

Report for Congress

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Student Loan Repayment Program for Federal Employees

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Lorraine H. Tong and Barbara L. Schwemle
Analysts in American National Government
Government and Finance Division

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Summary

Under a law enacted in 1990 (P.L. 101-510) and amended in 2000 (P.L. 106-398), federal agencies may repay portions of the student loans of General Schedule (GS) and non-GS (including Foreign Service) employees they seek to recruit and retain. Eligible employees, in professional, technical, administrative, or other positions, must sign at least a three-year service agreement to remain with their agencies. In return, these employees may receive loan repayments of up to \$6,000 per year and \$40,000 in total from an agency. Various student loans specified in law and authorized by the Higher Education Act of 1965 and the Public Health Service Act may be repaid. Agencies may use the repayment authority to recruit graduates, many of whom carry significant amounts of debt, in order to help meet agency workforce requirements. A factor in the establishment of this program has been the prospect of substantial retirements in the federal workforce over the next five years. The Office of Personnel Management (OPM) published final regulations to implement the original law on January 11, 2001, and final regulations to implement the amendments to the law on July 31, 2001. Executive branch agencies are at different stages in considering and implementing student loan repayment programs.

In the legislative branch, the General Accounting Office, the Government Printing Office (GPO), and the Library of Congress also have authority under P.L. 101-510 and P.L. 106-398 to establish student loan repayment programs. Enacted in the 107th Congress, P.L. 107-68 authorized the Senate and the Congressional Budget Office to institute student loan repayment programs, and P.L. 107-117 authorized the Capitol Police to establish a repayment program. To date, the Senate and the GPO have implemented repayment programs. The House of Representatives has legislation pending (H.R. 2555) to extend the student loan repayment benefit to the entire legislative branch.

In both the executive and legislative branches, questions of how to fund the program, what the required period of service should be, the criteria for repayment eligibility, and the kinds of program data to be collected will likely be considered as repayment programs are implemented. The September 11, 2001 attack on the World Trade Center and the Pentagon reinforced the critical need for highly qualified and skilled federal employees to be recruited and retained, particularly to fight the war on terrorism. S. 1800, pending in the Senate, would establish a pilot program to repay the student loans of federal employees in national security positions in seven agencies. Student loan repayments would not be subject to income tax under S. 1817 and H.R. 3893, pending in the Senate and the House of Representatives, respectively. Under H.R. 4555, also pending in the House, repayments received by members of the uniformed military would not be subject to income tax. For the judicial branch, H.R. 2522 would authorize deferral of principal and interest on federally insured student loans for law clerks and student loan forgiveness for federal defender attorneys.

The legislative history, statutory authority, status of executive and legislative branch implementation, and issues for consideration of the student loan repayment program are discussed in this report.

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Student Loan Repayment Program for Federal Employees

Introduction

More than a decade ago, Congress authorized a student loan repayment program for highly qualified professional, administrative, and technical federal personnel covered by the General Schedule (GS). Section 1206(b) of P.L. 101-510, enacted on November 5, 1990,¹ responded to a recommendation of the National Commission on the Public Service that a loan forgiveness program be established for federal service.² The commission found, in its April 1989 report, that the federal government had serious problems in recruiting and retaining a quality workforce. Student loan repayment is viewed as a way to make government service more attractive to candidates, many of whom have incurred significant student loan debts in acquiring their education.

Section 1206(b) of P.L. 101-510 covers executive agencies, independent establishments, government corporations under 31 U.S.C. Chapter 91, the General Accounting Office, the Government Printing Office, and the Library of Congress. Under the law, employees who sign service agreements of at least three years with their employing agencies are eligible for student loan repayments of up to \$6,000 per year and \$40,000 in total from an agency. Student loans made, insured, or guaranteed under the Higher Education Act of 1965, or health education assistance loans made or insured under the Public Health Service Act, are eligible for repayment under the law.

The Office of Personnel Management (OPM) proposed regulations to implement P.L. 101-510 on June 22, 2000, 10 years after enactment of the law. The final regulations became effective April 12, 2001.³ OPM did not provide a statement to explain the delay in issuing the regulations. The federal government's efforts to

¹P.L. 101-510; Nov. 5, 1990; 104 Stat. 1659, 5 U.S.C. 5379. Loan repayment is sometimes referred to as loan forgiveness; these terms are used interchangeably in this report.

²The National Commission on the Public Service, *Leadership for America; Rebuilding the Public Service*, Task Force Reports to the National Commission on the Public Service, 1989, p. 96. (Hereafter referred to as *Leadership for America*.)

³U.S. Office of Personnel Management, "Repayment of Student Loans," *Federal Register*, vol. 65, no. 121, June 22, 2000, pp. 38791-38794; U.S. Office of Personnel Management, "Repayment of Student Loans," *Federal Register*, vol. 65, no. 8, Jan. 11, 2001, pp. 2790-2793. The regulations were to have become effective on Feb. 12, 2001, but a 60-day moratorium on new regulations was imposed by President George W. Bush. U.S. Office of Personnel Management, "Repayment of Student Loans: Delay of Effective Date," *Federal Register*, vol. 66, no. 26, Feb. 7, 2001, p. 9187.

reduce its workforce in the early and mid-1990s, and lack of funding for the program, may have curtailed demand for the repayment authority.

With the passage of legislation in 2000, Congress amended the 1990 law. Section 1122 of P.L. 106-398, enacted on October 30, 2000, extended eligibility for student loan repayments to non-GS (including Foreign Service) federal employees and to employees in other than professional, technical, or administrative positions.⁴ Regulations to implement the amendments made by P.L. 106-398 were proposed by OPM on March 16, 2001 and finalized on July 31, 2001. Those regulations became effective on August 30, 2001.⁵

OPM is required by law to report to Congress annually on the implementation of student loan repayment programs in the agencies.⁶ Issues such as funding, number of years of service required, criteria for eligibility, and oversight of the program will likely be addressed by agencies in determining whether a repayment program is desirable or feasible.

In the legislative branch, the General Accounting Office, the Government Printing Office (GPO), and the Library of Congress also have authority to establish student loan repayment programs under P.L. 101-510 and P.L. 106-398. In the 107th Congress, the FY2002 Legislative Branch Appropriations Act (P.L. 107-68, November 12, 2001), authorized appropriated funds for the Senate to provide a student loan repayment program for Senate employees. P.L. 107-68 also gave authority to the Congressional Budget Office to institute a program. The FY2002 Department of Defense Appropriations Act (P.L. 107-117, January 10, 2002) authorized the Capitol Police to establish a repayment program. The House of Representatives is currently considering a program, and has legislation pending (H.R. 2555) to extend this recruitment and retention benefit to the entire legislative branch. To date, the Senate and the GPO have implemented repayment programs.

The September 11, 2001 attack on the World Trade Center and the Pentagon reinforced the critical need for highly qualified and skilled federal employees to be recruited and retained, particularly to fight the war on terrorism. Legislation (S. 1800) that would establish a pilot program to repay the student loans of federal employees in national security positions in seven agencies is pending in the Senate.

This report discusses the legislative history, statutory authority, status of executive and legislative branch implementation, and issues for consideration of the student loan repayment program.

⁴P.L. 106-398; Oct. 30, 2000; 114 Stat. 1654A-316 to 1654A-317; 5 U.S.C. 5379.

⁵U.S. Office of Personnel Management, "Repayment of Student Loans," *Federal Register*, vol. 66, no. 52, Mar. 16, 2001, pp. 15202-15203; U.S. Office of Personnel Management, "Repayment of Student Loans," *Federal Register*, vol. 66, no. 147, July 31, 2001, pp. 39405-39406.

⁶114 Stat. 1654A-316-1654A-317.

Legislative History of Repayment Program

In April 1989, after an 18-month study, the National Commission on the Public Service (commonly referred to as the Volcker Commission, after its chairman Paul Volcker) issued its report on rebuilding the public service. Formed because of a “concern that the federal workforce may be ill-prepared to serve the nation in the 21st century,” the commission dedicated itself to “placing high on the national agenda the need to strengthen the effectiveness of the career services in government.”⁷ A commission task force on recruitment and retention found that inadequate compensation and the unattractiveness of government employment to recent college graduates were among the reasons for the federal government’s serious problems in recruiting and retaining a quality workforce. As one of the remedies for these problems, the task force recommended that a federal service loan forgiveness program be established.⁸ Such a program was enacted in the 101st Congress, as discussed below.

101st Congress

Senate Bill. On May 18, 1989, one month after the publication of the commission’s report, Senator Ted Stevens introduced, for himself and Senator David Pryor, S. 1071, a bill to authorize the repayment of student loans for certain federal employees. In his statement accompanying the introduction, Senator Stevens noted the Volcker Commission’s recommendation and stated that the bill was “designed to improve the Federal Government’s ability to compete for top college graduates” many of whom have heavy debt and “simply cannot afford the option of Federal service.” Saying that agencies would have discretion to use the authority as they saw fit “to recruit highly qualified people that are important to its mission,” Senator Stevens emphasized that agencies “would be required to absorb the expense of loan repayment out of [their] existing payroll budget.” He stated that the provision envisioned “no new outlays whatsoever.” According to Senator Stevens, this would ensure “that this authority is used sparingly and only when necessary” and require agency managers “to make some tough decisions” in “reallocating funds to use this recruiting incentive.”

The bill’s provisions requiring at least three years of service, an acceptable level of performance, and cessation of the loan repayments if the employee separated (either voluntarily or for reasons of poor performance) from federal service were viewed by Senator Stevens as “ensur[ing] the Government a return on its human resource investment.”⁹ Senator Pryor reiterated the comments of Senator Stevens in saying that “[a]gencies will have wide latitude to work out how much of a loan will be repaid by the agency and the length of time the employee will have to commit to staying with the agency.” He anticipated “that agencies will exercise great discretion

⁷*Leadership for America*, Preface.

⁸*Ibid.*, pp. 75, 96.

⁹Sen. Ted Stevens, “Repayment of Certain Student Loans,” remarks in the Senate, *Congressional Record*, vol. 135, May 18, 1989, pp. 9895-9896.

in using this program” as they “will be required to absorb the costs.”¹⁰ After referral to the Senate Committee on Governmental Affairs, S. 1071 saw no further action.

