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STUDENT AID AND INSTITUTIONAL AUTONOMY: CONGRESSIONAL DECISIONS

Harry J. Hogan

The central battle in federal support for higher education revolves around the issue of institutional autonomy versus federal controls. In the enactment of the Educational Amendments of 1972, that battle was fought on two fronts — institutional aid and student aid. In any meaningful way, the institutions failed to get the immediate general aid that they wanted. Examination of the amendments to the traditional student aid programs (Educational Opportunity Grants, College Work-Study, and National Defense Student Loans) indicates, however, that in this arena the cause of institutional autonomy won, and won decisively.

This conclusion is contrary to accepted opinion. In regard to the changes in student aid made by the Education Amendments of 1972 (PL 92-318), attention is typically focused on the Basic Educational Opportunity Grant. That program is interpreted to provide a basic student aid program that will give any student, in spite of lack of his own resources, access to some postsecondary education institution. It would be administered by a federal bureaucracy on national guidelines with relative inflexibility to accommodate differences between institutions. That program, however, does not stand alone but rather is part of a composite aid program, and is balanced by the changes made in the traditional programs.



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The federal student aid programs, taken as an organic whole, now define a federal role that provides both access and option to the college-bound student. The BEOG program provides a universal access support. The traditional programs, now retitled as the Supplementary Educational Opportunity Grant, Work-Study, and Direct Loan programs, have been amended so as to provide to the college-bound student options in his choice of college. Such programs provide aid to students academically qualified and motivated to go to the college of their choice, but who needed the aid in order to be able to go. Thus they make possible the tuition income on which institutional autonomy is ultimately based.

The 1972 amendments reverse the direction of OE administration of these programs for the past several years. That bureaucratic effort has been to reinterpret all three programs so as to provide college support to students from low-income families, and to limit aid to students who need it to attend the college of their choice but who do not come from the approved category of low-income families. The effect of the 1972 amendments is to lift bureaucratic pressure to distort the three traditional programs into programs that provide access. The amendments do so, first, by meeting the universal access need through a new grant program, and secondly by reconfirming with new statutory language that the purpose of the traditional programs is to support the student in the college of his choice.

The point cannot be overstated. The SEOG, Work-Study and Direct Loan programs can no longer be treated as access programs directed at a class of students drawn from low-income families. They are now option programs to provide aid to students considered individually, whose need is relative to the costs of the institution rather than to family income.

Effectively the distinction is between two tests of need. One measures need in terms of student resources; the other in terms of institutional costs. The distinction is characterized by a difference in administration. Resource standards can be set nationally by a federal bureaucracy. The costs to the student of attending a college or university vary from institution to institution, and a program based on costs standards is best administered by the individual institution. Therefore an aid program phrased in terms of costs, rather than on such a resource standard as family income, is designedly a program to increase or diminish aid as necessary to allow the student applicant to attend the college of his choice. It is a program designed to provide the student with options. It conforms to the American tradition of providing opportunities to an individual to solve his problem on his own terms.

Supplementary Educational Opportunity Grant

In the recent past this program has come to be administered as a social welfare program, first to aid students from a low-family income category, and secondly to give priority in aid to those who had the greatest need, not in relation to the costs of attending the college of the student's choice, but in relation to national standards of family income. Administration of the program for this purpose has had to be based on strained statutory interpre-

tations which are no longer possible.

There never has been any express requirement in the legislation restricting aid so as to make it available only, or with a preference, to students from a low-family income category. The statutory needs tests, expressed in the former Section 404 (b) have always been: (1) exceptional financial need and (2) but for the grant, the student could not attend the college of his choice. The only reference to family income was in the former Section 401 (a) that the purpose of the program was to provide grants to applicants "who, for lack of financial means of their own or of their families would be unable to obtain such benefits without such aid". The 1972 amendments reworded this section as Section 413A (a) and, among other changes, deleted the reference to families. The relevant language now reads ". . . who, for lack of financial means, would be unable to obtain such benefits without such a grant". The amendment clearly eliminates the interpretation, theoretically possible before, that family resources disqualified a student even though the resources were not available to him. The language never supported the conclusion, made by the administrators of the program, that the program was to be limited to students from a low-family income category.

