions of this resolution, this matter surfaced only recently. Accordingly, there has not been time for a thorough appraisal of the real extent of the problem. In view of HEW's belief that the

Privacy Act requirements would impose a substantial unnecessary burden in this instance and that the Buckley Act would provide adequate safeguards for the records in question, we do not object to the provision.

James M. Frey

Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: June 28 Time: 945am

FOR ACTION: David Lissy
Dick Parsons
Max Friedersdorf
Ken Lazarus

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: June 28 Time: 400pm

SUBJECT:

S.J. Res. 203 - Higher Education Emergency Technical Provisions Act of 1976

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

__x__ For Your Comments ____ Draft Remarks

REMARKS:

please return to Judy Johnston,

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

The Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

JUN 24 1976

Dear Mr. Lynn:

This is in response to your request for a report on S. J. Res. 203, an enrolled joint resolution "To amend the Higher Education Act of 1965 and for other purposes".

In summary, we recommend that the resolution be approved because its enactment is necessary to permit the uninterrupted operation of the Guaranteed Student Loan Program after June 30, 1976. The bill also contains provisions relating to the College Work-Study Program and Basic Educational Opportunity Grant Program which resolved certain technical problems that would be encountered after June 30, 1976.

Under the Guaranteed Student Loan Program in part B of title IV of the Higher Education Act of 1965, the authority to insure loans and to pay interest benefits expires on June 30, 1976 with respect to students who have not received a loan under the program prior to that date. The enrolled resolution would extend this date through September 30, 1976. This is merely an interim extension provision, and we expect that legislation to extend the entire Higher Education Act should have been enacted by that time.

We strongly support this interim measure, because if the authority to insure new loans is allowed to expire after June 30, considerable confusion and uncertainty will result on the part of lenders, schools, and students who are participating in the program. Because the volume of new loan activity is especially high at this time of the year, even a short lapse in that authority would have adverse consequences on the efficient operation of the program.

The resolution also contains a technical provision relating to the College Work-Study Program during the transition quarter, July 1, 1976 through September 30, 1976. Under section 446(b) of the Higher Education Act of 1965, the Commissioner of Education is authorized to reallot unused College Work-Study Program funds within each State, and such amounts remain available for reallotment until the close of the fiscal year next succeeding the fiscal year for which they were appropriated. However under the Fiscal Year Transition Act, P.L. 94-274, the transition quarter would be considered a fiscal year for the purposes of the College Work-Study Program. Thus, we would have only until September 30, 1976 to reallot any available unused funds. For reasons which were more fully set forth in our letter to the Chairman of the Senate Labor and Public Welfare Committee and the House Education and Labor Committee on June 15, 1976, a copy of which is attached, we would be unable to accomplish the reallotment prior to September 30, 1976. The amendment contained in the enrolled resolution would correct that problem by providing that for the purposes of section 446 the transition period would be deemed part of the fiscal year ending September 30, 1977, giving the Office of Education until that date to accomplish the necessary reallotments. We fully support this provision, because otherwise nearly $40 million in unused College Work-Study funds would revert to the Treasury on September 30, 1976.

The final provision of the enrolled resolution relates to the effect of the Privacy Act of 1974 on certain arrangements entered into between the Department and institutions of higher education under the Basic Educational Opportunity Grant Program. The Department has entered into agreements with most colleges and universities under which those institutions act as disbursing agents for the Department in the Basic Grant Program. Since these institutions would be required to maintain a system of records to accomplish a function which would otherwise be performed by the Commissioner, we have determined that 5 U.S.C. 552a(m) applies to these arrangements, thus subjecting these institutions to the requirements of the Privacy Act. A legal memorandum explaining this conclusion is enclosed.

We believe this result is undesirable because it places a substantial burden upon institutions, solely by reason of these arrangements, which are not placed on the institutions by virtue of their participation in other student assistance programs, such as the Supplemental Educational Opportunity Grant Program and the College Work-Study Program. In these programs, the institutions are grantees and section 552a(m) does not apply. The resolution would correct this problem by amending the Basic Grant statute to provide that institutions entering into such arrangements shall not be deemed, by virtue of those agreements, to be contractors maintaining a system of records to accomplish a function of the Commissioner. This amendment would relieve the institutions of any obligation to comply with the provisions of the Privacy Act.

The major additional burden that would be placed on institutions if they were required to comply with the Privacy Act with regard to these agreements are the requirements relating to the physical security of the system of records. In most cases these records would be maintained in computers, and sophisticated and expensive modifications would need to be added to those computer systems in order to provide the necessary access limitations and other safeguards necessary to comply with the Privacy Act. It should be noted that these records will be maintained by institutions in the same system that it maintains other student financial assistance records, such as those which are necessary under the Supplemental Educational Opportunity Grant Program and the College Work-Study Program. Thus, information relating to basic grants would be required to be protected in accordance with the Privacy Act standards, while the same information relating to other programs would not be subject to those requirements.

We also note that the Family Educational Rights and Privacy Act of 1974, section 438 of the General Education Provisions Act, requires institutions receiving Federal financial assistance to adopt comprehensive procedure to protect the privacy of information relating to students in their files. We think these provisions provide adequate safeguards to protect the rights of students and their families with

regard to student financial aid information, and that the imposition of the Privacy Act requirements on these institutions, solely because of their agreement to assist the Commissioner in the disbursement of basic grant funds, is unnecessary. Furthermore, if the burdens that would be placed on these institutions are significant enough to cause them to withdraw from these agreements, the cost to the Federal government of disbursing the funds directly could be substantial.

For all of the above reasons, we believe that enactment of the enrolled joint resolution is desirable, and we recommend that it be approved.

If the joint resolution is not enacted before the end of June 30, 1976, there will be an interruption in our authority to guarantee certain loans under the Guaranteed Student Loan Program. As indicated above, we think that this event would cause substantial confusion in the administration of that program. We therefore strongly recommend that the enrolled joint resolution be approved prior to that date, in order to ensure continuity of program operation.

Sincerely,

Marjorie Lynch

Under Secretary

Enclosures

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

JUN 15 1976

The Honorable Harrison A. Williams, Jr.
Chairman, Committee on Labor and
Public Welfare
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

On June 11, persons from my staff and from the Office of Education met with Majority and Minority staff of the Subcommittee on Education of the Committee on Labor and Public Welfare to explain certain technical problems which have arisen with regard to the Guaranteed Student Loan program, College Work-Study program, and the Basic Educational Opportunity Grants program. This letter is to confirm those conversations.

As you know, the entire Higher Education Act of 1965, as amended, is due to expire on June 30. While the authorization for appropriations for most of the programs established under the Higher Education Act has been extended through September 30 of this year by the government-wide authorization of appropriations for the transition quarter, P.L. 94-144, the Department's General Counsel has determined that the statutory authority for the Office of Education to insure loans and to pay interest subsidies under the Guaranteed Student Loan program expires on June 30, 1976, with respect to those students who have not received such a loan prior to that time. We would hope that legislation could be enacted to continue our authority to insure loans and to pay subsidies through September 30, 1976, by which time congressional action to extend the entire Higher Education Act should have occurred.

We are also concerned with the effect of a provision of the Fiscal Year Transition Act, P.L. 94-274, on the College Work-Study (CWS) program relating to the expenditure of unused FY 1975 CWS funds during the period from July 1, 1976, through September 30, 1977. Under title IV of the Higher Education Act of 1965, the Commissioner of Education is given the authority to reallot unused CWS program funds within each State. According to the statute, such realloted amounts

shall remain available until the close of the fiscal year next succeeding the fiscal year for which appropriated. However, section 201(13) of the Fiscal Year Transition Act designates the period from July 1, 1976, to September 30, 1976, as a separate fiscal year for purposes of the College Work-Study program. This provision would have the effect of requiring the Commissioner of Education to make all reallotments not later than September 30, 1976.

Institutions require several weeks after the end of the award period on June 30 to close out their books and to prepare the fiscal-operations report for the National Direct Student Loan, Supplemental Educational Opportunity Grants and College Work-Study programs. Therefore, we have established a due date for the reports of August 31. Historically, by that date approximately 10 percent of the reports have not yet been received in the Office of Education and steps must be taken to obtain these late reports. After the actual unexpended authorizations have been identified and summarized by State, these summaries are provided to the Office of Education regional offices for their recommendation of supplemental awards for other institutions in the same State, and transmittal of these amounts to Washington for preparation of congressional announcements of awards, fund obligation documents and award letters to an estimated 1,200 institutions. Because of the many steps which must occur between the initial receipt of reports and the ultimate issuance of supplemental awards, the reallocation of CWS funds for the 1976-1977 award period cannot be completed by September 30, 1976. Therefore, we would hope that legislation could be enacted which would clearly state that the period of time from July 1, 1976, to September 30, 1976, would not be considered as a separate fiscal year for the purposes of the College Work-Study program.

We have an additional concern with regard to the application of provisions of the Privacy Act to the operation of the Basic Educational Opportunity Grants program. Institutions which undertake to distribute Basic Grant funds for the Office of Education do so as contractors rather than as grantees, thereby rendering them subject to the requirements of the Privacy Act. This places additional burdens on

institutions in processing applications and packaging student assistance. We propose that such institutions be considered grantees for this purpose. Such institutions would, of course, still be required to comply with the Family Educational Rights and Privacy Act. Our proposal would simply ease the administrative burden and treat institutions participating in the Basic Grants program in the same manner as they are treated under the campus-based student aid programs.

We are advised by the Office of Management and Budget that there would be no objection to the presentation of these views from the standpoint of the Administration's program.

Sincerely,

for Marjorie Lynch

Under Secretary

Staff Memorandum

Advice has been requested regarding whether institutions of higher education signing agreements with the Commissioner under the Basic Educational Opportunity Grant Program to carry out certain administrative duties are covered by the Privacy Act.

I

The Basic Educational Opportunity Grant Program ("Basic Grant Program") is authorized by Title IV-A-1 of the Higher Education Act of 1965. Section 411(a)(1) of that title (20 U.S.C. 1070a(a)(1)) provides that:

> The Commissioner shall. . .pay to each student who has been accepted for enrollment in, or is in good standing at, an institution of higher education. . .for each academic year during which that student is in attendance at that institution, as an undergraduate, a basic grant in the amount for which that student is eligible, as determined pursuant to paragraph (2).
> (Emphasis added.)

Thus under this program the Commissioner pays a basic grant in a specified amount to each eligible student attending an institution of higher education.

For the 1975-1976 academic year, approximately 1.2 million students attending approximately 5,000 institutions of higher education have qualified to receive Basic Grants. Because the Office of Education is unable as a practical matter directly to process and disburse grants to all those students, the Commissioner has entered into agreements with various institutions of higher education for their performance of certain functions in the administration of the Basic Grant Program (45 CFR 190.73), including the calculation and disbursement of Basic Grant awards. If an institution is unwilling or unable to perform these functions (which are described below) the Commissioner undertakes these activities directly. For the 1975-1976 academic year the Commissioner has directly processed and disbursed funds to approximately 8000 students attending approximately 700 institutions.

Under the program an undergraduate student enrolled on at least a half-time basis is eligible to receive a Basic Grant. The size of the grant is based on three factors: the student's cost of attendance, his expected family contribution and the amount of funds appropriated to carry out the program. In general, a student's grant is the difference between $1400 and the student's expected family contribution except that his grant may not exceed half his cost. (20 U.S.C. 1070a(a)(2))

To receive a grant the student initially submits a form directly to the Office of Education for a determination of his expected family contribution. The student receives from the Office of Education a "Student Eligibility Report" (SER) stating his expected family contribution (on the form called "eligibility index"). The student then applies for a Basic Grant by submitting his SER to the institution he is attending if that institution has entered into an agreement with the Commissioner. (45 CFR 190.61 and 190.76)

The institution then determines whether the applicant meets the eligibility requirements set forth in the program regulations at 45 CFR 190.3. The institution is entitled to rely on the information supplied by the student in making this determination. It calculates the student's cost of attendance in accordance with detailed criteria set forth in 45 CFR 190.51; determines the status of the student's enrollment at the institution, i.e., full time, three quarter time or half time, in accordance with 45 CFR 190.2; and calculates the student's grant in accordance with a Payment or Disbursement Schedule distributed to each institution by the Office of Education. These schedules are based on the student's cost of attendance, expected family contribution and enrollment status. Finally, the institution disburses funds to the student in accordance with 45 CFR 190.75.1/

An institution which has entered into an agreement with the Commissioner is required by paragraph 2 of Article II of the attached Agreement to

> . . .maintain adequate records, for such period of time as prescribed by the Commissioner, with regard to (i) the eligibility, or lack thereof, of all students enrolled in the Institution who have applied to the Institution for payments of a Basic Educational Opportunity Grant; (ii) the amount of such grants as have been awarded and to whom; (iii) the amount and date of disbursement of such grants to such students; and (iv) the amount and date of any overpayments of awards that have been restored to the program account. Such records shall include the "Student Eligiblity Report" for each student, the student's cost of attendance at the Institution, and the basis on which his full-time or part-time enrollment status and the portion of the academic year for which the student was enrolled was determined.2/

Institutions which enter into an agreement with the Commissioner receive an advance of funds to enable them to disburse the Basic Grant awards to their students. Three times a year the institution must submit a progress report to the Office of Education indicating the amount of funds the institution has disbursed and an estimate of the additional funds it will need for that purpose for the rest of the

academic year. When filing these progress reports the institution must also submit a copy of each recipient's SER (one copy is kept by the institution). After the third progress report is filed, the institution must file a Student Validation Roster. This form contains the names of all students for which the institution submitted an SER, each student's expected family contribution and the expected disbursement to be made to that student. These items are supplied by the Office of Education. The institution fills in the exact amount of funds that is disbursed to each student. This form is used as a financial check on the institution and is also used to determine the student's remaining Basic Grant eligibility. (A student is entitled to a Basic Grant for a period of 4 academic years, except in certain instances, a student may be entitled to a Basic Grant for a period of five academic years. (20 U.S.C. 1070a(a)(4)(A)) The Office of Education calculates the student's remaining period of entitlement by the percentage which the funds disbursed bears to the amount which that student should have received for an entire academic year.)

