

Legislative Bulletin.....September 16, 2009

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H.R. 3221 – The Student Aid and Fiscal Responsibility Act of 2009

Key Conservative Concerns

Take-Away Points

- Constitutes a massive, permanent government takeover of the private student loan industry*** – something liberals have been trying to achieve since the early-1990’s when the Direct Loan program (the government-run program) was created.
- Will cost up to \$50.1 billion over ten years factoring in market-risk.*** By using budget gimmicks, a bill that the Democrats say will “*save*” taxpayers 7.8 billion (over ten years), will actually ***cost \$50.1 billion over ten years*** factoring in the market-risk of inevitable defaults.
- Potentially eliminates over 30,000 jobs*** in the private sector.
- Creates ten new mandatory federal programs.***
- Creates a federal early education grant program for children from birth to 5 years old***, thus involving government, not parents, even more in early education.
- *Allows students convicted of drug possession to retain student loans.***

For more details on these concerns, see below.

H.R. 3221—Student Aid and Fiscal Responsibility Act of 2009
(G. Miller, D-CA)

Order of Business: The bill is scheduled to be considered on Wednesday, September 16, 2009 under a structured rule.

Background: The federal government provides subsidized and unsubsidized loans to parents and students for higher education using two programs: the Federal Family Education Loan (FFEL) program and the Direct Loan (DL) program. The FFEL loan program offers subsidized loans provided to students from private lenders. The FFEL program also provides almost 75 percent of student loans and it is used much more widely (for approximately three-fourths of all student loans) than the DL program.

The 110th Congress passed the College Cost Reduction and Access Act (CCRA) which significantly increase the financial burden on private lenders by cutting lender subsidies by \$21 billion. By reducing subsidies to lenders at a time when interest rates on the market were rising, the CCRA made lender participation in the program less attractive, causing some to pull out of the program and creating access difficulties for students and institutions. The legislation discouraged lenders from participating in the FFEL program. For more information on the CCRA, see this [RSC bulletin from April 2008](#).

After CCRA was passed, and FFEL lenders began experiencing further difficulties, Congress passed the Ensuring Continued Access to Student Loans Act (ECASLA). ECASLA provided temporary relief for lenders participating in the FFEL program. While some conservatives disagreed with ECASLA because it further involved the federal government in student loans, it was successful maintaining the FFEL program. H.R. 3221 is the final step in eliminating a program that the Democrats have wanted to end for years. As the Minority Views in the Committee Report states:

In justifying this latest government takeover, Democrats claim the FFEL program is on 'life support' and therefore must be eliminated. However, it cannot be ignored that Democrats have been trying to eliminate this program since 1993, when President Clinton put into place the Direct Loan program. What Committee Democrats refuse to acknowledge is that the FFEL program has been a stable source of private capital for more than 40 years. Private capital has temporarily dried up in the FFEL program, much like it has in the rest of the financial services sector. Yet student lending is the only sector of the financial services industry being targeted for a permanent government takeover.

Budget Gimmicks. The Democrats claim that the student loan bill “saves” \$7.8 billion” over ten years. But when all of the bill’s budget gimmicks are accounted for, the **cost is actually \$50.1 billion** (a difference of **\$58 billion**). For more information, see this [article by Ranking Member Kline in The Hill](#) from September 14th. Specifically, the Democrats try to hide the cost of the bill with the following three budget gimmicks:

FIRST, *not counting discretionary spending in the score*. The Democrats do not count \$13.5 billion of discretionary spending that would be required (via later appropriation) to simply administer the direct loan/Pell Grant expansions in the bill. Technically, this money is subject to later appropriation, but this spending would be necessary *merely to administer the provisions of this legislation*, and would thus be VERY likely to be appropriated (unlike, for example, other authorizations Congress passes where there is often a large gap between what is authorized and what is appropriated). **This gimmick amounts to \$13.5 billion.**

