THE HIGHER EDUCATION ACT REFORM AMENDMENTS OF 2005
Section-by-Section Analysis

Section 101. Section 101 of the bill would provide that, unless otherwise expressly stated, references in the bill to sections or other provisions to be amended or repealed are to be considered references to sections or provisions of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq., the "HEA").

Section 102. Section 102(a) of the bill would amend the definition of an "institution of higher education" in section 101(b)(2) of the HEA to permit an institution to implement programs that permit students to be enrolled in the institution while still attending high school, and still meet the definition of an "institution of higher education" for HEA purposes. Currently, that definition requires that the institution's regular students have received a high school diploma or the recognized equivalent, or be beyond the age of compulsory school attendance. This change would enable institutions, particularly community colleges, to implement dual enrollment programs, such as those that would be assisted under the amendments proposed in section 105 of the bill, without risking the loss of HEA eligibility. Students who are dually enrolled would still be ineligible to receive Federal student financial aid under Title IV of the HEA. Sections 102(b)(2) and (3) of the bill would make comparable changes to the definitions of a "proprietary institution of higher education" and a "postsecondary vocational institution" in sections 102(b) and (c) of the HEA, respectively.

Section 102(b)(1) of the bill would amend section 102(a)(3) of the HEA to eliminate the so-called "50 percent rules" related to distance education, which limit the amount of distance education (telecommunications and correspondence) an institution can offer and be eligible to participate in student aid programs under Title IV of the HEA. Ever-increasing numbers of postsecondary students are considered "nontraditional;" they attend part-time, have dependents at home, are older, and work full- or part-time. These students benefit from expanded options for pursuing postsecondary education that accommodate their life situations. It is the role of accrediting bodies to ensure the quality of postsecondary education, regardless of how the instruction is delivered.

Section 102(b)(2)(A) of the bill would amend section 102(b)(1) of the HEA to eliminate the so-called "90/10 rule" in the definition of a "proprietary institution of higher education" that requires such an institution to derive at least 10 percent of its revenues from sources other than Title IV of the HEA. Although well-intentioned, the 90/10 rule has not been shown to be a useful tool in ensuring the quality of education provided by proprietary institutions, and has only served to cause institutions that have a mission of serving the lowest-income students to restrict the number of Federal Pell Grant recipients that they enroll.

Section 102(c) of the bill sets out the effective dates for the amendments that would be made by sections 102(a) and (b) of the bill.

Section 103. Section 103 would make a number of changes to section 401 of the HEA, which authorizes the Federal Pell Grant Program. First, section 103(a) of the bill would amend section 401(a) of the HEA to extend the program authorization through fiscal year 2015, and then would make significant changes in how the particular aspects of the program are funded. Proposed new section 401(a)(2)(A) of the HEA would make available mandatory funding in the amount of $4,300,821,000 for fiscal year 2006 in order to retire the estimated shortfall in budget authority for Federal Pell Grants through award year 2005-2006, which would put the program on a firm financial footing. Proposed new sections 401(a)(2)(B) and (b)(2)(A) of the HEA would make available mandatory funding for an increase in the maximum Federal Pell Grant amount of $100 for each of the next five years in order to provide additional assistance to low-income students. These changes would increase the investment in Federal Pell Grants by more than $19 billion in new mandatory funding for 2006-2015. With this new mandatory funding, the total 2006 Federal Pell Grant request is nearly $18 billion, an all-time high.

The Administration proposes to pay for these funding changes by using mandatory savings generated by other changes to the HEA that are proposed in this bill. Discretionary appropriations would be needed to fully fund a $4,050 maximum Pell Grant award; in 2006, $420 million in mandatory funding would support a $100 increase in the maximum award, to $4,150.
The President's FY 2006 Budget also includes a new budget scoring rule to ensure the program is fully funded and that shortfalls do not materialize in future years.

These changes to the way in which the Federal Pell Grant program is funded are the centerpiece of the Administration's HEA-related budget proposals, and are designed to increase the grant aid available to address the financial need of low-income students pursuing a postsecondary education.

Sections 103(a) and (b)(1) of the bill would also eliminate outdated and confusing provisions in section 401(a) and (b)(1) of the HEA relating to how funds are disbursed, and the portion of a student's cost of attendance that a Federal Pell Grant, in combination with other forms of aid, is intended to cover.

Next, section 103(a)(2)(C) of the bill would eliminate the tuition sensitivity award rule in section 401(b)(3) of the HEA. While the intent of the rule was to provide grant parity for students attending high-tuition schools, its effect has been to penalize students attending extremely low-tuition schools by reducing their awards. Low-tuition schools primarily serve individuals from low-income families--the very students for whom the Federal Pell Grant is intended. In addition, implementation of this award rule requires a cumbersome set of additional payment tables that must factor in tuition in addition to total cost of education and expected family contribution, thus increasing the risk of error in making Pell Grant awards.

Section 103(a)(2)(E) of the bill would amend section 401(b)(5) of the HEA (to be redesignated by section 103(a)(2)(D) of the bill as section 401(b)(3) of the HEA) to index the minimum Pell Grant award to increases in the maximum award. Currently, although there is a $400 minimum award, students qualifying for an award between $200 and $399 also receive $400. At first, indexing would raise the $200 minimum award dollar-for-dollar with increases in the maximum, without adjusting the $400 actual payment; for example, the $100 increase proposed for FY 2006 would increase the minimum award to $300, with a $400 actual payment. Once the indexed minimum is increased to $400, there would be no discrepancy between the minimum for which the student qualifies and the actual minimum payment. This would better target aid to students with the greatest financial need.

Section 103(a)(2)(E) of the bill would amend section 401(b)(6) of the HEA (to be redesignated by section 103(a)(2)(D) of the bill as section 401(b)(4) of the HEA) to require the Secretary to make up to two Federal Pell Grants available in a single award year to an eligible student continuously enrolled in a two- or four-year degree program. This availability would give Federal Pell Grant recipients the option to accelerate their studies and promptly complete their education, as well as enable institutions of higher education to use their facilities more efficiently.

