

# U.S. Structured Finance Newsletter

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## H.R. 5715: LIMITED BENEFITS FOR THE STUDENT LOAN ABS MARKET

The student loan asset-backed securities (ABS) market continues to be in a state of flux as student loan lenders await further clarification from the government on H.R. 5715: Ensuring Continued Access to Student Loans Act of 2008, which was signed into law by President George W. Bush on May 7, 2008. A critical component of the new law provides the U.S. Secretary of Education (the Secretary) with temporary authority to purchase Federal Family Education Loan Program (FFELP) loans, originated on or after October 1, 2003, from student loan lenders in need of liquidity.

On May 21, 2008, to further explain the new law, the Secretary outlined some of the major components of the program, but also advised that because it was still being developed, a complete description of the plan would be published in the *Federal Register* in the upcoming weeks. These points included the following:

- By July 1, 2008, the U.S. Department of Education (the ED) may enter into purchase agreements that allow lenders to sell loans to the ED by September 30, 2009. Loans eligible for purchase are those originated on or after October 1, 2003, and before July 1, 2009.
- The price paid by the ED will be the sum of (1) the loan's par value, (2) accrued interest (net of the special allowance payment (SAP)), (3) the 1% lender-paid origination fee and (4) \$75 (used to defray the lender's estimated administrative costs).
- The ED will determine who will service the purchased loans, which means that the ED can direct servicing transfers away from the initial servicers.
- The ED may purchase participation interests (PIs) in short-term trusts backed by loans originated for the 2008–2009 academic year and hold the PIs until September 30, 2009. The PIs will yield interest equal to the commercial paper rate plus 0.50%.
- The proceeds of any sale of loans or PIs to the ED must be used to fund new student loans.

Despite this missive from the Secretary, several questions remain: What conditions are necessary to extend the program beyond September 2009? How will the ED determine who will service the loans it purchases? What are the guidelines for structuring the short-term trusts?

On its face, the plan appears to provide the short-term liquidity that lenders need to meet the funding needs for the 2008–2009 academic year. However, because of the unclear economics of the plan, how it balances with lenders' business models and the uncertainty surrounding the condition of the debt capital markets in September 2009, the plan may prove to fall short of providing the long-term liquidity necessary for certain lenders to survive. Further, the law does not change the recently enacted 40 to 55 basis point SAP cut and 50 basis point loan origination fee increase contained in the *College Cost Reduction and Access Act of 2007* (CCRAA), which have made FFELP lending only marginally economical. Additionally, H.R. 5715 offers little, if any, relief to issuers, and consequently to holders of auction-rate securities (ARS), because the legislation's loan purchase plan requires that the proceeds of the loan or PI sales be used to fund new student loans.

DBRS will continue to monitor the industry for further developments on H.R. 5715, as well as any additional relief that might be put forth by the government in order to secure the future availability of financial aid to students.

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