II

The Privacy Act (5 U.S.C. 552a) covers not only "systems of records" maintained by a Federal agency but also systems of records maintained by certain Federal contractors. 5 U.S.C. 552a(m) provides:

> GOVERNMENT CONTRACTORS. When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

The guidelines on the Privacy Act published by the Office of Management and Budget (40 F.R. 28948; July 9, 1975) provide some interpretation of section 552a(m). The guidelines indicate, in part:

> The effect of this provision is to clarify, further, the definition of the term "maintain" as it establishes agency accountability for systems of records. (See subsection (a)(3)). It provides that systems operated under a contract which are designed to accomplish an agency function are, in effect, deemed to be maintained by the agency. It was not intended to cover private

sector record keeping systems but to cover de facto as well as de jure Federal agency systems.

* * *

While the contract need not have as its sole purpose the operation of such a system, the contract would normally provide that the contractor operate such a system formally as a specific requirement of the contract. There may be some other instances when this provision will be applicable even though the contract does not expressly provide for the operation of a system; e.g., where the contract can be performed only by the operation of a system. The requirement that the contract provide for the operation of a system was intended to ease administration of this provision and to avoid covering a contractor's system used as a result of his management discretion. For example, it was not intended that the system of personnel records maintained by large defense contractors be subject to the provisions of the Act.

Nor only must the terms of the contract provide for the operation (as opposed to design) of such a system, but the operation of the system must be to accomplish an agency function. This was intended to limit the scope of the coverage to those systems actually taking the place of a Federal system which, but for the contract, would have been performed by an agency and covered by the Privacy Act. (40 F.R. at 28976)

III

Unlike other programs of federal financial assistance to students administered by the Office of Education, the Basic Grant program is a direct Federal-student program. The Commissioner rather than an intermediary, such as a lender or an institution of higher education, is directed to pay a Basic Grant to each eligible student. Furthermore, the Commissioner is directed to develop or carry out every other administrative activity or function. Since the beginning of this program the Basic Grant statute has been interpreted to mean that the Commissioner is responsible for administering the program and that none of the Commissioner's authority under the program may be delegated to anyone outside the Office of Education. Thus, when it was proposed to enter into agreements with institutions of higher education for the latter to assist in the administration of the program, the Office of Education was advised that such institutions were limited to performing non-discretionary, ministerial functions; and as can be seen from the earlier discussion, every act that the institution performs is mandated by a particular section of the program regulations.

The situation applicable to the so-called college based programs of student financial assistance contrasts with that of the BEOG program. Under the Supplemental Educational Opportunity Grant (SEOG), College Work-Study (CWS) and National Direct Student Loan (NDSL) Programs, funds are alloted among the States pursuant to a statutory formula and are allocated to institutions within a State on the basis of an evaluation of an application for funds submitted by that institution. Furthermore, unlike the Basic Grant program, each institution awards such allocated funds to its students and has discretion to choose among eligible students and to determine the amount of financial assistance. If an institution does not wish to participate in one of the three campus-based programs there is no program at that institution. If an instititon does not wish to "participate" in the Basic Grant Program, the students attending that school are still entitled to their grants and the Office of Education itself must calculate and disburse funds to those students.

IV

In the light of the foregoing, it is evident that:

(1) The Commissioner enters into contracts with instititions of higher education. These contracts provide for the operation of a system of records as a specific contractual undertaking (Para. II(2) of the attached Agreement).

(2) The system of records must be maintained in order to accomplish a function of the Office of Education, namely the administration of the Basic Grants Program; the records required to be maintained are needed to carry out that program.

(3) If the institutions in question does not perform the undertakings required in the agreement, the Commissioner would have to perform them since a student who is eligible for a BEOG is entitled to payment and therefore is entitled to have his eligibility determined and his award calculated and disbursed regardless of whether the Commissioner or an institution performs these functions. As a matter of fact, for the 1975-1976 academic year the Commissioner has performed these functions for approximately 8000 students attending 700 institutions.

(4) With regard to those 8000 students to whom the Commissioner is required to directly process and disburse Basic Grant funds, the Office of Education must maintain the same records that the institutions would have had to maintain pursuant to paragraph 2 of Article II of the Agreement.

In short, the terms of the contract in question provide for the operation of a system of records in order to accomplish an agency function. But for the contract, the agency would establish the systems (40 FR 28948, July 9, 1975). Under these circumstances, it appears that the Office of Education is providing by contract for the operation on its behalf of a system of records within the meaning of 5 U.S.C. 552a(m) and that, pursuant to that provision, the requirements of section 552a must be applied to such system.

Attachment

FOOTNOTES

1/ If the institution has not entered into such an agreement, the student must submit his SER to the Commissioner and the Commissioner makes the relevant calculation and disburses funds to the student. (45 CFR 190.86)

2/ This provision is authorized by section 190.80 of the program regulation (45 CFR 190.80) which provides:

> Each institution shall maintain adequate records with regard to (a) the eligibility or lack thereof, of all students enrolled in the institution who have applied to the institution for a Basic Educational Opportunity Grant, (b) the amount of such grants as have been awarded and to whom, (c) the amount and date of disbursements of such students, and (d) the amount and date of any overpayments of awards that have been restored to the program account. Such records shall include the "Student Eligiblity Report" for each student, the student's cost of attendance at the institution, the basis on which his full-time or part-time enrollment status was determined and the basis on which the portion of the academic year for which the student was enrolled was determined. Further, the institution shall make such records available for inspection by authorized representatives of the Commissioner, at any reasonable time at the Offices of the institution. The institution shall retain such records for three years following the date of submission of a final report covering such funds.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
BUREAU OF POSTSECONDARY EDUCATION
WASHINGTON, D.C. 20202

TERMS OF AGREEMENT

(Agreement Covering the Computation and Disbursement of Basic Educational Opportunity Grants)
July 1973

Whereas, the students of _____
(Name of Institution)
_____, hereinafter referred to as the
(Location of Institution)
"Institution", are potentially eligible to receive grant awards under the program of Basic Educational Opportunity Grants administered by the U.S. Commissioner of Education, hereinafter referred to as the "Commissioner," pursuant to Part A, Subpart 1 of Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070a) and the regulations issued pursuant thereto (45 CFR Part 190 et. seq.); and

Whereas, a finding of the eligibility of such students to receive awards, the computation of the amount of such awards, and the disbursement of funds to its students can best be accomplished by the Institution;

Now, therefore, in order to facilitate the conduct of the Basic Educational Opportunity Grants Program with respect to its students the Institution agrees to the following undertakings:

I. General Undertakings

1. The Institution shall make eligibility determinations, computations of awards, and disbursements from sums provided for that purpose by the Commissioner, at such times and in such manner as the Commissioner shall from time to time prescribe. An award shall be paid to a student only if the Institution determines in accordance with the regulations and instructions issued for that purpose that (i) such student is an "eligible student" and (ii) the amount to be paid has been determined in accordance

with the applicable payment schedule and other instructions as are issued by the Commissioner. The payment schedule will reflect the amount of an award to be made with respect to a student on the basis of (i) a dollar amount representing such student's "expected family contribution" (student eligibility index) and (ii) the student's cost of attendance at the Institution. The amount of a student's award will then be adjusted by the Institution on the basis of (i) the portion of the academic year for which the student is enrolled and (ii) the full-time or the part-time nature of his enrollment. The figure representing the student's "expected family contribution" (student eligibility index) is supplied by the Commissioner (Student Eligibility Report) to each student applicant who in turn submits it to the Institution. The figure representing the student's cost of attendance at the Institution is to be computed by the Institution in accordance with the regulations issued by the Commissioner (45 CFR 190.51). The full-time or part-time nature of a student's enrollment and the portion of the academic year for which he is enrolled will also be determined by the Institution in accordance with regulations issued by the Commissioner.

2. The Institution agrees that it will use all funds made available to it by the Commissioner pursuant to this Agreement only for making payments of Basic Educational Opportunity Grants as provided for in this Agreement. In the event that an overpayment is made to a student the Institution will cooperate fully with the Commissioner, making every reasonable effort to effect the return of such overpayment. The Institution does not, however, assume liability for any overpayments which are not so recovered unless such overpayment was made by the Institution under circumstances where the regulations or instructions of the Commissioner clearly indicate that such payment should not have been made. In making a finding that a student is an "eligible student," the Institution is entitled to rely on information provided by the student.

II. Specific Undertakings

In addition to the foregoing undertakings, and in no way in limitation thereof, the Institution further agrees as follows:

1. All funds received and disbursed under this agreement shall be handled through an account which may be an existing account (preferably one maintained for Federal funds) provided adequate control ledgers are maintained to properly account for such funds separately from other funds.

2. The Institution shall maintain adequate records, for such period of time as prescribed by the Commissioner, with regard to (i) the eligibility, or lack thereof, of all students enrolled in the Institution who have applied to the Institution for payments of a Basic Educational Opportunity Grant; (ii) the amount of such grants as have been awarded and to whom; (iii) the amount and date of disbursement of such grants to such students; and (iv) the amount and date of any overpayments of awards that have been restored to the program account. Such records shall include the "Student Eligibility Report" for each student, the student's cost of attendance at the Institution, and the basis on which his full-time or part-time enrollment status and the portion of the academic year for which the student was enrolled was determined.

3. The Institution will at all reasonable times make available for inspection by authorized representatives of the Commissioner, at the offices of the Institution, all books, records, documents, and other evidence bearing on the receipt and expenditure of such funds as have been made available to the Institution pursuant to this Agreement. Such right of inspection will extend for a period of five (5) years from the date of submission of a final report covering any such funds, unless the Commissioner provides otherwise by regulation.

4. The Institution shall submit such reports and information as the Commissioner may reasonably require in connection with the foregoing undertakings of the Institution and the accounting for the payment of Federal funds.

5. The Institution shall reduce to writing its policy for making refunds of amounts paid on account of tuition, fees, room, and board to students who withdraw or fail to pursue their course of study. A copy of such policy shall be made available to the Commissioner upon request. The Institution agrees that if a refund is made to a student pursuant to the policy of the Institution, the amount of such refund as is reasonably attributable to the payment of a Basic Educational Opportunity Grant in the light of the total of the amount paid to the Institution by the student for tuition, fees, room, and board, shall be treated as an overpayment and restored to the program account.

6. The Institution (if a proprietary Institution of higher education as defined in § 491 of the Higher Education Act of 1965 20 U.S.C. 1088) shall comply with such terms and conditions as the Commissioner determines to be necessary to insure that the availability of assistance under this program to students has not, and will not, increase the tuition, fees or other charges of the Institution.

III. Effect of Agreement

1. This Agreement shall be in effect with respect to all funds advanced to the Institution for disbursement under the Basic Educational Opportunity Grant Program.

2. The Institution understands and agrees that funds shall continue to be advanced to the Institution pursuant to this Agreement and the Institution shall continue to carry out its undertakings pursuant to this Agreement for so long as the Institution and the Commissioner mutually agree to do so.

3. The Institution agrees that reasonable notice shall be given to the Commissioner if it no longer is willing or able to carry out the terms hereof, and the Institution is advised that similar notice will be given to the Institution in the event the Commissioner selects some other means for making Basic Educational Opportunity Grants available to students attending the Institution.

DATE_____

_____
(Institutional Authorizing Officer)

_____
(Name and Title)

This Agreement covers the following branch campuses of the Institution

	Name and Address	OE Vendor Number
1.		
2.		
3.		
4.		
5.		
6.		

IRS No. _____
(Internal Revenue Service Number)

DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY

WASHINGTON, D.C. 20504

June 25, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Attention: Naomi R. Sweeney

Subject: S.J. Res. 203 to amend the Higher Education Act of 1965

Dear Mr. Lynn:

We have been asked to comment on S.J. Res. 203 to amend the Higher Education Act of 1965 and for other purposes. We confine our comments to Section (f) (c) of the Joint Resolution that would have the effect of exempting schools participating in the Basic Opportunities Grants Program from compliance with the Privacy Act of 1974, 5 USC 552(a). It is our understanding that by virtue of participation in this program schools are required and will continue to be required to comply with the Family Educational Rights and Privacy Act of 1974 (the Buckley Amendment).

It is our view that the privacy rights of students and their parents are adequately and appropriately protected by the safeguards in the Buckley Amendment. Substantive and procedural considerations suggest that it is desirable for educational institutions to operate all of their record systems that are accessed by personal identifiers under Buckley Amendment requirements, rather than operate systems under a patchwork of different and sometimes conflicting Buckley and Privacy Act provisions. From a privacy and information standpoint we do not perceive any reason to withhold Administration support of section (f)(c) of S. J. Res. 203.

Sincerely,

Robert R. Belair
Acting General Counsel

RRB:mm

THE DEPUTY SECRETARY OF THE TREASURY

WASHINGTON, D.C. 20220

JUN 23 1976

Director, Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Attention: Assistant Director for Legislative Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of S.J. Res. 203, "To amend the Higher Education Act of 1965, and for other purposes."

The enrolled enactment would, among other things, amend the Higher Education Act of 1965 to extend the authority to insure new student loans through the transition quarter, to September 30, 1976, and extend the provisions of the Emergency Insured Student Loan Act of 1969, through the same date. These provisions are scheduled to expire on June 30, 1976. The enrolled enactment is intended to provide temporary extensions until the Congress is able to take final action on permanent legislation in this area.