SECOND, *using an out-of-date budget baseline*. The Pell Grant expansion costs \$39 billion over ten years when compared to the March 2009 baseline, but it costs \$49 billion when compared to the most recent (and therefore the most accurate data available) August 2009 baseline. CBO, in a letter to Ranking Member John Kline, has provided this newer (accurate) score, but Democrats will instead use the March baseline because otherwise their numbers don't add up. **This gimmick amounts to \$11.4 billion.**

THIRD, *not fully accounting for the cost of market risk*. CBO, in a letter to Senator Gregg, notes that adjusted for the "cost of market risk," the bill's costs increase by **\$33 billion**. As CBO notes in its letter to Senator Gregg, in the TARP legislation, Congress directed CBO to score TARP on the cost of the market risk. If that precedent were followed for the scoring of the student loan bill, **the cost increases by another \$33 billion.**

When all three of these budget gimmicks are added together, a bill that the Democrats say will "save" taxpayers 7.8 billion (over ten years), will actually **cost \$50.1 billion over ten years** when taking into account market risk.

Summary:

Title I

Pell Grants.

- The bill increases the maximum amount available for Pell Grant awards from \$5,550 in FY2010 to \$6,900 in FY2019.

College Access and Completion Fund. The purpose of this new federal program is to "promote innovation in postsecondary education practices and policies by institutions of higher education, states, and nonprofit organization to improve student success, completion, and post-completion employment..." The College Access and Completion Fund is authorized at \$600 million per year for FY2010-FY2014. This is a total of \$3 billion.

- *College Access and Completion Grant.* Receives 25 percent of the funds (\$750 million). It was created in the College Cost Reduction and Access Act and requires the Secretary to help individuals achieve in college.
- *State Innovation Completion Grants.* Receives 50 percent of the funds (\$1.5 billion). The program promotes "student persistence in, and completion of, postsecondary education." Among other things, states that receive grants may use them in assisting institutions of higher education in financial literacy, education, and counseling to reduce the amount of loan debt incurred by students. Funds may not be used to promote any lender's loans. Each state receiving funds must provide an annual report to the Secretary on their activities and services, and the effectiveness of their programs in increasing postsecondary achievement.
- *Innovation in College Access and Completion National Activities.* Receives 23 percent of funds (\$690 million). The grants may go to institutions of higher education, states, nonprofits, philanthropic organizations, and other organizations.

The grants will be no less than \$1 million a piece and may be used to “conduct innovative programs that advance knowledge about, and adoption of, policies and practices that increase the number of individuals with postsecondary degrees or certificates.” The funds may also go towards helping these groups develop 2-year programs designed to help students with degree completion, graduating without debt, and employment. Each group or organization must submit an annual report on the effectiveness of the program.

- *Evaluation.* Two percent (\$60 million) will be spent for the Director of the Institute of Education Sciences to evaluate the programs funded under the College Access and Completion Fund.

Veterans Resource Officer Grants. Creates a new discretionary program to increase college completion rates for veterans enrolled in institutions of higher education that have an enrollment of at least 100 full-time veterans. The funds may be used for grants to hire veterans as “Veterans Resource Officers” to serve in the office of campus programs or similar office. They will provide services linking the student veterans and the staff of the institution and help with other student-veteran activities. Authorizes “such sums as may be necessary...”

Historically Black Colleges and Universities and Other Minority-Serving Institutions. Provides \$255 million in mandatory spending per year over ten years for these institutions.

Cooperative Education. Provides \$10 million for FY2010 in new mandatory spending for a program created in the Higher Education Act that was never previously appropriated funds.

Loan Forgiveness for Servicemembers Activated for Duty. The bill directs the Secretary to waive any return of Title IV aid for students called to military service.

Veterans Educational Equity Supplemental Grant Program. Requires the Secretary to provide grants to veterans who are eligible for education benefits under the *Post-9/11 Veterans Education Assistance Act of 2007*. This provision will likely be stripped in the Manager’s Amendment because the VA has found an administrative solution.