That family resources are relevant only to the extent that they are reasonably available to the applicant is now made explicit by the new language in Section 413C (a) (2) which describes the factors to be considered in determining "exceptional financial need". It defines the expected family contribution to be that "expected in the *specific circumstances* of the student as determined by the student financial aid officer at the institution in accordance with criteria promulgated by the Commissioner" (emphasis supplied). In order to preclude any administrative effort to shape the criteria to a categorical social welfare purpose rather than the "specific circumstances" of the individual student, Congress then listed in the subparagraph six categories of factors to be considered in determining the ability of the particular family to contribute.

The only other language in the old act bearing on an interpretation of Congressional intent that the program was to be directed at students from a low-family income category was Section 407 (a). It described conditions to be included in the agreement between the institution and the Commissioner. In relevant part, subparagraph (2) of that Section required the institution to: "(A) consider the source of such individual's income and that of any individual or individuals upon whom the student relies primarily for support, and (B) make an appropriate review of the assets of the student and of such individuals." That language is continued unchanged in the new Section 413C (b) (2). To the extent that the reference to "source" and to "assets" might be considered to allow an interpretation favoring a class of recipients as distinguished from a need of a particular student for the aid in order to go to his college, the interpretation is no longer possible because of the above-described changes in Section 413A (a) and Section 413C (a) (2). Those changes focus attention on the *but for* test (but for this aid the student could not attend).

This interpretation is further bolstered by the addition of explicit *but for* language in Section 413C (b) (3) (B) dealing with conditional commitments of aid to qualified secondary school students.

The language of the amendments thus makes entirely clear that the needs test is the *but for* test, and not membership in a low-family income category, and that the need of the student is to be related to the cost to the student of attending the institution.

The amendments retain old language which relates the need of the student for aid to the pricing structure of the institution of his choice. Section 413B (a) (1), retaining old language, entrusts to the institution responsibility for making the grant award. Section 413B (a) (2) (A) (i), retaining old language, instructs the institution in regard to the standard for calculating the aid. It reads:

The amount of the payment to any student pursuant to paragraph (1) shall be equal to the amount determined by the institution to be needed by that student to pursue a course of study at the institution. . . .

That it is the pricing structure of the particular institution of the student's choice that controls is further confirmed by Section 413C (a) (2) (D) which retains old language that requires the institution to determine that the applicant "would not, but for a supplemental grant, be financially able to pursue a course of study at *such* institution" (emphasis supplied).

A supporting argument for the primacy of institutional costs is that in Section 413B (a) (2) (A) (i) (II), Congress carefully retained the matching requirement. That section now permits funds from the federal BEOG, Work-Study and Direct Loan programs to be used by the institution of higher education to meet the matching requirements in the SEOG program. It is significant that, although Congress substantially lightened or lifted the burden of matching, Congress retained the form of the requirement. Instead of basing student need only on student resource considerations, Congress has continued formal recognition that the student's need is directly related to the unique pricing situation of his institution, and that the institution must cooperate in managing an arrangement of resources, including its own, to meet the student's need.

The new specific considerations for determining "expected family contribution" set out in Section 413C (a) (2) require a consistent interpretation of the requirement in Section 413C (b) (2), which repeats old language determining "exceptional financial need." The institution is required to:

"(A) consider the source of such individual's income and that of any individual or individuals upon whom he relies primarily for support, and (B) make appropriate review of the assets of the student and of such individuals;"

Consistent with this interpretation is new language indicating that the grant is no longer awarded automatically for four years. Amendatory language now gives the institution the option annually of awarding the grant (Section 413B (b) (1) (A)). Such a change is consistent with a *but for* test, and inconsistent with a social welfare purpose of recruitment of students from a social class characterized by low-family income and presumably poorly motivated to go to college.

That the award is now optional and not automatic is further indicated by the omission in the amendments of language in former Section 402 that “. . . an institution of higher education *shall, for the duration of the grant,* pay to that student for each academic year during which he is in need of grant aid to pursue a course of study at the institution. . .” (emphasis supplied). Consistent with that omission is the parallel omission in the amendments of language in former Section 403 that “the duration of an educational opportunity grant awarded under this part shall be the period required for completion by the recipient of his undergraduate course of study. . .”

