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INFORMATION AND DUE PROCESS OF LAW:

DOES THE MODE OF INFORMATION INFLUENCE THE PROPERTY RIGHTS OF PARTICIPANTS IN THE FEDERAL STUDENT LOAN PROGRAM?

Timothy C. Bagwell, B.A., B.S., M.S.

A Dissertation Presented to the Faculty of the Graduate
School of Saint Louis University in Partial
Fulfillment of the Requirements for the
Degree of Doctor of Philosophy

2001

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DIGEST

This study examined the laws, policies and practices of the Federally Guaranteed Student Loan Program in relation to the theory of the mode of information as set out by Mark Poster (1990). The research question focused on the relationship of information to due process. The role of information was delineated by Poster's "mode of information" theory.

The mode of information consists of three elements. The first is the monitoring and surveillance of people and populations through electronic records. The second is the utilization of these records to constitute the individual based on a norm. The third is utilization of this information to discipline or punish the person or population.

The study found a relationship between how information is utilized within the student loan program and due process issues in regards to the offset of income tax refunds. In regards to the monitoring and surveillance element, the study found that the regulatory principles of due diligence had been compromised by the information processes and policies of student loan guarantors and the Department of Education. The practice of reasonable due diligence is the accepted standard for valid administrative record keeping. The efforts of the Department and USAFunds to circumvent application of the Fair Debt Collection Practices Act constituted the core of the compromise of the principles of due diligence.

Regarding the element of constituting the individual as norm and the element of discipline and punishment, the study found that information was used to

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define the individuals who had defaulted on loans as "deadbeats." Discipline and punishment has been applied by the removal of available forms of relief and procedural due process to the point that might be considered a bill of attainder toward defaulting consumers within the federal student loan program.

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COMMITTEE IN CHARGE OF CANDIDACY:

Professor Kenneth F. Warren
Chairperson and Advisor

Professor Thomas Kramer

Associate Professor Robert Cropf

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DEDICATION

I dedicate this work to my mother, Mary L. Bagwell for her support and encouragement. I also dedicate the work to Dr. Donald MacDonald. Mac was my mentor in my masters program at Southern Illinois University. It was through his encouragement and through work done in his classes that I was first able to publish. I discovered shortly after completion of this dissertation that he was killed in an accident about year and a half ago. He will be missed.

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ACKNOWLEDGMENTS

I wish to acknowledge everyone who assisted my efforts in completion of this research. This includes current and past employees of the Department of Education who have requested to remain nameless. These good government people were crucial in identifying key documents without which the study would have been more difficult. Through their efforts and generosity costly delays that would have eventually stopped this project were avoided. In the office of former U.S. Senator Paul Simon, the assistance of Bob Shireman in leading me to the right places is greatly appreciated. The office of U.S. Congressman, Richard Gephardt was helpful in attaining cooperation from USAFunds. Robert Hobbs, Director of the National Consumer Law Center assisted in my understanding the place of consumer law in the student loan program. The efforts of the United Auto Worker's Legal Services Plan in Newark, Delaware in confirming the contents of their case files is also appreciated. I wish to acknowledge the court clerk for Judge Murray Schwartz, at the Federal District Court in Delaware for confirming the contents of the court's files. I also wish to acknowledge the assistance of Curt Prinz of the American Collectors Association. As a former staffer of the House Banking Committee, Mr. Prinz was part of the group that authored the Fair Debt Collection Practices Act in the mid-1970s. His sharing of how the law came about assisted my understanding of its many facets and principles.

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I also want to acknowledge the editorial efforts of two good friends. Nancy Shattuck, provided editorial review of chapters one through three. Bill Tucker, did the same for chapters four and five. Without their review of my comma deficient style of writing the brakes would have been locked on the project. Of course any errors remain my own.