Drug-Related Offenses and Student Loans. While the bill maintains current law on whether a student can keep a loan after a drug sale conviction, the language in this bill *allows students convicted of drug possession to retain their student loans*. Under current law, there is a “three strikes and you’re out” scenario. Students who are convicted of drug possession once are ineligible for a year. A student who is convicted twice is ineligible for two years, and a student who is convicted three times is indefinitely ineligible. This is eliminated in the underlying bill. Congressman Souder (R-IN) attempted, and failed, in Committee to reinstate the language.

Title II

Federal Family Education Loan (FFEL). The bill terminates the FFEL program after June 30, 2010 and requires the transition to Direct Loan by July 1, 2010.

Consolidation. The bill allows a FFEL borrower with a consolidation loan to reconsolidate into the Direct Loan program.

Contracts. The Secretary will award multiple contracts, through a competitive bidding process, including non-for-profit servicers, to service Direct Loans. If a contract is formed, the Secretary must provide a job retention incentive payment, if the group agrees to hire for positions created as a result of the contract to areas where the group had performed student loan servicing under FFEL.

Servicing Rights for Not-for-Profit Groups. In the case where there is only one eligible nonprofit servicer in a state, the Secretary shall allocate the servicing rights to the lesser of the following:

- The loans of 100,000 borrowers; or
- The loans of all the borrowers attending institutions located within the state.

In the case where there is more than one eligible nonprofit servicer in the state, the Secretary shall allocate the servicing rights for the lesser of the following:

- The loans of 100,000 borrowers; or
- An equal share of the loans of all borrowers attending institutions in the state.
The Secretary must prepare a report evaluating the performance of all eligible not-for-profit servicers awarded contracts.

Interest Rates on Loans. The rate will change according to a formula adding the bond equivalent rate of auctioned Treasury bills plus 2.5 percent. However, the rate will be capped at 6.8 percent.

Perkins Loans. H.R. 3221 converts Perkins loans from a discretionary program to a mandatory program. The bill provides \$6 billion to the program for FY2010-FY2011. Institutions will receive funding by entering into agreements with the Department of Education similar to the Direct Loan program. The allocation of these funds is as follows:

- 50 percent is given to institutions based on their need;
- 25 percent is given based on low tuition incentive; and
- 25 percent is given based on the graduation rate for Pell-eligible students.

Title III

Modernization, Renovation, and Repair. H.R. 3221 authorizes \$4.04 billion for FY2010 and FY2011 for the U.S. Secretary of Education to make grants to state educational agencies for the modernization, renovation, or repair of public school facilities. Furthermore, the bill would authorize the appropriation of \$60 million for FY2010 and FY2011 to help repair and construct new public schools damaged by Hurricanes Katrina and Rita in 2005.

Below are *some of* the allowable modernizations, renovations, and repairs:

- Roofs, electrical wiring, plumbing systems, sewage systems, lighting systems, or components of such systems, windows, or doors;
- Heating, ventilation, air conditioning systems, or components of such systems (including insulation), including indoor air quality assessments;
- Bringing public schools into compliance with fire and safety codes;
- Preparations for emergencies, including installation of fire/life safety alarms;
- Measures to reduce human exposure to **classroom noise and environmental noise pollution**; and
- Asbestos, polychlorinated biphenyls, mold, mildew, or lead-based hazards abatement or removal.

Impermissible Uses of Funds. The bill prohibits funds from being used to pay for maintenance costs, stadiums, or other facilities primarily used for athletic contests (including events which charge admission to the general public). Funds may also not be used for the construction of facilities that are not used for educating children, or for purchasing carbon offsets.

Davis-Bacon. All projects under this subtitle of H.R. 3221 are subject to General Education Provisions Act (GEPA). GEPA requires that all laborers on all construction projects under the Department of Education be paid Davis-Bacon wages.

Buy American. Requires that all projects under this subtitle must use iron, steel and manufactured goods produced in the United States unless:

- It would be inconsistent with the public interest;
- It is not produced in the U.S. in sufficient and reasonably available quantities; or
- It will increase the cost of the project by more than 25 percent.

