

Information Item

California Student Aid Commission

Update on the Voluntary Flexible Agreement

In 1998, Congress amended the Higher Education Act of 1965 (HEA) to authorize the U.S. Secretary of Education to enter into Voluntary Flexible Agreements (VFA) with guaranty agencies. The VFA was established as a pilot program allowing only a small number of guaranty agencies to participate. There are currently 35 guaranty agencies nationwide. Five guaranty agencies including the Commission had their VFA proposals approved. A VFA incorporates and modifies the guaranty agency agreements with the U.S. Department of Education (USDE) under sections 428(b) and (c) of the HEA, and is intended to enhance program integrity, increase cost efficiencies, and allow flexibility to experiment and improve delinquency and default prevention.

When VFAs were created by Congress in 1998, there was a stipulation in the law that they must be “cost neutral”. According to USDE, the cuts to the financing model for guaranty agencies as part of the College Cost Reduction Act (effective October 1, 2007) meant the VFAs were no longer cost neutral. On October 2, 2007, USDE announced that the current VFA contract between the Commission and USDE would be terminated on December 31, 2007. Legislative language included in the Omnibus Appropriation Bill directed the U.S. Secretary of Education to renegotiate VFAs with Federal Family Education Loan (FFEL) Program guaranty agencies no later than March 31, 2008. In April 2008, based upon Commission direction, the Executive Director of the Commission provided USDE with a letter indicating that the President of EDFUND would be acting as liaison on behalf of the Commission regarding VFA and implementation plans and specifically noting that all VFA correspondence would continue to be routed through the Executive Director.

EDFUND presented a VFA proposal to USDE that focuses on the success of the Early Withdrawal Counseling (EWC) program. EDFUND’s research indicated that student borrowers who leave school prior to completing their program are much more likely to default on their student loans than those who finish their programs. Using this research as a foundation, EDFUND developed a EWC program that targets these borrowers and provides specific services that have not only shown positive results in default prevention, but also positively impact the borrowers’ completion rates in school.

At its April 17, 2008 meeting, the Commission authorized the Executive Director to sign the VFA under the conditions that it remain substantially similar to the VFA proposal presented by EDFUND to USDE and it be approved by the Department of Finance under the authority granted by Chapter 182, Statutes of 2007 (Senate Bill 89). The Commission’s General Counsel received a draft VFA proposal from USDE and determined that the proposed language of the VFA imposed additional liability on CSAC

that was not present in the original draft, including a focus on the liability of the Commission for the acts of EDFUND, additional reporting requirements placed on CSAC/EDFUND, and contract termination language that specifically relates to the retention of the CSAC Executive Director and the senior management staff responsible for oversight of the loan program. As a result of these proposed changes, the Commission's General Counsel determined that the additional language constituted a substantial change from the original proposal and that the VFA would not fall within the April 2008 delegation to the Executive Director and must therefore be reviewed and approved by the Commission at a future meeting.

The Commission's General Counsel is working with USDE's General Counsel to resolve outstanding issues relating to certain provisions added by USDE to the terms of the draft VFA. As of August 26, 2008, USDE is reviewing Commission staff's edits to the draft VFA proposal and will notify the Commission when the process is completed.

Responsible Persons: Keri Tippins
General Counsel

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