Section 103(a)(3) of the bill would amend section 401(c) of the HEA to limit Federal Pell Grant eligibility to the equivalent of 16 semesters or 24 quarters in duration, as determined by the Secretary in regulation. This would provide an incentive for a more timely completion of a degree program.

Section 103(a)(4) would eliminate section 401(g) of the HEA, which describes procedures for the Secretary to follow in the event of insufficient Federal Pell Grant appropriations. This provision would be unnecessary under the funding structure proposed in sections 103(a)(1) and (2)(B) of the bill.

Section 103(b) would set out the effective dates for the changes made in section 103(a) of the bill.

<u>Section 104.</u> Section 104 of the bill would add a new section 401A to Subpart 1 of Part A of Title IV of the HEA that would create a new Enhanced Pell Grants for State Scholars Program to provide $1,000 grants for up to two years to Federal Pell Grant recipients who have completed the State Scholars curriculum in high school. Currently, 15 states participate in the State Scholars program, which entails completing a demanding curriculum in high school in preparation for technical school, community college, university, or work. Students who complete a rigorous curriculum (with at least three years of mathematics and science, as well as four years of English and social studies, and courses in foreign languages) are more successful in pursuing and completing further education. Although this proposed new program would be funded through discretionary appropriations for the larger Federal Pell Grant program, total funding would be capped at $33 million for fiscal year 2006. If recipients qualify for more than this amount, awards would be allocated within the available funding level.

<u>Section 105.</u> Section 105 of the bill would amend current Chapter 3 of Subpart 2 of Part A of title IV of the HEA by replacing the Academic Achievement Incentive Scholarships with a Community College Access program.

New section 406A of the HEA would provide findings and a purpose for the new chapter. The purpose of the chapter would be to enhance higher education opportunities by promoting dual enrollment programs through which students can earn college credits while still in high school and by facilitating the transfer of academic credits among institutions of higher education, particularly across State lines.

New section 406B(a) of the HEA would require the Secretary to make grants to partnerships to establish or expand existing dual-enrollment programs at junior and community colleges or community college systems that allow high school students to earn high school and transferable college credit. Grants would be awarded for a period of not more than 5 years. An eligible partnership would include one or more local educational agencies and one or more junior or community colleges or a community college system.

New section 406B(b) of the HEA would provide that "junior or community college" would be defined as it is in section 313(f) of the HEA. A "dual-enrollment program" would be defined as a program for 11th and 12th grade high school students that would allow them to enroll in both academic and vocational courses at junior or community college, while concurrently attending high school (although advanced placement or international baccalaureate high school courses would not be included), for both high school and postsecondary education academic credit that is transferable to 2- and 4-year institutions of higher education and or eligible postsecondary vocational institutions and proprietary institutions of higher education. A dual-enrollment program could not require participating students to pay the costs of course tuition and fees at the postsecondary institution.

New section 406B(c) of the HEA would require a partnership desiring an award to submit an application to the Secretary. Each application would be required to: list each member of the partnership and their responsibilities (including who will act as the fiscal agent of the partnership); describe the need for the program; list the human, financial, and other resources that each member of the partnership will contribute to the program, and describe the efforts each member of the partnership will make in seeking additional resources; describe how the program will operate, how grant funds will be used for program activities and to increase the quality and rigor of the courses in the dual-enrollment programs, and how program progress will be measured; and describe how the partnership will support and continue to support dual-enrollment programs after the grant has expired. The Secretary would be required to use a peer-review process to review applications and make recommendations for funding to the Secretary.

New section 406B(c) of the HEA would also require the Secretary to give priority to applications that: place few restrictions on the courses that students enrolled in the dual enrollment program can take, other than those imposed on regular students at the junior or community college; include schools in which at least 50% of the students are eligible for free and/or reduced lunch under the Richard B. Russell National School Lunch Act; give priority to students who are low-income individuals, as defined in section 402A(g)(2) of the HEA; or have established clear articulation agreements to ensure that dual-enrollment academic credits earned at a junior or community college participating in these dual-enrollment programs are transferable.

New section 406B(d) of the HEA would require a grantee to use its grant funds to carry out one or more of the following: establish or expand existing dual-enrollment programs, which may include both academic and technical courses; promote awareness throughout the State of these programs; provide support services to students; awarding postsecondary, academic scholarships to high school students who enroll in and complete the dual-enrollment program and who matriculate to an institution of higher education; provide books and other materials for students enrolled in these programs; and annually evaluate the performance of the program.

New section 406B(d) of the HEA would also require a participating student under this program, in order to receive assistance in paying for books and other materials, to: be a low-income individual, as defined in section 402A(g)(2) of the HEA; have maintained an overall 3.0 grade point average in high school; and have met the enrollment requirements of the high school and the junior or community college, or received permission to participate in the program from his or her high school and parent or guardian.

New section 406B(e) of the HEA would require each grantee to submit to the Secretary an annual report on the operation and progress of its program during the preceding year, using such performance measures and supplying such documents and data as the Secretary might require. Based on the annual reports, the Secretary would be required to publish a report on the performance of the program. The Secretary would also be required to disseminate successful practices developed under the program.

New section 406C(a) of the HEA would require the Secretary to make grants to consortia of two or more States and institutions of higher education to create comprehensive articulation agreements between institutions of higher education in the participating States that would allow for the seamless and timely transfer of postsecondary academic credits between such institutions, particularly across State lines and from junior and community colleges to 2- and 4-year institutions. Grants would be awarded for a period of not more than 3 years. In a State in which the State constitution or law designates an individual, entity, or agency in the State other than the Governor to be responsible for the supervision of institutions of higher education, that individual, entity, or agency would represent the State within the consortium. Each participating State in a consortium, after consultation with the State agency responsible for supervision of institutions of higher education, would designate a State agency to be responsible for the administration and supervision of the activities carried out within the State.

New section 406C(b) of the HEA would provide definitions for "articulation agreement" and "credit."