In most instances it would be natural if the award is continued. For that reason the appropriation language continues authorization for “continuing supplemental grants” for three years beyond the year of the initial grant (Section 413A (b) (2)).

That the SEOG program is now to be treated as an educational aid program, and not a social welfare program, is further indicated by the amendment in the 1972 Act to add “Subpart 4 – Special Programs for Students from Disadvantaged Backgrounds.” This new Subpart deals with the Talent Search, Upward Bound, and Special Services for Disadvantaged Students programs. In the former law those programs were dealt with in Section 408 which was a section in the old Sub-part A dealing with Educational Opportunity Grants. The new separate treatment indicates Congressional awareness that these special programs have a social welfare purpose, not properly akin to the educational student aid purpose of the grant program.

Consistent with this interpretation is the retention in Section 413D of the former state formula apportioning appropriations in the ratio that “the number of persons enrolled full-time and the full-time equivalent of the number of persons enrolled part-time in institutions of higher education in such State bears to the total number of such persons in all the States.” That formula is addressed to enrollment, not poverty.

Section 413D does amend the old formula in regard to the money subject to it so as to reserve ten percent of the appropriated funds to “be apportioned among the States by the Commissioner in accordance with equitable criteria which he shall establish and which shall be designed to achieve a distribution of the sums so appropriated among the States which will most effectively carry out the purpose of this subpart. . .” Since the purpose of the provision is not to aid those who are most poor on a national standard, but rather those who need help to pay the costs of attending the college of their choice, it would not be permissible for the Commissioner to apportion his

discretionary ten percent so as to give the money to those states in which there are in college the most poor whose poverty is determined by a national standard. It would be consistent for him to give the money to those states in which there is the discrepancy, between student resources and costs of attendance at institutions which students desire to attend, producing the greatest quantitative need.

Consistent with this interpretation, also, is the amendment describing grant recipients in the program purpose provision. The old Section 401 (a) said that the purpose was to provide grants to "high school graduates." The new Section 413A (a) deletes that language and substitutes for it the word "students." The grant program is now available to any student of any age and from any educational background, a purpose consistent with the *but for* aid test, and not consistent with a program purpose to reach poorly motivated high school students from low income families at that decision-making time in their lives when they are about to leave high school.

The former requirement of "exceptional financial need", stricken from the purpose language of Section 413A (a) in favor of a simple *but for* test, is retained in Section 413C (a) (2) (C) as one of the four requirements which a successful applicant must meet. Rules of statutory construction require that the use of new language in one place be reconciled to the retention of the old language in the other by an interpretation which finds a difference in meaning. Otherwise the Congressional amendatory effort would be meaningless.

The two sections can be reconciled only by treating the requirement of exceptional need in Section 413C (a) (2) (C) as a threshold requirement but not as a justification for setting priorities in the order of greatest need. Once everyone qualifies as having "exceptional financial need," the program purpose set out Section 413A (a), of providing aid to those who but for the aid could not attend, does not allow the establishment of a system of priorities based on relative need among those who have also passed the test. This interpretation would not preclude the setting by the institution of a preference on other ground as, for example, for those students who received a grant the previous year and are continuing their education with substantially unchanged financial circumstances.

The Commissioner has no authority to introduce independent purposes into education programs (see Section 503 of the amendments which requires him to describe the "specific legal authority of each section, or other such authority division, of each rule, regulation, guideline, interpretation, or other order. . ."). He cannot find such authority in provisions which give him authority to set "regulations," "criteria," "schedules" or the like, or in provisions which authorize him to make agreements with institutions in regard to administration of the program. The terms of such regulations, criteria, schedules, or agreements must have an independent legal basis.

Similarly, the Commissioner cannot construct a purpose he desires out of finding of supportive language by Congressmen or Senators in floor debate, or the like in Committee reports. Reference to legislative history is permissible only when the abstraction of logical meaning from the statute, itself, is not possible, i. e. when an ambiguity, otherwise unresolvable, exists. Very rarely does Congress pass a statute or provision so unintelligible as to meet that test. No provision of the student aid provisions of the Education Amendments of 1972 is so unintelligible, within the four corners of the Act itself, as to require recourse to legislative history.