The Department would have no objection to a recommendation that the enrolled enactment be approved by the President.

Sincerely yours,

George H. Dixon

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: June 28 Time: 945am

FOR ACTION: David Lissy
Dick Parsons
Max Friedersdorf
Ken Lazarus

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: June 28 Time: 400pm

SUBJECT:

S.J. Res. 203 - Higher Education Emergency
Technical Provisions Act of 1976

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

_x_ For Your Comments ____ Draft Remarks

REMARKS: Approve. RHP
please return to Judy Johnston,

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: June 28 Time: 945am

FOR ACTION: David Lissy
Dick Parsons
Max Friedersdorf
Ken Lazarus

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: June 28 Time: 400pm

SUBJECT:

S.J. Res. 203 - Higher Education Emergency
Technical Provisions Act of 1976

ACTION REQUESTED:

___ For Necessary Action ___ For Your Recommendations

___ Prepare Agenda and Brief ___ Draft Reply

x For Your Comments ___ Draft Remarks

REMARKS:

please return to Judy Johnston,

Sign
WMD

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

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S.J. Res. 203 - Higher Education Emergency
Technical Provisions Act of 1976

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

x For Your Comments ____ Draft Remarks

REMARKS:

please return to Judy Johnston,

No objection -- Ken Lazarus 6/28/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

WASHINGTON

June 29, 1976

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX L. FRIEDERSDORF

SUBJECT: SJRes. 203 - Higher Education Emergency Technical Provisions Act of 1976

The Office of Legislative Affairs concurs with the agencies that the subject resolution be signed.

Attachments

To. J. Connaughton 6-26-76 9:30 A.M.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUN 26 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Resolution - S.J.Res. 203 - Higher Education Emergency Technical Provisions Act of 1976
Sponsor - Sen. Pell (D) R.I.

Last Day for Action

July 3, 1976 - Saturday — Recommend action before June 30, 1976 to avoid interruption of guaranteed student loan program.

Purpose

Extends for 3 months, from June 30, 1976 to September 30, 1976, the authority for the Guaranteed Student Loan program; corrects a technical problem created in the College Work-Study program by the shift to the new fiscal year; and exempts institutions from the requirements of the Privacy Act of 1974 in their capacity as disbursing agents under the Basic Educational Opportunity Grant program.

Agency Recommendations

Office of Management and Budget	Approval
Department of Health, Education, and Welfare	Approval
Domestic Council Committee on Right of Privacy	Approval ("privacy" provision)
Department of the Treasury	No objection

Discussion

S.J.Res. 203 would make three changes in education laws recommended to the Congress by the Department of Health, Education, and Welfare (HEW).

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 94-1281

EMERGENCY TECHNICAL PROVISIONS ACT OF 1976

JUNE 18, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor, submitted the following

REPORT

[To accompany H.J. Res. 984]

The Committee on Education and Labor to whom was referred the joint resolution (H.J. Res. 984) to amend the Higher Education Act of 1965, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the joint resolution as amended do pass.

The amendments are as follows:

Page 2, line 15, strike out "provisions" and insert in lieu thereof "provision".

Page 2, line 23, insert after "deemed" the following: ", by virtue of such agreement,".

PURPOSE OF THE LEGISLATION

This Resolution seeks to make several technical amendments to existing law relative to student financial assistance programs, in order to assure that the "transitional quarter" which extends from July 1, 1976 to September 30, 1976 will not interrupt or suspend the operation of existing law, and to assure that the "pass-through" administration of the Basic Grant Program by educational institutions shall be treated in a similar manner to the administration by the same institutions of other student assistance programs.

The amendments were requested by the Office of Education, worked out in bi-partisan consultation, and considered in an open legislative session on June 15 by the Committee on Education and Labor, which approved the resolution by a unanimous voice vote.

GUARANTEED LOANS

Last December, the Congress enacted Public Law 94-144, extending from July 1, 1976 through September 30, 1976, the appropriation au-

thority for Federal programs whose authority expires on June 30, 1976. This enactment extended the life of most higher education programs, including most of the student aid programs, and those parts of the guaranteed loan program which require Federal appropriations. However, the basic authority to make new loans which are entitled to Federal guarantee and interest payments was not extended by Public Law 94-144. Absent other legislation, the right to make new loans which are insurable by the Commissioner of Education and the right to set a new special allowance for the transitional quarter will lapse, and there will be a hiatus in the making of new loans and the payment of the special allowance.

Such a lapse in the operation of the other student aid programs would be an inconvenience, but not fatal to their operation. In the case of the guaranteed loan program, it could indeed be a trauma which the program might not survive. The guaranteed loan program does not involve the lending of Federal money, but of private capital, provided by banks, credit unions, savings and loan associations and other lenders. Commercial lenders are not going to lend other people's money casually on the expectation that they will subsequently be covered by loan guarantees and eligible for the receipt of special allowances. Understandably they will require the firm assurance of a statute in place before they will make such new loans.

The schedule of both Houses makes it certain that the major long-range legislation relating to the loan program (H.R. 14070 in this House, S. 2657 in the Senate) will not be acted upon, brought through conference and signed prior to June 30. It is thus the belief of the House Committee, shared by the Administration, by the members of the Committee in the other body, that subsections 2 (a), (b), (c), and (d) of this resolution should be enacted without delay. Subsection (a) extends the Commissioner's authority to insure new loans, subsection (b) extend his right to re-insure loans guaranteed by State agencies and private non-profit guarantee agencies, and subsection (c) extends the special allowance setting authority of the Emergency Insured Student Loan Act. Subsection (d) of the resolution makes it clear that the amendment in this resolution will not trigger the automatic extension provisions of the General Education Provisions Act.

H.R. 14070, a bill reported to the House earlier by the Committee, but not yet acted on by the House will make some substantive changes for FY 1977 and later in these areas. This provision of the joint resolution applies only to the transitional quarter and only extends existing law.

College Work-Study

Subsection (e) of the joint resolution seeks to clarify a further transitional quarter problem with another student assistance program—the College Work-Study Program. Public Law 94-43, enacted last June sought to clarify a provision of the law governing the Work-Study program, by permitting the Commissioner to reallocate, within a given state, work-study funds which were not needed for distribution to students in the schools to which they had originally been allotted.

Because the availability of these funds does not become apparent until near the end of the fiscal year, and because it takes some time for the paperwork of reporting by the institutions, application by other eligible institutions, and the making of new awards, the funds to be reallocated were made available to the Commissioner for such reallocation and for expenditure to the schools during the "fiscal year next succeeding the fiscal year for which" the funds were appropriated.

Public Law 94-274 sought to solve some of the transitional quarter problems by providing that the transitional quarter would be considered as a fiscal year for the purposes of several programs, including College Work-Study. While this enactment solved some problems, it created an unanticipated problem with respect to the reallocation authority established by Public Law 94-43. The Committee has been advised by the Office of Education that they are simply not able to perform the various data gathering, verification, and other clerical tasks involved within the transitional quarter, which, under the terms of Public Law 94-274 becomes the "fiscal year next succeeding the fiscal year for which" the current year's funds were appropriated.

To avoid the reversion of unused College Work-Study funds and their unavailibility to students who do need them, the Committee proposes that, for the purposes of that one provision of the Higher Education Act alone, the "fiscal year next succeeding" the current fiscal year be deemed to extend from July 1, 1976 to September 30, 1977.

Basic Educational Opportunity Grants

Section 2(f) of the resolution provides a clarification of requirements applicable to records kept by institutions which disburse Basic Educational Opportunity Grants to students attending such institutions. Two federal statutes have been enacted which affect the maintenance of records necessary to carry out federal student assistance programs. One of these statutes is the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g), which applies to educational institutions that participate in federal education programs. The other is the Privacy Act of 1974 (5 U.S.C. 552a), which is generally applicable to records maintained by government agencies.

Financial data on students and their families used in carrying out the Supplemental Educational Opportunity Grant Program, the College Work-Study Program, and the Natonal Direct Student Loan Program are clearly covered by the provisions of the Family Educational Rights and Privacy Act. An institution which violates the statute or applicable regulations could be precluded from further participation in federal education programs.

The General Counsel of the Department of Health, Education, and Welfare has ruled that an institution which has an agreement with the Commissioner of Education to distribute BEOG funds for which its students are eligible is subject to both the Family Educational Rights and Privacy Act and the Privacy Act of 1974. This is because the agreement with the Commissioner to disburse BEOG has been construed by HEW to mean that the institution is a contractor according to the provisions of 5 U.S.C. 552a(m). This contractor status could mean that these institutions would be required to maintain multiple records on each student who benefits from a Basic Grant as well as other forms of federal financial assistance.

This result was not intended by the Congress and the clarification provided by section 2(f) is necessary to insure that institutions are not subject to conflicting requirements to protect the legitimate privacy rights of federally assisted students.

Section 2(f) will clarify the situation while at the same time insuring that confidential financial information regarding students and their families will not be subject to inspection by, or disclosure to unauthorized individuals or used for purposes other than determining the eligibility of such students for financial assistance to pursue a postsecondary education.

Under the rules of the House, the Committee on Govenment Operations has jurisdiction over the Privacy Act of 1974. Following is a letter from the Committee on Government Operations expressing the view that immediate consideration of this legislation without referral to that Committee is in the interests of an efficient legislative process.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., June 18, 1976.

Hon. CARL PERKINS,
Chairman, Committee on Education and Labor, U.S. House of Representatives, Washington, D.C.

DEAR MR. CARL: It is my understanding that the Committee on Education and Labor has ordered reported House Joint Resolution 984, to amend the Higher Education Act of 1965, and for other purposes. Section 2(f) of that Resolution would amend section 411 of the Higher Education Act of 1965 to provide that an institution of higher education which enters into an agreement with the Commission of Education to disburse Basic Educational Opportunity Grants to its students would not be deemed by virtue of such agreement to be a contractor maintaining a system of records to accomplish a function of the Commissioner.

The Committee on Government Operations has jurisdiction over the Privacy Act of 1974, which, but for the proposed amendment to section 411 of the Higher Education Act, would apply to records relating to BEOGs maintained by the colleges disbursing them on behalf of the Commissioner of Education. In view of this, it appears that the Committee on Government Operations could claim jurisdiction over this legislation and request a sequential referral.

I understand that the legislation is of an emergency nature and must be enacted by the end of this month. I am also aware that the records in question are already subject to 20 U.S.C. § 1232g, whose provisions are quite similar to those of the Privacy Act, and that the educational institutions in question would be required to maintain two entirely separate sets of records if they were to be subject to both acts.

Without establishing any precedent concerning the jurisdiction of the Committee on Government Operations over the Privacy Act of 1974, I have concluded that I will not request a sequential referral of the legislation. The Honorable Bella S. Abzug, Chairwoman of the

Government Information and Individual Rights Subcommittee, which has jurisdiction over the Privacy Act, agrees that bringing the bill to the floor without further delay will be in the best interest of an efficient legislative process and will not affect adversely the rights of the members of the Committee on Government Operations.

With best wishes, I am

Sincerely,

JACK BROOKS,
Chairman.

COST ESTIMATES

Because of the urgency of this legislation, the Committee was unable to request from the Congressional Budget Office a formal cost estimate of this legislation. However, the Committee calls to the attention of the House CBO estimates on H.R. 14070, which appear in House Report 94–1232, at pp. 16–18. These estimates are of the cost implications of that long-range bill which will be considered later, and which will make some substantive changes in the loan program. Since the Federal costs of the loan program do not, for the most part, occur until after the loan has been made, much of the true budgetary impact of simply extending the existing law (even without other change) will be felt in later years and will be affected by the substantive changes made by later legislation. Assuming that approximately half of the new loans for the academic year 1976–1977 are made during the transitional quarter, and assuming that the substantive changes provided by H.R. 14070 are enacted later this year, the "cost estimate" of this joint resolution would probably be somewhere in the neighborhood of 10 to 15 percent of the cost estimate provided by CBO for fiscal year 1977 in House Report 94–1232. With the understanding that this is an oversimplification of the cost impact of this resolution, the Committee nevertheless appends the CBO estimates for H.R. 14070 as a guide to an understanding of the cost impact of the enactment of subsections (a) through (d) of this resolution.

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., June 7, 1976.

Hon. CARL D. PERKINS,
Chairman, Committee on Education and Labor, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 14070 Guaranteed Student Loan Amendments of 1976.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely yours,

ALICE M. RIVLIN,
Director.

Attachments.

JUNE 4, 1976.

Congressional Budget Office Authorization Bill Cost Estimate

1. Bill No.: H.R. 14070.
2. Bill title: Guaranteed Student Loan Amendments of 1976.
3. Purpose of bill: To extend and amend the Guaranteed Student Loan provisions of the Higher Education Act. The following provisions which affect costs will take effect in fiscal year 77: 1) the income limit for subsidy eligibility will rise to $20,000 adjusted family income; 2) The annual loan limit remains at $2,500 except if a loan is made by a state loan program or an educational institution where it cannot exceed 50 percent of cost of attendance or if made by an institution to a freshman it cannot exceed $1,500 unless paid in installments; and 3) State Guarantee Agencies will be fully reinsured for default claims, except those with default rates over 7 percent, and will be permitted to retain 30 percent of their collections.

Additionally there are provisions to become effective at the start of fiscal year 1978. They are: (1) The income limit is now raised to $25,000 adjusted family income; (2) the special allowance rate will now be the 91-day treasury bill rate less 3.5 percent; (3) A one percent administrative allowance will be paid to all State Guarantee Agencies on the total principal amount of insured loans, and (4) new advance provisions whereby State Guarantee Agencies receive early payment of a portion of the federal reinsurance obligation. This bill does not provide new budget authority.