New section 406C(c) of the HEA would require any consortium desiring an award under this section to submit an application to the Secretary. Each application would be required to: list each consortia representative and their responsibilities; describe the need for the proposed program; describe the human, financial, and other resources that each member of the consortium will contribute to the consortium, and describe the efforts each member of the consortium will make in seeking additional resources; describe how the proposed program will operate, how grant funds will be used for authorized activities, and how program progress will be measured; describe how the proposed program will reduce the administrative and financial burdens of credit transfer among institutions of higher education in participating States; and describe how the consortium will support and continue the program after the grant has expired. The Secretary would be required to use a peer-review process to review applications and make recommendations for funding to the Secretary.

New section 406C(c) of the HEA would also require the Secretary to give priority to applications that include private institutions of higher education in the articulation agreements and encourage articulation agreements that cover rigorous core academic subject areas.

New section 406C(d) of the HEA would require a grantee to use grant funds to design, establish, and implement comprehensive articulation agreements between institutions of higher education in participating States that would allow for the seamless and timely transfer of postsecondary academic credits between such institutions and to annually evaluate the performance of the program. A grantee could use grant funds to acquire technical assistance from State or local entities that have successfully designed, established, or implemented extensive transfer-of-credit arrangements and provide technical and administrative support to institutions and to develop agreements with local educational agencies for vocational course-equivalency approval procedures for purposes of satisfying entrance requirements to institutions of higher education.

New section 406C(e) of the HEA would require each consortium participating in the program to submit to the Secretary an annual report on the operation and progress of its program during the preceding year, using such performance measures and supplying such documents and data as the Secretary might require. Based on the annual reports, the Secretary would be required to publish a report on the performance of the program. The Secretary would also be required to disseminate successful practices developed under the program.

New section 406D of the HEA would authorize $125,000,000 to be appropriated for fiscal year 2006 and such sums as may be necessary for each of the 4 succeeding fiscal years to carry out the chapter.

<u>Section 106.</u> Section 106 of the bill would amend Subpart 8 of Part A of Title IV of the HEA by replacing the Learning Anytime Anywhere Program with a program of Presidential Mathematics and Sciences Scholarships.

New section 420D of the HEA would provide findings, a purpose, and definitions for the new Subpart. The purpose of the Subpart would be to increase the number of postsecondary students from low-income backgrounds who are enrolled in studies leading to baccalaureate, graduate, or professional degrees in physical, life, or computer sciences, mathematics, and engineering.

Definitions of "computer science", "life sciences", "physical sciences", "mathematics", and "engineering" would be provided. An "eligible student" would be defined as a student who: is enrolled, full-time, in an institution of higher education, other than a United States service academy; has completed at least 2 years of undergraduate education; has declared, and is pursuing, a major in studies leading to a baccalaureate degree in physical, life, or computer sciences, mathematics, or engineering; and is eligible for a Federal Pell Grant. The Federal Pell Grant program is the most need-focused of the student aid programs under Title IV of the HEA, with individual awards varying according to the financial circumstances of students and their families. A "managing agent" would be defined as an entity to which an award is made under new section 420E to manage a program of Presidential Mathematics and Sciences Scholarships.

New section 420E(a) of the HEA would require the Secretary, from the funds authorized under new section 420F and through a grant or cooperative agreement, to make an award to a private, nonprofit organization, other than an institution of higher education or system of institutions of higher education, to manage, through a public and private partnership, a program of Presidential

Mathematics and Sciences Scholarships. This award would be for a five-year period. One hundred percent of the funds awarded for any fiscal year would be obligated and expended solely on scholarships to eligible students, and no Federal funds could be used to provide more than 50 percent of the cost of any scholarship to an eligible student.

The Secretary would be authorized to establish: eligibility criteria that managing agent must meet, including criteria regarding financial and administrative capability; operational standards for the managing agent, including management and performance requirements (such as audit, recordkeeping, record retention, and reporting procedures and requirements); and rules for the selection and treatment of scholarship applicants and recipients and for transfer and accounting of funds by the managing agent and the institutions of higher education that recipients attend. The Secretary, as necessary, would review and revise such criteria, standards, and rules and, through agreement with the managing agent, see that any revisions are implemented. If the managing agent failed to meet the requirements of this section, the Secretary could terminate the award to the managing agent.

New section 420E(b) of the HEA sets forth the duties of the managing agent. The managing agent would be required to: establish a Presidential Mathematics and Sciences Scholar's Fund in a separate, named account, that clearly discloses the amount of Federal and non-Federal funds deposited in the account and used for scholarships; solicit funds for scholarships and for the administration of the program, from non-Federal sources; solicit applicants for scholarships; from the amounts in the Fund, award scholarships to eligible students and deliver such funds to the institutions of higher education that they attend; and annually submit to the Secretary a financial audit, an evaluation of the program, and such other documents as the Secretary may require to determine the effective management of the program.

New section 420E(c) of the HEA would require any entity desiring to be the managing agent to submit an application to the Secretary. The application would have to include a description of: how the entity meets, or would meet, any criteria, standards, and rules established by the Secretary; how the entity would solicit funds for scholarships and for the administration of the program, from non-Federal sources; how the entity would provide nationwide outreach to inform students about the program and to encourage students to pursue degrees in physical, life, or computer sciences, mathematics, and engineering; how the entity would solicit throughout the Nation for applications for scholarships; how the entity would verify the eligibility of applicants for scholarships and their eligibility for continued support; the selection criteria the entity would use to award scholarships and to renew those awards; how the entity would inform the institution of higher education chosen by a recipient of the name and scholarship amount of the recipient; what procedures and assurances the entity and the institution of higher education that the recipient attends would use to verify student eligibility, attendance, degree progress, and academic performance, and to deliver and account for payments to the institution the recipients attend; the management (including audit and accounting) procedures the entity would use for the program; the human, financial, and other resources that the applicant would need and use to manage the program; how the applicant would evaluate the program and report to the Secretary annually; and a description of how the entity would coordinate with, complement, and build on similar public and private mathematics and sciences programs.