In Section 413B (a) (2) (C) the first clause of the first sentence limits the Commissioner's authority to set "basic criteria and schedules for the determination of the amount of need to be determined under division (i) of subparagraph (A)." Division (i) of subparagraph A sets out the familiar cost standard: "the amount determined by the institution to be needed by that student to enable him to pursue a course of study at the institution. . ." Therefore, the Commissioner cannot weaken the primacy of the cost standard in determining student eligibility: he can only offer criteria and schedules for its determination.

In that same subsection (C), the first clause of the second sentence states that "such criteria and schedules shall take into consideration the objective of limiting assistance under this subpart to students of financial need." That objective as has been noted, is already defined by division (i) of subparagraph (A) in terms of institutional pricing rather than solely in student resource terms. The second clause carefully uses general language ("such other factors"), not describing as a program objective the limitation of aid to students who can meet a test of need in terms of resources, but rather describing resource need as a factor "related to determining the need of students for financial assistance" (already defined on a costs standard), as indeed it is.

Most interestingly, the second clause of the second sentence in that same subsection (C) specifically prohibits the disqualification of "an applicant on account of his earned income if income from other sources in the amount of such earned income would not disqualify him." The "income from other sources" that "would not disqualify him" from receiving an SEOG is federal aid. Receipt of a BEOG, for example, would not disqualify an applicant from receiving an SEOG, and self-help is by this language placed in the same category to the ceiling amount of such aid. The ceiling on earnings is important because otherwise, for example, a self-supporting executive earning \$50,000 annually might be eligible. The language seems carefully worded to strike down existing regulations of the Office of Education that discourage self-help by giving preference to students, who do not help themselves, over students, otherwise similarly situated, who work.

This new self-help provision is consistent with the new availability of the program to half-time students, set out in Section 413B (b) (2) (B). Half-time students are invariably working students.

College Work-Study

The Education Amendments of 1972 in regard to the College Work-Study program mark the same shift from being an aid program for which the student qualified on the basis of his absolute resources regardless of institutional costs to a program for which the student qualified on the basis of relative adequacy of his resources to meet the costs of attendance at the institution of his choice.

Formerly there were two standards set out in the provisions of Section 441 (a) of the Higher Education Act of 1965, which define program purpose. One was that extreme form of attribution of importance to resources which sets up a preferred social class — preference was given to students who came “from low-income families.” The second was cost based — students had to be “in need of the earnings from such employment to pursue courses of study at such institutions.”

Section 135 of the Education Amendments of 1972 amended Section 441 (a) so that now there is only one standard. The resource standard — “low-income families” — is gone. The substitute words are “great financial need.” They are coupled with the already existing language in the section which sets forth the *but for* test of need (“who are in need of the earnings from such employment to pursue courses of study at such institutions”) and so are consistent with the cost standard. The use of the word “great” presents a different problem which requires separate analysis.

Use of the old resource standard gave a preference to a category of applicants who started with low resources, i.e. “low family income.” Since they qualified by category, the adequacy of their resources thereafter to meet institutional costs was irrelevant (except as a ceiling on aid). But when institutional costs sets the need, then the individual never qualifies categorically by the inadequacy of his resources considered alone. He qualifies by his unique financial circumstances relative to his special problem in meeting particular institutional costs.

Section 135E (a) of the Education Amendments of 1972 makes a similar change in Section 444 (a) (3) which describes conditions of the agreement to be made between the institution and the Commissioner regarding the institution’s administration of the program. The new language required by Section 135E (a) of the Education Amendments of 1972 qualifies, for the participation in the program, those students “with the greatest financial need.” The interpretation that costs at the particular institution set the standard of need is strengthened by the addition of parenthetical language — “(taking into consideration the actual cost of attendance at such institution).” Here again the use of the word “greatest” introduces a new concept and will be given separate analysis.