4. Authorization levels and cost estimates:

[Dollar amounts in millions]

	Fiscal year—				
	1977	1978	1979	1980	1981
Total authorization level of H.R. 14070	$600	$866	$1,055	$1,220	$1,402
Subsidy and special allowance payments	420	620	806	972	1,157
Student loan insurance fund	180	190	192	190	186
Administrative allowance		11	12	13	14
Sec. 422 reserve fund		45	45	45	45
Total estimated outlays [1]	400	823	1,059	1,193	1,371
Subsidy and special allowance payments	315	570	760	931	1,111
Student loan insurance fund	72	184	229	191	188
Administrative allowance		11	12	13	14
Sec. 422 reserve fund		45	45	45	45

[1] Outlays calculated using spend-out rates provided by the Budget Office, U.S. Office of Education.

5. Basis for estimate: The major costs of this program are payments for interest subsidies for borrowers and incentive payments to lenders. Both the provision which extends subsidy eligibility to borrowers with higher family incomes over two years and the new mechanism which links the special allowance to the 91-day treasury bill rate affect these payments. The following table shows the base volume under current law 1/, the new volume of loans as a result of the income limit provisions 2/, and the consequent subsidy and special allowance payments under the new rate provisions:

IMPACT OF NEW PROVISIONS TO REINSURE STATES [1] AND ALLOW THEM TO RETAIN 30 PERCENT OF COLLECTIONS: FISCAL YEARS 1977–81

[Dollar amounts in millions]

	Fiscal year—				
	1977	1978	1979	1980	1981
Current law (reinsurance program):					
Obligations [2]	$74	$83	$93	$104	$117
Less collections [2]	8	10	12	15	18
Total	66	73	81	89	99
H.R. 14070 (reinsurance program):					
Obligations [3]	93	104	116	130	146
Less collections [4]	6	7	8	11	13
Total	87	97	108	119	133
Increase due to H.R. 14070 (total)	21	24	27	30	34
Estimates for student loan insurance fund requirements under current law (total)	159	166	165	160	152
Estimates for SLIF under H.R. 14070 (total)	180	190	192	190	186

[1] Except those with default rates over 7 percent.
[2] Estimates for fiscal years 1977 and 1978 are based on OE's preliminary proposed fiscal year 1978 budget. Fiscal years 1979–81 are CBO estimates of future year obligations and collections.
[3] New obligations equals 1.25 times obligations under current law to reinsure at 100 percent.
[4] New collections equals 0.7 times collections under current law.

The second major cost component in this program is the insurance fund which covers net default claims (default obligations less collections) under the federal insurance and reinsurance provisions. The federal government presently reinsures 80 percent of State Guarantee Agencies claims but under H.R. 14070 will increase its obligations by 25 percent to fully reinsure all agencies except those with default rates over 7 percent (only two states with small programs are in this category). On the collections side a provision in H.R. 14070 allows state agencies to retain 30 percent of what they collect. The following table shows the estimated impact on insurance fund requirements of these new provisions. These estimates do not include the marginal effect on future year default obligations of raising the income limits.

COMBINING BASE VOLUME WITH NEW VOLUME FROM CHANGE IN SUBSIDY INCOME LIMIT: FISCAL YEARS 1977–81

[Dollar amounts in millions]

	Fiscal year —				
	1977	1978	1979	1980	1981
Base volume, in-school/grace	$4,074	$4,363	$5,219	$6,042	$6,769
New volume outstanding, in-school/grace	338	1,029	1,803	1,939	2,084
Total volume, in-school/grace	4,412	5,392	7,022	7,981	8,853
Base volume, in-repayment	1,743	1,741	1,587	1,821	2,442
New volume outstanding, in-repayment				789	1,486
Total volume, in-repayment	1,743	1,741	1,587	2,610	3,928
Total volume, outstanding	6,155	7,133	8,609	10,591	12,781
Subsidy payments (at 7 percent of total in-school grace volume)	309	377	492	559	620
Special allowance rate [3] (percent)	1.8	3.4	3.65	(3.9)	(4.2)
Special allowance payments (rate times total volume outstanding)	111	243	314	413	537
Total, subsidies plus special allowance payments	420	620	806	972	1,157

[1] Projections for future year loan volumes in the guaranteed student loan program were calculated using a loan model (operated by the program) incorporating an assumption of 7.5-percent annual growth in average awards (based on growth in student charges). The results of this model are based on time-series analyses of historical program data.

[2] Based on CBO estimates of likelihood to borrow of newly eligible students.

[3] Becomes tied to T-bill rate of fiscal year 1978 and beyond. Projections for 91-day T-bill rates are consistent with CBO's Path C economic assumptions.

The new advance provisions which would take effect in fiscal year 1978 require an authorization level of $12.5 million (as in present law) plus a "sums such as necessary" clause for making advances to State Guarantee Agencies of $50,000 or 10 percent of loan paper which matures during the prior fiscal year. These advances will last three years for states with active loan programs and five years for those who just establish a program. OE has only recently begun to collect matured paper data from the Guarantee Agencies. Last years figures show about $400 million maturing from all states which would mean an advance of about $40 million would have been required this year had these new provisions been in effect. Since the level of matured paper is fairly constant in states with ongoing programs we estimate that about $40 million will be required for each of the years between fiscal year 1978–fiscal year 1981. Data is not available which allow accurate estimation of how many states will begin new programs but even for those who do their matured paper volume will remain small for several years. At the outside perhaps an additional $5 million would be required. These estimates for the new advance provisions are highly tentative.

The one percent administrative allowance provision which takes effect in fiscal year 1978 will cost between $11 and $14 million each year, roughly estimated. OGSL projections for new disbursements made by State Guarantee Agencies under current law range from $750 million in fiscal year 1978 to about $1 billion in fiscal year 1981. However, raising the subsidy income limit to $25,000 will add about $350 million in fiscal year 1978 to about $440 million in fiscal year 1981 in new disbursements through State Guarantee Agencies.

6. Cost comparison: Not available.
7. Previous CBO estimate: Not applicable.

8. Estimate prepared by: Richard Wabnick (225–4745).
9. Estimate approved by:

C. G. NUCKELS,
(For James L. Blum,
Assistant Director for Budget Analysis).

Subsection (e), dealing with work-study, will authorize no further budget authority or outlay authority, but would allow the reallocation of up to $40 million among institutions within the states where the funds were originally allotted. That figure is the maximum which OE estimates will be available for reallocation as of June 30, 1976. Some, but it is not possible to estimate how much, of that can be reallocated even without this resolution. If the resolution is enacted, all of it can probably be utilized.

Subsection (f) of the resolution is not believed to have any cost implications to the taxpayer. It will save some costs for institutions of postsecondary education.

ADMINISTRATION VIEWS

The Committee received the following letter from the Undersecretary of the Department of Health, Education and Welfare relative to the provisions contained in House Joint Resolution 984.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
June 15, 1976.

Hon. CARL D. PERKINS,
Chairman, Committee on Education and Labor, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On June 11, persons from my staff and from the Office of Education met with Majority and Minority staff of the Committee on Education and Labor to explain certain technical problems which have arisen with regard to the Guaranteed Student Loan program, College Work-Study program, and the Basic Educational Opportunity Grants program. This letter is to confirm those conversations.

As you know the entire Higher Education Act of 1965, as amended, is due to expire on June 30. While the authorization for appropriations for most of the programs established under the Higher Education Act has been extended through September 30 of this year by the government-wide authorization of appropriations for the transition quarter, P.L. 94–144, the Department's General Counsel has determined that the statutory authority for the Office of Education to insure loans and to pay interest subsidies under the Guaranteed Student Loan program expires on June 30, 1976, with respect to those students who have not received such a loan prior to that time. We would hope that legislation could be enacted to continue our authority to insure loans and to pay subsidies through September 30, 1976, by which time congressional action to extend the entire Higher Education Act should have occurred.

We are also concerned with the effect of a provision of the Fiscal Year Transition Act, P.L. 94–274, on the College Work-Study (CWS)

program relating to the expenditure of unused FY 1975 CWS funds during the period from July 1, 1976, through September 30, 1977. Under title IV of the Higher Education Act of 1965, the Commissioner of Education is given the authority to reallot unused CWS program funds within each State. According to the statute, such realloted amounts shall remain available until the close of the fiscal year next succeeding the fiscal year for which appropriated. However, section 201(13) of the Fiscal Year Transition Act designates the period from July 1, 1976, to September 30, 1976, as a separate fiscal year for purposes of the College Work-Study program. This provision would have the effect of requiring the Commissioner of Education to make all reallotments not later than September 30, 1976.

Institutions require several weeks after the end of the award period on June 30 to close out their books and to prepare the fiscal-operations report for the National Direct Student Loan, Supplemental Educational Opportunity Grants and College Work-Study programs. Therefore, we have established a due date for the reports of August 31. Historically, by that date approximately 10 percent of the reports have not yet been received in the Office of Education and steps must be taken to obtain these late reports. After the actual unexpended authorizations have been identified and summarized by State, these summaries are provided to the Office of Education regional offices for their recommendation of supplemental awards for other institutions in the same State, and transmittal of these amounts to Washington for preparation of congressional announcements of awards, fund obligation documents and award letters to an estimated 1,200 institutions. Because of the many steps which must occur between the initial receipt of reports and the ultimate issuance of supplemental awards, the reallocation of CWS funds for the 1976–1977 award period cannot be completed by September 30, 1976. Therefore, we would hope that legislation could be enacted which would clearly state that the period of time from July 1, 1976, to September 30, 1976, would not be considered as a separate fiscal year for the purposes of the College Work-Study program.

We have an additional concern with regard to the application of provisions of the Privacy Act to the operation of the Basic Educational Opportunity Grants program. Institutions which undertake to distribute Basic Grant funds for the Office of Education do so as contractors rather than as grantees, thereby rendering them subject to the requirements of the Privacy Act. This places additional burdens on institutions in processing applications and packaging student assistance. We propose that such institutions be considered grantees for this purpose. Such institutions would, of course, still be required to comply with the Family Educational Rights and Privacy Act. Our proposal would simply ease the administrative burden and treat institutions participating in the Basic Grants program in the same manner as they are treated under the campus-based student aid programs.

We are advised by the Office of Management and Budget that there would be no objection to the presentation of these views from the standpoint of the Administration's program.

Sincerely,

MARJORIE LYNCH,
Under Secretary.

Oversight

Twelve days of oversight hearings were held on the Guaranteed Student Loan Program during the 93rd Congress, and a substantial portion of the hearings during the 94th Congress have also been devoted to this subject, although not in the formal oversight framework. The Committee on Government Operations and the General Accounting Office have also examined this program. Since this legislation is a short extension of existing law, it does not incorporate provisions to deal with the problems identified in the program. However, H.R. 14070 which was reported from this Committee on June 8, 1976 (House Report 94–1232) does incorporate new language which will deal with problems identified in the program.

Inflationary impact

The rules of the House require that each Committee Report contain a statement of the legislation's "inflationary impact on prices and costs in the operation of the national economy".

The impact of this bill results from the fact that it continues the current guaranteed student loan program for a three month period. This extension will permit new students to borrow and will result in some federal outlays for the payment of interest to holders of student loan notes. These will, of course, be payments that will continue for a number of years after the loan is made.

This extension is not expected to increase the volume of loans made to students in the coming academic year. Thus its inflationary impact will be negligible.

Section-by-section analysis

Section 1 of House Joint Resolution 984 provides that the resolution may be cited as the "Emergency Technical Provisions Act of 1976." Subsection (a) of section 2 amends section 424(a) of the Higher Education Act (setting time and dollar limits on the amount of loans which can be guaranteed by the Commissioner), by striking the terminal date of June 30, 1975, and permitting Federal loan insurance to be granted for up to $2 billion in loans made during the transitional quarter from July 1 to September 30, 1976.

Subsection (b) of Section 2 allows the payment of interest subsidy benefits under Section 428 for loans made during the transitional quarter and insured by the Commissioner by State student loan programs or by private non-profit insurance agencies under existing provisions of the law.

Subsection (c) of Section 2 amends the Emergency Insured Student Loan Act by striking the June 30, 1976 terminal date after which special allowances can no longer be paid under that Act, and permitting such allowances to be paid during the transitional quarter.

Subsection (d) of section 2 provides that the automatic extension provisions of Section 414 of the General Education Provisions Act will not be deemed to authorize the extension of the amendments made by this resolution beyond the date specified in the resolution.

Subsection (e) of section 2 provides that, for purposes of Section 446(b) of the Higher Education Act of 1965, the transitional quarter and fiscal year ending on September 30, 1977 shall be considered

as one fiscal year, any other provisions of law to the contrary notwithstanding.

Subsection (f) of section 2 adds a new subsection (c) to Section 411 of the Higher Education Act, providing that any institution of higher education which enters into an agreement with the Commissioner to disburse to students attending that institution the amounts those students are entitled to receive under the Basic Educational Opportunity Grant Program shall not be deemed, by virtue of that agreement, to be a contractor maintaining a system of records to accomplish a function of the Commissioner.

Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

HIGHER EDUCATION ACT OF 1965

* * * * * * *

TITLE IV—STUDENT ASSISTANCE

Part A—Grants to Students in Attendance at Institutions of Higher Education

* * * * * * *

Subpart 1—Basic Educational Opportunity Grants

BASIC EDUCATIONAL OPPORTUNITY GRANTS: AMOUNT AND DETERMINATIONS; APPLICATIONS

Sec. 411. (a) (1) The Commissioner shall, during the period beginning July 1, 1972, and ending June 30, 1975, pay to each student who has been accepted for enrollment in, or is in good standing at, an institution of higher education (according to the prescribed standards, regulations, and practices of that institution) for each academic year during which that student is in attendance at that institution, as an undergraduate, a basic grant in the amount for which that student is eligible, as determined pursuant to paragraph (2).

