Higher Education Act of 1965, as Amended
Part I—Competitive Loan Auction Pilot Program

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(a) Definitions

In this section:

(1) Eligible federal plus loan

The term ‘eligible Federal PLUS Loan’ means a loan described in section 428B made to a parent of a dependent student who is a new borrower on or after July 1, 2009.

(2) Eligible lender

The term ‘eligible lender’ has the meaning given the term in section 435.

(b) Pilot program

The Secretary shall carry out a pilot program under which the Secretary establishes a mechanism for an auction of eligible Federal PLUS Loans in accordance with this subsection. The pilot program shall meet the following requirements:

(1) Planning and implementation

During the period beginning on the date of enactment of this section and ending on June 30, 2009, the Secretary shall plan and implement the pilot program under this subsection. During the planning and implementation, the Secretary shall consult with other Federal agencies with knowledge of, and experience with, auction programs, including the Federal Communication Commission and the Department of the Treasury.

(2) Origination and disbursement; applicability of section 428b

Beginning on July 1, 2009, the Secretary shall arrange for the origination and disbursement of all eligible Federal PLUS Loans in accordance with the provisions of this subsection and the provisions of section 428B that are not inconsistent with this subsection.

(3) Loan origination mechanism

The Secretary shall establish a loan origination auction mechanism that meets the following requirements:

(A) Auction for each state

The Secretary administers an auction under this paragraph for each State, under which eligible lenders compete to originate eligible Federal PLUS Loans under this paragraph at all institutions of higher education within such State.

(B) Prequalification process

The Secretary establishes a prequalification process for eligible lenders desiring to participate in an auction under this paragraph that contains, at a minimum—

(i) a set of borrower benefits and servicing requirements each eligible lender shall meet in order to participate in such an auction; and

(ii) an assessment of each such eligible lender’s capacity, including capital capacity, to participate effectively; and

(iii) a commitment from such eligible lender that, if the lender has a winning bid under subparagraph (F), the lender will enter into the agreement required under subparagraph (G).

(C) Timing and origination

Each State auction takes place every 2 years, and the eligible lenders with the winning bids for the State are the only eligible lenders permitted to originate eligible Federal PLUS Loans made under this paragraph for the cohort of students at the institutions of higher education within the State until the students graduate from or leave the institutions of higher education.

(D) Bids

Each eligible lender’s bid consists of the amount of the special allowance payment (after the application of section 438(b)(2)(I)(v)) the eligible lender proposes to accept from the Secretary with respect to the eligible Federal PLUS Loans made under this paragraph in lieu of the amount determined under section 438(b)(2)(I).

(E) Maximum bid
The maximum bid allowable under this paragraph shall not exceed the amount of the special allowance payable on eligible Federal PLUS Loans made under this paragraph computed under section 438(b)(2)(I) (other than clauses (ii), (iii), (iv), and (vi) of such section), except that for purposes of the computation under this subparagraph, section 438(b)(2)(I)(iii) shall be applied by substituting ‘1.79 percent’ for ‘2.34 percent’.

(F) Winning bids

The winning bids for each State auction shall be the 2 bids containing the lowest and the second lowest proposed special allowance payments, subject to subparagraph (E).

(G) Agreement with secretary

Each eligible lender having a winning bid under subparagraph (F) enters into an agreement with the Secretary under which the eligible lender—

(I) agrees to originate eligible Federal PLUS Loans under this paragraph to each borrower who—

(aa) seeks an eligible Federal PLUS Loan under this paragraph to enable a dependent student to attend an institution of higher education within the State;

(bb) is eligible for an eligible Federal PLUS Loan; and

(cc) elects to borrow from the eligible lender; and

(ii) agrees to accept a special allowance payment (after the application of section 438(b)(2)(I)(v)) from the Secretary with respect to the eligible Federal PLUS Loans originated under clause (i) in the amount proposed in the second lowest winning bid described in subparagraph (F) for the applicable State auction.