Section 135E (b) of the Education Amendments of 1972 amends Section 444 (a) so as to strike clause (4) which limited the average hours of employment of a student on a work-study program to not more than fifteen a week. Section 135D of the Education Amendments of 1972 amends Section 444 (a) (3) (C) so as to strike the full-time enrollment requirement in favor of half-

time. Both are consistent with the shift away from a national standard of absolute resources to a local standard of need relative to the costs of attending the institution chosen by the student. Both are consistent with the general tenor of other amendments away from concern about students not being able to take responsibility for themselves and toward giving them authority to handle their own decisions in their own particular circumstances.

The interpretation that the standard of need is the institutional costs is strengthened by the decision expressed in Section 135B (a) of the Education Amendments of 1972 to retain the system of state allotment of funds set out in Section 442. That formula contains a one-third poverty factor, but forces a distribution of money based two-thirds on other considerations. Therefore it produces an allotment of money to institutions quite disproportionate to the need of the students at particular institutions if that need is judged on a national absolute resource standard. The decision to retain the formula is a decision to approve its results, i.e. to obtain flexibility to meet student needs relative to institutional costs. It is a crude but effective device to protect against a federal bureaucratic decision to force an arbitrary national standard unrelated to the local situation, i. e. the situation in which a student finds himself in regard to a particular institution.

Section 135B (a) amends Section 442 in regard to the money subject to the formula so as to reserve ten percent of the appropriated funds "to be allotted among the States by the Commissioner in accordance with equitable criteria which shall be designed to achieve a distribution of the sums appropriated to carry out this part among the States which will most effectively carry out the purpose of this part. . . ." The necessity that the Commissioner must conform his criteria to the program purpose would require him to distribute the ten percent in ways which would best accomplish the purpose of allowing individual students to meet the costs of attendance at the college of their choice.

The use in amended Section 441 (a) of the phrase "with great financial need" and in amended Section 444 (a) (3) of the phrase "with the greatest financial need, taking into account grant assistance provided such student from any public or private sources", introduces a new Congressional concern. It displays a Congressional intent to relate Work-Study to the SEOG program. Both programs, as amended, now use the *but for* test for need — but for the aid the student could not attend the institution of his choice. In the SEOG program, the words descriptive of need are "exceptional financial need"; in Work-Study the words are those set forth in Section 441 (a) and Section 444 (a) (3).

Congress evidently intended that the two programs use related standards of need and that the students with the greatest need at the institution have first access to SEOG. The use of the word "exceptional" in SEOG rather than "greatest", as one might expect, is explicable historically. It is a carry over from the language already in the Act. That the word "exceptional" in SEOG means more than the word "great" in Work-Study is evident from a reading of the adjectival language appended to the phrase

"greatest financial need, taking into account grant assistance provided such student from any public or private sources" used in Section 444 (a) (3) of the Work-Study provisions. The "grant assistance" referred to in that language includes, most meaningfully, the Supplementary Educational Opportunity Grant and the Basic Educational Opportunity Grant. It assumes that the student first obtains a grant as his basic aid, and that Work-Study is the next form of assistance to be made available to him.

Work-Study, however, is by this amendment required to be used in a leveling way. A student who received an SEOG on the ground of exceptional need, or a BEOG, may have less need when he is considered for Work-Study than a student who could not qualify for an SEOG or BEOG.

This amendment requires a major change in the packaging of student aid assistance. It will no longer be possible to package a complete grant and Work-Study program for an applicant selected initially because of his great need. As he receives aid from one program, his need decreases his relative eligibility in the next program. The student may still be short of the total amount needed to meet his costs in attending the institution of his choice. He will, however, have qualified for some immediate aid, and for the remainder of the amount needed he is eligible for student loan programs.

This change is dramatic evidence of Congressional intent that these programs are not welfare programs for students whose need is determined by their resources alone. The programs are directed to students in their individual circumstances, and are designed to help all students put together resources sufficient to enable them to meet their costs in the institutions of their choice.

That Congress intended to relate Work-Study to the SEOG program is also indicated by Section 135 E (a) of the Education Amendments of 1972. It amends Section 444 (a) (3) by deleting clause (B) which describes one of the conditions which a student must meet in order to qualify for Work-Study employment. Clause (B) formerly read: "(B) is capable, in the opinion of the institution, of maintaining good standing in such course of study while employed under the program covered by the agreement. . . ." That language is almost precisely the language used in Section 413 C (a) (1) (B) to describe the academic qualification of a recipient of an SEOG. There it reads: "(B) he shows evidence of academic or creative promise and capability of maintaining good standing in this course of study." The only possible point of the amendment in the Work-Study program is to conform the two programs so that they can be administered together.