(2) (A) (i) The amount of the basic grant for a student eligible under this subpart for any academic year shall be $1,400, less an amount equal to the amount determined under paragraph (3) to be the expected family contribution with respect to that student for that year.

(ii) In any case where a student attends an institution of higher education on less than a full-time basis during any academic year, the amount of the basic grant to which that student is entitled shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Commissioner for the purposes of this division. Such schedule of reductions shall be established by regulation and

published in the Federal Register not later than February 1 of each year.

(B) (i) The amount of a basic grant to which a student is entitled under this subpart for any academic year shall not exceed 50 per centum of the actual cost of attendance at the institution at which the student is in attendance for that year.

(ii) No basic grant under this subpart shall exceed the difference between the expected family contribution for a student and the actual cost of attendance at the institution at which that student is in attendance. If with respect to any student, it is determined that the amount of a basic grant plus the amount of the expected family contribution for that student exceeds the actual cost of attendance for that year, the amount of the basic grant shall be reduced until the combination of expected family contribution and the amount of the basic grant does not exceed the actual cost of attendance at such institution.

(iii) No basic grant shall be awarded to a student under this subpart if the amount of that grant for that student as determined under this paragraph for any academic year is less than $200. Pursuant to criteria established by the Commissioner by regulation, the institution of higher education at which a student is in attendance may award a basic grant of less than $200 upon a determination that the amount of the basic grant for that student is less than $200 because of the requirement of division (i) and that, due to exceptional circumstances, this reduced grant should be made in order to enable the student to benefit from postsecondary education.

(iv) For the purpose of this subparagraph and subsection (b) the term "actual cost of attendance" means, subject to regulations of the Commissioner, the actual per-student charges for tuition, fees, room and board (or expenses related to reasonable commuting), books, and an allowance for such other expenses as the Commissioner determines by regulation to be reasonably related to attendance at the institution at which the student is in attendance.

(3) (A) (i) Not later than February 1 of each year the Commissioner shall publish in the Federal Register a schedule of expected family contributions for the succeeding academic year for various levels of family income, which, except as is otherwise provided in division (ii), together with any amendments thereto, shall become effective July 1 of that year. During the thirty-day period following such publication the Commissioner shall provide interested parties with an opportunity to present their views and make recommendations with respect to such schedule.

(ii) The schedule of expected family contributions required by division (i) for each academic year shall be submitted to the President of the Senate and the Speaker of the House of Representatives not later than February 1 of that year. If either the Senate or the House of Representatives adopts, prior to May 1 of such year, a resolution of disapproval of such schedule, the Commissioner shall publish a new schedule of expected family contributions in the Federal Register not later than fifteen days after the adoption of such resolution of disapproval. Such new schedule shall take into consideration such recommendations as may be made in connection with such resolution and

shall become effective, together with any amendments thereto, on July 1 of that year.

(B) (i) For the purposes of this paragraph and subsection (b), the term "family contribution" with respect to any student means the amount which the family of that student may be reasonably expected to contribute toward his postsecondary education for the academic year for which the determination under subparagraph (A) of paragraph (2) is made, as determined in accordance with regulations. In promulgating such regulations, the Commissioner shall follow the basic criteria set forth in division (ii) of this subparagraph.

(ii) The basic criteria to be followed in promulgating regulations with respect to expected family contributions are as follows:

(I) The amount of the effective income of the student or the effective family income of the student's family.

(II) The number of dependents of the family of the student.

(III) The number of dependents of the student's family who are in attendance in a program of postsecondary education and for whom the family may be reasonably expected to contribute for their postsecondary education.

(IV) The amount of the assets of the student and those of the student's family.

(V) Any unusual expenses of the student or his family, such as unusual medical expenses, and those which may arise from a catastrophe.

(iii) For the purposes of clause (I) of division (ii), the term "effective family income" with respect to a student means the annual adjusted family income, as determined in accordance with regulations prescribed by the Commissioner, received by the parents or guardian of that student (or the person or persons having an equivalent relationship to such student) minus Federal income tax paid or payable with respect to such income.

(iv) In determining the expected family contribution with respect to any student, any amount paid under the Social Security Act to, or on account of, the student which would not be paid if he were not a student, and one-half any amount paid the student under chapters 34 and 35 of title 38, United States Code, shall be considered as effective income for such student.

(C) The Commissioner shall promulgate special regulations for determining the expected family contribution and effective family income of a student who is determined (pursuant to regulations of the Commissioner) to be independent of his parents or guardians (or the person or persons having an equivalent relationship to such student). Such special regulations shall be consistent with the basic criteria set forth in division (ii) of subparagraph (B).

(4) (A) The period during which a student may receive basic grants shall be the period required for the completion of the undergraduate course of study being pursued by that student at the institution at which the student is in attendance, except that such period may not exceed four academic years unless—

(i) the student is pursuing a course of study leading to a first degree in a program of study which is designed by the institution offering it to extend over five academic years; or

(ii) the student is, or wil be, unable to complete a course of study within four academic years because of a requirement of the institution of such course of study that the student enroll in a noncredit remedial course of study;

in either which case such period may be extended for not more than one additional academic year.

(B) For the purposes of clause (ii) of subparagraph (A), a "noncredit remedial course of study" is a course of study for which no credit is given toward an academic degree, and which is designed to increase the ability of the student to engage in an undergraduate course of study leading to such a degree.

(b) (1) The Commissioner shall from time to time set dates by which students must file applications for basic grants under this subpart.

(2) Each student desiring a basic grant for any year must file an application therefor containing such information and assurances as the Commissioner may deem necessary to enable him to carry out his functions and responsibilities under this subpart.

(3) (A) Payments under this section shall be made in accordance with regulations promulgated by the Commissioner for such purpose, in such manner as will best accomplish the purposes of this section.

(B) (i) If, during any period of any fiscal year, the funds available for payments under this subpart are insufficient to satisfy fully all entitlements under this subpart, the amount paid with respect to each such entitlement shall be—

(I) in the case of any entitlement which exceeds $1,000, 75 per centum thereof;

(II) in the case of any entitlement which exceeds $800 but does not exceed $1,000, 70 per centum thereof;

(III) in the case of any entitlement which exceeds $600 but does not exceed $800, 65 per centum thereof; and

(IV) in the case of any entitlement which does not exceed $600, 50 per centum thereof.

(ii) if, during any period of any fiscal year, funds available for making payments under this subpart exceed the amount necessary to make the payments prescribed in division (i), such excess shall be paid with respect to each entitlement under this subpart in proportion to the degree to which that entitlement is unsatisfied, after payments are made pursuant to division (i).

(iii) In the event that, at the time when payments are to be made pursuant to this subparagraph (B), funds available therefor are insufficient to pay the amounts set forth in division (i), the Commissioner shall pay with respect to each entitlement an amount which bears the same ratio to the appropriate amount set forth in division (i) as the total amount of funds so available at such time for such payments bears to the amount necessary to pay the amounts indicated in division (i) in full.

(iv) No method of computing or manner of distribution of payments under this subpart shall be used which is not consistent with this subparagraph.

(v) In no case shall a payment under this subparagraph be made if the amount of such payment after application of the provisions of this subparagraph is less than $50.

(C) (i) During any fiscal year in which the provisions of subparagraph (B) apply, a basic grant to any student shall not exceed 50 per centum of the difference between the expected family contribution for that student and the actual cost of attendance at the institution in which the student is enrolled, unless sums available for making payments under this subsection for any fiscal year equal more than 75 per centum of the total amount to which all students are entitled under this subpart for that fiscal year, in which case no basic grant shall exceed 60 per centum of such difference.

(ii) The limitation set forth in division (i) shall, when applicable, be in lieu of the limitation set forth in subparagraph (B) (i) of subsection (a) (2).

(4) No payments may be made on the basis of entitlements established under this subpart during any fiscal year ending prior to July 1, 1975, in which—

(A) the appropriation for making grants under subpart 2 of this part does not at least equal $130,093,000; and

(B) the appropriation for work-study payments under section 441 of this title does not at least equal $237,400,000; and

(C) the appropriation for capital contributions to student loan funds under part E of this title does not at least equal $286,000,000.

(c) Any institution of higher education which enters into an agreement with the Commissioner to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall not be deemed, by virtue of such agreement, a contractor maintaining a system of records to accomplish a function of the Commissioner.

* * * * * * *

SCOPE AND DURATION OF FEDERAL LOAN INSURANCE PROGRAM

SEC. 424. (a) The total principal amount of new loans made and installments paid pursuant to lines of credit (as defined in section 435) to students covered by Federal loan insurance under this part shall not exceed $1,400,000,000 for the fiscal year ending June 30, 1972, $1,600,000,000 for the fiscal year June 30, 1973, $1,800,000,000 for the fiscal year ending June 30, 1974, and $2,000,000,000 *each* for the fiscal year ending June 30, 1975, *for the fiscal year ending June 30, 1976, and for the period beginning July 1, 1976, and ending September 30, 1976.* Thereafter, Federal loan insurance pursuant to this part may be granted only for loans made (or for loan installments paid pursuant to lines of credit) to enable students, who have obtained prior loans insured under this part, to continue or complete their educational program; but no insurance may be granted for any loan made or installment paid after June 30, 1979.

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FEDERAL PAYMENTS TO REDUCE STUDENT INTEREST COSTS

SEC. 428. (a) (1) * * *

* * * * * * *

(5) The period referred to in subparagraphs (B) and (C) of paragraph (1) of this subsection shall begin on the date of enactment of this Act and end at the close of [June 30, 1975] *September 30, 1976,* except that, in the case of a loan made or insured under a student loan or loan insurance program to enable a student who has obtained a prior loan made or insured under such program to continue his educational program, such period shall end at the close of June 30, 1979.

* * * * * * *

EMERGENCY INSURED STUDENT LOAN ACT OF 1969

* * * * * * *

INCENTIVE PAYMENTS ON INSURED STUDENT LOANS

SEC. 2. (a) (1) * * *

* * * * * * *

(7) As used in this Act, the term "eligible loan" means a loan made on or after August 1, 1969, and prior to [July 1, 1975] *October 1, 1976* which is insured under title IV-B of the Higher Education Act of 1965, or made under a program covered by an agreement under section 428 (b) of such Act.

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Calendar No. 905

94TH CONGRESS 2d Session | SENATE | REPORT No. 94-954

EMERGENCY TECHNICAL PROVISIONS ACT OF 1976

JUNE 16, 1976.—Ordered to be printed

Mr. PELL, from the Committee on Labor and Public Welfare, submitted the following

REPORT

[To accompany S.J. Res. 203]

The Committee on Labor and Public Welfare reports an original bill to amend and extend certain sections of the Higher Education Act of 1965, and for other purposes, and recommends that the bill do pass.

Legislation amending and extending the programs authorized by the Higher Education Act of 1965, as amended, (S. 2657) is currently pending in the Senate. However, due to the number of bills on the Senate calendar, it appears highly unlikely that such legislation will become law before its expiration on July 1, 1976.

For most programs authorized by the Act, the delay in enactment of S. 2657, the Education Amendments of 1976, will not be crucial. Since these programs are on an annual funding cycle, a potential gap in their authorizations will have no programmatic effect. Other programs have additional funds appropriated for their conduct during the transition quarter, so their administration will continue unaffected.

The same is not true of the Guaranteed Student Loan Program, however. The Commissioner's authority to insure new student loans must continue on a day-to-day basis. Any interruption in that authority would cause chaos in the field, as banks and other lending agencies would not have sufficient certainty to continue to make loans to students seeking them. The net result would be to shut down this massive program completely, without notice and during the annual period that its loan volume is traditionally the highest. This is obviously unacceptable to all parties.

The bill reported by the Committee would extend through September 30, 1976 the Commissioner's authority to insure new loans and the additional special allowance authorized by the Emergency Insured Student Loan Act of 1969. The provisions of section 414 of the General Education Provisions Act, relating to automatic extension of education legislation for an additional fiscal year, would expressly

not apply to this three-month extension. It is the Committee's hope that the period of time covered by his bill will be sufficient to enable the Congress to enact the Education Amendments of 1976, making substantive changes in the Guaranteed Loan Program, as well as in a number of other education programs.

Subsection (e) of the Committee bill would correct what appears to be a technical error in the Fiscal Year Transition Act (P.L. 94–274) regarding the College Work-Study Program. That recent legislation would make the Transition Quarter a fiscal year for the purposes of the Work-Study Program.

Under the Work-Study legislation, the Commissioner of Education is assigned the responsibility of discretionary reallotment of unused funds within each State. In addition, the Joint Resolution making continuing appropriations for fiscal year 1976 provides that the program's funds may be made available for three years. This means that the unexpended portion of the fiscal year 1975 appropriation, available to institutions of higher education for use in fiscal year 1976, may be recovered and reallocated within each State for use by institutions through the 1976–1977 award period.

If the Transition Quarter is interpreted to be the equivalent of a fiscal year, this would require the Commissioner to recover and reallocate unexpended funds within that three-month period. The process is too lengthy and too complicated to be achieved within this limited time-frame.

The Office of Education has developed the following schedule for reallocation of unexpended College Work-Study funds for the award period 1976–1977:

NUMBER OF INSTITUTIONS: ESTIMATED 1,200

June 30, 1976—Close of fiscal year 1976.
July 30, 1976—Application forms for reallocated funds cleared through the Office of Management and Budget.
August 2, 1976—Distribution of fiscal-operations report forms to institutions.
August 31, 1976—Deadline for submission of fiscal-operations reports to the Office of Education.
October 1, 1976—Application forms printed and distributed to all CWS participating institutions.
November 15, 1976—Application forms returned to regional offices.
November 15, 1976—Determination of amount of unused CWS funds by State from fiscal operations reports completed and State summaries sent to regional offices.
November 16, 1976—Request for reapportionment of unexpended authorizations submitted to OMB.
December 13, 1976—Recommendations for supplemental awards received from regional offices.
January 3, 1977—Deobligation of unused CWS funds from institutional accounts.
January 4, 1977—Request for resymbolization of deobligated funds sent to the Budget Division so that funds can be transferred into a current accounting number for reobligation.