House Bill. In the House of Representatives, Representative Benjamin Gilman for himself and Representative William Ford introduced H.R. 2544 on June 6, 1989, which included, as section 3, provisions on student loan repayment similar to those in S. 1071.¹¹ Representative Gilman, in a statement accompanying the introduction, noted that the Volcker Commission had recommended repayment of student loans and said the bill would make “the Federal Government an employer of first choice for many of our Nation’s finest students.” He stated, “Repayment shall be from funds already appropriated at the time of appointment.” He also thanked Senators Stevens and Pryor for “formulating and drafting major provisions of the bill” on the repayments.¹²

House Subcommittee Hearing. The Public Service Education Assistance Act of 1990 (H.R. 2544) was referred to the Civil Service Subcommittee of the House Committee on Post Office and Civil Service. The subcommittee conducted a hearing on the bill on July 27, 1989 and took testimony from the director of the Office of Personnel Management, the executive director of the National Commission on the Public Service, and the special counsel of the Consumer Bankers Association. In remarks during the hearing, Representative Ford described H.R. 2544 as a “sort of a GI bill for civil servants.”¹³ Representing OPM, its then-director Constance Newman, while stating that the agency had “not given enough consideration to how much this approach would cost or to whether the benefits would justify the cost” expressed several concerns about the student loan repayment provisions in H.R. 2544. Those concerns related to:

- not wanting to induce people to work for the government just long enough to qualify for loan repayment and then move elsewhere;
- consideration of the equity of a recruitment incentive that would have no value for those who have already paid their own way through college;
- the essential need to limit the coverage to shortage or critical skills occupations where there is difficulty in recruiting or retaining employees (identified as scientists and engineers);

¹⁰Sen. David Pryor, remarks in the Senate, *Congressional Record*, vol. 135, May 18, 1989, p. 9897.

¹¹Section 2 of H.R. 2544 authorized agencies to pay or reimburse federal employees for the cost of basic degree training.

¹²Rep. Benjamin Gilman, “The Public Service Education Assistance Act of 1989 (H.R. 2544),” remarks in the House of Representatives, *Congressional Record*, vol. 135, June 6, 1989, pp. 11032-11034.

¹³U.S. Congress, House Committee on Post Office and Civil Service, Subcommittee on the Civil Service, *Public Service Education Assistance Act of 1989*, hearing on H.R. 2544, 101st Cong., 1st sess., July 27, 1989 (Washington: GPO, 1989), p. 4.

- the need to examine carefully the administrative feasibility of agencies making loan repayments;
- the lack of a provision on a central regulatory authority to ensure uniformity among the agencies;
- the inappropriateness of not having an employee repay any loan payments made by the agency if he or she fails to complete the service requirement; and
- the lack of a limit on how large a repayment commitment could be made.¹⁴

The latter three concerns were addressed by provisions that were included in the bill when it was reported to the House. Asked about the appropriateness of a three-year service requirement, Mrs. Newman stated that “three is probably a fairly standard time,” but:

The concern is that we have some assurance that the kinds of people, if you go with this type of approach, actually have an intent to participate in public service, and that they aren’t just using this as a vehicle to repay their loans. And whether or not a three year limitation provides enough assurance that you get at least some benefit from having participated in this, I don’t know.¹⁵

L. Bruce Laingen, executive director of the National Commission on the Public Service, viewed the legislation as a step in “enriching the talent pool” of government and as “a practical way to get young people started on their careers.” According to Laingen, “entry level payment in Government is increasingly noncompetitive with the private sector” and “combined with slow procedures by Government in hiring on the one hand and students loans to repay on the other, often makes Government even for those who actually seek Government service an unattractive career choice.”¹⁶

The special counsel of the Consumer Bankers Association, John Dean, noted the significant student loan indebtedness of students with advanced degrees:

An individual facing this repayment burden may and frequently does feel obliged to seek employment with an employer able to provide the highest level of compensation possible and, in most cases, that is not the Federal Government.

To encourage extended government service, Dean suggested that larger repayments be made for longer years of service. His concerns about the legislation related to:

- the need for close examination of existing program regulations to assure that borrower records are appropriately documented, especially for cases where limitations on the maximum repayment amount provided under the program results in a residual amount having to be paid by the individual student loan borrower;

¹⁴Ibid., pp. 2-3.

¹⁵Ibid., p. 5.

¹⁶Ibid., p. 10.

- making sure that when a federal check comes in for a student loan it gets applied to the correct loan;
- ensuring that, if the check is for an amount that is less than the amount due on the loan, a note in the computer file will indicate that a second check will be coming, so that an insufficient notice payment will not follow receipt of the first check from the federal government;
- identifying who will be held accountable for delinquency on the loans if there is a paperwork error and the federal government payment arrives late; and
- the possibility of precipitating an employee to be delinquent or to default on a loan when he or she no longer qualifies for loan repayment because of performance reasons or separation from government service.¹⁷

House Bill Reported. On February 7, 1990, the House Committee on Post Office and Civil Service reported the bill to the House, but no further action occurred. As reported, H.R. 2544 differed from the Senate bill in several respects. It did not cover student loans made, insured, or guaranteed by state governments. The bill also provided that “[i]n selecting employees to receive [student loan repayment] benefits ... an agency shall, consistent with the merit system principles set forth in paragraphs (1) and (2) of section 2301(b), take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.” Additionally, H.R. 2544 authorized OPM to “prescribe regulations containing such standards and requirements as [it] considers necessary to provide for reasonable uniformity among programs.”¹⁸

Discussing the need for the legislation, the committee cited the findings of the Volcker Commission, as well as reports published by the Merit Systems Protection Board in May 1988 and the Office of Personnel Management in June 1988, on the federal government’s difficulties in recruiting and retaining highly qualified professional, technical, or administrative personnel.¹⁹ According to these reports, pay rates significantly less than those offered by the private sector, a negative image of the public service, and lack of information about careers in government were among the reasons inhibiting the federal government from attracting and keeping skilled individuals. The committee report stated that the “new authority is an attempt to bolster efforts to recruit top-flight candidates for employment with the federal government” and noted that “the repayment program would be used as a recruiting

¹⁷Ibid., pp. 14-16.

¹⁸U.S. Congress, House Committee on Post Office and Civil Service, *Public Service Education Assistance Act of 1990*, report to accompany H.R. 2544, 101st Cong., 2nd sess., H.Rept. 101-402 (Washington: GPO, 1990), pp. 2-3. (Hereafter referred to as H.Rept. 101-402.)

¹⁹U.S. Merit Systems Protection Board, Office of Policy and Evaluation, *Attracting Quality Graduates to the Federal Government: A View of College Recruiting*, May 1988, 36 pp.; and The Hudson Institute, *Civil Service 2000*, prepared for the U.S. Office of Personnel Management, June 1988, 52 pp.

tool to attract individuals with critical skills necessary for the agency.” It acknowledged criticisms that these repayment provisions could result in disparate treatment of equally qualified candidates solely on the basis of their form of indebtedness.” The report expressed the “committee’s opinion that remedies for an otherwise gravely lacking Federal compensation system must be sought wherever the Federal Government can exert unique pressure.”²⁰

With regard to the limitations on the size of the repayments, the committee stated its intent to “strike a balance” between the “extremely high loan indebtedness” of many college graduates and “the limited resources available to Federal agencies for new initiatives in programs and employee benefits.” Further, the committee said that the loan repayment was “to apply to indebtedness outstanding at the time an employee enter[ed] into an agreement.”²¹

CBO Cost Estimate. The Congressional Budget Office (CBO) estimated that the cost of the student loan repayment program in 1991 would be between \$2 and \$3 million, with the potential to increase to \$10 to \$15 million by 1995. CBO also estimated that administrative costs would total less than one million dollars. The cost estimate assumed that “most agencies would agree to reimburse ... loan payments for at least five years.”²²

Views of the Departments of Education and Justice. The Department of Education (DoE) and the Department of Justice (DoJ) submitted views to the House Committee on Post Office and Civil Service opposing H.R. 2544's provisions to establish a student loan repayment program. DoE believed that the program “would be extremely costly, with overly generous agency repayment amounts permitted, and is unlikely to correlate to the recruitment needs of the Federal service or alter any significant number of students’ decisions to enter the Federal service.”²³ Additional concerns expressed by Education were that the program would:

Set a dangerous precedent by allowing for the first time cancellation of Guaranteed Student Loans (GSLs) in exchange for performance of a certain activity. Introducing cancellation for one activity would almost certainly lead to pressure for cancellation for many other “meritorious” activities.

Very probably be poorly correlated to recruitment needs [and be] unlikely to affect many decisions on whether to enter the Federal service. Prior efforts to attract recruits to certain professions such as teaching (through loan forgiveness and similar programs) have not had a significant impact on students’ decisions to enter the field.

Provide a potential windfall for some employees, particularly in light of the high agency repayment amounts permitted.

²⁰H.Rept. 101-402, pp. 5-7.

²¹Ibid., p. 12.

²²Ibid., p. 15.

²³Ibid., pp. 17-18.

Aggravate current retention problems if employees need only complete three years of federal service to take advantage of the repayment program Some ... may well work only long enough to earn the cancellation before moving elsewhere. Other programs, such as the Perkins Loan Program in the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*) require five years of service in certain teaching positions before the entire loan is canceled.

[By authorizing payments up to \$6,000 per year, provide] a very generous yearly “bonus” ... far in excess of the amounts generally available to a small number of employees in the form of cash awards or merit pay bonuses for outstanding service. Thus, employees who either have no student loans or who have already repaid their loans would, in essence, be compensated at a lower rate than other employees simply because they do not have a particular form of debt. This type of inequity could have a demoralizing effect on the federal employees not participating in the repayment program ... and create retention problems The Federal government should not be in a position of “rewarding” students who finance their education through Federal student loans, and penalizing students who chose work or savings to finance their postsecondary education.

[Create a situation in which] it could be very difficult to regulate effectively the very broad, subjective authority of an agency head to waive a right of recovery against an employee if it would be against equity and good conscience, or against the public interest.²⁴

DoJ wrote to the committee that it also could not support student loan repayment. The agency’s concerns were that the program would not “provide a reliable incentive for recruitment and retention because its usefulness depends upon the nature of an individual’s indebtedness and thus varies from candidate to candidate.”²⁵ Additionally, Justice believed that the program:

would require the Department to treat otherwise similarly situated candidates different solely because of their indebtedness or the form of their indebtedness Students who worked to pay their tuition would not qualify for benefits nor would those whose parents saved or borrowed to pay for the student’s education. This disparate treatment of otherwise equally qualified candidates outweighs the minimal benefits to be gained by the student loan repayments.²⁶

Final Action. During House consideration of the National Defense Authorization Act for FY1991 (H.R. 4739) on September 11, 1990, Representative Gilman offered the text of H.R. 2544 as an amendment, no. 709, to the bill.²⁷ He stated that the provisions were “intended to be applied systemwide to all Federal agencies.” He also noted that, as no new funds were being authorized, agencies would have to fund the program from salary and expense accounts and “use these tools in a cost efficient manner.” According to Representative Gilman, the

²⁴Ibid., pp. 16-17.