(G) Agreement with secretary; compliance

(i) Agreement

Each eligible lender having a winning bid under subparagraph (F) shall enter into an agreement with the Secretary under which the eligible lender—

(I) agrees to originate eligible Federal PLUS Loans under this paragraph to each borrower who—

(aa) seeks an eligible Federal PLUS Loan under this paragraph to enable a dependent student to attend an institution of higher education within the State;

(bb) is eligible for an eligible Federal PLUS Loan; and

(cc) elects to borrow from the eligible lender; and

(ii) agrees to accept a special allowance payment (after the application of section 438(b)(2)(I)(v)) from the Secretary with respect to the eligible Federal PLUS Loans originated under subclause (I) in the amount proposed in the second lowest winning bid described in subparagraph (F) for the applicable State auction.

(ii) Compliance

If an eligible lender with a winning bid under subparagraph (F) fails to enter into the agreement required under clause (i), or fails to comply with the terms of such agreement, the Secretary may sanction such eligible lender through one or more of the following:

(I) The assessment of a penalty on such eligible lender for any eligible Federal PLUS Loans that such eligible lender fails to originate under this paragraph in accordance with the agreement required under clause (i), in the amount of the additional costs (including the amounts of any increase in special allowance payments) incurred by the Secretary in obtaining another eligible lender to originate such eligible Federal PLUS Loans. The Secretary shall collect such penalty by—

(aa) reducing the amount of any payments otherwise due to such eligible lender from the Secretary by the amount of the penalty; or

(bb) requesting any other Federal agency to reduce the amount of any payments due to such eligible lender from such agency by the amount of the penalty, in accordance with section 3716 of title 31, United States Code.

(II) A prohibition of bidding by such lender in other auctions under this section.

(III) The limitation, suspension, or termination of such eligible lender’s participation in the loan program under part B.
Any other enforcement action the Secretary is authorized to take under part B.

Sealed bids; confidentiality

All bids are sealed and the Secretary keeps the bids confidential, including following the announcement of the winning bids.

Eligible lender of last resort

In general

In the event that there is no winning bid under subparagraph (F), the students at the institutions of higher education within the State that was the subject of the auction shall be served by an eligible lender of last resort, as determined by the Secretary.

Determination of eligible lender of last resort

Prior to the start of any auction under this paragraph, eligible lenders that desire to serve as an eligible lender of last resort shall submit an application to the Secretary at such time and in such manner as the Secretary may determine. Such application shall include an assurance that the eligible lender will meet the prequalification requirements described in subparagraph (B).

Geographic location

The Secretary shall identify an eligible lender of last resort for each State.

Notification timing

The Secretary shall not identify any eligible lender of last resort until after the announcement of all the winning bids for a State auction for any year.

Maximum special allowance

The Secretary is authorized to set a special allowance payment that shall be payable to a lender of last resort for a State under this subparagraph, which special allowance payment shall be kept confidential, including following the announcement of winning bids. The Secretary shall set such special allowance payment so that it incurs the lowest possible cost to the Federal Government, taking into consideration the lowest bid that was submitted in an auction for such State and the lowest bid submitted in a similar State, as determined by the Secretary.

Guarantee against losses

The Secretary guarantees the eligible Federal PLUS Loans made under this paragraph against losses resulting from the default of a parent borrower in an amount equal to 99 percent of the unpaid principal and interest due on the loan.

Guarantee against losses

Each eligible Federal PLUS Loan originated under this paragraph shall be insured by a guaranty agency in accordance with part B, except that, notwithstanding section 428(b)(1)(G), such insurance shall be in an amount equal to 99 percent of the unpaid principal and interest due on the loan.

Loan fees

The Secretary shall not collect a loan fee under section 438(d) with respect to an eligible Federal Plus Loan originated under this paragraph.

Consolidation

In general

An eligible lender who is permitted to originate eligible Federal PLUS Loans for a borrower under this paragraph shall have the option to consolidate such loans into 1 loan.

