Before World War II, American colleges historically provided financial aid directly to their students. The 1944 Servicemen’s Readjustment Act (GI Bill) signaled a new type of government involvement in education aid as well as a recognition of the connection between higher education and economic productivity. The GI Bill guaranteed military personnel a year of education for ninety days of service, plus one month for each month of active combat duty, with a maximum award of forty-eight months of benefits.

The GI Bill was even more popular than its drafters envisioned. To keep up with demand, the government added the College Scholarship Service, a prelude to National Defense Student Loans, which later became the Perkins Loan Program.

The Federal Family Education Loan (FFEL) Program, also known as the guaranteed loan program, was created in the Higher Education Act of 1965. The 1965 legislation also created the Federal Insured Student Loan (FISL) Program, which provided federal insurance for loans. The FISL was eventually phased out. The Higher Education Act Amendments of 1992 created a new generic name, Federal Family Education Loans, for the major forms of federal student loans. Although the FFEL student loan program was a federal program, it was mostly administered through state or private nonprofit agencies called guaranty agencies.

Banks were initially reluctant to participate in the guaranteed loan program. Congress encouraged participation by covering a large percentage of any losses through loan guarantees. When banks were still reluctant to join the program, Congress created a government-sponsored enterprise—the Student Loan Marketing Association (known as SLMA or Sallie Mae)—as a secondary market for guaranteed student loans.

Over time, the focus in the federal loan program shifted toward providing more benefits for middle-income students. In the 1992 Higher Education Act, among other changes Congress created the unsubsidized loan program. This allowed students of any income level to get federally guaranteed student loans.

The Student Loan Reform Act of 1993 significantly changed the student loan landscape by creating a new Federal Direct Loan Program. In the Direct Loan Program, the government through the Department of Education (the Department) directly originates student loans.

A more dramatic change occurred in 2010 when the FFEL Program was eliminated as part of the Health Care and Education Reconciliation Act of 2010. As of this date, nearly all federal lending is through the Direct Loan Program. However, many existing FFEL Program loans will be held, serviced, and collected by FFEL lenders, servicers, and guaranty agencies for many more years. Further, many guaranty agencies have stayed in the student loan business in a variety of ways. For example, all of the four major Direct Loan Program servicers were either FFEL lenders or guaranty agencies, or both.

The elimination of the FFEL Program came about due to many factors. The credit crisis and economic recession had a huge impact, especially as private lenders in the FFEL Program faced increases in funding costs during the crisis. Beginning in 2007, many student lenders decided to leave the student loan business. Fears of private lenders pulling out led many schools to transition to Direct Loans even before the FFEL Program was eliminated. Before eliminating the program completely, Congress acted throughout 2008 to alleviate the market turmoil. The Ensuring Continued Access to Student Loans Act of 2008 temporarily injected liquidity into the FFEL market. The law was extended for the 2009–2010 year. The Department also enhanced the lender-of-last-resort program, designed to provide access to FFEL Program loans for those students who faced difficulty obtaining conventional loans.

Although the credit crisis helped accelerate the switch to Direct Loans, there were other concerns, particularly about the costs of compensating the FFEL private lenders and guaranty agencies. Payments to lenders were set by law and, according to the Congressional Budget Office, were only weakly related to the actual costs that lenders incurred. There were also concerns about conflicts of interest. For example, the guaranty agencies provided a number of services that may have been in potential conflict, including providing default insurance for lenders, default prevention, and collecting or rehabilitating loans.

In 2017, the Perkins Loan Program expired; Perkins Loan disbursements may not be made after June 2018. Although bills have been introduced to revive and extend the Perkins Loan Program, none have been enacted as of March 2019.

Footnotes

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15 [15] Id. at 38.


19 [19] Id. See also U.S. Dep’t of Educ., Dear Colleague Letter, GEN-08-08, The Ensuring Continued Access to Student Loans Act of 2008 (June 18, 2008).


22 [22] See § 1.4.1.4 [1], infra.

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