²⁵Ibid., p. 19.

²⁶Ibid.

²⁷Amendment no. 709 was an amendment to an amendment that had been offered by Representative Nicholas Mavroules.

Department of Defense “d[id] not object” to the amendment and “considers it an important tool in enhancing their ability to recruit and keep essential qualified personnel.” The executive director of the National Commission on the Public Service, L. Bruce Laingen, in a letter to Representative Gilman that was inserted into the *Congressional Record*, said the provisions were “an important step forward in the larger challenge of ensuring that the services of government in the years ahead are performed by personnel of the highest competence.”²⁸ The House agreed to the amendment by voice vote the same day. H.R. 4739 became P.L. 101-510 on November 5, 1990. Section 1206(b) of the law provides the repayment authority.²⁹

106th Congress Amendments

Ten years after the original student loan repayment authority had been enacted in P.L. 101-510, Senator Richard Durbin offered an amendment to the Floyd D. Spence National Defense Authorization Act for FY 2001 (S. 2549) to make changes to the law. The amendment, No. 3480, provided for full implementation of student loan repayment programs. It expanded both the kinds of employees covered by the law and the types of student loans that could be repaid. The Senate agreed to the amendment by voice vote on June 20, 2000. In lieu of S. 2549, the Senate passed H.R. 4205, with an amendment.³⁰ On October 30, 2000, H.R. 4205 became P.L. 106-398. Section 1122 provides the expanded repayment authority.

107th Congress Legislation Enacted

During its first session, the 107th Congress passed two separate pieces of legislation to extend the student loan repayment program to specific legislative branch entities.

Senate and Congressional Budget Office. The FY2002 Legislative Branch Appropriations Act, P.L. 107-68,³¹ authorized Senate employing offices to establish a program for Senate employees, and also authorized appropriations to fund the program. The law also authorized the Congressional Budget Office to institute a program for student loan forgiveness.

²⁸*Congressional Record*, vol. 136, Sept. 11, 1990, pp. 23901-23902.

²⁹H.R. 4739 passed the House of Representatives (amended) on a 256-155 vote (No. 352) on Sept. 19, 1990. On Sept. 25, 1990, the Senate struck all after the enacting clause and substituted the language of S. 2884 as amended. The Senate then passed H.R. 4739 with an amendment in lieu of S. 2884 by unanimous consent. The House agreed to the conference report (H.Rept. 101-923) on a 271-156 vote (No. 517) on Oct. 24, 1990. The Senate agreed to the conference report on an 80-17 vote (No. 320) on Oct. 26, 1990.

³⁰On July 13, 2000, the Senate struck all after the enacting clause and substituted the language of S. 2549, amended, into H.R. 4205. The Senate then passed H.R. 4205, with an amendment, on a 97-3 vote (No. 179). The House of Representatives agreed to the conference report (H.Rept. 106-945) on a 382-31 vote (No. 522) on Oct. 11, 2000. The Senate agreed to the conference report on a 90-3 vote (No. 275) the next day.

³¹H.R. 2647, P.L. 107-68, Nov. 12, 2001, 115 Stat. 563-568 and 115 Stat. 577-578.

U.S. Capitol Police. Later in the first session of the 107th, Congress passed the FY2002 Department of Defense Appropriations Act, P.L. 107-117,³² which gives authority to the U.S. Capitol Police to offer a student loan repayment program for recruitment and retention purposes.

Details of P.L. 107-68 and P.L. 107-117 are discussed below.

Provisions of the Title 5 Law and Implementing Regulations³³

Section 1206(b) of P.L. 101-510, enacted on November 5, 1990, as amended by section 1122 of P.L. 106-398, enacted on October 30, 2000, authorizes repayment of student loans to federal General Schedule (GS) and non-GS (including Foreign Service) employees in professional, technical, administrative, or other positions.

On June 22, 2000, OPM proposed regulations to implement the P.L. 101-510.³⁴ OPM did not provide a statement to explain the 10-year delay in issuing the regulations. *Government Executive*, in an article on the regulations, suggested that efforts to reduce the federal workforce in the early and mid-1990s created little demand in the agencies for the repayment authority.³⁵ Lack of funding for the program also may have contributed to the delay. OPM's final regulations became effective on April 12, 2001.³⁶ Proposed regulations to implement P.L. 106-398 were published by OPM on March 16, 2001.³⁷ The final regulations, published on July 31, 2001, became effective on August 30, 2001.³⁸

³²H.R. 3338, P.L. 107-117, Jan. 10, 2002. U.S. Congress, Conference Committees, *Making Appropriations for the Department of Defense for the Fiscal Year Ending September 30, 2002, and for Other Purposes*, conference report to accompany H.R. 3338, 107th Cong., 1st sess., H.Rept. 107-350 (Washington: GPO, 2001), pp. 91-92.

³³This section discusses only the Title 5 program. Other statutes authorize the repayment of education loans for employees in various public service (including teachers, child care providers, and law enforcement or corrections officers) and health care (including nurses, doctors, medical technicians, and health researchers) professions and in the military.

³⁴U.S. Office of Personnel Management, "Repayment of Student Loans," *Federal Register*, vol. 65, no. 121, June 22, 2000, pp. 38791-38794.

³⁵Brian Friel, "Student Loan Help On Hold," *Government Executive*, Feb. 8, 2001, available at [<http://www.govexec.com/dailyfed/0201/020801pb.htm>], visited Aug. 13, 2001.

³⁶U.S. Office of Personnel Management, "Repayment of Student Loans," *Federal Register*, vol. 65, no. 8, Jan. 11, 2001, pp. 2790-2793. The regulations were to have become effective on Feb. 12, 2001, but a 60-day moratorium on new regulations was imposed by President George W. Bush. U.S. Office of Personnel Management, "Repayment of Student Loans: Delay of Effective Date," *Federal Register*, vol. 66, no. 26, Feb. 7, 2001, p. 9187.

³⁷U.S. Office of Personnel Management, "Repayment of Student Loans," *Federal Register*, vol. 66, no. 52, Mar. 16, 2001, pp. 15202-15203.

³⁸U.S. Office of Personnel Management, "Repayment of Student Loans," *Federal Register*,
(continued...)

The Title 5 law covers executive agencies, independent establishments, government corporations under 31 U.S.C. Chapter 91, as well as the General Accounting Office, the Government Printing Office, and the Library of Congress. It provides that the possibility of repayment benefits may be used to recruit or retain employees in several types of employment categories. Federal employees covered by the law are:

- permanent employees;
- temporary employees who are serving on appointments which can be converted to term or permanent appointments;
- term employees with at least three years left on their appointment; and
- employees serving on excepted appointments which can be converted to term, career, or career conditional appointments.

Schedule C appointees—employees in confidential, policy-determining, policy-making, or policy advocating positions—are not eligible for the repayments.

Under the Title 5 law, an employee may receive up to \$6,000 per year and \$40,000 in total from an agency. According to OPM, “The \$40,000 limitation is the maximum an agency may pay to any one employee.”³⁹ Agencies may use the student loan repayment benefit in conjunction with other recruitment and retention incentives available under Title 5 of the United States Code. Student loan repayments are not subject to the Title 5 provision that limits the aggregate amount of pay an employee can receive to Executive Level I, or \$166,700 (as of January 2002).⁴⁰

Service Agreement. An employee seeking student loan repayment must sign a written agreement to work for the agency repaying the loan for at least three years. The implementing regulations specify that the following language should be stated in the service agreement: “A service agreement made under this part in no way constitutes a right, promise, or entitlement for continued employment or

³⁸(...continued)

vol. 66, no. 147, July 31, 2001, pp. 39405-39406.

³⁹66 FR 39405. (Hereafter, citations to the *Federal Register* are noted as FR, preceded by the volume and followed by the page.) OPM stated: “One agency commented that the \$40,000 payment limitation is not clear, and that the final regulations should provide greater clarity as to what this limitation represents. OPM did not adopt this suggestion because we believe the language in the regulation at 5 C.F.R. 537.106(c)(2) which reads, “a total of \$40,000 per employee,” is sufficiently clear.”

⁴⁰Ibid. When it published the final regulations which implemented the amendments to the student loan repayment law, OPM stated that one agency had suggested that those regulations address the aggregate limitation on pay. OPM said that the issue was outside the scope of the regulations, but that it would amend its questions and answers on student loan repayment to clarify that the aggregate limitation does not apply to the repayments.

noncompetitive conversion to the competitive service.”⁴¹ Other employment conditions the agency considers to be appropriate may be specified in the agreement. These might include the employee’s position and the duties he or she is expected to perform, work schedule, or level of performance.

Reimbursement Required. An employee who separates voluntarily from the agency, does not maintain an acceptable level of performance,⁴² or violates any of the conditions of the service agreement, becomes ineligible to continue receiving student loan repayment benefits. An employee who fails to complete the required period of service must reimburse the agency for the total amount of any repayment benefits received. This would occur if the employee is separated involuntarily for misconduct or performance, or leaves the agency voluntarily. The agency must collect through appropriate debt collection procedures any amount the employee fails to reimburse. Reimbursement is not required of an employee who is involuntarily separated for reasons other than misconduct or performance or who leaves the agency voluntarily to enter into the service of another agency. The service agreement, however, may specify reimbursement in this latter instance. An agency head may waive, in whole or in part, a right of recovery of an employee’s debt if “recovery would be against equity and good conscience or against the public interest.”⁴³

Repayment Plan Features. OPM regulations require the head of an agency to establish a student loan repayment plan before repaying any student loans. The plan must include the following seven elements:

The designation of officials with authority to review and approve offering student loan repayment benefits;

The situations when the loan repayment authority may be used;

Criteria that must be met or considered in authorizing loan repayments, including criteria for determining the size and timing of a payment[s];

Procedures for making loan repayments;

A system for selecting employees to receive repayment benefits that ensures fair and equitable treatment;

Requirements for service agreements (including a basis for determining the length of service to be required if greater than the statutory minimum), and provisions for recovering any amount outstanding from an employee who fails to complete the period of employment established under a service agreement and for conditions when the agency decides to waive the employee’s obligation to reimburse the agency for payments; and

⁴¹66 FR 2792; 5 C.F.R. 537.107. (Hereafter, citations to the *Code of Federal Regulations* are designated by C.F.R. preceded by the title number and followed by the part designation.)

