In the Matter of

IOWA STUDENT LOAN LIQUIDITY CORPORATION

Program Review Control No. 200621025013

DECISION OF THE SECRETARY

This matter comes before the Secretary on appeal by Iowa Student Loan Liquidity Corporation (Iowa SLLC) of an initial determination by Federal Student Aid (FSA). Iowa SLLC requests that the Secretary overturn the determination of FSA. Under the authority vested in the Secretary, the Secretary has delegated to me the authority to decide this appeal.

DISCUSSION

On March 28, 2006, FSA issued findings of a review it conducted to determine whether student loan operations of Iowa SLLC comply with the requirements of the Taxpayer Teacher Protection Act of 2004 (TTPA) and its regulations at 34 CFR 682.302(e).

Iowa SLLC is a nonprofit corporation that provides a secondary market for Federal Family Education Loan Program (FFELP) loans, which it purchases from banks and other lenders. Iowa SLLC issued tax-exempt bonds to obtain funds to acquire loans. At the time of the review, some $313 million of such bonds issued prior to October 1, 1993, were outstanding. Iowa SLLC bills the U.S. Department of Education (Department) for special allowance payments (SAP) on the loans it holds.

FSA's letter of March 28, 2006, found violations of the TTPA by Iowa SLLC and ordered corrective action. Iowa SLLC appealed FSA's determination, submitting appeal letters on May 10, 2006, and August 18, 2006, and a formal appeal brief to the Secretary's attention on May 17, 2007. FSA responded to Iowa SLLC in a letter dated July 20, 2006, and also submitted a formal appeal response brief to the Secretary's attention on April 10, 2007.

Nature of Appeal

Iowa SLLC appeals FSA's finding that Iowa SLLC violated the TTPA by inappropriately billing the Department for special allowance payments (SAP) guaranteeing them a 9.5 percent floor return on certain loans, even though the loans in question had been moved from one taxable issue to another taxable issue after October 1, 2004. Iowa SLLC denies that it violated the TTPA, disagreeing with FSA's interpretation that the TTPA makes loans that have been subject to taxable to taxable transfers ineligible for the 9.5 percent floor.

FSA argues in its brief that the TTPA changed the previous SAP rules in a plain and unambiguous manner. FSA points out that the TTPA amended HEA 438(b)(2)(B) by adding new clause (v), which provides that SAP is payable at the regular rate, rather than the 9.5 percent minimum return rate–

> ...for a holder of loans that–
> (I) were made or purchased with funds–
> (aa) obtained from the issuance of obligations the income from which is excluded from gross income under the Internal Revenue Code of 1986 and which obligations were originally issued before October 1, 1993; or
> (bb) obtained from collections or default reimbursements on, or interest or other income ... on the investment of such funds; and
> (II) are–
> (aa) financed by such an obligation that, after September 30, 2004, ... has matured or been retired or defeased;
> (bb) refinanced after September 30, 2004, ... with funds obtained from a source other than funds described in subclause (I) of this clause; or
> (cc) sold or transferred to any other holder after September 30, 2004... .

Following passage of the TTPA, in January 2005, the Department's Office of Postsecondary Education issued a Dear Colleague Letter, notifying stakeholders of the change in law. The letter specifically noted that the TTPA had altered the previous landscape, in which "loans that were financed with funds obtained by the holder from the issuance of tax-exempt obligations originally issued prior to October 1, 1993 received a special allowance at a rate that ... would not be less than 9.5 percent... ." The letter explained that, after the TTPA, the rule was changing "on some loans that would have been subject to this treatment... ." The Dear Colleague letter then listed three categories of loans that would no longer receive the 9.5 percent floor treatment, specifically, loans that are:

(1) "Financed by a tax exempt obligation that, after September 30, 2004, ... has matured or been retired or defeased;"

(2) "Refinanced after September 30, 2004, ... with funds obtained from a source other than funds described in section 438(b)(2)(B)(v)(I) of the HEA [i.e.---tax exempt sources]; or

(3) "Sold or transferred to any other holder after September 30, 2004... ."

FSA asserts that the TTPA's statutory language clearly and unambiguously put Iowa SLLC on notice that taxable to taxable transferred loans would no longer be eligible for floor eligibility. In response, Iowa SLLC does not argue that the TTPA's text should be read to plainly and unambiguously authorize continued floor eligibility after a taxable to taxable transfer. Instead Iowa SLLC takes issue with FSA's claim that the statute was clear. Having pointed out linguistic problems with FSA's interpretation of the statute, Iowa SLLC asserts that "Floor SAP eligibility for refinanced loans is an exceedingly complex area, even by FFELP standards" and that "SAP treatment of refinanced loans is a topic on which the statute has never been a model of drafting clarity."

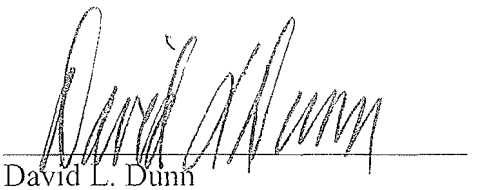
Even granting for the sake of argument Iowa SLLC's claim that the TTPA's provisions were not abundantly clear, Iowa SLLC was not justified in assuming that no change in the law had occurred, and that business should continue according to the status quo ante. The Department's January 2005 Dear Colleague Letter specifically invited stakeholders: "If you have questions concerning the recent statutory changes, please contact Pam Moran ... or George Harris... ." Nothing in the record suggests that Iowa SLLC made any attempt to obtain clarification or further guidance from these individuals or any other Department officials. Faced with what Iowa SLLC claims was an ambiguous new statute, it was incumbent upon Iowa SLLC to obtain clarification regarding how FSA would be interpreting the statute's meaning. By failing to seek and obtain clarification, Iowa SLLC abdicated its responsibilities and cannot now be excused from the consequences.

In addition to arguing that the TTPA was not "plain and unambiguous," Iowa SLLC argues that FSA's interpretation of the law is contrary to Congressional intent, arguing that the TTPA was intended merely to "curb the growth" of 9.5 percent floor loans, not to actually reduce the number of such loans in existence. In Iowa SLLC's view, because taxable to taxable transfers only perpetuate existing floor-eligible loans, and do not create new floor eligible 9.5 percent loans not yet in existence, it is meeting Congressional intent to "curb the growth" of these loans. In light of the clear statutory language, I did not find the evidence submitted by Iowa SLLC to be indicia of clear Congressional intent that the TTPA was only intended to curb the growth in floor eligible loans, and was not intended to change the floor eligibility status of taxable to taxable transferred loans.

ORDER

Accordingly, I HEREBY AFFIRM the determination of FSA.

So ordered this 11th day of January 2008.



David L. Dunn
Chief of Staff
Office of the Secretary

Washington, D.C.

SERVICE LIST

Office of Hearings and Appeals
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

Fred J. Marinucci
Office of General Counsel
Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Saul L. Moskowitz, Esq.
Moskowitz & Austin LLC
1100 Wayne Avenue
Suite 1111
Silver Spring, MD 20910