New section 420E(d) of the HEA would require students who receive scholarships under this subpart to be known as Presidential Mathematics and Sciences Scholars. A student desiring to receive a scholarship would have to submit the free application for Federal student assistance to the Secretary, and an application to the managing agent. Scholarships would be awarded for only one academic year of study at a time, but would be renewable on an annual basis for the established length of the academic program, not to exceed 4 years of study, if the student remained an eligible student. The managing agent could condition renewal of a scholarship on measures of academic progress and achievement with the approval of the Secretary.

If a student failed to remain eligible, or to meet established measures of academic progress and achievement, the managing agent would be required to instruct the student's institution of higher education to suspend payment of the scholarship. A suspension of payment would remain in effect until the student is able to demonstrate that he or she is again eligible and meets established measures of academic progress and achievement. A student's eligibility would be terminated if a suspension period exceeds 12 months. However, a student awarded a scholarship could, under terms established by, and with the approval of, the managing agent, postpone or interrupt his or her enrollment at an institution of higher education for up to 12 months and such postponement or interruption would not be considered a suspension.

Neither a student nor the student's institution of higher education would receive his or her scholarship payments during the period of postponement or interruption, but such payments would resume upon enrollment or reenrollment. In exceptional circumstances, such as serious injury or illness or the necessity to care for family members, the student's postponement or interruption could, upon notification and approval of the managing agent, be extended beyond the 12-month period.

New section 420E(e) of the HEA would require the managing agent to require any institution of higher education that enrolls a student who receives a scholarship under this subpart to annually provide an assurance, prior to making any payment, that the student is eligible in accordance with the new section 420D(c) definition of an "eligible student" and has provided the institution with a written commitment to attend, or is attending, classes and is satisfactorily meeting the institution's academic criteria for enrollment in its program of study. The managing agent would be required to provide the institution of higher education with payments from the Fund for selected recipients in at least two installments. An institution of higher education would be required to return prorated amounts of any scholarship payment to the managing agent, for deposit in the Fund, if a recipient declines a scholarship, does not attend courses, transfers to another institution of higher education, or becomes ineligible for a scholarship.

New section 420F of the HEA would authorize $50,000,000 to be appropriated for fiscal year 2006 and such sums as may be necessary for each of the 4 succeeding fiscal years to carry out this subpart.

<u>Section 107.</u> Section 107(a) would amend section 413A(b)(1) of the HEA to extend the Federal Supplemental Educational Opportunity Grant (FSEOG) Program through fiscal year 2010.

Section 107(b) would amend the allocation formula in section 413D of the HEA to phase out the base guarantee portion of the current formula over 5 years. Under current law, the annual appropriation for each of the three Title IV, HEA "campus-based" programs—the FSEOG, Federal Work-Study, and Federal Perkins Loan programs—is distributed to institutions according to a two-part statutory formula. The first part, the "base guarantee", considers a school's program expenditures in a previous year. The second step in the current allocation formula is based on institutional need for additional funding. The current allocation formula is problematic because it has historically distributed a disproportionate share of funding to institutions with a long history of program participation, rather than on the number of low-income students they enroll. By phasing out the base guarantee, the distribution of campus-based program funding would be based more directly on the needs of an institution's current students.

Section 107(b) would also amend section 413D of the HEA to require the Secretary to allocate up to 10 percent of annual appropriations in excess of $700,000,000 to institutions at which at least 10 percent of the students enrolled are Federal Pell Grant recipients; that offer programs of at least 4 years, or at least 2, but less than 4 years, in duration; and that have rates for Federal Pell Grant recipients graduating (or transferring to a 4-year institution, in the case of the second category of institutions) within the normal program duration that exceed the median rate for the institution's sector. This would provide an incentive to institutions to encourage their students to complete their degrees in a timely manner. Current section 413D of the HEA authorizes, but does not require, the Secretary to make this allocation, and the targeting of institutions is less precise.

Section 107(c) of the bill sets out the effective date for the amendments that would be made by section 107(a) and (b) of the bill.

<u>Section 108.</u> Section 108 would amend sections 424(a), 428(a)(5) and 428C(e) of the HEA to extend various Federal Family Education Loan Program authorities. Section 424(a) of the HEA relates to the scope and duration of the Federal loan insurance program, section 428(a)(5) of the HEA pertains to the duration of the authority to make interest subsidized loans, and section 428C(e) contains a termination date for the authority to make consolidation loans.

<u>Section 109.</u> Section 109 would amend sections 425(a), 428(b)(1), and 428H(d)(2)(C) of the HEA to increase subsidized Stafford Loan limits for first-year students from $2,625 to $3,500, and for second-year students from $3,500 to $4,500, and increase Unsubsidized Stafford Loan limits for graduate and professional students from $10,000 to $12,000. The aggregate undergraduate subsidized Stafford Loan limit would also be increased from $23,000 to $25,000, and to reflect this increase, the aggregate subsidized Stafford Loan limit for graduate and professional students would be increased from $65,500 to $67,500. Loans limits for first-year undergraduate students have remained effectively unchanged since 1975, and loan limits for second-year undergraduates have not increased since 1992. At the same time, the average price of attending an institution of higher education has increased significantly.

While grants are the preferred and primary tool for equalizing educational opportunity at the postsecondary level, loans have become an important and necessary part of financing postsecondary education. Today, 41% of low-income students enrolled at least half-time receive a Federal student loan, with more than two-thirds of first- and second-year students enrolled full-time borrowing the maximum subsidized Stafford loan, and more than half of all graduate students borrowing the maximum Unsubsidized Stafford loan (more than two-thirds of students in medicine, other health science related fields and law borrowed the maximum Unsubsidized Stafford loan).

Section 109(b) of the bill sets out the effective date for the amendments that would be made by section 109(a) of the bill.

Section 110. Section 110(a) of the bill would amend sections 427A and 428C of the HEA to eliminate the change to a fixed rate of 6.8 percent for Stafford and Unsubsidized Stafford Loans, and to a fixed rate of 7.9 percent for PLUS Loans, that is scheduled for July 1, 2006, and change the interest rate on consolidation loans to a variable rate instead of the current weighted-average calculation.