⁴²The most recent performance rating must be “fully successful” for an employee whose performance appraisal is covered by 5 C.F.R. part 430, subpart B.

⁴³66 FR 2792; 5 C.F.R. 537.109.

Documentation and record keeping requirements sufficient to allow reconstruction of the action taken in each case.⁴⁴

Criteria for Repayments. The OPM regulations also establish criteria for loan repayments. The repayments “must be based on a written determination that, in the absence of offering loan repayment benefits, the agency would encounter difficulty either in filling the position with a highly qualified candidate, or retaining a highly qualified employee in that position.” The written determination for recruitment purposes must be made before the employee actually enters on duty in the position for which he or she was recruited. For retention purposes, the written determination must state “that the high or unique qualifications of the employee or special need of the agency for the employee’s services makes it essential to retain the employee, and that, in the absence of offering student loan repayment benefits, the employee would be likely to leave for employment outside the Federal service.” The determination “must be based on a written description of the extent to which the employee’s departure would affect the agency’s ability to carry out an activity or perform a function that is deemed essential to the agency’s mission.”⁴⁵

In selecting employees to receive the loan repayment, “agencies must adhere to merit system principles and take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.”⁴⁶

Student Loans Covered. Eligible for repayment are student loans made, insured, or guaranteed under parts B, D, or E of title IV of the Higher Education Act of 1965; and health education assistance loans made or insured under part A of title VII or part E of title VIII of the Public Health Service Act.⁴⁷ According to OPM, loans that qualify for repayment include the following:

Federal Family Education Loans (FFEL)

- Subsidized Federal Stafford Loans
- Unsubsidized Federal Stafford Loans
- Federal PLUS Loans
- Federal Consolidation Loans

William D. Ford Direct Loan Program (Direct Loans)

- Direct Subsidized Stafford Loans

⁴⁴66 FR 2791; 5 C.F.R. 537.103.

⁴⁵Ibid. 5 C.F.R. 537.105.

⁴⁶Ibid. Also specified in 5 U.S.C. 5379(e).

⁴⁷114 Stat. 1654A-316; 66 FR 39406.

- Direct Unsubsidized Stafford Loans
- Direct PLUS Loans
- Direct Subsidized Consolidation Loans
- Direct Unsubsidized Consolidation Loans

Federal Perkins Loan Program

- National Defense Student Loans (made before July 1, 1972)
- National Direct Student Loans (made between July 1, 1972 and July 1, 1987)
- Perkins Loans (made after July 1, 1987)

Loans made or insured under the Public Health Service Act

- Loans for Disadvantaged Students (LDS)
- Primary Care Loans (PCL)
- Nursing Student Loans (NSL)
- Health Professions Student Loans (HPSL)
- Health Education Assistance Loans (HEAL)⁴⁸

Tax Implications. The student loan repayment must be included in an employee's income for both income and employment tax purposes. OPM has posted on its Internet website a document prepared by the Internal Revenue Service that addresses questions and answers on the tax liability of student loan repayments made by federal entities. The document includes a discussion on agency reporting and withholding requirements for tax purposes, and an explanation of how agencies should calculate and withhold employment taxes.⁴⁹

For illustrative purposes, we are providing an example of an employee's tax liability if a federal agency were to provide a student loan repayment in the amount

⁴⁸U.S. Office of Personnel Management, Office of Compensation Administration, *Student Loan Repayment Program Questions and Answers*. Available on the Internet at [<http://www.opm.gov/oca/pay/StudentLoan/HTML/QandAs.htm>], visited June 6, 2002. OPM advises that "Further questions regarding the types of loans covered by the student loan repayment program should be referred to the Department of Education at (202) 377-4008."

⁴⁹U.S. Office of Personnel Management, Office of Compensation Administration, *Student Loan Repayment Program, Questions and Answers on Tax Liability*. Available on the Internet at [<http://www.opm.gov/oca/pay/StudentLoan/HTML/QandAsTax.htm>], visited June 6, 2002.

of \$6,000. For tax year 2002, a single employee with taxable income between \$27,950 and \$67,700 is subject to a federal income tax rate of 27%. In addition to the income tax, employment taxes (at a 7.65% rate for Social Security and Medicare) would be collected on the repayment amount. Thus, a total of 34.65% in federal taxes would have to be paid by an employee receiving repayment benefits under the program. On a \$6,000 repayment this amounts to \$2,079. In addition, the \$6,000 would be subject to any applicable state and local income taxes.⁵⁰

Legislation to exclude student loan repayments from gross income for the purposes of federal income tax was introduced in the Senate (S. 1817) on December 13, 2001 and in the House of Representatives (H.R. 3893) on March 7, 2002. In addition, legislation to exclude the repayments from gross income for purposes of federal income tax for members of the uniformed military was introduced in the House (H.R. 4555) on April 23, 2002.

Current Status of Implementation

The executive and legislative branches are at various stages of examining the issue of student loan repayment programs.

Executive Branch

Executive branch agencies have considerable flexibility to apply OPM's regulations on student loan repayment programs. Plans for student loan repayment are final in eight of the 14 cabinet agencies. The Departments of Agriculture, Commerce, Defense, Energy, the Interior, Justice, Labor, and the Treasury have final plans. Additionally, the Department of Health and Human Services prepared a model program plan to serve as guidance that can be used by the agencies under the department in preparing their plans. The Department of Veterans Affairs expects its plan to be final shortly. The Export-Import Bank, the Federal Energy Regulatory Commission (an independent regulatory agency within the Department of Energy), the General Services Administration, and the National Aeronautics and Space Administration also have student loan repayment plans that are final.⁵¹

Legislative Branch

There is considerable interest in the student loan repayment program in the legislative branch, but there is not a single policy for, or approach to, a repayment program that is applied evenly across the entire legislative branch. The 1990 student

⁵⁰This example was provided to the authors by Louis Alan Talley, Specialist in Taxation, at CRS.

⁵¹Based on telephone conversations conducted on Mar. 1, 2002 and June 4, 2002 with the cabinet departments and the four independent agencies. The agencies were selected on the basis of press reports about the student loan repayment program or upon the recommendation of agency contacts who knew of programs being developed in other agencies.

loan repayment statute (5 U.S.C. 5379) provides authority to the General Accounting Office, the Government Printing Office, and the Library of Congress to establish student loan repayment programs. The FY2002 Legislative Branch Appropriations Act (P.L. 107-68, H.R. 2647), provides the Senate and the Congressional Budget Office (CBO) with authority to establish a student loan repayment program. The FY2002 Department of Defense Appropriations Act (P.L. 107-117, H.R. 3338) extends similar authority to the U.S. Capitol Police. A House of Representatives bill (H.R. 2555), referred to two House committees, proposes that a student loan repayment program be authorized for the entire legislative branch.

Seeking to be competitive with the private sector and the executive branch, Congress and several legislative branch entities are considering student loan repayment programs as a possible tool to recruit highly qualified and talented individuals, as part of benefits packages.⁵²

The following describes the rationale underlying consideration of repayment programs by Congress and other legislative branch entities.

Congress. Some Members of both the Senate and the House, already concerned about high turnover and “brain drain” in their personal and committee offices, have expressed varying degrees of interest and support for a student loan repayment program. Congressional staff, on average, tend to be younger than other federal employees, and many are recent college graduates shouldering significant student loan debt. According to the *2001 Senate Staff Employment Study*, conducted by the Congressional Management Foundation (CMF),⁵³ of the offices that responded, about 86% of Senate staff held at least a bachelor’s degree and about 20% had advanced degrees.⁵⁴ The *2000 House Staff Employment Study* found that, of the offices that responded, 82% of House staff had a minimum of a bachelor’s degree and 16% had advanced degrees.⁵⁵ Proponents of the repayment program want to have the same tools as other employers to attract and retain high caliber individuals and to have a competitive edge. Others do not see the necessity for a student loan forgiveness program as a recruitment incentive because there is no lack of highly qualified applicants for congressional jobs. Working for a congressional office and

⁵²Legislative branch support agencies also have offered the flexibility (or are seeking authority to offer greater flexibility) to establish family friendly policies such as flexitime, child care, and telework, as well as the promise of professional training and development, upward mobility, and recruitment bonuses.

⁵³Established in 1977 by former congressional staff to help improve congressional office management practices, the Congressional Management Foundation is a non-profit, non-partisan organization. The studies of the Senate and House apply only to congressional staff in personal offices, and not leadership or committee staff.

⁵⁴Sheree L. Beverly, *2001 Senate Staff Employment Study* (Washington: Congressional Management Foundation, 2002). This study was based on 62 Senate offices responding to the CMF questionnaire. (Hereafter referred to as *2001 Senate Staff Employment Study*.)

⁵⁵Sheree L. Beverly, *2000 House Staff Employment Study* (Washington: Congressional Management Foundation, 2000), p. 79. This study was based on 183 House offices responding to the CMF questionnaire. (Hereafter referred to as *2000 House Staff Employment Study*.)

or committee is viewed as highly desirable, and these staff positions carry a certain cachet that, arguably, compares favorably with other federal jobs.

Congress watchers observe that congressional staff tenure is relatively short because congressional salaries cannot compete with the private sector, the hours are long, and the workload is heavy. Even under such conditions, thousands of highly qualified individuals flock to Capitol Hill for the opportunity to work for a Member of Congress or congressional committee, to have an input on public policy, and to play a role in shaping our nation's laws. Some observers maintain that a high percentage of staff never intend to stay long, and view the Hill experience as a launching pad to achieve other career goals.

In the view of many, while recruitment of congressional staff is not a problem, retention is. According to the CMF 2001 Senate study, 50% of Senate staff had less than one year of experience in their current position, including 52% of communication directors, 44% of legislative assistants, 73% of legislative correspondents, 50% of legislative directors, and 34% of chiefs of staff.⁵⁶ Results of the CMF 2000 House study indicated that nearly two-thirds of House staff had less than two years experience in their current position, including 39% of chiefs of staff, 64% of legislative directors, and 74% of press secretaries.⁵⁷ Turnover is higher for entry level positions.