Work-Study for Community Service Learning Program

This new program is an off-campus Work-Study program with an entirely different need qualification. The need standard, set out in Section 447 (a), is not "great financial need" as it is in the Work-Study program proper, but rather "need of additional financial support."

This new Work-Study program has other purposes than to meet financial need. It provides work, described in Section 447 (a) as that "which offers the maximum potential both for effective service to the community and for the enhancement of the educational development of such students."

Special Programs

These programs, formerly Upward Bound, Talent Search, and Special Programs, are now grouped together in Subpart 4 of Part A, Title I of Higher Education Act of 1965, as amended under the descriptive rubric "Special Programs for Students from Disadvantaged Backgrounds".

Students qualify for these programs by belonging to a certain category. They come "from low income families." They may have financial need in terms of institutional costs, but it is not a necessary qualification, and they do not have to demonstrate greater financial need than other students in order to qualify. They qualify by being, i. e. by coming from a certain social category.

These programs are not student aid programs like SEOG, Work-Study or Direct Loans. They are welfare programs and valuable ones. They are not and should not be subjected to the same administrative considerations of actual need as is required in the student aid programs.

Direct Loans

This most useful program provides low-interest loans to students on the lowest possible needs qualification. The standard, set out in Section 461 (a) as amended by Section 137 (b) of the Education Amendments of 1972, is not *but for* this aid the student could not attend the institution of his choice. It is simply "need".

It is a flexible program responsive to the individual student's need to obtain funds to meet the costs of attendance at the college of his choice. That responsiveness is further assisted by its administrative structure. It is firmly based on-campus as an institutional revolving fund administered by the institution itself. It is therefore relatively immune to bureaucratic controls nationally imposed to accomplish a welfare purpose of aiding students who qualify in terms of inadequacy of resources alone without reference to institutional costs. That lack of amenability has made this program attractive in the past to the institutions and to Congress. For the same reason it has been unattractive on occasion, to past Administrations and predictably may be so in the future.

Guaranteed Student Loans

In regard to the central thesis that the Education Amendments of 1972 express a Congressional intent to make the traditional student aid programs more amenable to institutional standards, rather than national standards, the changes made in the guaranteed Student Loan program are especially enlightening. They are so because, on superficial analysis, here the needs test seems to have been tightened, and the Commissioner has been authorized to issue regulations controlling how it was to be tightened. On that analysis, the Congressional decisions in regard to this program would go counter to the general principle of institutional autonomy followed by Congress in regard to the other aid programs.

The superficial interpretation does not bear inspection. Analysis indicates that Congressional treatment of this program is consistent with its treatment of the other programs.

The crucial language has to do with eligibility of the student borrower for the interest subsidy. It is set out in Section 428 (a) (1). The old language read:

“Each student who has received a loan for study at an eligible institution . . . and whose adjusted family income is less than \$15,000 at the time of execution of the note or written agreement evidencing such loan, shall be entitled to have paid on his behalf and for his account to the holder of the loan, a portion of the interest in the loan”.

Correspondingly, under the former language of Section 427 (a) (1) (C), the college or university “provided the lender with a statement of the institution which sets forth a schedule of the tuition and fees applicable to that student and its estimate of the cost of board and room for such a student”. That statement did not, however, control the bank’s decision on how much it might lend to the student under the interest subsidy provision. The statement simply provided information regarding institutional costs not related to the bank’s determination that the “adjusted family income is less than \$15,000. . .” Accordingly, secure in the invulnerability of their decisions, the banks were willing to lend to students. The program became enormously successful and in each of fiscal years 1971 and 1972 provided over one million students with over one billion dollars in loans.