Currently, the interest rate on Stafford and Unsubsidized Stafford Loans is a variable rate equal to the 91-day Treasury bill rate plus 1.7 percent during in-school, grace, and deferment periods, and plus 2.3 percent during repayment, capped at 8.25 percent. For PLUS Loans (for parents), the variable rate formula is equal to the 91-day Treasury bill rate plus 3.1 percent, capped at 9 percent. Retaining a variable interest rate on these loans would protect borrowers and Federal taxpayers by tying interest rates and subsidies to market forces. These amendments would also result in borrowers paying less in interest than would be the case under the scheduled move to a fixed interest rate. Moreover, at no time during the 10-year budget-scoring window are borrower interest rates expected to rise above the currently-scheduled fixed interest rates of 6.8 percent for student loans and 7.9 percent for parent loans.

The interest rate for consolidation loans is currently calculated on the basis of a weighted average of the interest rates on the loans to be consolidated, rounded up to the nearest one-eighth of a percent. Section 110 of the bill would change this to the same variable rate currently used for Stafford and Unsubsidized Stafford Loans and extended by these amendments. This change to a variable rate for consolidation loans would treat current and former students equally, and borrowers who choose to consolidate their loans will not find themselves locked in at high interest rates during a low interest rate environment, as is the case today. Variable rates will keep student loans tied to current market conditions that benefit students and taxpayers.

Sections 110(b) and (c) of the bill would make conforming changes to sections 455(b) and 438(b)(2)(I) of the HEA, respectively, to reflect the changes proposed in section 110(a) of the bill.

Section 111. Section 111 of the bill would amend section 428(b)(1)(G) of the HEA to reduce the insurance paid to lenders from 98% to 95%, and authorize the Secretary to increase that insurance to 96 percent if the lender meets data quality standards specified by the Secretary.

When the student loan programs were first authorized, lenders were insured for 100% of the unpaid principal and interest on a loan, in the event a student failed to repay it. Over the years, as ineffective institutions were eliminated from the student loan programs, as students were provided much improved repayment options and counseling services, and as lenders and guaranty agencies focused their efforts on default prevention, more students successfully repaid their student loans and fewer students found themselves unable to repay. As a result, Congress reduced the lenders' level of insurance so that lenders began to share in the risk associated with defaults. Currently, the monetary risk to a lender as a result of a default is 2%.

As default rates have continued to decline, to the historic low of 5.2 percent last year, and repayment options improve (including the extended repayment changes proposed in section 113 of the bill), lenders should shoulder a greater share of the risk of default. Under this amendment, lenders would bear 5 percent of the risk of default, unless the Secretary chooses to increase the level of insurance by 1 percent to reward those lenders that meet data quality standards specified by the Secretary.

<u>Section 112.</u> Section 112(a) would amend section 428(b)(1)(H) of the HEA to require the deposit, in the Federal Fund established under section 422A(a) of the HEA, of a one percent origination fee. Current law gives guaranty agencies the option of charging the borrower an insurance fee of up to 1 percent, which is then deposited in a Federal Fund and used to pay default claims. In 2003, only 16 guaranty agencies charged borrowers the optional 1 percent insurance fee, thereby reducing the value of the Federal Fund. If a guaranty agency allows the Federal Fund to become depleted, it will be unable to pay default claims. This amendment would strengthen the financial stability of the guaranty agency system.

Section 112(b) of the bill would set out the effective date for the changes made by section 112(a) of the bill.

<u>Section 113.</u> Section 113 would amend sections 428(b)(9) and 455(d) of the HEA to provide all FFEL borrowers, regardless of when their loans were made, access to the same extended repayment terms available in the Direct Loan program. Direct Loan borrowers have access to longer repayment terms than FFEL borrowers with comparable debt levels; currently, FFEL borrowers must consolidate their loans to receive similar benefits. This amendment will give FFEL borrowers the same repayment options as Direct Loan borrowers, so that FFEL borrowers with higher debt levels have longer repayment periods. With rising debt levels, flexible repayment options help students manage their debt, reducing the risk of default. Note that while the extended repayment terms would not be changed for the Direct Loan Program, they would be added to section 455(d) of the HEA by section 113(b) of the bill.

<u>Section 114.</u> Section 114(a) of the bill would amend section 428(c)(1) of the HEA to reduce the reinsurance rate for a guaranty agency from 95, 85, or 75 percent, depending on the percentage of loans insured by that guaranty agency and in repayment for which the Secretary makes reimbursement payments in a fiscal year, to 92, 82, or 72 percent, respectively.

This proposed reduction is intended to encourage lenders and guaranty agencies to continue to strengthen default prevention efforts, and in recognition of the strong repayment record associated with student loans today. The proposed reduction is also consistent with the amendments proposed in section 111 of the bill to increase risk sharing by lenders. The savings that would be generated by this increased risk sharing among FFEL Program participants would be redirected to increase the government investment in Federal Pell Grants (as proposed in section 103 of the bill) and provide other benefits to students. Under the amendments proposed in section 114(a) of the bill, guaranty agencies will, on average, receive $1.9 million less in fiscal year 2006 and $4.6 million less in fiscal year 2015.

Section 114(b) of the bill would set out the effective dates for the amendments made by section 114(a) of the bill.

Section 115. Section 115 of the bill would amend section 428(c)(6)(B) to reduce the collection retention fee paid to guaranty agencies from the current 23 percent to 20 percent in 2006, then to 18 percent in 2008, and then, in 2010, to a rate that would be determined in accordance with the regulations of the Secretary and equal to the average rate paid to collection agencies under contract to the Department (currently 16 percent). Comparable reductions would also be made with respect to consolidation loans and rehabilitated loans.

The Department of Education currently pays its collection contractors an average of 16 cents on each dollar they collect. For similar collection activity, guaranty agencies retain 23 cents. (Guaranty agencies currently retain 18.5 cents if the collection is made by consolidating the defaulted loan.) Guaranty agencies are operating more efficiently today than in the past, and it is anticipated that their efficiency will continue to increase in the future. Therefore, an incremental reduction in the amount guaranty agencies may retain from collections on defaulted loans to the average paid to the Department's private collection agents is appropriate.