High staff turnover affects not only an individual Member office or committee, but is arguably both a qualitative and quantitative loss to the institution. The potential disruption to the smooth operations of a congressional office or committee, and the time needed to recruit, interview, hire, and train new staff is a cost that has not been precisely calculated. These concerns have led the Senate and the House to consider student loan repayment programs. Each chamber has taken a different approach, as detailed below.

Senate. Senate employing offices have authority to establish student loan repayment programs under the FY2002 Legislative Branch Appropriations Act (P.L. 107-68) for recruitment and retention purposes. The act authorizes the head of a Senate employing office, at his or her discretion, to establish a program under which the office may agree to repay (by direct payments on behalf of the Senate employee) any student loan debt.

Under P.L. 107-68, the Senate is authorized to appropriate funds for the program. Authorized appropriations for each employing office (personal office of a Senator) shall be an amount equal to 2% of total sums appropriated for administrative and clerical salaries. The amount for all other employing offices is 2% of total sums appropriated for the fiscal year for salaries of that office. For Senate committees, the funds will be apportioned between the majority and minority staff of the committee. The Secretary of the Senate will establish a central account specifically for the program from which repayments will be made available, and within that account there will be sub-accounts for each employing office from which

⁵⁶2001 Senate Staff Employment Study.

⁵⁷2000 House Staff Employment Study, p. 2.

the student loan repayments will be made. The authorization will apply to FY2002 and each fiscal year thereafter, and will be subject to annual appropriations.

The Senate began implementation of the program in mid-March 2002. Under the Senate program, a minimum one-year service agreement is required, with the possibility of additional one-year agreements.⁵⁸ The monthly maximum is \$500 over a 12-month period with a total limit of \$40,000 cumulative across Senate offices. The program conforms with the provisions of P.L. 107-68, and has similar components to those provided in P.L. 101-510 (5 U.S.C. 5379), including the requirement that an employee must repay the benefit if the employee violates or leaves before fulfilling the terms of the service agreement. The benefit is not an entitlement or a guarantee of continued employment. The repayment may be made to current and outstanding specified loans only, and the amounts are in addition to basic pay and subject to taxes.

The Office of the Secretary of the Senate has provided offices with guidance on the steps to implement the student loan program, and has prepared a standard service agreement for the use of employing offices. Written service agreements must be signed and submitted to the Senate Disbursing Office, which will make the repayments directly to the lender.

House of Representatives. The House does not have a student loan repayment program for its employees. Under the existing policy, Members and employees are precluded from receiving reimbursement of “expenses to attend educational programs in order to obtain a primary, secondary, graduate, post-graduate, or professional degree.”⁵⁹

On July 18, 2001, Representative Barbara Lee introduced, for herself and Representative Steny Hoyer, legislation (H.R. 2555) to amend 5 U.S.C. 5379 that would authorize a student loan repayment program for the entire legislative branch. Details of this bill are discussed below under the section on “107th Congress Proposed Legislation.”

Conferees to the FY2002 Legislative Branch Appropriations bill (H.R. 2647, H.Rept. 107-259) directed the Legislative Branch Financial Managers Council (LBFMC)⁶⁰ to “develop, in consultation with all Legislative Branch entities the

⁵⁸The shorter service agreement requirement takes into consideration the unique realities of the Senate election cycles, and any potential changes in the majority in the Senate.

⁵⁹See the Educational Expenses sections of the *Members’ Congressional Handbook* and the *Committees’ Congressional Handbook* on the House Committee on Administration Web site, [<http://www.house.gov/cha/handbook/welcome.html>] and [<http://www.house.gov/cha/cmttehdbkcover.html>], visited Jan. 22, 2002.

⁶⁰Established by charter in March 1996, the Council’s mission is to promote more effective financial management of the legislative branch, and works to ensure that efficient and cost-effective financial systems are available to support decision making. The Council comprises the financial managers of legislative branch entities (including the Architect of the Capitol, the Capitol Police, the Congressional Budget Office, the General Accounting Office, the

(continued...)

controls and criteria that will govern [student loan repayment] program implementation.” Specifically, the LBFMC was “directed to perform a comparative analysis between entity implementing regulations and governing controls and criteria and report the results of that analysis to the House and Senate” appropriations subcommittees on the legislative branch by March 1, 2002. The LBFMC consulted with each legislative branch entity beginning in December 2001, completed a comparative analysis of entity implementing regulations, and developed governing controls and criteria recommendations for the student loan repayment programs in the legislative branch. On February 27, 2002, the LBFMC reported the results of the analysis and recommendations to the House and Senate appropriations subcommittees on the legislative branch.

Other Legislative Branch Entities. Congress has indicated concern about impending retirements within the federal workforce⁶¹ and in the legislative branch. Like executive branch agencies, several legislative entities are currently considering or formulating possible student loan repayment programs for their respective employees.

Legislative branch entities are facing and planning for substantial retirements in their respective agencies over the next five years. For example, by the end of fiscal year 2006, 12% of all staff at the Congressional Budget Office will be eligible for retirement, including 9% of its analysts and 58% of its senior managers.⁶² At the General Accounting Office, more than 35% of its analysts and 50% of its senior executives will be eligible for retirement within the next five years.⁶³ The Library of Congress estimates that 42% of its staff and 47% of its computer specialists will be eligible to retire by the end of fiscal year 2006.⁶⁴ Forty-eight percent of the Congressional Research Service staff will be eligible to retire by the end of fiscal year 2006, including 64% of the research and analytical staff, and 83% of the senior management.⁶⁵

⁶⁰(...continued)

House of Representatives, the Library of Congress, the Office of Compliance, and the Senate).

⁶¹During the first half of 2001, the Senate Committee on Governmental Affairs, [http://www.senate.gov/~gov_affairs/hearings.htm], conducted two hearings on the federal government’s human capital.

⁶²Based on discussions with the human resources office at the Congressional Budget Office, and information transmitted to CRS on June 29, 2001.

⁶³Statement of David M. Walker, Comptroller General of the United States, testimony before the Subcommittee on the Legislative Branch, Committee on Appropriations, U.S. Senate, *Fiscal Year 2002 Budget Request*, U.S. General Accounting Office, May 10, 2001, p. 15 (unprinted). (Hereafter referred to as GAO Comptroller General David Walker Testimony.)

⁶⁴Based on information provided by the human resources office at the Library of Congress, Aug. 2, 2001. This figure excludes the Congressional Research Service.

⁶⁵U.S. Library of Congress, Congressional Research Service, *Primary Analysis of FY 2001 Retirement Survey/Risk Assessment*. Internal document provided June 14, 2001.

These agencies have devised strategic plans to deal with this circumstance by looking at ways to replenish seasoned personnel with highly qualified and skilled individuals. In recruiting and retaining the best talent available, these agencies are seeking to be as competitive as employers in the private sector and the executive branch. Some agencies view student loan repayment programs as an attractive additional component to the benefits package they can offer to potential candidates who might be shouldering heavy student debt.

The authority and status of the legislative entities to establish student loan repayment programs follow:

Architect of the Capitol (AOC). The AOC currently does not have a policy on repayment of student loans, however, it is studying the issue as a possible component of a recruitment and retention incentive package.⁶⁶

Capitol Police. The Capitol Police was authorized to establish a student loan repayment program by the FY2002 Department of Defense Appropriations Act (P.L. 107-117). The law provides for a program that is similar to that provided to other agencies under 5 U.S.C. 5379. In response to the terrorist threats, the Capitol Police is planning to use this authority to recruit and retain highly qualified employees.⁶⁷

Congressional Budget Office (CBO). Authority for the CBO to establish a student loan repayment program was provided for under the FY2002 Legislative Branch Appropriations Act (P.L. 107-68). The CBO is currently drafting regulations in anticipation of implementing the program, and has requested \$30,000 for FY2003 to fund the program.⁶⁸

General Accounting Office (GAO). Authority for a student loan repayment program is provided for GAO under 5 U.S.C. 5379. The GAO has announced that it will have a program and that the details are currently being worked on. The GAO has requested \$810,000 for FY2003 to fund the second year of the student loan repayment program, increasing the total program funding to \$1.2 million.⁶⁹

Government Printing Office (GPO). Authority for a student loan repayment is granted to the GPO under 5 U.S.C. 5379. The GPO implemented a repayment program in April 2002.⁷⁰

⁶⁶Based on a telephone conversation with staff at the Architect of the Capitol office in Jan. 2002.

⁶⁷Based on a telephone conversation with the Capitol Police Human Resources Office on Jan. 16, 2002.

⁶⁸Based on an email from the Congressional Budget Office on May 6, 2002.

⁶⁹Statement of David M. Walker, Comptroller General of the United States, Testimony before the Subcommittee on Legislative, Committee on Appropriations, House of Representatives, *Fiscal Year 2003 Budget Request*, U.S. General Accounting Office, April 24, 2002, p. 18.

⁷⁰Based on a telephone conversation with the Government Printing Office on May 10, 2002.

Library of Congress (LOC) (including the Congressional Research Service). Authority for the Library of Congress to establish a student loan repayment program is provided for under 5 U.S.C. 5379. The Library is currently drafting regulations on the student loan repayment program.

Office of Compliance. The Office of Compliance does not currently have authority to establish a student loan repayment program. However, the Office is examining the issue as a possible recruitment and retention tool.

Judicial Branch

According to the Administrative Office of the U.S. Courts, which administers personnel policies for the judicial branch, “Unlike executive branch agencies, the Judiciary cannot assist employees in any manner in repaying student loans.”⁷¹ At the request of the United States Judicial Conference, legislation (H.R. 2522) was introduced in the House of Representatives on July 26, 2001, as discussed below, to authorize student loan deferral for judicial law clerks and to provide student loan forgiveness for federal defender attorneys.

107th Congress Proposed Legislation

Legislative Branch Employees (H.R. 2555)

H.R. 2555, introduced in the House by Representative Barbara Lee for herself and Representative Steny Hoyer on July 18, 2001, would amend 5 U.S.C. 5379 to include the entire legislative branch in a student loan repayment program. The bill calls for minimum service requirement of one year. Student loan repayments for House employees would be paid out of an account of the House of Representatives established by the House Chief Administrative Officer, which would be segregated from the Member’s Representational Allowance or other applicable accounts of the employee’s employing authority. An account established in the Treasury jointly by the House Chief Administrative Officer and the Secretary of the Senate would cover any other employee not included in the above two categories. The bill was jointly referred to the Committee on House Administration and the Committee on Government Reform for consideration of provisions under the jurisdiction of each committee for a period to be determined by the Speaker. The bill would authorize appropriations of “such sums as may be necessary” for making payments during FY2002 and each succeeding fiscal year.