This project would not have been possible without the efforts of the members of my dissertation committee. Dr. Kenneth Warren pointed me to the works of Bernard Schwartz, greatly expanding my understanding of American Jurisprudence. Dr. Warren also graciously tolerated my non-credit participation in his Administrative Law course. Without that course I would not have been able to complete this dissertation. Dr. Thomas Kramer and Dr. Robert Cropf have been patient of my many promises and delays of drafts. Their inputs contributed toward the making of a better product than the one I initially presented to them.

I especially want to acknowledge my good friends and fellow students, Dr. Barb Searight and Dr. Chuck Roberson. The restraints of a part time program sometimes make the formation of collegiate relationships difficult. We managed to form a team with the motto to "cooperate, collaborate and graduate." Though our group study for the oral exams as a team and through Chuck's helpful comments on my work, we are now able to complete on our mutual goals.

I apologize to anyone I may have left out.

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CHAPTER I

Description of the Problem

This is a study of the relationship between information and due process of law. The study examines information from the post modern perspective of information systems as processes that monitor and control individuals and groups. This is described by Mark Poster (1990) as the "Mode of Information." The power to control and monitor, as theorized, is accomplished through control of databases and data gathering mechanisms. As a case study, it examines the process of the administrative taking of the federal income tax refunds of people who have defaulted on loans made under the Guaranteed Student Loan Program (GSLP). Income tax refunds are monies held by the federal government that are owed to taxpayers as a result of excess payment on their annual income tax. Judge Murray Schwartz, in the "Constitutional" section of his decision in *Games v Cavasos* 737 F Supp. 1368 (D. Del 1990), recognized the Fifth and Fourteenth Amendments property interest of the consumer plaintiff toward the consumer's income tax refund. Because these administrative takings involve records about private individuals, there may be Fourth Amendment privacy implications toward the basis of the taking. This may also extend to privacy provisions of the Administrative Procedure Act (PL75-404, 5 U.S.C. 1001(a)) and to similar provisions within the Consumer Credit Protection Act of 1968 (PL90-321, 15 U.S.C.A. 1001).

These properties may be taken by the federal government through

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administrative offset upon a finding against the individual toward moneys owed to the government (S. Hrg. 101-1116, 1990). This can be owed through a variety of government programs such as the GSLP, taxes owed for prior years or overpayments of government benefits. In the first four years (1986-1990) following enactment of the income tax refund-offset program, nearly $1.2 million in income tax refunds were taken toward payment of student loans (S. Hrg. 101-1116, 1990). From 1966 to 1992 the various loan programs authorized under the Higher Education Act of 1965 have amounted to 142 billion dollars lent to 22 million consumers (GAO/AFMD-93-20).

The Fifth and Fourteenth Amendments of the Constitution permit the government to take property only through due process of law. This would have normally required an administrative or civil court hearing prior to the actual taking. Today, under the structure of the GSLP and related legislation the taking of income tax refunds is largely exempt from these hearing requirements as a result of passage of the Deficit Reduction Act of 1984 (PL98-369, 31 U.S.C. 3720A, July 18, 1984). A consumer may initiate the procedure for a hearing, but this will not delay the taking of the income tax refund. An important aspect of this procedure is that it will apply only to those consumers who are owed an income tax refund. Taxpayers who plan their taxes well, can plan not to have a refund. They are thus able to evade this procedure.

If consumers are capable of that kind of financial management, they are not

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likely to be in default or may be managing their finances to rebuild their credit and repay their loans. The administrative takings are being made on relatively small income tax refunds, toward taxpayers who are not likely to be in high income tax brackets, based on loans that are not themselves large.

Information, Data Gathering, and the GSLP

The basis for the administrative taking of an income tax refund in payment against the default on a GSLP loan involves a number of private, state and federal organizations and actors. The involvement of these organizations centers around the payment records of borrowers and the collection efforts of lenders, guarantors, collection agencies and the Internal Revenue Service (IRS). The size and scale of the GSLP have facilitated the development of computerized information systems to manage the payment and collection activities of the borrowers and the collecting organizations.