Charter Schools. The bill states that “A local educational agency receiving an allocation under this Act shall distribute an amount of that allocation to charter schools within its jurisdiction for modernization, renovation, repair, and construction of charter school facilities.” The bill further states that “individual charter schools shall receive a share based on the needs of the schools, as determined by the agency in consultation with the charter school community.”

Green Schools Provision. H.R. 3221 mandates that LEAs that utilize federal funds under this act must use a certain percentage of all funds on modernizations, renovations, and repairs that are consistent with the provisions of the [LEED Green Building Rating System](#), are [LEED Green Building certified](#), or are [Energy Star](#) certified. The required use of funds on products that meet green certification standards increases from 50 percent in FY 2010 to 75 percent in FY 2011.

Subtitle B of Title III

Higher Education. Creates a new grant program that requires the Secretary to give grants to states to construct *new community college facilities* and modernize, renovate, and repair existing community college facilities. The program will have a one-year cost of \$2.5 billion in FY2011. The bill requires that community colleges receiving funding must use at least 50 percent of their funds to carry out green projects (projects that are consistent with the LEED Green Building Rating System; Energy Star; the CHPS Criteria, Green Globes; or an equivalent program adopted by the state.) As with the above section, the funds may not be used for payment of maintenance costs; on stadiums; or on facilities used for sectarian instruction, religious worship, or where a substantial portion of the functions of the facilities are subsumed in a religious mission.

Title IV

Early Learning Challenge Fund. Provides \$8 billion (\$1 billion per year) for President Obama's new zero-five Early Learning Challenge Fund for FY2010-2017. The bill creates two new grant programs: Quality Pathway Grants and Development Grants.

1) Quality Pathways Grants.

- **Length of Grant.** Five year grants, renewable subject to approval by the Secretary.
- **Prohibition on Use of Funds.** May not be used for assessments that provide rewards or sanctions for individual children or teachers; a single assessment used as the primary or sole method for assessing program effectiveness; or evaluating children other than for things such as “*determining the need for health, mental health, disability, or family support services.*”
- **Matching Requirement.** A state receiving a grant must contribute matching funds (10 percent in the first year; 10 percent in the second year, 15 percent in the third year; and 20 percent in the fourth year and subsequent years). This section allows states to use cash or in-kind contributions to satisfy the match requirements.
- **State Application.** In order to be considered for a grant, states must provide the following (this is not an extensive list):
 - A description of how the state will improve early learning programs serving disadvantaged children from birth to age 5;
 - A description of how the state will improve school readiness outcome;
 - A description of how the state will implement a governance structure and a system of early learning programs and services including: *Not later than 12 months after receiving notice of an award of the grant, complete State early learning and development standards that include social and emotional, cognitive, and physical development domains, and approaches to learning that are developmentally appropriate (including culturally and linguistically appropriate) for all children.*

**See conservative concerns section below.*

 - A description of how the funds will target increasing the number of low-income children in high-quality early learning programs;

- An assurance that the grant will be used to improve the quality of early learning programs across a range of types; and
- A description of the steps the state will take to make progress towards including existing education programs (i.e. Head Start, State-funded prekindergarten, etc.)
- **State Uses of Funds.** States may use the funds to improve the qualifications of early learning providers, reduce class size, build the capacity of early learning programs and communities to *facilitate screening, referral, and provision of services related to health, mental health, disability, and family support* for children participating in early learning programs, among other things.

2) Development Grants.

- **Length of Grant.** Three year grants which may not be renewed.
- **Priority.** A state receiving a grant must use it to prioritize improving the quality of early learning programs serving low-income children.
- **Commission.** The bill establishes a commission to:
 - Review the status of State and Federal early learning program quality standards and early learning and development standards;
 - Recommend benchmarks for program quality standards and early learning and development standards, including taking into consideration the school readiness needs of children with limited English proficiency; and
 - Report to the Secretaries of Education and Health and Human Services not later than 2 years after the date of the enactment of this Act on the commission's findings and recommendations.