On July 30, 2001, Representative Lee submitted an amendment on student loan repayment to the FY2002 Legislative Branch Appropriations Bill, H.R. 2647, to the House Committee on Rules. The amendment was similar to H.R. 2555. The rule (H.Res. 213) for H.R. 2647 did not make the amendment in order for consideration on the House floor. However, on July 31, 2001, during floor consideration of H.R.

⁷¹U.S. Administrative Office of the U.S. Courts, “Judicial Improvement Bill Would Help Judiciary Retain, Recruit Employees,” *The Third Branch* newsletter, Aug. 2001. (Hereafter referred to as *The Third Branch*.)

2647, Representative James Moran stated that “a uniform policy should be developed across the board,” and noted that the bill “calls for study of the issue by the Committee on House Administration.” He further stated that because the Senate-passed version of the bill would authorize the student loan repayment benefit to all Senate employees, it was “essential that the Committee on House Administration develop guidelines rapidly.”⁷²

Pilot Program for National Security Positions in the Executive Branch (S. 1800)

Senator Richard Durbin (and cosponsors Senators Fred Thompson, Daniel Akaka, and Susan Collins) introduced S. 1800, the Homeland Security Federal Workforce Act, on December 11, 2001.⁷³ The bill was referred to the Committee on Governmental Affairs, and a hearing is anticipated in March 2002. Section 101 of S. 1800 would amend 5 U.S.C. chapter 53, subchapter VII, by creating a new Section 5379A on a pilot program for student loan repayment.

Agencies and Employees Covered. The student loan program proposed in S. 1800 would cover federal employees in national security positions in the Departments of Defense, Energy, Justice, State, and Treasury, the Central Intelligence Agency, and the National Security Agency. The OPM director, in consultation with an agency, would determine national security positions involving important homeland security applications. Not covered by the program would be employees in a position excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character, or not in a national security position. An employee would be ineligible for continued benefits if he or she separates from the agency or does not maintain an acceptable level of performance, as determined under standards and procedures prescribed by the agency head.

Loans Covered. Student loans eligible for repayment would be the same as those covered by current law—loans made, insured, or guaranteed under parts B, D, or E of Title IV of the Higher Education Act of 1965; and health education assistance loans made or insured under Part A of Title VII or Part E of Title VIII of the Public Health Service Act.

Repayment Amount. To recruit or retain highly qualified professional personnel, the OPM director would establish a pilot program under which an agency head could repay (by direct payments on behalf of the employee) an employee’s student loan. The agency and the employee would mutually agree to the terms, limitations, or conditions of the payments. An agency could pay up to \$10,000 per

⁷²Rep. James Moran, remarks in the House of Representatives, *Congressional Record*, vol. 147, July 31, 2001, p. H4888.

⁷³Section 101 of S. 1799, the Homeland Security Education Act, introduced by Senator Durbin (and cosponsors Senators Thompson and Akaka) on Dec. 11, 2001, would provide for forgiveness of the interest on student loan debt incurred by selected students who obtain undergraduate degrees in science, mathematics, engineering, or a foreign language. The bill was referred to the Senate Committee on Governmental Affairs.

year as student loan repayment for each year that an employee remains in his or her position.⁷⁴ The maximum amount that could be paid in total would be \$80,000. The benefit would be in addition to basic pay and any other form of compensation otherwise payable to the employee.

Service Agreement and Repayment. The employee selected to receive repayment benefits would agree in writing, before receiving any benefit, to remain in his or her position with the agency for a period to be specified in the agreement. The period would have to be for at least three years, unless the employee were involuntarily separated. The employee would have to repay the agency for any benefits received if he or she were separated involuntarily because of misconduct, or voluntarily before the end of the agreed-upon period. An employee who voluntarily left his or her agency for service in another agency before the end of the agreed-upon service period would not have to repay the benefits received. However, if the agency head that authorized the benefits notified the employee before the effective date of the employee's service in the other agency, repayment from the employee would be required.

If an employee who is involuntarily separated because of misconduct or who voluntarily separates before completing the required service period fails to repay the benefit, the amount outstanding could be recovered from the employee (or his or her estate) by setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the government; and any other method provided for by law for recovery of amounts owed to the government. An agency head could waive, in whole or in part, a right of recovery if it is shown that such would be against equity and good conscience or against the public interest. Any amount repaid by or recovered from an individual (or an estate) would be credited to the appropriation account from which the amount was originally paid. The credited amount would be merged with other sums in the account and would be available for the same purposes and period, and subject to the same limitations (if any) as those other sums.

Correspondence to Existing Laws. In selecting employees to receive benefits, an agency would, consistent with the merit system principles at 5 U.S.C. 2301(b)(1) and (2), consider the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in government service.

An agency would not be authorized to reimburse an employee for any student loan repayments made by the employee prior to his or her agreement with the agency. Nothing in the new section 5 U.S.C. 5379A would be construed to affect student loan repayment programs in existence on the section's enactment; to revoke or rescind any such existing law; to authorize OPM to determine national security positions for purposes other than this section; or as a basis to determine the exemption of any

⁷⁴The Department of Defense, in an April 19, 2002 briefing paper to Congress on the agency's FY2003 legislative program for civilian human resources management, recommended that federal agencies be allowed to increase the amount of a student loan repayment to an employee from \$6,000 to \$10,000 per year.

position from being included in a bargaining unit under 5 U.S.C. chapter 71, or the right of an incumbent in a national security position (determined by OPM) to entitlement of all rights and benefits under that chapter.

Funding. The OPM director would establish a fund within OPM to be used by agencies to provide the repayments and would coordinate the program with the agency heads to recruit employees to serve in national security positions. Such sums as may be necessary to carry out Section 5379A for each fiscal year would be authorized to be appropriated. Not later than six months after the section is enacted, the OPM director would report to the appropriate congressional committees on the manner in which he or she will allocate funds and implement the program. The OPM director would report to the appropriate congressional committees on the status of the program and its success in recruiting and retaining employees for national security positions not later than four years after enactment of the section.

Regulations and Length of Program. Not later than two months after this section is enacted, the OPM director would propose regulations to carry out the program. The final regulations would be promulgated by the director not later than six months after the comment period for the proposed regulations ends. The pilot student loan repayment program would remain in effect for five years. Employees recruited under the program who are in compliance with its requirements would continue to receive benefits until their service commitments end.

Senate Subcommittee Hearing. The Senate Subcommittee on International Security, Proliferation, and Federal Services of the Committee on Governmental Affairs conducted a hearing on S. 1800 on March 12, 2002.⁷⁵ In his opening statement, Senator Daniel Akaka, the subcommittee's chairman, spoke of the "lack of critical personnel and needed skills in our national security agencies." He emphasized that it had "taken years of neglect to reach this deficit in trained workers, and it will take sustained efforts to hire, retain and retrain employees with critical skills."⁷⁶ The ranking member of the subcommittee, Senator George Voinovich, stated that the bill includes "important flexibilities and innovative programs designed to make the federal government a more attractive employer for applicants with academic and professional background in areas critical to national security."⁷⁷

Representatives of OPM, the Department of Defense, the Department of State, the Federal Bureau of Investigation (FBI), the National Security Agency, the GAO, and the Defense Language Institute provided testimony to the subcommittee. Former Representative Lee Hamilton also testified. Among the comments presented were these:

⁷⁵U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on International Security, Proliferation, and Federal Services, *Critical Skills for National Security and the Homeland Security Federal Workforce Act*, hearing on S. 1800, 107th Cong., 2nd sess., March 12, 2002. (Unpublished.) Available on the Internet at [http://www.senate.gov/~gov_affairs/hearings.htm], visited March 27, 2002. (Hereafter referred to as S. 1800 Hearing.)

⁷⁶Statement of Senator Daniel Akaka, S. 1800 Hearing, pp. 1-2.

⁷⁷Statement of Senator George Voinovich, S. 1800 Hearing, p. 2.

- OPM urged that any enhancements to the student loan repayment program reflect agency experiences under the current 5 U.S.C. 5379 authority. OPM also expressed concern about the establishment of a separate fund for the repayments, saying that allowing agencies to make those decisions was appropriate.⁷⁸
- DOD supports the increased student loan repayment provisions of S. 1800. The agency is concerned that a centralized program of loan payment does not provide the necessary implementation flexibility.⁷⁹
- The Department of State views student loan repayment as “a valuable and useful tool” for “increasing access to the Foreign Service for Americans from modest financial backgrounds.” The department is designing its repayment program “to target recruiting and retention in chronically difficult to staff skills and positions.” The department suggested that modifying the existing program rather than creating new or overlapping programs might be simpler and more efficient. Additionally, the department believes that S. 1800 should give “agencies sufficient discretion to frame their eligibility and participation criteria, and administer their programs in order to deal with their unique recruitment and retention problems.”⁸⁰
- The FBI, an agency in the excepted service, stated that S. 1800, as currently drafted, would not cover many of its employees. FBI employees are covered by the student loan repayment provisions of 5 U.S.C. 5379, but it is too early to determine the effect on recruitment and retention efforts. The agency expressed concern “that S. 1800 could create additional, unnecessary levels of bureaucracy, to include the management and administration of the funding, which have a tendency to inhibit the use of flexibilities.”⁸¹
- The Defense Language Institute recommended that the repayment program included in S. 1800 cover all federal employees “because most of the linguist assignments are in the excepted service or are exempt from the requirements of the competitive service.”⁸²
- Former Representative Lee Hamilton noted that the U.S. Commission on National Security/21st Century, on which he served for the past few years, made recommendations on student loan repayment that were similar to those included in S. 1800. He expressed his strong support for S. 1800 and stated that the bill “would encourage more people to enter national security positions by easing the financial sacrifices often associated with graduate study and with

⁷⁸Statement of Donald J. Winstead, S. 1800 Hearing, p. 3.

⁷⁹Statement of Ginger Groeber, S. 1800 Hearing, p. 3.

⁸⁰Statement of Dr. Ruth A. Whiteside, S. 1800 Hearing, p. 5.

⁸¹Statement of Sheri A. Farrar, S. 1800 Hearing, p. 6.

⁸²Statement of Ray T. Clifford, S. 1800 Hearing, p. 2.

government service.”⁸³ In his testimony, Mr. Hamilton stressed the urgent need to attract and retain talented and committed individuals to government service and, in particular, civilian and military personnel in key positions in national security departments and agencies.