Notification

In the event a borrower with eligible Federal PLUS Loans made under this paragraph wishes to consolidate the loans, the borrower shall notify the eligible lender who originated the loans under this paragraph.

Limitation on eligible lender option to consolidate

The option described in clause (i) shall not apply if—
(I) the borrower includes in the notification in clause (ii) verification of consolidation terms and conditions offered by an eligible lender other than the eligible lender described in clause (i); and

(II) not later than 10 days after receiving such notification from the borrower, the eligible lender described in clause (i) does not agree to match such terms and conditions, or provide more favorable terms and conditions to such borrower than the offered terms and conditions described in subclause (I).

(iv) Consolidation of additional loans

If a borrower has a Federal Direct PLUS Loan or a loan made on behalf of a dependent student under section 428B and seeks to consolidate such loan with an eligible Federal PLUS Loan made under this paragraph, then the eligible lender that originated the borrower’s loan under this paragraph may include in the consolidation under this subparagraph a Federal Direct PLUS Loan or a loan made on behalf of a dependent student under section 428B, but only if—

(I) in the case of a Federal Direct PLUS Loan, the eligible lender agrees, not later than 10 days after the borrower requests such consolidation from the lender, to match the consolidation terms and conditions that would otherwise be available to the borrower if the borrower consolidated such loans in the loan program under part D; or

(II) in the case of a loan made on behalf of a dependent student under section 428B, the eligible lender agrees, not later than 10 days after the borrower requests such consolidation from the lender, to match the consolidation terms and conditions offered by an eligible lender other than the eligible lender that originated the borrower’s loans under this paragraph.

(v) Special allowance on consolidation loans that include loans made under this paragraph

The applicable special allowance payment for loans consolidated under this paragraph shall be equal to the lesser of—

(I) the weighted average of the special allowance payment on such loans, except that in calculating such weighted average the Secretary shall exclude any Federal Direct PLUS Loan included in the consolidation; or

(II) the result of—

(aa) the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H–15 (or its successor) for such 3-month period; plus

(bb) 1.59 percent.

(vi) Interest payment rebate fee

Any loan under section 428C consolidated under this paragraph shall not be subject to the interest payment rebate fee under section 428C(f).

(c) Required initial evaluation

The Secretary and Secretary of the Treasury shall jointly conduct an evaluation, in consultation with the Office of Management and Budget, the Congressional Budget Office, and the Comptroller General, of the pilot program carried out by the Secretary under this section. The evaluation shall determine—

(1) the extent of the savings to the Federal Government that are generated through the pilot program, compared to the cost the Federal Government would have incurred in operating the PLUS loan program under section 428B in the absence of the pilot program;

(2) the number of lenders that participated in the pilot program, and the extent to which the pilot program generated competition among lenders to participate in the auctions under the pilot program;

(3) the number and volume of loans made under the pilot program in each State;

(4) the effect of the transition to and operation of the pilot program on the ability of—

(A) lenders participating in the pilot program to originate loans made through the pilot program smoothly and efficiently; and

(B) institutions of higher education participating in the pilot program to disburse loans made through the pilot program smoothly and efficiently; and

(C) parents to obtain loans made through the pilot program in a timely and efficient manner;
(5) the differential impact, if any, of the auction among the States, including between rural and non-rural States; and
(6) the feasibility of using the mechanism piloted to operate the other loan programs under part B of this title.

(d) Reports

(1) In general

The Secretary and the Secretary of the Treasury shall submit to the authorizing committees—

(A) not later than September 1, 2010, a preliminary report regarding the findings of the evaluation described in subsection (c);

(B) not later than September 1, 2012, an interim report regarding such findings; and

(C) not later than September 1, 2013, a final report regarding such findings.

(2) Contents

The Secretary shall include, in each report required under subparagraphs (A), (B), and (C) of paragraph (1), any recommendations, that are based on the findings of the evaluation under subsection (c), for—

(A) improving the operation and administration of the auction; and

(B) improving the operation and administration of other loan programs under part B.