Section 116. Section 116(a) of the bill would amend section 428C of the HEA to eliminate the so-called "single holder rule." Section 116(a) of the bill would also eliminate the option for joint consolidation by married borrowers, which has proven too burdensome and complicated.

Currently, the single holder rule in section 428C(b)(1)(A)(i) of the HEA generally requires that a borrower seeking a consolidation loan, and who has all of his or her FFEL loans with a single lender, must obtain the consolidation loan from that lender, unless the borrower certifies that he or she has been unable to obtain a consolidation loan with income-sensitive repayment terms from that lender. The elimination of this provision would permit a borrower to seek out the best possible arrangement for obtaining a consolidation loan.

Additionally, section 116 of the bill would amend section 428C(a) of the HEA to permit borrowers to obtain a refinanced consolidation loan, which would be defined as a new loan made to discharge the liability on a single previous consolidation loan and no other eligible loans. Among other benefits, this would enable student loan borrowers to take advantage of the variable rates for consolidation loans proposed in section 110 of the bill. A borrower seeking a refinanced consolidation loan would be required to first apply to the lender who holds the borrower's consolidation loan, and, if the holder denies the borrower's application, the borrower may go elsewhere to obtain a refinanced consolidation loan. Permitting the borrower to obtain a refinanced consolidation loan, however, would impose additional costs on lenders and the Federal Government, so, in order to offset those costs and to discourage obtaining a refinanced consolidation loan for frivolous reasons, section 116(a) of the bill would amend section 428C(a) to require the borrower to pay a 1 percent fee.

Conforming changes would also be made to sections 428C(b)(5) and 455(g) of the HEA to eliminate other barriers to providing maximum flexibility to a borrower seeking to consolidate his or her loans, and to permit a borrower to obtain a refinanced consolidation loan under the Direct Loan Program, subject to the 1 percent fee.

Section 116(b) of the bill would set out the effective dates for the amendments that would be made by section 116(a) of the bill.

Section 117. Section 117 of the bill would amend section 428G of the HEA to reinstate two provisions that expired on October 1, 2002, relating to loan disbursements. As amended, section 428G(a)(3) of the HEA would provide that, in the case of FFEL or Direct Loans made for periods of instruction beginning on or after July 1, 2006, an institution with cohort default rates of less than 10 percent for the three most recent fiscal years would be exempted from the requirement that loans be issued in at least two separate disbursements. Under the waiver, qualifying schools will be able to issue loans in a single disbursement for any period of enrollment that is not more than 1 semester, 1 trimester, 1 quarter, or 4 months.

Section 428G(b)(1) would be amended to provide that, in the case of FFEL or Direct Loans made for periods of instruction beginning on or after July 1, 2006, an institution with a cohort default rate of less than 10 percent for the three most recent fiscal years is exempt from the requirement that loans to first-year students be delayed for 30 days prior to disbursement.

These waiver provisions were originally added to the HEA by the Higher Education Amendments of 1998 (P.L. 105-244), in order to reward institutions that maintained low cohort default rates. The Administration has supported the reinstatement of these waivers since their expiration in 2002.

Section 118. Section 118 of the bill would amend section 428I of the HEA to make substantial changes to the current "exceptional performance" requirements, under which lenders receive 100 percent insurance for achieving a 97 percent compliance rate with due diligence requirements. The current requirements are too easily met and do not merit an "exceptional" designation--simply performing the tasks required by the law and regulations 97 percent of the time does not support exceptional status nor does it warrant payment of 100 percent insurance. Instead, section 118 of the bill would set insurance for exceptional performers at 97 percent (exceptional performance would be limited to eligible lenders and servicers under the proposed new language), and the Secretary would be authorized to set new performance measures in regulations (as well as authorized to increase the insurance rate 1 percent if the lender or servicer meets data quality standards identified by the Secretary). Until the new performance measures are established, current designations as exceptional performers would continue, but the Secretary would not designate any new exceptional performers.

The reduction to the insurance percentage for exceptional performer status is consistent with the Administration's proposals to increase risk sharing for FFEL program participants in order to increase the government's investment in Pell Grants and other benefits to students.

Section 118(b) of the bill would set out the effective dates for the amendments that would be made in section 118(a) of the bill.

Section 119. Section 119 of the bill would amend section 438(b)(2)(B) of the HEA to make permanent the phase-out of the 9.5 percent floor on special allowance rates for FFELs funded using this tax-exempt financing. Prior to enactment of the "Taxpayer-Teacher Protection Act of 2004" (P.L. 108-409), holders of FFELs funded with the proceeds of tax-exempt securities originally issued before October 1, 1993 received the benefit of a 9.5 percent floor on special allowance rates that was substantially more generous than the special allowance payments that are paid on other types of loans. These loan holders were able to retain these higher benefits indefinitely by refinancing the underlying securities. In response, the Administration proposed to prohibit these transactions in the fiscal year 2005 budget and was successful in securing a temporary change to the HEA through the Taxpayer-Teacher Protection Act of 2004, which eliminated the use of particular financial techniques designed to enable holders to receive the more generous special allowance payments indefinitely. Section 119 of the bill would continue the work begun in the Taxpayer-Teacher Protection Act of 2004.

Section 120. Section 120 of the bill would amend section 438 of the HEA to increase the lender fee on consolidation loans from 0.50 percent to 1.0 percent, and to create a new annual loan holder rebate fee of 0.25 percent on non-consolidation loans designed to offset the loss to the Federal Government that occurs when lenders earn in excess of the statutorily set lender yield.

Loan holders have increased their financial return through the use of innovative financial instruments, especially through participation in the loan securitization market. In addition, through market consolidations, many lenders have substantially increased their loan portfolios and are achieving economies of scale that have resulted in a lower cost of doing business. These trends have been most notable with respect to FFEL consolidation loans, where the top 50 lenders account for 98 percent of all consolidation loans made. The improved efficiency resulting from greater use of private capital markets and program management improvements should lead to lower Federal subsidies.