Student Loan Tax Forgiveness

Senator George Voinovich, for himself and Senator Fred Thompson, introduced S. 1817 in the Senate on December 13, 2001 to exclude student loan repayments from gross income for the purposes of federal income tax. The bill would amend the Internal Revenue Code provision at 26 U.S.C. 108 (f)(1) on student loans and would require that the repayment be a recruitment or retention incentive offered to highly qualified federal personnel. The bill was referred to the Senate Committee on Finance.

Representative Dan Burton, for himself, Representatives Elijah Cummings, Danny Davis, Constance Morella, John Tierney, and Henry Waxman, and Delegate Eleanor Holmes Norton, introduced H.R. 3893 in the House of Representatives on March 7, 2002. H.R. 3893 like S. 1817, would amend 26 U.S.C. 108(f)(1) to exclude student loan repayments from gross income for the purposes of federal income tax. The bill also would amend 26 U.S.C. 3121(a) to exclude student loan repayments from the definition of wages under the Internal Revenue Code and 42 U.S.C. 409(a) to exclude repayments from the definition of wages under Social Security. The amendments would apply to payments made in taxable years beginning after December 31, 2001. The bill was referred to the House Committee on Ways and Means.

Representative Gary Miller introduced H.R. 4555, the Tax Exemption for Military Student Loan Repayments Act, in the House of Representatives on April 23, 2002. H.R. 4555 would amend the Internal Revenue Code provision at 26 U.S.C. 134(b) (relating to qualified military benefits) to exclude student loan repayments from gross income for the purposes of federal income tax for members of the uniformed military. The amendments would apply to repayments made in taxable years beginning after December 31, 2002. The bill was referred to the House Committee on Ways and Means. According to Representative Miller:

Today’s military requires more high-tech skilled personnel than ever before and the military continues to have a dire need to recruit for its shortage of medical personnel. To fill these jobs, known as military occupational specialists or MOSs, the Army, Navy and Air Force utilize student loan repayment programs to attract skilled recruits who have gained high-tech, medical, or other valuable skills, but may be hesitant to join the military because they have incurred substantial indebtedness to finish their college education.⁸⁴

⁸³Statement of the Honorable Lee H. Hamilton, S. 1800 Hearing, p. 3.

⁸⁴Statement of Representative Gary G. Miller, Introducing the Tax Exemption for Military Student Loan Repayments Act, *Congressional Record*, daily edition, vol. 148, April 23, 2002, p. E611.

He also explained the need for the amendment as follows.

If you are on active duty, tuition assistance is not taxed as income. If you have been honorably discharged and received education assistance through the GI bill, it is not taxed as income. However, if the military needs to recruit an individual for an occupation specialty that is needed, the student loan repayment is taxed as income.⁸⁵

Deferral of Student Loans for Judicial Law Clerks and Forgiveness of Student Loans for Federal Defender Attorneys

At the request of the United States Judicial Conference, Representatives Howard Coble and Howard Berman introduced the Federal Courts Improvement Act of 2001, H.R. 2522, on July 17, 2001. The bill would “[a]uthorize judicial law clerks to defer payment of principal and interest on federally insured loans during the period they serve as clerks” and “aid in the recruitment and retention of highly qualified individuals as clerks.”⁸⁶ Student loan repayment for full-time federal defender attorneys also would be authorized. H.R. 2522 was referred to the House Committee on the Judiciary and the House Committee on Education and the Workforce. The Subcommittee on Courts, the Internet, and Intellectual Property conducted a hearing on the bill on July 26, 2001.

Law Clerk Loan Deferment. Section 205 of H.R. 2522 would amend the Higher Education Act of 1965 to authorize the deferment of the unpaid principal balance and interest on a federally insured student loan of a full-time judicial law clerk for up to three years. The law clerk would have to be employed by an appeals or district court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Federal Claims, or the Court of International Trade. This provision would apply to loans made after July 1, 1998, and to employment as a judicial clerk that occurs on or after the act’s enactment date.

Student Loan Forgiveness for Federal Defender Attorneys. Section 209 of H.R. 2522 would amend the Higher Education Act of 1965, on cancellation of loans for certain public service, to provide that a full-time federal defender attorney employed in a federal public defender organization or a community defender organization would be authorized for student loan forgiveness.⁸⁷ The loan would have to have been a Federal Perkins Loan made after June 30, 1972. Fifteen percent of the loan would be cancelled for the first or second year of service, 20% for the third or fourth year of service, and 30% for the fifth year of service. The amount of

⁸⁵Statement of Representative Gary G. Miller, Stop Taxing Military Student Loan Repayments, *Congressional Record*, daily edition, vol. 148, May 8, 2002, p. H2169.

⁸⁶*The Third Branch*.

⁸⁷Section 209 would amend 20 U.S.C. 1087ee(a)(2)(F), which currently provides student loan forgiveness for full-time law enforcement officers or corrections officers serving in local, State, or federal law enforcement or corrections agencies.

a loan and interest on a loan that is canceled would not be considered income for purposes of federal income tax.

Impetus for Repayment Programs

Congressional interest in the student loan repayment issue will likely continue as the Senate and the House of Representatives address the human capital issues of recruitment and retention. The reasons underlying enactment of the student loan repayment program, as identified in the legislative history, continue today. Some contend that impending retirements in the federal workforce make the need for loan forgiveness especially compelling. For others, the federal government's difficulty in attracting individuals to public service, and the substantial student loan debts of recent college graduates, are paramount concerns that could be partly addressed by repayments. Some believe that the problem in attracting qualified personnel is agency-specific, and even job specific, rather than a government-wide issue. The September 11, 2001 attack on the World Trade Center and the Pentagon reinforced the critical need for highly qualified and skilled federal employees to be recruited and retained, particularly to fight the war on terrorism.

Impending Retirements

A substantial number of federal workers will be eligible to retire by 2006. An April 2001 evaluation by the General Accounting Office (GAO) estimated that some "493,000 people [federal civilian employees] will be eligible to retire, and that through the end of 2006 about half of the eligible employees (236,000 people, the equivalent of 15 percent of the 1998 workforce) will actually retire." GAO also estimated that the overall annual retirement rate will be about 2% per year.⁸⁸ OPM projected that full-time permanent retirement rates and numbers, based on 1.48 million full-time permanent employees, will be 3.4% or 50,771 (FY2001), 3.7% or 54,174 (FY2002), 3.8% or 56,994 (FY2003), 4.0% or 59,112 (FY2004), and 4.1% or 60,377 (FY2005). Over the period FY2001 through FY2005, OPM projected a 19% retirement rate and 281,428 retirements.⁸⁹

OPM data shows that 41,543 employees, or 2.8% of full-time permanent employees, actually retired in FY2001.⁹⁰ This was 9,228 fewer retirements than the

⁸⁸U.S. General Accounting Office, *Federal Employee Retirements; Expected Increase Over the Next 5 Years Illustrates Need for Workforce Planning*, GAO-01-509, Apr. 2001, pp. 4-5.

⁸⁹U.S. Office of Personnel Management, *Retirement Projections Fiscal Years 2001-2005*. Available on the Internet at [<http://www.opm.gov/feddata/retire/rs-projections.pdf>], visited Mar. 18, 2002.

⁹⁰Data are available on the Internet at [<http://www.fedscope.opm.gov/cognos/cgi-bin/ppdscgi.exe>], visited March 18, 2002 and June 6, 2002; choose GPD1S-FY 2001 and then set the separation (separation from federal service) parameter to retirement, the work schedule parameter to full-time, and the type of appointment parameter to permanent.

agency anticipated for FY2001. During the first quarter of FY 2002, 7,214 full-time permanent employees retired.⁹¹

In a May 2001 study, the Congressional Budget Office (CBO) found that over the period 1985 through 2000 the federal government experienced a loss (because of such things as retirements, separations, and reductions in force) of 430,000 civilian employees or 19% of the workforce. Furthermore, as of December 2000, 40% of the federal workforce was over age 50 and nearly three-quarters were over age 40.⁹²

Moreover, as discussed earlier in detail, staff turnover in Congress continues to be higher than in the rest of the federal government. The legislative branch support agencies also are anticipating a considerable number of retirements within the next five years.

Attraction of Government Service

On May 28, 2002, the Council for Excellence in Government released a survey entitled “Young Americans’ Call to Public Service” which found that the interest of individuals age 18 to 30 in serving in government has increased slightly since the last time the survey was conducted in October 1997. In April 2002, 40% of respondents said that government service is “very appealing” or “fairly appealing” compared to 35% who responded that way five years earlier. Additionally, the percentage difference between those who prefer to work in the private sector (62%) and those who prefer to work in the public sector (27%) has narrowed since 1997 when the results were private sector (66%) and public sector (24%). For individuals already working in government, however, 48% prefer private sector employment and 45% prefer public sector employment in 2002.⁹³

A 1998 study of students earning master’s degrees in public affairs or public administration, conducted for the National Association of Schools of Public Affairs and Administration, found that working for the federal government was “very appealing” and/or “their top preference” to 36% of respondents, “fairly appealing” to 12%, and “slightly appealing” to 36%. Those who said that they “would not even consider working for the Federal government” numbered 16%.⁹⁴

⁹¹Data are available on the Internet at [<http://www.fedscope.opm.gov/cognos/cgi-bin/ppdscgi.exe>], visited June 6, 2002; choose GPD1S-FY 2002 (1st Quarter) and then set the parameters as in the footnote immediately above.

⁹²U.S. Congressional Budget Office, *Changes in Federal Civilian Employment: An Update*, May 2001, pp. 2, 9.

⁹³Young Americans’ Call to Public Service; A Hart-Teeter Study for the Council for Excellence in Government, May 2002, pp. 1-2. Available on the Internet at [<http://www.excelgov.org/publication/poll911/pr.htm>], visited June 6, 2002. The survey was conducted among 600 young adults age 18 to 30 by telephone from April 19-28, 2002. The margin of error for results is plus or minus 4%.

⁹⁴“MPAs and MPPs View Federal Employment: Impressions, Incentives, and Impediments,” available at [http://www.naspaa.org/Almanac/GWU_Study_Fed.htm], visited Jan. 28, 2002. The 1998 study of 477 graduate master of public administration and master
(continued...)