January 24, 1977—Receipt of Advice of Allotment from the Budget Division, whereby deobligated funds are made available for reuse through the reallocation process.
February 15, 1977—Fund obligation documents to the Finance Division (OE).
March 1, 1977—Announcement of CWS supplemental awards to Members of Congress.
March 4, 1977—CWS supplemental award letters mailed to institutions.

Obviously, a schedule as complicated as the one outlined above cannot be achieved by the end of the Transition Quarter. If the Committee amendment is not enacted, the net result will be the return of approximately $40 million in already appropriated. Work-Study funds to the Treasury. Students in need of financial aid would be denied it. The Committee strongly believes that this denial was not intended by the Congress and that it must not happen.

Subsection (f) of the Committee bill seeks to clarify the intent of the Privacy Act, so that educational institutions who serve as payment agents for the Basic Educational Opportunity Grant Program are not considered subject to the provisions of section 552a(m) of the Act, relating to contractors maintaining a system of records to accomplish a function of the Commissioner. The Department of Health, Education, and Welfare will continue to be subject to the provisions of the Privacy Act and will maintain its current adequate safeguards for the privacy of records in the Basic Grant Program. In addition, the Family Educational Rights and Privacy Act will be unaffected, and will continue to provide necessary protection of student records in the possession of the institution of higher education.

The Committee has received a number of communications from institutions of higher education concerning the additional and unnecessary administrative burdens which would be imposed upon them if the institutions were deemed "contractors." Financial aid officers have indicated that they would be unable to cope with the additional paperwork burdens. Unless the Committee amendment is adopted, student financial aid offices around the country will be thrown into chaos on July 1, 1976, when the Act's provisions become effective.

The amendment proposed by the Committee has been endorsed by the American Council on Education, the American Association of Community and Junior Colleges, the American Association of State Colleges and Universities, the Association of American Universities, the Association of Jesuit Colleges and Universities, the National Association of Independent Colleges and Universities, the National Association of State Universities and Land-Grant Colleges, and the National Catholic Educational Association's College and University Department.

COST ESTIMATES ON THE COMMITTEE BILL

The Committee bill is merely a straight extension of the Guaranteed Student Loan Program and the Emergency Insured Student Loan Act necessary to continue these authorities through the Transition Quarter, or until S. 2657, the Education Amendments of 1976, is enacted into law. This is not an unanticipated expense, as it is included

in the cost estimates on S. 2657 prepared by the Congressional Budget Office for the Report (No. 94–882) accompanying that legislation.

The amendment relating to the College Work-Study funds has no additional cost implications, since it relates to already-appropriated funds.

Tabulation of Votes Cast in Committee

Pursuant to Section 133(b) of the Legislative Reorganization Act of 1946, as amended, the following is a tabulation of votes cast in Committee:

The Committee bill was unanimously ordered reported to the Senate.

Departmental Reports

The following communication was received from the Department of Health, Education, and Welfare:

Department of Health, Education, and Welfare,
June 15, 1976.

Hon. Harrison A. Williams, Jr.,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: On June 11, persons from my staff and from the Office of Education met with Majority and Minority staff of the Subcommittee on Education of the Committee on Labor and Public Welfare to explain certain technical problems which have arisen with regard to the Guaranteed Student Loan program, College Work-Study program, and the Basic Educational Opportunity Grants program. This letter is to confirm those conversations.

As you know, the entire Higher Education Act of 1965, as amended, is due to expire on June 30. While the authorization for appropriations for most of the programs established under the Higher Education Act has been extended through September 30 of this year by the government-wide authorization of appropriations for the transition quarter, P.L. 94–144, the Department's General Counsel has determined that the statutory authority for the Office of Education to insure loans and to pay interest subsidies under the Guaranteed Student Loan program expires on June 30, 1976, with respect to those students who have not received such a loan prior to that time. We would hope that legislation could be enacted to continue our authority to insure loans and to pay subsidies through September 30, 1976, by which time congressional action to extend the entire Higher Education Act should have occurred.

We are also concerned with the effect of a provision of the Fiscal Year Transition Act, P.L. 94–274, on the College Work-Study (CWS) program relating to the expenditure of unused FY 1975 CWS funds during the period from July 1, 1976, through September 30, 1977. Under title IV of the Higher Education Act of 1965, the Commissioner of Education is given the authority to reallot unused CWS program funds within each State. According to the statute, such realloted amounts shall remain available until the close of the fiscal year next succeeding the fiscal year for which appropriated. However, section 201(13) of the Fiscal Year Transition Act designates the period from July 1, 1976, to September 30, 1976, as a separate fiscal year for purposes of the College Work-Study program. This provision would have the effect of requiring the Commissioner of Education to make all reallotments not later than September 30, 1976.

Institutions require several weeks after the end of the award period on June 30 to close out their books and to prepare the fiscal-operations report for the National Direct Student Loan, Supplemental Educational Opportunity Grants and College Work-Study programs. Therefore, we have established a due date for the reports of August 31. Historically, by that date approximately 10 percent of the reports have not yet been received in the Office of Education and steps must be taken to obtain these late reports. After the actual unexpended authorizations have been identified and summarized by State, these summaries are provided to the Office of Education regional offices for their recommendation of supplemental awards for other institutions in the same State, and transmittal of these amounts to Washington for preparation of congressional announcements of awards, fund obligation documents and award letters to an estimated 1,200 institutions. Because of the many steps which must occur between the initial receipt of reports and the ultimate issuance of supplemental awards, the reallocation of CWS funds for the 1976–1977 award period cannot be completed by September 30, 1976. Therefore, we would hope that legislation could be enacted which would clearly state that the period of time from July 1, 1976, to September 30, 1976, would not be considered as a separate fiscal year for the purposes of the College Work-Study program.

We have an additional concern with regard to the application of provisions of the Privacy Act to the operation of the Basic Educational Opportunity Grands program. Institutions which undertake to distribute Basic Grant funds for the Office of Education do so as contractors rather than as grantees, thereby rendering them subject to the requirements of the Privacy Act. This places additional burdens on institutions in processing applications and packaging student assistance. We propose that such institutions be considered grantees for this purpose. Such institutions would, of course, still be required to comply with the Family Educational Rights and Privacy Act. Our proposal would simply ease the administrative burden and treat institutions participating on the Basic Grants program in the same manner as they are treated under the campus-based student aid programs.

We are advised by the Office of Management and Budget that there would be no objection to the presentation of these views from the standpoint of the Administration's program.

Sincerely,

Marjorie Lynch,
Under Secretary.

Section-by-Section Analysis

Subsections (a) and (b) of section 2 of the Committee bill extend the Commissioner's authority to insure new student loans through the Transition Quarter, to September 30, 1976. Subsection (c) extends the provisions of the Emergency Insured Student Loan Act of 1969 through the same date. Subsection (d) makes it clear that the exten-

sion is only for a three-month period, and that the provisions of section 414 of the General Education Provisions Act, relating to contingent extension of education laws, do not apply.

Subsection (e) provides that, for the purpose of reallocating College Work-Study funds, the Transition Quarter and the period beginning October 1, 1976, and ending September 30, 1977, shall be treated as a single fiscal year.

Subsection (f) clarifies that institutions of higher education which have entered into an agreement with the Commissioner of Education to disburse funds under the Basic Educational Opportunity Grant Program shall not be deemed, by virtue to such agreement, to be "a contractor maintaining a system of records to accomplish a function of the Commissioner, within the meaning of section 552a(m) of the Privacy Act.

Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic):

HIGHER EDUCATION ACT OF 1965

* * * * * * *

TITLE IV—STUDENT ASSISTANCE

Part A—Grants to Students in Attendance at Institutions of Higher Education

STATEMENTS OF PURPOSE; PROGRAM AUTHORIZATION

Sec. 401. (a) It is the purpose of this part, to assist in making available the benefits of postsecondary education to qualified students in institutions of higher education by—

(1) providing basic educational opportunity grants (hereinafter referred to as "basic grants") to all eligible students;

(2) providing supplemental educational opportunity grants (hereinfater referred to as "supplemental grants") to those students of exceptional need who, for lack of such a grant, would be unable to obtain the benefits of a postsecondary education;

(3) providing for payments to the States to assist them in making financial aid available to such students;

(4) providing for special programs and projects designed (A) to identify and encourage qualified youths with financial or cultural need with a potential for postsecondary education, (B) to prepare students from low-income families for postsecondary education, and (C) to provide remedial (including remedial language study) and other services to students; and

(5) providing assistance to institutions of higher education.

(b) The Commissioner shall, in accordance with subparts 1, 2, 3, 4 and 5, carry out programs to achieve the purposes of this part.

Subpart 1—Basic Educational Opportunity Grants

BASIC EDUCATIONAL OPPORTUNITY GRANTS: AMOUNT AND DETERMINATIONS; APPLICATIONS

Sec. 411. (a)(1) The Commissioner shall, during the period beginning July 1, 1972, and ending June 30, 1975, pay to each student who has been accepted for enrollment in, or is in good standing at, an institution of higher education (according to the prescribed standards, regulations, and practices of that institution) for each academic year during which that student is in attendance at that institution, as an undergraduate, a basic grant in the amount for which that student is eligible, as determined pursuant to paragraph (2).

(2)(A)(i) The amount of the basic grant for a student eligible under this subpart for any academic year shall be $1,400, less an amount equal to the amount determined under paragraph (3) to be the expected family contribution with respect to that student for that year.

(ii) In any case where a student attends an institution of higher education on less than a full-time basis during any academic year, the amount of the basic grant to which that student is entitled shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Commissioner for the purposes of this division. Such schedule of reductions shall be established by regulation and published in the Federal Register not later than February 1 of each year.

(B)(i) The amount of a basic grant to which a student is entitled under this subpart for any academic year shall not exceed 50 per centum of the actual cost of attendance at the institution at which the student is in attendance for that year.

(ii) No basic grant under this subpart shall exceed the difference between the expected family contribution for a student and the actual cost of attendance at the institution at which that student is in attendance. If with respect to any student, it is determined that the amount of a basic grant plus the amount of the expected family contribution for that student exceeds the actual cost of attendance for that year, the amount of the basic grant shall be reduced until the combination of expected family contribution and the amount of the basic grant does not exceed the actual cost of attendance at such institution.

(iii) No basic grant shall be awarded to a student under this subpart if the amount of that grant for that student as determined under this paragraph for any academic year is less than $200. Pursuant to criteria established by the Commissioner by regulation, the institution of higher education at which a student is in attendance may award a basic grant of less than $200 upon a determination than the amount of the basic grant for that student is less than $200 because of the requirement of division (i) and that, due to exceptional circumstances, this reduced grant should be made in order to enable the student to benefit from postsecondary education.

(iv) For the purpose of this subparagraph and subsection (b) the term "actual cost of attendance" means, subject to regulations of the Commissioner, the actual per-student charges for tuition, fees, room and board (or expenses related to reasonable commuting), books, and an allowance for such other expenses as the Commissioner determines by regulation to be reasonably related to attendance at the institution at which the student is in attendance.

(3)(A)(i) Not later than February 1 of each year the Commissioner shall publish in the Federal Register a schedule of expected family contributions for the succeeding academic year for various levels of family income, which, except as is otherwise provided in division (ii), together with any amendments thereto, shall become effective July 1 of that year. During the thirty-day period following such publication the Commissioner shall provide interested parties with an opportunity to present their views and make recommendations with respect to such schedule.

(ii) The schedule of expected family contributions required by division (i) for each academic year shall be submitted to the President of the Senate and the Speaker of the House of Representatives not later than February 1 of that year. If either the Senate or the House of Representatives adopts, prior to May 1 of such year, a resolution of disapproval of such schedule, the Commissioner shall publish a new schedule of expected family contributions in the Federal Register not later than fifteen days after the adoption of such resolution of disapproval. Such new schedule shall take into consideration such recommendations as may be made in connection with such resolution and shall become effective, together with any amendments thereto, on July 1 of that year.

(B)(i) For the purposes of this paragraph and subsection (b), the term "family contribution" with respect to any student means the amount which the family of that student may be reasonably expected to contribute toward his postsecondary education for the academic year for which the determination under subparagraph (A) of paragraph (2) is made, as determined in accordance with regulations. In promulgating such regulations, the Commissioner shall follow the basic criteria set forth in division (ii) of this subparagraph.

(ii) The basic criteria to be followed in promulgating regulations with respect to expected family conributions are as follows:

(I) The amount of the effective income of the student or the effective family income of the student's family.

(II) The number of dependents of the family of the student.

(III) The number of dependents of the student's family who are in attendance in a program of postsecondary education and for whom the family may be reasonably expected to contribute for their postsecondary education.

(IV) The amount of the assets of the student and those of the student's family.

(V) Any unusual expenses of the student or his family, such as unusual medical expenses, and those which may arise from a catastrophe.

(iii) For the purposes of clause (I) of division (ii), the term "effective family income" with respect to a student means the annual adjusted family income, as determined in accordance with regulations

prescribed by the Commissioner, received by the parents or guardian of that student (or the person or persons having an equivalent relationship to such student) minus Federal income tax paid or payable with respect to such income.

(iv) In determining the expected family contribution with respect to any student, any amount paid under the Social Security Act to, or on account of, the student which would not be paid if he were not a student, and one-half any amount paid the student under chapters 34 and 35 of title 38, United States Code, shall be considered as effective income for such student.