With respect to the proposed loan holder rebate fee, a June 2004 study by the Congressional Budget Office found that lender interest returns on variable-rate student loans are, on average, approximately 0.25 percent above the rate of return guaranteed in the statute. Section 120(2) of the bill would amend section 428 of the HEA to reduce Federal subsidies accordingly, while maintaining maximum lender financing flexibility.

Reducing these subsidies will allow the Administration to invest more resources in the Federal Pell Grant Program in order to assist low-income students while maintaining a healthy and competitive student loan marketplace.

Section 121. Section 121(a) would amend section 441(b) of the HEA to extend the Federal Work-Study (FWS) Program authorization through fiscal year 2010, and to specify that 20 percent of FWS appropriations shall be available for the community service agreements described in section 121(c), below.

Section 121(b) of the bill would amend the allocation in section 442 of the HEA to phase out the base guarantee portion of the current formula over 5 years and allocate a portion of appropriations to certain degree-granting institutions for timely degree completion, consistent with the changes proposed to the FSEOG allocation formula in section 107(b) of the bill, but with the addition of an allocation for community services to carry out the changes proposed in section 121(c) of the bill.

Section 121(c) of the bill would amend section 443 of the HEA to create a new set-aside of 20 percent of Federal Work-Study funds to be used by institutions that wish to engage their students in community service activities. This proposal would replace the current provision of the HEA that requires all institutions to use 7 percent of their work-study funds to compensate students employed in community service jobs. While institutions placed an average of 15 percent of their students in community service jobs, many institutions do not meet even the 7 percent requirement. Schools would apply for community service funds by means of a check-off on their annual applications for campus-based Federal student aid funds. There would be no separate application, grant competition or selection process. Institutional allocations of the community service funds would be based on the same allocation formula applied to regular Federal Work-Study funds. Any community service funds not used by an institution for a fiscal year would be reallocated to other institutions to compensate students employed in community service, as is the case with the other excess Federal Work-Study allocations, and the community service allocation of the institution returning the funds would be reduced for the next fiscal year.

Section 121(c) of the bill would also add a new section 443(f) to the HEA that would require the Secretary to provide institutions of higher education and the appropriate public and private nonprofit agencies with information on effective practices in the creation and maintenance of high-quality community service and service-learning programs and technical assistance concerning the implementation of FWS community service programs. The Secretary would be authorized to consult with the Corporation for National and Community Service in developing and disseminating this information and technical assistance.

Section 121(d) of the bill would set out the effective dates for the amendments made by sections 121(a), (b), and (c) of the bill.-

<u>Section 122.</u> Section 122 of the bill would amend section 458 of the HEA to provide $795,000,000 per year in mandatory spending authority for fiscal years 2006 through 2010 for administrative costs under the Direct Loan and FFEL programs, and for account maintenance fee payments to guaranty agencies in the FFEL program. Of that $795,000,000 amount, $195,000,000 would be available each year for account maintenance fees.

The Administration continues to support changing the spending authority under section 458 of the HEA from mandatory to discretionary, in order to administer the Federal student aid programs within a unified discretionary Student Aid Administration account. The current student aid administration budget structure, which is split between mandatory and discretionary accounts, hinders increased accountability for reducing costs and improving financial controls. However, in light of budget scorekeeping requirements and current tight discretionary spending targets, the Administration believes that this change would be better accomplished within the context of a broader revision of budget enforcement legislation, rather than through this bill, HEA reauthorization or the appropriations process.

Section 122 of the bill would also clarify that a guaranty agency's entitlement to account maintenance fees extends only to the $195,000,000 specified for those fees under section 458 of the HEA, plus any amounts transferred from the Federal Student Loan Reserve Fund in accordance with proposed new section 458(c)(1) of the HEA (current section 458(c)(2)(A) of the HEA).

Section 123. Section 123(a) of the bill would repeal the Federal Perkins Loan Program in Part E of Title IV of the HEA; section 123(b) of the bill would set out the requirements for the return of Federal capital contributions and assignment of Federal Perkins Loans to the Secretary; and section 123(c) of the bill would make conforming changes to sections 488 and 489(a) of the HEA.

The Federal Government's approximately $6 billion investment in the Federal Perkins Loan Program is not serving most students effectively. The number of institutions participating in the Federal Perkins Loan program has declined from 3,338 in 1983-84 to 1,789 in 2004-05 – a decline of 46 percent. The number of community colleges participating declined from 443 to 141 (a decline of 68 percent) and the number of for-profit schools participating declined from 1,121 to 194 (a decline of 83 percent). Only 3% of students enrolled in postsecondary education receive Federal Perkins Loans each year. While there is significant variation by sector, in only one sector—private not-for-profit doctorate-granting institutions—does the percentage of students receiving Perkins Loans exceed 10 percent.

The Federal Government puts up $3 for every $4 in new Federal Perkins Loans. Compared to the subsidy rates in the FFEL and Direct Loan programs, new Perkins Loans cost the Federal Government more to make loans. Not only are these loans more expensive for the Federal Government at the outset, the national cohort default rate for the Federal Perkins Loan program is nearly twice (at 9%) the rate for the other student loan programs.

Federal Perkins Loan borrowers also currently pay higher interest rates than under the FFEL and Direct Loan programs. The effect on students of the repeal of the Federal Perkins Loan Program would be mitigated by the increase in loan limits for subsidized Stafford loans for first- and second-year undergraduates and for Unsubsidized Stafford loans for graduate and professional students, as proposed in section 109 of the bill. The funds returned to the Federal Government would be used to increase Pell Grant funds as proposed in section 103 of the bill.

Section 123(b) of the bill would require an institution of higher education participating in the Federal Perkins Loan Program to return, by October 1, 2006, the Federal portion of the liquid assets of the student loan revolving fund to the Secretary of Education. The relative Federal and institutional shares of the fund would be determined on June 30, 2005. The institution would also be required to return promptly to the Secretary the Federal portion of collections and other receipts to the fund that are received by the institution after the payment due by October 1, 2006.