The administrative taking of income tax refunds is performed by the IRS upon the request of the Department of Education. The IRS receives a digital listing of taxpayers based on the taxpayer's Social Security Number (SSN). The IRS and the Department of Education have an agreement that the list as sent represents valid findings of default against the GSLP and that a taking of refundable monies will be made based on the listing (S. Hrg. 101-1116, 1990). The IRS performs this administrative taking without involvement in the prior loan collection processes. The Department of Education receives its information and

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data about defaulted loan accounts from student loan guarantor agencies, collection agencies, lenders and in a feedback process from the IRS (S. Hrg. 101-1116, 1990).

Foundations of the GSLP

The basic reasoning behind the creation of the GSLP was the argument that conventional lenders would not take on the risk of lending to people who would be in school and as such would be unlikely to produce enough income to make the principle and interest payments on the loan. Also, given that the level of risk is normally offset by interest rates on a loan, lenders would be unlikely to set reasonable rates that would assure payment.

For these reasons along with other loftier goals, the GSLP was created by the Higher Education Act of 1965 (PL89-329, 79 Stat. 20 USC)) to provide a set of incentives and safeguards to lenders in an effort to support moving more people toward higher education. Incentives were made to lenders in the form of interest subsidies and loan guarantees. The relative low interest rate given to consumers on a GSLP loan is made available by a federal interest subsidy payment to the lender to make up the difference between what has been offered to the borrower and what the agreed market rate is at the time of the loan. If a loan is made at 8 percent and the agreed market rate is 14 percent, the government would pay the difference to the lender of 6 percent on the life of the loan. The government subsidizes the entire interest owed during the time the borrower is enrolled in

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school or if the borrower is covered within an approved deferred payment agreement (S. Hrg. 101-1116, 1990).

The Federal government also agrees to pay the lender for the total amount of the loan that is outstanding if the borrower defaults on the loan. However, the federal government does not make this payment directly to the lenders. Initial payment to lenders on defaulted loans is made by a student loan guarantor agency. These are either agencies state government agencies or not-for-profit companies organized to be the first line of collection of defaulted GSLP loans. Most of the collection effort on a defaulted GSLP loan is done by these organizations. Most of the data forwarded to the Department of Education about defaulted borrowers and their loans is collected by these organizations. If a guarantor agency is unable to collect on a student loan, they will receive payment in full from the federal government.

As described so far, there would be little incentive on the part of borrowers or guarantors to collect if the federal government were to pick up all the defaulted loans. However, the government has set standards for acceptable default rates. These rates are placed on the school, lenders and guarantors. The government also requires the guarantor organization to accumulate reserve funds as a condition for participation in the program as a safety net against possible losses.

Risks to Borrowers

It has not gone unnoticed that underwriting the risk to the lenders is not

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wholly effective in addressing the issue of boosting the loan market in support of the social goal of higher education. Charles L Schultze in his work *The Public Uses of Private Interest* (1977) notes "Merely guaranteeing education loans will not be sufficient [to promote education(sic)]. This eliminates the risk to the lender but not to the borrower" (Schultz, 1997, page 40). The borrower can be at risk by not receiving the promised quality of education offered by an educational institution. They may be at risk if subsequent employment does not provide an income capable of a living wage and loan repayment. The borrower is also liable for repayment of any loan regardless of whether they completed the educational program.

The risk to borrowers is further complicated by the extension of administrative offset to the garnishment of wages, PL102-164, 20 U.S.C. Sec. 1095a, 1991. This development has been relatively recent with few wage garnishments having been performed to date. The reluctance to perform administrative wage garnishments, in the same manner as offset of income tax refunds, may derive from the anticipated legal battles that may ensue once the practice became widely implemented. Because of the lack of data regarding wage garnishments, this study will consider only the implication of administrative takings in relation to the income tax refund.