(C) The Commissioner shall promulgate special regulations for determining the expected family contribution and effective family income of a student who is determined (pursuant to regulations of the Commissioner) to be independent of his parents or guardians (or the person or persons having an equivalent relationship to such student). Such special regulations shall be consistent with the basic criteria set forth in division (ii) of subparagraph (B).

(4)(A) The period during which a student may receive basic grants shall be the period required for the completion of the undergraduate course of study being pursued by that student at the institution at which the student is in attendance, except that such period may not exceed four academic years unless—

(i) the student is pursuing a course of study leading to a first degree in a program of study which is designed by the institution offering it to extend over five academic years; or

(iii) the student is, or will be, unable to complete a course of study within four academic years because of a requirement of the institution of such course of study that the student enroll in a noncredit remedial course of study;

in either which case such period may be extended for not more than one additional academic year.

(B) For the purposes of clause (ii) of subparagraph (A), a "noncredit remedial course of study" is a course of study for which no credit is given toward an academic degree, and which is designed to increase the ability of the student to engage in an undergraduate course of study leading to such a degree.

(b)(1) The Commissioner shall from time to time set dates by which students must file applications for basic grants under this subpart.

(2) Each student desiring a basic grant for any year must file an application therefor containing such information and assurances as the Commissioner may deem necessary to enable him to carry out his functions and responsibilities under this subpart.

(3)(A) Payments under this section shall be made in accordance with regulations promulgated by the Commissioner for such purpose, in such manner as will best accomplish the purposes of this section.

(B)(i) If, during any period of any fiscal year, the funds available for payments under this subpart are insufficient to satisfy fully all entitlements under this subpart, the amount paid with respect to each such entitlement shall be—

(I) in the case of any entitlement which exceeds $1,000, 75 per centum thereof;

(II) in the case of any entitlement which exceeds $800 but does not exceed $1,000, 70 per centum thereof;

(III) in the case of any entitlement which exceeds $600 but does not exceed $800, 65 per centum thereof; and

(IV) in the case of any entitlement which does not exceed $600, 50 per centum thereof.

(ii) If, during any period of any fiscal year, funds available for making payments under this subpart exceed the amount necessary to make the payments prescribed in division (i), such excess shall be paid with respect to each entitlement under this subpart in proportion to the degree to which that entitlement is unsatisfied, after payments are made pursuant to division (i).

(iii) In the event that, at the time when payments are to be made pursuant to this subparagraph (B), funds available therefor are insufficient to pay the amounts set forth in division (i), the Commissioner shall pay with respect to each entitlement an amount which bears the same ratio to the appropriate amount set forth in division (i) as the total amount of funds so available at such time for such payments bears to the amount necessary to pay the amounts indicated in division (i) in full.

(iv) No method of computing or manner of distribution of payments under this subpart shall be used which is not consistent with this subparagraph.

(v) In no case shall a payment under this subparagraph be made if the amount of such payment after application of the provisions of this subparagraph is less than $50.

(C) (i) During any fiscal year in which the provisions of subparagraph (B) apply, a basic grant to any student shall not exceed 50 per centum of the difference between the expected family contribution for that student and the actual cost of attendance at the institution in which the student is enrolled, unless sums available for making payments under this subsection for any fiscal year equal more than 75 per centum of the total amount to which all students are entitled under this subpart for that fiscal year, in which case no basic grant shall exceed 60 per centum of such difference.

(ii) The limitation set forth in division (i) shall, when applicable, be in lieu of the limitation set forth in subparagraph (B) (i) of subsection (a) (2).

(4) No payments may be made on the basis of entitlements established under this subpart during any fiscal year ending prior to July 1, 1975, in which—

(A) the appropriation for making grants under subpart 2 of this part does not at least equal $130,093,000; and

(B) the appropriation for work-study payments under section 441 of this title does not at least equal $237,400,000; and

(C) the appropriation for capital contributions to student loan funds under part E of this title does not at least equal $286,000,000.

(c) Any institution of higher education which enters into an agreement with the Commissioner to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall not be deemed, by virtue of such agreement, a contractor

maintaining a system of records to accomplish a function of the Commissioner.

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PART B—FEDERAL, STATE, AND PRIVATE PROGRAMS OF LOW-INTEREST INSURED LOANS TO STUDENTS IN INSTITUTIONS OF HIGHER EDUCATION [1]

* * * * * * *

SCOPE AND DURATION OF FEDERAL LOAN INSURANCE PROGRAM

SEC. 424. (a) The total principal amount of new loans made and installments paid pursuant to lines of credit (as defined in section 435) to students covered by Federal loan insurance under this part shall not exceed $1,400,000,000 for the fiscal year ending June 30, 1972, $1,600,000,000 for the fiscal year June 30, 1973, $1,800,000,000 for the fiscal year ending June 30, 1974, and $2,000,000,000 [for the fiscal year ending June 30, 1975] *each for the fiscal year ending June 30, 1975, for the fiscal year ending June 30, 1976, and for the period beginning July 1, 1976 and ending September 30, 1976.* Thereafter, Federal loan insurance pursuant to this part may be granted only for loans made (or for loan installments paid pursuant to lines of credit) to enable students, who have obtained prior loans insured under this part, to continue or complete their educational program; but no insurance may be granted for any loan made or installment paid after June 30, 1979.

(b) The Commissioner may, if he finds it necessary to do so in order to assure an equitable distribution of the benefits of this part, assign, within the maximum amounts specified in subsection (a), Federal loan insurance quotas applicable to eligible lenders, or to States or areas, and may from time to time reassign unused portions of these quotas.

* * * * * * *

FEDERAL PAYMENTS TO REDUCE STUDENT INTEREST COSTS

SEC. 428. (a) (1) Each student who has received a loan for study at an eligible institution—

(A) which is insured by the Commissioner under this part;

(B) which was made under a State student loan program (meeting criteria prescribed by the Commissioner), and which was contracted for, and paid to the student, within the period specified by paragraph (5); or

(C) which is insured under a program of a State or of a nonprofit private institution or organization which was contracted for, and paid to the student, within the period specified in paragraph (5), and which—

(i) in the case of a loan insured prior to July 1, 1967, was made by an eligible lender and is insured under a program which meets the requirements of subparagraph (E) of subsection (b) (1) and provides that repayment of such loan shall be in installments beginning not earlier than sixty days after the student ceases to pursue a course of study (as de-

scribed in subparagraph (D) of subsection (b)(1)) at an eligible institution, or

(ii) in the case of a loan insured after June 30, 1967, is insured under a program covered by an agreement made pursuant to subsection (b),

shall be entitled to have paid on his behalf and for his account to the holder of the loan a portion of the interest on such loan at the time of execution of the note or written agreement evidencing such loan under circumstances described in paragraph (2).

(2)(A) Each student qualifying for a portion of an interest payment under paragraph (1) shall—

(i) have provided to the lender a statement from the eligible institution, at which the student has been accepted for enrollment, or at which he is in attendance in good standing (as determined by such institution), which—

(I) sets forth such student's estimated costs of attendance; and

(II) sets forth such student's estimated financial assistance; and

(ii) meet the requirements of subparagraph (B).

(B) For the purposes of clause (ii) of subparagraph (A), a student shall qualify for a portion of an interest payment under paragraph (1) if such student's adjusted family income—

(i) is less than $15,000, and—

(I) the amount of such loan would not cause the total amount of the student's loans insured by the Commissioner under this part or by a State or nonprofit private institution or organization which has an agreement under subsection (b) to exceed $2,000 in any academic year, or its equivalent, or

(II) the amount of such loan would cause the total amounts of the loans described in clause (I) of this subparagraph of that student to exceed $2,000 in any academic year or its equivalent, and the eligible institution has provided, with respect to the amount of such loans in excess of $2,000, the lender with a statement recommending the amount of such excess; or

(ii) is equal to or greater than $15,000, and the eligible institution has provided the lender with a statement evidencing a determination of need and recommending a loan in the amount of such need.

(C) For the purposes of paragraph (1) and this paragraph—

(i) a student's estimated cost of attendance means, for the period for which the loan is sought, the tuition and fees applicable to such student together with the institution's estimate of other expenses reasonably related to attendance a such institution, including, but not limited to, the cost of room and board, reasonable commuting costs, and costs for books;

(ii) a student's estimated financial assistance means, for the period for which the loan is sought, the amount of assistance such student will receive under parts A, C, and E of this title, plus other scholarship, grant, or loan assistance;

(iii) the term "eligible institution" when used with respect to a student is the eligible institution at which the student has been accepted for enrollment or, in the case of a student who is in attendance at such an institution is in good standing (as determined by such institution);

(iv) the determination or need and the amount of a loan recommended by an eligible institution under subparagraph (B)(ii) and the amount of loans in excess of $2,000 recommended by an eligible institution under subparagraph (B)(i)(II) with respect to a student shall be determined by subtracting from the estimated cost of attendance at such institution the total of the expected family contribution with respect to such student (as determined by means other than one formulated by the Commissioner under subpart 1 of part A of this title) plus any other resources or student financial assistance reasonably available to such student.

(D) In addition, the Commissioner shall pay an administrative cost allowance in the amount established by paragraph (3)(B) of this subsection with respect to loans to any student without regard to the borrower's need. For the purposes of this paragraph, the adjusted family income of a student shall be determined pursuant to regulations of the Commissioner in effect at the time of the execution of the note or written agreement evidencing the loan. Such regulations shall provide for taking into account such factors, including family size, as the Commissioner deems appropriate. In the absence of fraud by the lender, such determination of the need of a student under this paragraph shall be final insofar as it concerns the obligation of the Commissioner to pay the holder of a loan a portion of the interest on the loan.

(3)(A) The portion of the interest on a loan which a student is entitle to have paid on his behalf and for his account to the holder of the loan pursuant to paragraph (1) of this subsection shall be equal to the total amount of the interest on the unpaid principal amount of the loan which accrues prior to the beginning of the repayment period of the loan, or which accrues during a period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in subsection (e) of this section or in section 427(a)(2)(C); but such portion of the inteerst on a loan shall not exceed, for any period, the amount of the interest on that loan which is payable by the student after taking into consideration the amount of any interest on that loan which the student is entitled to have paid on his behalf, for that period under any State or private loan insurance program. The holder of a loan with respect to which payments are required to be made under this section shall be deemed to have a contractual right, as against the United States, to receive from the Commissioner the portion of interest which has been so determined and the administrative cost allowance payable under this subsection. The Commissioner shall pay this portion of the interest and administrative cost allowance to the holder of the loan on behalf of and for the account of the borrower at such times as may be specified in regulations in force when the applicable agreement entered into pursuant to subsection (b) was made, or if the loan was made by a State or is

insured under a program which is not covered by such an agreement, at such times as may be specified in regulations in force at the time the loan was paid to the student.

(B) If (i) a State student loan insurance program is covered by an agreement under subsection (b), (ii) a statute of such State limits the interest rate on loans insured by such program to a rate which is less than 7 per centum per annum on the unpaid principal balance, and (iii) the Commissioner determines that section 428(d) does not make such statutory limitation inapplicable and that such statutory limitation threatens to impede the carrying out of the purposes of this part, then he may pay an administrative cost allowance to the holder of each loan which is insured under such program and which is made during the period beginning on the sixtieth day after the date of enactment of the Highed Education Amendments of 1968 and ending 120 days after the adjournment of such State's first regular legislative session which adjourns after January 1, 1969. Such administrative cost allowance shall be paid over the term of the loan in an amount per annum (determined by the Commissioner) which shall not exceed 1 per centum of the unpaid principal balance of the loan.

(4) Each holder of a loan with respect to which payments of interest or of administrative cost allowances are required to be made by the Commissioner shall submit to the Commissioner, at such time or times and in such manner as he may prescribe, statements containing such information as may be required by or pursuant to regulation for the purpose of enabling the Commissioner to determine the amount of the payment which he must make with respect to that loan.

(5) The period referred to in subparagraphs (B) and (C) of paragraph (1) of this subsection shall begin on the date of enactment of this Act and end at the close of [June 30, 1975] *September 30, 1976*, except that, in the case of a loan made or insured under a student loan or loan insurance program to enable a student who has obtained a prior loan made or insured under such program to continue his educational program, such period shall end at the close of June 30, 1979.

(6) No payment may be made under this section with respect to the interest on a loan made from a student loan fund established under title II of the National Defense Education Act of 1958.

(7) Nothing in this or any other Act shall be construed to prohibit or require unless otherwise specifically provided by law, a lender to evaluate the total financial situation of a student making application for a loan under this part, or to counsel a student with respect to any such loan, or to make a decision based on such evaluation and counseling with respect to the dollar amount of any such loan.

