

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of **Docket Nos. 96-19-ST and
96-22-EA**

STUDENT LOAN FUND OF IDAHO, Student Financial Assistance And Show Cause
Proceedings
Respondent.

Appearances: Robert C. Montgomery, Esq., Fruitland, Idaho, and John J. Keohane, Esq., New York, New York, for the Student Loan Fund of Idaho.

Brian P. Siegel, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before: Judge Ernest C. Canellos

DECISION

The Student Loan Fund of Idaho (SLFI) is a private, nonprofit corporation organized under the laws of the State of Idaho. On June 13, 1978, SLFI was appointed by the Governor of Idaho to act as the designated guaranty agency for the State of Idaho in the Guaranteed Student Loan (GSL) Program, in accordance with §428(b) of the Higher Education Act of 1965, as amended (HEA). [See footnote 1](#) To effectuate this designation as the guaranty agency, SLFI and the United States Commissioner of Education entered into a series of five agreements on July 20, 1978, which agreements governed how SLFI would carry out its functions as a guaranty agency.

By notice dated February 20, 1996, the Office of Student Financial Assistance Programs (SFAP) notified SLFI that it was intending to terminate the agreements under which SLFI

participated as a guaranty agency. SFAP cites §428(c)(9)(E)(4) of the HEA and 34 C.F.R. §682.413(c)(1)(iv) as authority for such action. This same notice imposed an Emergency Action against SLFI in accordance with the provisions of 34 C.F.R. § 682.413(e)(2)(i) and 682.704(a). In response to the notice, on March 8, 1996, the Executive Director of SLFI requested a hearing in the termination action and an opportunity to show cause why the emergency action was unwarranted.

Pursuant to a delegation of authority from the Secretary to conduct proceedings and issue final decisions in both of these proceedings, I was assigned this matter on March 26, 1996. I issued an Order Governing Proceedings on April 2, 1996, in which I required the parties to address, as a threshold issue, the extent of my jurisdiction in this matter. [See footnote 2](#) The parties submitted briefs, procedural issues were resolved, and a teleconference was held on May 15, 1996. During my dialogue with counsel for both parties during the teleconference, it became clear that the parties concurred that SLFI had voluntarily terminated its guaranty agency agreements effective June 10, 1994. As a result of such apparent concurrence, the parties were directed to attempt to enter into a stipulation which reflected this understanding. The parties were unable to arrive at a stipulation because of their stated disagreement as to the consequences of the termination of the agreements, but readily proffered that the agreements were terminated. Each of the parties submitted a timely draft order for my signature. Both draft orders contain the following identical language:

1. The Office of Student Financial Assistance Programs (SFAP) and the Respondent, Student Loan Fund of

Idaho (SLFI) stipulate that: (a) on April 22, 1994, SLFI informed the Department of Education (ED) that it was providing the 60 days written notice of termination required under the agreements between SLFI and ED; and (b) that, pursuant to that notice, those agreements [were] terminated at the close of business on June 30, 1994.

In a show cause proceeding, the guaranty agency has the burden of persuading me that the emergency action is unwarranted. 34 C.F.R. § 682.704(d)(2)(ii). Further, pursuant to the provisions of 34 C.F.R. § 682.704(a), an emergency action should be upheld if: (1) there is reliable information that the institution is violating a provision of Title IV; (2) immediate action is necessary to prevent the misuse of federal funds, and (3) the likelihood of loss from the misuse outweighs the importance of adherence to the procedures for termination actions. However, in a termination action, it is ED which has the burden of proving that the agreements should be

terminated. In either case, it is obvious that there must be a viable pre-existing agreement between the parties for me to have jurisdiction to determine whether the parties met their respective burdens; otherwise, I have nothing to decide. Consistent with the stated position of the parties, I find that the guaranty agency agreements between SLFI and ED were effectively terminated by SLFI in 1994, and, as a result, my jurisdiction to consider whether the termination or emergency action is warranted is necessarily eliminated. Since I have determined that I lack jurisdiction over this matter, I can not reach any of the substantive questions raised by the parties.

ORDER

On the basis of the foregoing, it is hereby ORDERED that the termination and emergency actions imposed against the Student Loan Fund of Idaho are DISMISSED.

Judge Ernest C. Canellos

Dated: May 21, 1996

SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested to the following:

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Footnote: 1 1 The GSL program is currently called the Federal Family Education Loan (FFEL) program.

Footnote: 2 2 In its notice, ED states that it believes that SLFI previously had terminated its guaranty agency

agreements and that the termination action was initiated to resolve any possible question regarding SLFI's status in the FFEL program.