The Research Question and Student Loans

In this study the "property rights" of the "participants" as indicated in the

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title, are those of all the participants including the borrowers, lenders, guarantor organizations, the schools, and the federal government. Underlying all these rights are the loan agreements and loan payments made by borrowers seeking higher education. Loan payments are fulfillment of an obligation on an instrument known as a note. This note is the “property” as far as the lenders and the guarantors are concerned.

The struggle described in this study is among these participants in the GSLP over the property rights in the form of income tax refunds. The basis of evidence or claim to payments and to income tax refunds are contained in the databases and information systems built by the data-gathering efforts of the participants, which can include consumers if they choose to build a database. It is the influence of these databases, information systems and data gathering processes upon the property rights of the participants and therefore on due process of law that is the focus of this study. Stated more succinctly, does the mode of information influence the property rights of participants in the federal student loan program?

Approach of the Study

This study will use three approaches for the conduct of the research. The first of these is the systems approach as applied to the political and administrative process by David Easton in iterations from 1964 through 1979. The second is the concept of the “Mode of Information” as proposed by Mark Poster (1990) and

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developed in a series of critical essays in his book *The Mode of Information: Poststructuralism and Social Context*. The third is case study methodology as developed by Yin (1988) and Strauss (1995) that applies multiple research tools and data sources toward the study of specific behaviors in an uncontrolled field research setting such as a government program.

The Systems Approach

These theories and methodologies are used to define a set of relationships between processes and actor. Key to this approach is placing the mode of information within the systems model as the focal process of the system. At the core of the debt collection process is the struggle between the collector and the consumer over payments, property and information or in other words, a struggle between political actors over money, income tax refunds and the information used to collect both. This analysis can be conducted from within the framework proposed by Easton (1979) in which the administrative process is characterized as a struggle with the "authoritative allocation of values . . . the power of political actors to force their values on others." In this study the power struggle plays out in the obtaining of withholding information, payments and income tax refunds.

Preeminent in this struggle over these allocations is the balancing of the rights of the individual against the rights of the state. In this study the right of the consumer to receive their income tax refund and the right of the state to seize it in payment of an obligation to the government is the central outcomes that are

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examined. These struggles are characterized by the struggle of all parties in the system to persist and survive. In the political system the struggle to survive, forms the behavioral underpinning within which the political actors play out their needs, wants and desires.

The administrative process of debt collection is a continuous process, in both its interaction between administrators and consumers and in the policy changes the program undergoes. The systems approach allows the tracking of these changes in relation to a process that spans the time frame by placing the elements of actors, processes and events in a consistent observable frame of reference, Warren (1996).

These survival mechanisms also frame the processes of the other components of the system. In this study consumers struggle to escape the inquiries or harassment of collectors and to be left alone, to control how they spend their money and retain ownership of their income tax refunds. The collectors seek to meet performance standards, while guarantors and lenders seek to comply with federally established compliance standards and government officials of the Executive Branch to comply with the oversight of Congress in demonstration of program management.

Case Study Methodology

Case Study methodology allows the researcher the flexibility to set limits on the scope and depth of the research project. It is especially useful in

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combination with the systems approach. The flexibility of Case Study methodology allows the researcher to incorporate systems model components into the construction of the case study. As the first attempt to examine the "mode of information" within a systems framework the selection of a domain of investigation was based on the importance of the issue and the importance of information in the process.

As stated at the beginning of this chapter, Poster's model asserts that the mode of information is used to monitor and control individuals and groups. This is accomplished through control of databases and data gathering mechanisms. The GSLP is based almost entirely on the administration of information. The GSLP process can also terminate with the taking of property in the form of income tax refunds. This makes the GSLP process an issue of due process of law and a constitutional question.

The GSLP default collection process can eventually terminate at the taking of an individual income tax refund. This taking is based entirely on the information gathered during the collection process. The GSLP met the first set of criteria for a study of the mode of information.