Next, section 123(b) would require the Secretary to publish, not later than 180 days after the enactment of the Higher Education Act Reform Amendments of 2005, a notice describing a plan for the orderly return of Federal capital contributions, and the assignment of Federal Perkins Loans to the Secretary. That plan would include provisions requiring the assignment of Federal Perkins Loans to the Secretary; provisions describing the periodic payment by the Secretary of the institutional share of Federal Perkins Loans that are assigned to the Secretary; and such other provisions for the orderly winding-down of the Federal Perkins Loan Program and the preservation of Federal capital contributions as the Secretary may specify. The Secretary could modify the plan as the Secretary determines is necessary for the orderly winding-down of the Federal Perkins Loan Program and the preservation of Federal capital contributions.

Section 123(d) of the bill would provide that a Federal Perkins Loan borrower would continue to be subject to the terms and conditions applicable to that loan as of June 30, 2005 until that loan is repaid or discharged. In addition, an institution of higher education that was participating in the Federal Perkins Loan Program on June 30, 2005 would continue to be subject to program requirements while the institution holds any Federal Perkins Loans or any part of the Federal share of the revolving fund, and would receive its institutional share of the fund in accordance with the Secretary's plan.

Section 124. Section 124 of the bill would amend section 480(d)(3) of the HEA to include active duty military personnel, including those serving in the National Guard or the reserves if they are ordered to active duty for other than training purposes, in the definition of "independent student" used for purposes of need analysis under Part F of Title IV of the HEA. Veterans of the Armed Forces (except those with dishonorable discharges) are already included in that definition. Active duty personnel are typically supporting themselves already, and are truly independent of their parent financially. Reservists not called to active duty, cadets or midshipmen at service academies, and those in training will continue to be treated as dependent students for need analysis purposes.

Section 125. Section 125 of the bill would amend section 484(*l*)(4) of the HEA to make changes to conform to the elimination of the 50 percent rules, as proposed in section 102(b)(1) of the bill, and rewrite the definition of a telecommunications course. As rewritten, the definition would emphasize the interaction between faculty and students (a key component of quality), incorporate references to new technology, and more clearly differentiate telecommunications courses from correspondence courses. The current definition could be interpreted to allow a correspondence school to qualify for full participation in student financial assistance programs by introducing even a very limited amount of e-mail contact between students and a grader or instructional assistant, with or without subject matter expertise, into what is essentially a correspondence course. Similarly, a course outline or notes posted to the Web might also meet the current definition. Continuation of a broad definition of "telecommunications" that blurs the distinction between telecommunications courses and correspondence courses increases the risk of program abuse by unscrupulous schools.

Section 126. Section 126 of the bill would clarify section 484(r) of the HEA so that it only affects the eligibility of student aid applicants who commit a drug-related offense while enrolled in higher education and receiving Federal financial assistance; incoming students would no longer be subject to the provision.

Section 127. Section 127 of the bill would make several changes to the HEA in order to require additional performance data from institutions that offer distance education. This data would be used to safeguard against abuse as well as provide additional consumer information to students and their families. These changes would conform to the proposed elimination of the "50-percent rules" in section 102(b)(1) of the bill.

Section 127(a)(1) of the bill would amend section 498(b) of the HEA to require, as part of the application form used to qualify institutions to participate in the Title IV programs, information about the institution's distance education courses and students, including the percentages of students enrolled in telecommunications and correspondence courses, and the percentages of telecommunications and correspondence courses offered by the institution.

Section 127(a)(2) of the bill would add a new subsection (k) to section 498 of the HEA. Paragraph (1) of that proposed new subsection would require each institution that offers distance education, and that meets criteria established by the Secretary, to provide additional performance data as required by the Secretary. Paragraph (2) of that proposed new subsection would authorize the Secretary to consider this data in making a determination whether to certify, recertify or provisionally certify an institution to participate in the Title IV programs.

Section 127(b) of the bill would amend section 485(a)(1) of the HEA to include the data provided under proposed new section 498(k)(1) in the information that the institution must provide to prospective and enrolled students.

Section 127(c) of the bill would set out the effective dates for the amendments made by subsections (a) and (b) of section 127. The amendments made to section 498(b) of the HEA, as well as proposed new section 498(k)(1) of the HEA would be effective on enactment, so that institutions begin tracking the data immediately. The amendments made to section 485(a)(1) of the HEA and proposed new section 498(k)(2) of the HEA would be effective as of the beginning of the second award year following the date of enactment of this Act, and for succeeding award years. This delay is necessary to provide enough lead time for institutions to track and report the data, and so that there is sufficient data on which to make certification decisions.

<u>Section 128.</u> Section 128(a) of the bill would amend the Taxpayer-Teacher Protection Act of 2004 (P.L. 108-409) by making a minor technical change and by permanently extending authorization of the increased loan forgiveness of $17,500 for "highly qualified" math, science, and special education teachers at qualified low-income schools.

The Taxpayer-Teacher Protection Act of 2004 amended sections 428J and 460 of the HEA to provide expanded loan forgiveness for highly qualified math, science, and special education teachers serving low-income communities from $5,000 to $17,500 for loans made prior to October 1, 2005. In the past, schools in low-income communities often were forced to hire uncertified teachers or assign teachers who are teaching "out-of-field." By making the increased loan forgiveness available on loans made on or after October 1, 2005 as well, this amendment would continue to assist low-income schools in recruiting and retaining highly qualified math, science, and special education teachers.

Section 128(b) of the bill would extend the Higher Education Relief Opportunities for Students (HEROES) Act of 2003 (P.L. 108-76) through fiscal year 2010. The HEROES Act authorizes the Secretary of Education to waive or modify various statutory or regulatory provisions applicable to the student financial assistance programs under Title IV of the HEA as the Secretary deems necessary to provide particular types of relief for students, institutions of higher education, and others in connection with a war or other military operation, or national emergency. Currently, the HEROES Act is scheduled to expire at the end of fiscal year 2005.