According to a study published in July 2001, the John F. Kennedy School of Government at Harvard University sent 42% of its Master in Public Policy Class of 2000 into the private sector, 34% into government, and 24% to nonprofit organizations.⁹⁵

Student Loan Indebtedness

According to a March 2002 report by the State Public Interest Research Groups (PIRG) Higher Education Project, “Students are increasingly shouldering high levels of debt to pay for a college education.” Among the key findings in the PIRG report were these:

- “In 1999-2000, 64% of students graduated with student loan debt, and the average student loan debt has nearly doubled over the past eight years to \$16,928.”
- “Thirty-nine percent (39%) of student borrowers now graduate with unmanageable levels of debt, meaning that their monthly payments are more than 8% of their monthly incomes.”
- “Fifty-five percent (55%) of African-American student borrowers and 58% of Hispanic student borrowers graduated with unmanageable debt burden.”

Other findings in the report were that 33% of seniors graduated with debt of more than \$20,000 in 1999-2000 and that the average student loan debt was \$16,243 at four-year public institutions and \$17,613 at four-year private institutions.⁹⁶

Issues for Consideration

Policies to implement the student loan repayment program are, for the most part, in the early stages of development. Questions surrounding funding, the number of years of service required, criteria for eligibility, and oversight of the program are likely to be among the issues agencies consider, as they determine whether the operation of a repayment program is desirable or feasible.

⁹⁴(...continued)

of public policy students was conducted by the Public Administration Department at The George Washington University.

⁹⁵Carol Chetkovich, *Winning the Best and the Brightest: Increasing the Attraction of Public Service* (Washington: The PricewaterhouseCoopers Endowment for the Business of Government, July 2001), pp. 8, 10.

⁹⁶King, Tracey and Ellynn Bannon, *The Burden of Borrowing: A Report on the Rising Rates of Student Loan Debt* (Washington: The State PIRGs’ Higher Education Project, March 2002), pp. 1-2. The State PIRGs are non-profit, non-partisan public interest advocacy groups.

Funding

While P.L. 101-510, as amended, provides authority to executive and certain legislative branch support agencies to establish student loan repayment programs, it does not provide funding to implement those programs. The legislative history of the 1990 law is clear that the authority is to be used sparingly and that no additional appropriations were anticipated. If they implement repayment programs, agencies may need to take monies from existing pay and benefits programs and/or prioritize between the recruitment and retention incentives already available, as the Senate and House sponsors of the 1990 law envisioned. A consideration might be whether to fund the program for a limited number of individuals or use resources to fund benefits that would affect a larger number of employees.⁹⁷

The U.S. Commission on National Security/21st Century, known as the Hart-Rudman Commission, identified student loan repayment as an incentive program designed to recruit and retain quality employees. The commission recommended that additional funds be provided to maximize agency use of such incentives. According to the commission: “Many departments and agencies have not used these programs for lack of funds. Because all incentive programs are drawn from the same pool of money as that for salaries, administrators must trade off incentives for some employees against the ability to hire additional personnel.”⁹⁸

Another commission also is expected to consider student loan repayment programs as part of recruitment and retention incentives. The second National Commission on the Public Service (successor to the 1989 commission of the same name and commonly referred to as the Volcker Commission), established on February 14, 2002, is focusing on the need for comprehensive reform in the federal service. The Brookings Institution’s Center for Public Service is directing the commission, which again is chaired by the former Federal Reserve Board Chairman Paul Volcker. The commission is expected to make several comprehensive recommendations on the public service and release a final report in winter 2002.

The Department of State, whose student loan repayment program is close to being finalized, requested an appropriation of seven million dollars for FY2002 and received an appropriation of two million dollars.⁹⁹ The Department of Labor is

⁹⁷The National Treasury Employees Union (NTEU) “strongly supports” the program, but is concerned that “no new funding was authorized.” NTEU is “hopeful Congress will provide additional funding to help agencies pay for this important benefit, and that Congress will require agencies to utilize this incentive authority.” FAX transmission of a statement received from NTEU on July 18, 2001.

⁹⁸U.S. Commission on National Security/21st Century, *Road Map for National Security: Imperative for Change*; The Phase III Report (Washington: Feb. 15, 2001), pp. 99 and 125.

⁹⁹Telephone conversation with Department of State staff on Feb. 6, 2002. P.L. 107-77, Nov. 28, 2001, 115 Stat. 783; U.S. Congress, Conference Committees, *Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 2002, and For Other Purposes*, conference report to accompany H.R. 2500, 107th Cong., 1st sess., H.Rept. 107-278 (Washington: GPO, 2001),

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establishing a central fund to support “a department-wide approach to the recruitment, development, and advancement of a skilled and competent workforce.”¹⁰⁰

The FY2002 Legislative Branch Appropriations Act (P.L. 107-68) authorized appropriations for a student loan repayment program for Senate employing offices in FY2002 and each succeeding year.

H.R. 2555, introduced in the House on July 18, 2001, would authorize a repayment program for the legislative branch and would provide “such sums as may be necessary” for making repayments for FY2002 and each succeeding year. This bill has been referred to two House committees.

A current cost estimate on student loan repayment is not available.

Required Service Agreement

Executive branch and legislative support agencies might consider whether the service requirement should be extended beyond three years. Their decisions could be affected by whether the time it takes for an individual to achieve senior level or recognized expert status in an agency exceeds the minimum period, or whether the purpose of repayment is also to retain a new employee so that he or she can offset the loss of retiring senior staff. If agencies expend time and resources on an employee who might only stay for three years, recruitment to fill the same position again would be necessary. On the other hand, extending the required service agreement could diminish interest in working for a federal agency with the longer requirement.

To encourage continued service, an agency could consider increasing the amount of loan repayment money that a recruit might receive for each succeeding year the individual remains with the agency.

Programs proposed for the Senate and House employees will necessarily have service agreements of shorter duration because of the Members’ tenure of office. The Senate student loan repayment program, under P.L. 107-68, calls for a one-year service agreement, with additional service agreements possible. In the House bill, H.R. 2555, the minimum service agreement proposed is one year.

Eligibility Criteria

When publishing the proposed regulations, OPM identified five factors to be considered in determining whether the loan repayments should be authorized and the amount of such payments. The factors focused on the following:

⁹⁹(...continued)
p. 145.

¹⁰⁰Information received by e-mail from the Department of Labor, Human Resource Policy and Accountability Center, Feb. 8, 2002.

- the success of recent efforts to recruit high quality candidates;
- labor market factors affecting recruitment;
- special qualifications or education needed;
- the cost of training current versus new employees; and
- the practicality of using other recruitment and retention incentives.

OPM’s final regulations noted that because “Several agencies complained that the ‘factors to be considered’ portion of the [Criteria for Payment] section were overly restrictive and burdensome,” these were deleted from the final rules.¹⁰¹ Requirements for written determinations of the need for the repayments based on recruitment and retention (see the “Criteria for Repayments” section above) were retained in the final regulations. Some agencies might plan to exercise the flexibility within the OPM criteria to maximize use of the authority.

In final regulations implementing the amendments to the law, OPM noted a suggestion that the term “highly qualified personnel” be defined in the regulations. OPM stated that it did not adopt this suggestion because “A standard definition of ‘highly qualified personnel’ may limit agencies in their use of this authority, as there are many ways in which an individual may be deemed highly qualified in relation to the duties they perform or the skills they possess.”¹⁰² As for making the determination that an employee would likely leave government service without the repayment benefit, OPM stated that the regulations give agencies “wide latitude” and do not require “proof from a private sector employer” to use repayment as a retention incentive.¹⁰³

Additionally, horizontal equity (fairness) in applying the program may be an issue. Some agencies appear to be considering only new recruits as eligible for student loan repayments. Other agencies appear to be considering repayments to both new recruits and current employees. A further consideration may be that recruits, depending on the pay grade at which they are hired, could have varying capabilities of repaying their student loans. Additionally, some current employees may have already recently paid off their student loans. For these employees and others, the horizontal equity of the program and the impact on employee morale have obvious implications.¹⁰⁴

¹⁰¹66 FR 2790.

¹⁰²66 FR 39405.

¹⁰³Ibid.

¹⁰⁴The American Federation of Government Employees (AFGE) “very much favors” the benefit for both recruits and incumbent employees and believes that it might help current employees to advance themselves and remain in government service. The National Federation of Federal Employees (NFFE) views the program as a good recruitment and retention tool. NTEU “believe[s] that agencies should give priority consideration to using (continued...)”

Oversight

The student loan repayment law requires agencies to report annually to OPM on the number and job classifications of employees selected to receive student loan repayment and the cost of providing student loan repayments. The regulations state that cost is defined as the total amount of student loan repayments and not the costs of administering the program. Under the regulations implementing the law, records on student loan repayments must be maintained by the agencies for three years or until after OPM formally evaluates the program, whichever comes first. OPM must report annually to Congress on agency use of the student loan repayment program.¹⁰⁵

Thus far, information is not available about oversight in the legislative branch. However, reports on program implementation (similar to those of the executive branch) would likely be submitted to the pertinent Senate and House oversight committees.

Agencies might examine whether student loan repayment records should be maintained beyond the period prescribed by regulation. A longer period of record keeping may be useful if an employee leaves to work at another federal agency and, in turn, also receives loan repayment from that agency. The collected data could be used for oversight purposes. In addition, information on the number of participating employees in the student loan repayment programs, the average amount of payments, and implementation of the programs may be useful to evaluate the cost, desirability, feasibility, and effectiveness of the programs.

Conclusion

Executive branch agencies and certain legislative branch entities have been granted the authority to establish student loan repayment programs and broad discretion to use it. Limited funds for pay and benefits may necessitate that employing agencies consider whether repayments or other personnel flexibilities will maximize their ability to recruit and retain highly qualified employees. Agencies may opt for a pilot program and evaluate the results to determine the effect on recruitment and retention. While some agencies are seriously considering repayment programs, others are taking a wait-and-see attitude, with a view toward using other agencies' programs as a model. Requesting specific appropriations for repayment programs also may be considered by agencies.

¹⁰⁴(...continued)

this incentive to retain those individuals already in the government workforce before using it as a recruitment incentive." Telephone responses from AFGE (July 18, 2001) and NFFE (July 16, 2001) and a July 18, 2001 FAX transmission of a statement from NTEU.

¹⁰⁵Although the law does not specify the committees, the Senate Committee on Governmental Affairs and the House Committee on Government Reform, in general, have exercised jurisdiction over federal employee issues. Other committees, such as Appropriations, also may have an interest in seeing the reports.