Within the framework of a study of a federal program, the selection of a focal actor in the process might seem obvious. The Department of Education is the authorized administrator of the GSLP under the Higher Education Act of 1965. The study of this administrative and political environment requires a method

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of identifying the focal actor in ways consistent with the constraints of the core processes involved in administering the program, which is, the gathering data from consumers.

The focal process of this study is the gathering of data from consumers that is used in the administrative offset of an income tax refund. Independent student loan guarantors are the major sources for this data. The Department of Education acts as the final guarantor of the GSLP loan, but it depends on the student loan guarantors as the first line in the default collection process. The Department of Education uses the data from the guarantors to give authorization to the IRS to perform the offset of the income tax refund.

The guarantor that is most extensively engaged in this process, the largest guarantor of student loans since 1990, the oldest guarantor and the one most engaged in disputes with consumers over collection policies is USAFunds. USAFunds is a not-for-profit private corporation head-quartered in Indianapolis, Indiana. USAFunds has the most contact with consumers through data gathering and debt collection. In this process USAFunds is the most prominent actor placed between the government and the consumer. They are placed there by agreement with the government and in this way, they are a proxy agent of the government.

A time frame was required to set the depth of data gathering across the program. Policy changes unfavorable to consumers began as early as 1976 with changes in Federal Bankruptcy regulation related to student loans. The

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government's power to perform administrative takings of income tax refunds was authorized in 1985 in the Budget Reconciliation Act of that year. These two events set the stage for the questions of the study.

The Savings and Loan Crisis (S&L Crisis) of the late 80s and early 90s, along with the insolvency of a major student loan guarantor, however, precipitated a relatively concentrated period of legislative changes to the GSLP and court decisions related to default collections. These changes in policy run roughly from 1990 through 1992. This period is the focal period of the study and contains the focal policy changes that are key to the study.

The Mode of Information

The next section of the study involves describing and explaining why information has had the new role that it has in the political system. This is accomplished through use of a model known as "the mode of information." The concept of "the mode of information" has been developed by Mark Poster (1990) as a descriptive and explanatory model for the consequences of information uses in the postindustrial period. More simply, it examines how those with more power use information toward those with less power. In the development of the model, Poster challenges the classical Weberian models of information control in bureaucracies and Marxist models of power relationships in society (Poster, 1990, pages 87-88).

Poster's reasoning of the change from the Weberian and Marxist models

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derives from the shift in communication and data storage technologies. Poster groups these changes under the concept of "the electronic mediation of communication." This "electronic mediation" asserts Poster, causes a subtle linguistic change in how individuals and groups are defined (Poster 1993, page 95). It also causes a change in how the relationships between the individual, groups and society are defined, viewed and consequently managed. It is the result of these changes that Poster calls "the mode of information."

In his 1990 work, Poster writes forcefully about the consequences of the transformation of "electronic mediation" into the "mode of information." He leans heavily upon Foucault's study of French Prisons (1977) and analogizes the data gathering mechanisms of business and government to the methods of prison surveillance. While this exposition helps to clarify the model, Poster offers no case study of the role of the "mode of information." Poster does not write about classical social contract theory in his work. His framework appears to encompass many of the classical elements of social contract theory. In order to more accurately frame this study, social contract theory will be examined as critical to the framework. This study will test of Poster's model and propositions. At the operational level, the hypotheses constructed within this study will be based on Poster's "mode of information."

There are two related elements of this "mode of information" that have consequences for the theoretic framework of this study. The first is the defining of

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the norm and, through that, the disciplining of the populations. The second is the defining of the deviant and their punishment, which is also part of the process of disciplining the population. These elements have theorized consequences toward the due process rights of individuals, deviants, and toward acceptance of punishment acts toward these individuals by the mass of the population through changing values and discipline.