There seems to have been some abuse, however, in the sense that on occasion, students were obtaining low interest loans for purposes other than meeting institutional costs. Accordingly, by Section 132C of the Education Amendments of 1972, Congress amended the controlling language in Section 428 (a) (1) to read as follows:

“Each student who has received a loan for study at an eligible institution . . . shall be entitled to have paid on his behalf and for his account to the holder of the loan a portion of the interest on such loan . . . only if at the time of execution of the note . . . his adjusted family income is —

“(I) less than \$15,000 and the eligible institution at which he has been accepted for enrollment, or, in the case of a student who is attending such an institution, at which he is in good standing (as determined by such institution) —

“(a) has determined the amount of need for such loan by subtracting from the estimated cost of his attendance at such institution (which, for purposes of this paragraph, means the cost, for the period for which the loan is sought, of tuition, fees, room and board, and reasonable commuting costs) the expected family contribution with respect to such student plus any other resources or student aid reasonably available to such student, and

“(b) has provided the lender with a statement evidencing the determination made under Clause I (a) of this paragraph and recommending a loan in the amount of such need; or

“(II) equal to or more than \$15,000 and the eligible institution at which he has been accepted for enrollment or, in the case of a student who is attending such an institution, at which he is in good standing (as determined by such institution) —

“(a) has determined that he is in need of a loan to attend such institution,

“(b) has determined the amount of such need by subtracting from the estimated cost of attendance at such institution the expected family contribution with respect to such student plus any other resources or student aid reasonably available to such student, and

“(c) has provided the lender with a statement evidencing the determination made under Clause II (b) of this paragraph and recommending a loan in the amount of such need.”

The Congressional intent evident in the new language is to tie the interest subsidy to the student's need to meet institutional costs as determined by the institution. That purpose is the same as that evidenced in Congressional amendments of the other student aid programs.

The Commissioner however, initially interpreted the authority given to him to issue regulations in regard to the institutions' determination of adjusted family income so as to authorize him to impose rigid national standards of family income. The Commissioner's regulations made impossible a flexible institutional determination in relation to the individual circumstances of each student in his confrontation with the costs of attending the institution of his choice. Difficulty in administration of the program was immediate and immense, and was evidenced in almost total breakdown of the lending process in the crucial summer months just preceding the September enrollment. The paralysis was resolved by emergency Congressional action delaying the effective date of the 1972 amendments until March 30, 1973.

The Commissioner's second set of draft regulations, published in the Federal Register on October 28, 1972, allow much more authority to the determination of each institution. To that extent, they constitute administrative acceptance of the principle favoring institutional autonomy which is consistently present in all the Congressional amendments of the traditional student aid programs.

Predictably, however, the battle is not won. It will continue to be fought by institutions alone and together in regard to the writing of the federal regulations and in their administration.

Conclusion

Examination of the amendments of each of the traditional student aid programs indicates a consistent Congressional intent to favor institutional autonomy, i.e., to allow the individual student to establish his special needs in regard to the costs he faces at the institution of his choice.

To avoid the possibility that the federal bureaucracy might favor the national welfare purposes of the BEOG program over the institutional autonomy purposes of the traditional programs, a cautious Congress protected the traditional programs from administrative decisions to diminish their funding. Section 411 (b) (4) prohibits appropriations for the new BEOG program unless appropriations for that fiscal year for SEOG total \$130,093,000; Work-Study \$237,400,000; and for capital contributions to the Direct Loan program total \$286,000,00.

Although Congressional intent is clear enough, it is equally clear that the Office of Education will not accept it. The battle of the institutions for recognition of their autonomy in the area of student aid is not won. Predictably it will have to be fought continuously on the administrative front. Problems should come up immediately in two arenas — in regard to appropriations, and in regard to administrative regulations.

This article is being written in late November 1972. All information now available indicates that, in both arenas, OE will not give up its present policy — administratively determined — of using the student aid programs for the broad welfare purpose of aiding students from low-income families. In making its appropriations request in the early spring of 1973, OE is seriously considering disregarding the law entirely, and asking for appropriations that will fund its independent administratively-determined policy. In regard to program regulations and guidelines, OE is apparently also deciding to disregard the law and to continue essentially unchanged its present regulations and guidelines which express that same independent administratively-determined policy.

If these predictions should materialize, the higher education community will then have to decide how to protect its interests. Analysis of possibilities is beyond the scope of this paper.