Title V

Cost. This title authorizes and appropriates a total of \$7 billion: \$730 million for each year from FY2010 to FY2013, and \$680 million for each year from FY2014 through FY2019.

New Grant Program for Community College Reform. The title creates a new grant program for the Secretary of Labor to award grants to programs “that lead to the completion of a postsecondary degree, certificate, or industry-recognized credential leading to a skilled occupation in a high-demand industry.”

- Grants are awarded for four-year increments.
- The Secretary shall give priority to eligible entities that partner with philanthropic or research organizations, businesses or industry that are related to the theme of the grant program; and *labor unions*.
- **Benchmarks.** Entities receiving grants must develop benchmarks on closing gaps in enrollment and completion rate for groups underrepresented in higher education; and groups of students enrolled at the eligible entity who have the lowest enrollment and completion rates. They must also address local and regional workforce needs and *establish agreements between two-year and four-year public institutions of higher education within a state*. Some conservatives

might be concerned that this requires the collaboration between community colleges and four-year institutions. The *program's goals are also highly duplicative* of Workforce Investment Act programs and Higher Education Act programs.

New Grant for Community College Programs.

- Six year competitive grants to states implementing the reform of junior and community colleges. The section requires that not less than 90 percent of grant funds shall be used for community colleges.

Open Online Education. “[T]he Secretary is authorized to make competitive grants to institutions of higher education, philanthropic organizations, and other appropriate entities to develop, evaluate, and disseminate freely-available high-quality online training, high school courses, and postsecondary education courses.” See conservative concerns in the “Other Potential Conservative Concerns” section below.

Learning and Earning Research Center. The bill creates a four-year grant to a nonprofit to establish the Learning and Earning Research Center. The Center will develop metrics, data elements, standards, data-sharing methods, and best practices to be measure employment outcomes and more.

Possible Conservative Concerns:

Concerns with the Elimination of the FFEL program:

- **Government Takeover of Student Loan Industry.** The bill eliminates competition by taking over the private student loan industry (the FFEL program). Under the FFEL program, students and their families can choose which loan best suits them at lower rates. The elimination of the FFEL program provides a one-size-fits all approach to lending.
- **Job Losses.** Approximately 30,000 private sector jobs could be lost due to the elimination of the FFEL program. For a breakdown on job losses per state, see this [RSC document](#).
- **Department of Education Overload.** It is likely that the Department of Education will not be able to quickly and efficiently service all of the transferred loans. The result will be an expansion of the federal government (if DoE decides to hire more employees) and a reduction of speedy, individual service for borrowers.

Green School Mandate Concerns:

- **Davis-Bacon Wage Requirement.** Many conservatives may also be concerned that this legislation is subject to the requirements of the Davis-Bacon Act. To read more on Davis-Bacon, see this [RSC document](#) from March 2007.
- **Increasing Federal Responsibility.** Historically, the federal government has had an extremely limited financial responsibility with regard to school infrastructure

projects. Many conservatives may be concerned that this legislation expands the federal role in an area that has been left up to the states in the past.

- **Unprecedented Spending.** During consideration of the 21st Century Green High-Performing Public School Facilities Act, the Education and Labor Committee asserted that statistics show that the unmet need for school construction and renovation is estimated to be \$144 billion, while states and local governments spent \$20 billion this year alone on school construction and renovation. Many conservatives are concerned that H.R. 3221 creates a new federal funding stream for school construction which may cause state, local, and private sector investors to back away from their responsibility to build and maintain safe schools.
- **Green School Mandate.** Many conservatives may be concerned that this legislation would require that local educational agencies use a certain percentage of funds for products that meet green building certification standards. While such rating systems and certifications are growing in interest around the U.S., some conservatives may be concerned that this requirement is mandated. Furthermore, many conservatives from smaller and/or rural communities may be concerned that this mandate would cut into funding for more necessary projects if they are required to follow strict green building procedures and practices. For instance, if a school is in need of a roof repair, they may be required to replace the entire roof in order to comply with the green mandate. This would undoubtedly cost the school more money, leaving less money for other needed renovations or repairs.

