

Direct Student Loans: Legality of regulations authorizing origination fee reduction, File: B-283717, Date: September 29, 1999



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The Honorable Bill Goodling

House of Representatives

Dear Mr. Goodling:

This letter responds to your request dated September 17, 1999. You asked us to comment on the legality of recent regulations authorizing the reduction of the origination fee charged in the William D. Ford Federal Direct Student Loan (Direct Loan) Program. In our view, the regulations conflict with a statutory requirement that the Department of Education (the Department) charge a 4 percent origination fee for loans made under the Direct Loan Program.

Background

In order to make financial assistance available to higher education students, Congress has established two federally insured student loan programs. The Federal Family Education Loan (FFEL) Program provides incentives for private lenders to make higher education loans. The Direct Loan Program authorizes the Department to make such loans directly to eligible students.

To help offset federal costs, both programs require payment of origination fees to the Department. Until last year, the law fixed these fees at 4 percent for Direct Loans [¹] and an amount not to exceed 3 percent for FFEL loans. [²] The Higher Education Amendments of 1998 (HEA 1998) specified conditions under which FFEL lenders may offer discounts on origination fees, expressly allowing them to reduce the 3 percent fee to borrowers in financial need. [³] This legislation did not affect the Direct Loan origination fee, which remains fixed at 4 percent.

On August 24, 1999, the Department published final regulations authorizing reductions in loan origination fees to borrowers under the Direct Loan Program commensurate with those provided to FFEL borrowers.

[⁴]In its preamble to the rule, the Department points out that the Higher Education Act of 1965, as amended, contemplates that borrowers in the Direct Loan Program are to receive the same terms,

conditions and benefits on their loans as borrowers in the FFEL Program. Therefore, in the Department's view, any flexibility in the origination fee for the FFEL program is also available for the Direct Loan Program.

Analysis

The HEA provision calling for the same terms, conditions, and benefits for borrowers in the FFEL and Direct Loan Programs expressly defers to contrary provisions in the same body of law:

"Unless otherwise specified in [the Direct Loan Program], loans made to borrowers shall have the same terms, conditions, and benefits and be available in the same amounts, as loans made to borrowers under [the FFEL Program]." 20 U.S.C. §1087e(a)(1) (1994 ed.) (emphasis added).

Congress has provided clear and unambiguous direction to the Department to charge Direct Loan Program borrowers an origination fee of 4 percent:

"The Secretary shall charge the borrower of a loan made under [the Direct Loan Program] an origination fee of 4.0 percent of the principal amount of loan." 20 U.S.C. §1087e(c) (1994 ed.).

The Supreme Court has confirmed that where the law is clear, "that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." [5]

The Department asserts that the provision, quoted above, requiring that Direct Loan borrowers be charged a 4 percent origination fee (while some FFEL borrowers can receive a reduced fee) conflicts with the provision generally requiring the same terms and conditions for both the Direct Loan and FFEL loan programs. We disagree.

There is no conflict between the Direct Loan fee requirement and the provision calling for the two programs to have the same terms and conditions, "unless otherwise specified." By setting a 4 percent fee for the Direct Loan program the Congress has specified that in this respect the terms and conditions of the two programs will not be the same.

Consistent with this conclusion, and contrary to the Department's assertion, the legislative history of HEA 1998 indicates that the need to address both programs individually was understood at the time Congress authorized the FFEL fee reduction. Before the 1998 adoption of the House provision affecting only the FFEL Program, the Senate voted down an amendment that would have reduced student loan fees in *both* the FFEL and Direct Loan Programs. [6]

Conclusion

The regulation is in conflict with the statute. Under current law, the Department lacks authority to enact a rule authorizing origination fees of less than 4 percent for the Direct Loan Program.

Sincerely,

Robert P. Murphy
General Counsel

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Digest:

Regulations authorizing reduction of the origination fee charged in the William D. Ford Federal Direct Student Loan Program conflict with statutory requirement that Department of Education charge a 4 percent origination fee for loans made under that program.

Notes

1. 20 U.S.C. §1087e(c) (1994 ed.).
2. 20 U.S.C. §1087-1(c)(2) (1994 ed.) (the law also provided for the collection of an insurance fee of not more than 1 percent for FFEL loans, see 20 U.S.C. §1078(b)(1)(H) (1994 ed.)).
3. Pub. L. No. 105-244, §433, 112 Stat. 1581, 1710 (1998) (classified to 20 U.S.C. §1087-1(c)(2) (1994 ed.)).
4. Department of Education Final Rule, 64 Fed. Reg. 46,252 (amending 34 C.F.R. §685.202).
5. Chevron U.S.A. Inc. v. Natural Resources Defense Council, 467 U.S. 837 at 842-43 (1984).
6. S. Amdt. 3118, 105th Cong. (1998) (see floor debate at 144 Cong. Rec. S7857-64).