(b) (1) Any State or any nonprofit private institution or organization may enter into an agreement with the Commissioner for the purpost of entitling students who receive loans which are insured under a student loan insurance program of that State, institution, or organization to have made on their behalf the payments provided for in subsection (a) if the Commissioner determines that the student loan insurance program—

(A) authorizes the insurance of not less than $1,000 nor more than $2,500, (except in those cases where the Commissioner determines, pursuant to regulations prescribed by him, that a higher amount is warranted in order to carry out the purposes of this part with respect to students engaged in specialized training requiring exceptionally high costs of education) in loans to any individual student in any academic year or its equivalent (as determined under regulations of the Commissioner), which limit shall not be deemed exceeded by a line of credit under which actual payments by the lender to the borrower will not be made in any such year in excess of such annual limit; and provides that the aggregate insured unpaid principal amount of all such insured loans made to any student shall not at any time exceed $7,500 in the case of any student who has successfully completed a program of undergraduate education, and $10,000 in the case of any graduate or professional student (as defined by regulations of the Commissioner and including any loans which are insured by the Commissioner under this part or by a State or nonprofit institution or organization with which the Commissioner has an agreement under this part made to such person before he became a graduate or professional student);

(B) authorizes the insurance of loans to any individual student for at least six academic years of study or their equivalent (as determined under regulations of the Commissioner);

(C) provides that (i) the student borrower shall be entitled to accelerate without penalty the whole or any part of an insured loan, (ii) except as provided in subsection (e) of this section, the period of any insured loan may not exceed fifteen years from the date of execution of the note or other written evidence of the loan, and (iii) the note or other written evidence of any loan may contain such provisions relating to repayment in the event of default by the borrower as may be authorized by regulations of the Commissioner in effect at the time such note or written evidence was executed;

(D) subject to paragraphs (C) and (K) of this paragraph and except as provided by subsection (e) of this section, provides that repayment of loans shall be in installments over a period of not less than five years nor more than ten years begininng not earlier than nine months nor later than one year after the student ceases to pursue a full-time course of study at an eligible institution, exception that if the program provides for the insurance of loans for part-time study at eligible institutions the program shall provide that such repayment period shall begin not earlier than nine months nor later than one year after the student ceases to carry at an eligible institution at least one-half the normal full-time academic workload as determined by the institution;

(E) authorizes interest on the unpaid balance of the loan at a yearly rate not in excess of 7 per centum per annum on the unpaid principal balance of the loan (exclusive of any premium for insurance which may be passed on to the borrower);

(F) insures not less than 80 per centum of the unpaid principal of loans insured under the program;

(G) does not provide for collection of an excessive insurance premium;

(H) provides that the benefits of the loan insurance program will not be denied any student who is eligible for interest benefits under section 428(a) (1) and (2) except in the case of loans made by an instrumentality of a State or eligible institution;

(I) provides that a student may obtain insurance under the program for a loan for any year of study at an eligible institution;

(J) in the case of a State program, provides that such State program is administered by a single State agency, or by one or more nonprofit private institutions or organizations under the supervision of a single State agency;

(K) provides that the total of the payments by a borrower during any year of any repayment period with respect to the aggregate amount of all loans to that borrower which are (i) insured under this part, or (ii) made by a State or the Commissioner under section 428(a)(1)(B) or 433, respectively, shall not be less than $360 or the balance of all such loans (together with interest thereon), whichever amount is less; and

(L) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid during any period (i) during which the borrower is pursuing a full-time course of study at an eligible institution, (ii) not in excess of three years during which the borrower is a member of the Armed Forces of the United States, (iii) not in excess of three years during which the borrower is in service as a volunteer under the Peace Corps Act, or (iv) not in excess of three years during which the borrower is in service as a full-time volunteer under title VIII of the Economic Opportunity Act of 1964.

(2) Such an agreement shall—

(A) provide that the holder of any such loan will be required to submit to the Commissioner, at such time or times and in such manner as he may prescribe, statements containing such information as may be required by or pursuant to regulation for the purpose of enabling the Commissioner to determine the amount of the payment which he must make with respect to that loan;

(B) include such other provisions as may be necessary to protect the financial interest of the United States and promote the purposes of this part, including such provisions as may be necessary for the purpose of section 437, and as are agreed to by the Commissioner and the State or nonprofit private organization or institution, as the case may be; and

(C) provide for making such reports in such form and containing such information as the Commissioner may reasonably require to carry out his function under this part and for keeping such records and for affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports.

(c)(1) The Commissioner may enter into a guaranty agreement with any State or any nonprofit private institution or organization with which he has an agreement pursuant to subsection (b), whereby the Commissioner shall undertake to reimburse it, under such terms and conditions as he may establish, in an amount equal to 80 percentum of the amount expended by it in discharge of its insurance obligation, incurred under its loan insurance program, with respect to

losses (resulting from the default of the student borrower) on the unpaid balance of the principal (other than interest added to principal) of any insured loan with respect to which a portion of the interest (A) is payable by the Commissioner under subsection (a); or (B) would be payable under such subsection but for the borrower's lack of need.

(2) The guaranty agreement—

(A) shall set worth such administrative and fiscal procedures as may be necessary to protect the United States from the risk of unreasonable loss thereunder, to insure proper and efficient administration of the loan insurance program, and to assure that due diligence will be exercised in the collection of loans insured under the program;

(B) shall provide for making such reports, in such form and containing such information, as the Commissioner may reasonably require to carry out his functions under this subsection, and for keeping such records and for affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports;

(C) shall set worth adequate assurance that, with respect to so much of any loan insured under the loan insurance program as may be guaranteed by the Commissioner pursuant to this subsection, the undertaking of the Commissioner under the guaranty agreement is acceptable in full satisfaction of State law or regulation requiring the maintenance of a reserve;

(D) shall provide that if, after the Commissioner has made payment under the guaranty agreement pursuant to paragraph (1) of this subsection with respect to any loan, any payments are made in discharge of the obligation incurred by the borrower with respect to such loan (including any payments of interest accruing on such loan after such payment by the Commissioner), there shall be paid over to the Commissioner (for deposit in the fund established by section 431) such proportion of the amounts of such payments as is determined (in accordance with regulations prescribed by the Commissioner) to represent his equitable share thereof, but shall not otherwise provide for subrogation of the United States to the rights of any insurance beneficiary: *Provided*, That, except as the Commissioner may otherwise by or pursuant to regulation provide, amounts so paid by a borrower on such a loan shall be first applied in reduction of principal owing on such loan; and

(E) may include such other provisions as may be necessary to promote the purposes of this part.

(3) To the extent provided in regulations of the Commissioner, a guaranty agreement under this subsection may contain provisions which permit such forbearance for the benefit of the student borrower as may be agreed upon by the parties to an insured loan and approved by the insurer.

(4) For purposes of this subsection, the terms "insurance beneficiary" and "default" shall have the meanings assigned to them by section 430(e).

(5) In the case of any guaranty agreement entered into prior to September 1, 1969, with a State or nonprofit private institution or organization with which the Commissioner has in effect on that date

an agreement pursuant to subsection (b) of this section, or section 9(b) of the National Vocational Student Loan Insurance Act of 1965, made prior to the date of enactment of this subsection, the Commissioner may, in accordance with the terms of this subsection, undertake to guarantee loans described in paragraph (1) which are insured by such State, institution, or organization and are outstanding on the date of execution of the guaranty agreement, but only with respect to defaults occurring after the execution of such guaranty agreement or, if later, after its effective date.

(d) No provision of any law of the United States (other than sections 427(a)(2)(D) and 427(b) of this Act) or of any State (other than a statute applicable principally to such State's student loan insurance program) which limits the rate or amount of interest payable on loans shall apply to a loan—

(1) which bears interest (exclusive of any premium for insurance) on the unpaid principal balance at a rate not in excess of 7 per centum per annum, and

(2) which is insured (A) by the United States under this part, or (B) by a State or nonprofit private institution or organization under a program covered by an agreement made pursuant to subsection (b) of this section.

Emergency Insured Student Loan Act of 1969

(P.L. 91-95)

AN ACT To authorize special allowances for lenders with respect to insured student loans under title IV-B of the Higher Education Act of 1965 when necessary in the light of economic conditions in order to assure that students will have reasonable access to such loans for financing their education, and to increase the authorizations for certain other student assistance programs

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Insured Student Loan Act of 1969".

INCENTIVE PAYMENTS ON INSURED STUDENT LOANS

Sec. 2. (a)(1) Whenever the Secretary of Health, Education, and Welfare determines that the limitations on interest or other conditions (or both) applicable under part B of title IV of the Higher Education Act of 1965 (Public Law 89-329) to student loans eligible for insurance by the Commissioner of Education or under a State or nonprofit private insurance program covered by an agreement under section 428(b) of such Act, considered in the light of the then current economic conditions and in particular the revelant money market, are impending or threatening to impede the carrying out of the purposes of such part B and have caused the return to holders of such loans to be less than equitable, he is hereby authorized, by regulation applicable to a three-month period specified therein, to prescribe (after consultation with the Secretary of the Treasury and the heads of other appropriate agencies) a special allowance to be paid by the Commissioner of Education to each holder of an eligible loan or loans. The amount of such allowance to any holder with respect to such

period shall be a percentage, specified in such regulation, of the average unpaid balance of disbursed principal (not including interest added to principal) of all eligible loans held by the such holder during such period, which balance shall be computed in a manner specified in such regulation; but no such percentage shall be set at a rate in excess of 3 per centum per annum.

(2) A determination pursuant to paragraph (1) may be made the Secretary of Health, Education, and Welfare, on a national, regional, or other appropriate basis and the regulations based thereon may, accordingly, set differeng allowance rates for different regions or other areas or classifications of lenders, within the limit of the maximum rate set forth in paragraph (1).

(3) For each three-month period with respect to which the Secretary of Health, Education, and Welfare prescribes a special allowance, the determination required by paragraph (1) shall be made, and the percentage rate applicable thereto shall be set, by promulgation of a new regulation or by amendment to a regulation applicable to a prior period or periods.

(4) The special allowance established for any such three-month period shall be payable at such time, after the close of such period, as may be specified by or pursuant to regulations promulgated under this Act. The holder of a loan with respect to which any such allowance is to be paid shall be deemed to have a contractual right, as against the United States, to receive such allowance from the Commissioner.

(5) Each regulation or amendment, prescribed under this Act, which establishes a special allowance with respect to a three-month period specified in the regulation or amendment shall, notwithstanding section 505 of the Higher Education Amendments of 1968, apply to the three-month period immediately preceding the period in which such regulation or amendment is published in the Federal Register, except that the first such regulation may be made effective as of August 1, 1969, and notwithstanding other provisions of this section requiring a three-month period, may be made effective for a period of less than three months.

(6)(A) The Secretary of Health, Education, and Welfare shall determine, with respect to the student insured loan program as authorized under part B of title IV of the Higher Education Act of 1965 and this Act, whether there are any practices of lending institutions which may result in discrimination against particular classes or categories of students, including the requirement that as a condition to the receipt of a loan the student or his family maintain a business relationship with the lender, the consequences of such requirement, and the practice of refusing to make loans to students for their freshman year of study, and also including any discrimination on the basis of sex, color, creed, or national origin. The Secretary shall make a report with respect to such determination, and his recommendations, to the Congress on or before March 1, 1970.

(B) If, after making such determination, the Secretary finds that, in any area, a substantial number of eligible students are denied a fair opportunity to obtain an insured student loan because of practices of lending institutions in the area which limit student participation, (i) he shall take such steps as may be appropriate, after consultation with the appropriate State guarantee agencies and the Advisory Council on

Financial Aid to Students, relating to such practices and to encourage the development in such area of a plan to increase the availability of financial assistance opportunities for such students, and (ii) he shall, within sixty days after making such determination, adopt or amend appropriate regulations pertaining to the student insured loan program to prevent, where practicable, and practices which he finds have denied loans to a substantial number of students.

(7) As used in this Act, the term "eligible loan" means a loan made on or after August 1, 1969, and prior to [July 1, 1975] *October 1, 1976* which is insured under title IV–B of the Higher Education Act of 1965, or made under a program covered by an agreement under section 428(b) of such Act.

(b) The Commissioner of Education shall pay the holder of an eligible loan, at such time or times as are specified in regulations, a special allowance prescribed pursuant to subsection (a), subject to the condition that such holder shall submit to the Commissioner, at such time or times and in such manner as he may deem proper, such information as may be required by regulation for the purpose of enabling the Secretary of Health, Education, and Welfare and the Commissioner to carry out their functions under this Act and to carry out the purposes of this Act.

(c)(1) There are hereby authorized to be appropriated for special allowances as authorized by this section not to exceed $20,000,000 for the fiscal year ending June 30, 1970, $40,000,000 for the fiscal year ending June 30, 1971, and for succeeding fiscal years such sums as may be necessary.

(2) Sums available for expenditure pursuant to appropriations made for the fiscal year ending June 30, 1969, under section 421(b) (other than clause (1) thereof) of the Higher Education Act of 1965 shall be available for payment of special allowances under this Act. The authorization in paragraph (1) shall be reduced by the amount made available pursuant to this paragraph.

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CORRECTED SHEET

S. J. Res. 203

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the nineteenth day of January, one thousand nine hundred and seventy-six

Joint Resolution

To amend the Higher Education Act of 1965, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That this joint resolution may be cited as the "Emergency Technical Provisions Act of 1976".

SEC. 2. (a) The first sentence of section 424(a) of the Higher Education Act of 1965 is amended by striking out "for the fiscal year ending June 30, 1975" and inserting in lieu thereof the following: "each for the fiscal year ending June 30, 1975, for the fiscal year ending June 30, 1976, and for the period beginning July 1, 1976, and ending September 30, 1976".

(b) Section 428(a)(5) of such Act is amended by striking out "June 30, 1975" and inserting in lieu thereof "September 30, 1976".

(c) Section 2(a)(7) of the Emergency Insured Student Loan Act of 1969 is amended by striking out "July 1, 1975" and inserting in lieu thereof "October 1, 1976".

(d) The amendments made by this section shall not be deemed to authorize the automatic extension of the programs so amended, under section 414 of the General Education Provisions Act, beyond the date specified in such amendments.

(e) For the purposes of section 446(b) of the Higher Education Act of 1965, the period beginning July 1, 1976, and ending September 30, 1977, shall be treated as one fiscal year, any other provision of law to the contrary notwithstanding.

(f) Section 411 of the Higher Education Act of 1965 is amended by inserting at the end thereof the following new subsection:

"(c) Any institution of higher education which enters into an agreement with the Commissioner to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall not be deemed, by virtue of such agreement, a contractor maintaining a system of records to accomplish a function of the Commissioner.".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

v

June 22, 1976

Dear Mr. Director:

The following bills were received at the White House on June 22nd:

S.J. Res. 203
S. 391
S. 2847

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C.