Other Potential Conservative Concerns:

- **Puts the government on a path to federalizing pre-K.** The bill includes an “Early Learning Challenge Fund” which creates a grant program for states to increase early education programs from birth to age five. With a push by many Democrats to create a universal pre-K program, the concern is that this provision would continue to encourage government to substitute for parenting even earlier in a child’s life. The questionable results of pre-K programs in Georgia and Oklahoma on national exams call into question the purpose of further involving the federal government in early education programs. The section will also increase federal oversight over early education providers that participate in the program. For more information on the dangers of the “Early Learning Challenge Fund” see the [Home School Legal Defense Association’s memo](#).
- **Potential Mental Health Screening for Children.** Many conservatives may be concerned that the Early Learning Challenge Fund includes language that could lead down the path to mental health screenings for children since the state is put in the position of being required to measure the “social and emotional, cognitive, and physical development domains...” This presents a huge threat to parental rights.
- **Students convicted of drug possession will retain their loans.** The bill eliminates the restriction which limited the eligibility of students convicted of drug possession from receiving their student loans.
- **Creates ten new massive mandatory government spending programs.**

- **Duplicative Programs.** The “American Graduation Initiative” duplicates programs already authorized under the Higher Education Act and the Workforce Investment Act.
- **Federalized School Curriculum.** Some conservatives might have concerns at the open-ended authority the “Open Online Education” section gives organizations, through grants from the federal government, to develop curricula that will be used in online courses. This is a step towards federal curriculum for schools and colleges and severely interferes with the authority of states and localities to determine the curriculum that schools provide. Some conservatives may also consider this provision a waste of taxpayer money since online courses are already being provided by 1,000 colleges and universities.

Outside Groups Opposing:

* indicates the group will score

- Alliance for Worker Freedom*
- Americans for Tax Reform
- Citizens Against Government Waste*
- Home School Legal Defense Association

Committee Action: On July 15, 2009, the bill was referred to the House Committee on Education and Labor. The bill was marked up in Committee on July 27, 2009 and passed by a vote of [30-17](#).

Administration Position: The Obama Administration supports passage of H.R. 3221. See the [SAP here](#).

Cost to Taxpayers: In a July 24, 2009 report, CBO finds that the bill will constitute a net increase of \$5.7 billion in spending over ten years (this number is achieved by adding the estimated outlays of \$13.5 billion in spending subject to appropriation and \$7.8 in savings in direct spending). *However*, these numbers were achieved by using the March baseline. After [Ranking Member Kline requested updated numbers](#) relative to the August baseline, the total spending rises to **\$17.12 billion over 10 years**. This number, however, rises to a potential **cost of \$50.12 billion** when accounting for market risk, which is outlined in a [letter from CBO Director Elmendorf to Senator Judd Gregg](#) on July 27, 2009. Because of a Congressional budget resolution gimmick, requiring the use of the March baseline numbers, Democrats will be able to use CBO’s original score despite its updated analyses.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The bill is a government takeover of the private student loan industry and creates ten new government programs.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. Many conservatives may argue that Section 339 of H.R. 3221 institutes new intergovernmental mandates, requiring that local educational agencies use

a certain percentage of funds on products that meet green standards. While CBO does not regard these as mandates under the Unfunded Mandates Reform Act, many conservatives may still view this provision as a federal government mandate on local school construction projects.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The committee report asserts that, “H.R. 3221 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e) or 9(f) of rule XXI of the House of Representatives.”

Constitutional Authority: The Education and Labor Committee, in House Report [111-232](#) cites constitutional authority in Article I, Section 8. House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific powers* granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” [*emphasis added*]