The mode of information also provides the epistemological and ontological foundations of the study. The mode of information provides both a frame and evaluation criteria to study knowledge about information and the administrative process within the GSLP. As a model, the mode of information is a formal statement of theory. As such, it excludes certain other possibilities in order to focus on a rigorous study of its variables. With this in mind an examination of the major components of the mode of information can be made.

Monitoring and Surveillance - Isolation the Individual

In the administrative process of the GSLP the collector of a debt contacts an alleged defaulted consumer of GSLP loans. This contact is generally by letter or by phone (S. Hrg. 101-1116, 1990). At the point that a consumer is engaged in a phone conversation or reading of a collection letter they enter a kind of isolation. They are generally confronted with information about their lack of payment, amount owed and consequences likely to occur if a payment or agreement for arrangement of payment is not-made. Their response or lack of response to the

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caller or the letter will be tabulated, stored and annotated in some manner determined by the collector, their management and their information systems.

Using the Norm to Constitute the Individual - Stereotyping and Aggregating

The guarantor's collectors are gathering data and information about a large number of consumers. This information is used to report the effectiveness of the collector's efforts, the degree to which the population is not complying with collection efforts and the effectiveness of the guarantor in maintaining the acceptable default rate. The management and performance of the GSLP program are tied to the representation of the consumer population contained in the statistical reports of these databases. Management objectives and standards may begin to define the population. In Poster's model a new language of the database is imposed on top of the already existing language. This language is "one that uses the norm to constitute individuals and define deviants." Operationally this is an ongoing process that may or may not involve changes in how individuals in a population are treated. However, this federal program is subject to congressional oversight and review. Congress may monitor its performance and make changes based on the perceived problems in the administration of the program. – This brings us to the next phase of the mode of information as applied in the administrative process.

Define the Deviant - Policy Changes and Disciplining the Population

Policy changes generally arise from two directions from with the process of

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the GSLP. The first is a review of the program, in the case of the GSLP a review of the effectiveness of the collection efforts by the guarantors toward the population. The other is in response to challenges from individuals within the population, usually in the form of a court case. A successful challenge from an individual in a court case may also lead to legislative changes in the program that counteract the gains made by the individual in the court case. In the case of review-based changes, anecdotal data about individual behaviors and aggregate data about consumer behaviors have both been used to seek changes to aid increased collections. In the court victories of consumers' the aggregate data may also be used to justify more stringent policies in order to aid increased collections. Having built the basic framework of the study we can now place the elements within a working hypothesis.

The Life Cycle of a Student Loan

This section will outline the structure of the student loan program subsidy, loan and collection process. Figure 1 depicts the student loan process. The process begins with the student applying for a loan with a guaranteed lender. The loan is approved by a guaranty agency after which the lender makes the loan to the student. The responsibility of the school is to report the enrollment status of the student and sometimes to present the loan to the student.

The Department of Education pays the Lender the interest subsidy (the difference between the rate to be paid by the student and the agreed rate of the

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guarantee policy). After completion of school (or exit from school) two processes are possible.

One process begins with the student applying payments consistently and repaying the loan. The second process involves a series of events surrounding defaults and difficult payment patterns of the consumer. The guarantor pays the lender for the loan and then begins the process of collection. At the time a borrower defaults payment, the lender reports the default to credit reporting agencies.

The guarantor is required by their agreement with the Department of Education to make collection efforts which are "due diligent" as prescribed by the Higher Education Act. If the borrower still does not make adequate payments and the guarantor can demonstrate due diligence the guarantor can file a claim on the loan with the Department of Education. With the payment to the guarantor, the account and data are transferred to the Department of Education. At that point the debt becomes a debt to the federal government. The Department often turns these accounts back to the guarantor for further collection with the new authority of the debt now being a debt to the government. Finally the guarantors in conjunction with the Department of Education and the Internal Revenue Service may seize the income tax refund of the defaulting consumer or garnish wages, both of these through administrative offset procedures.

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This outline describes the basic process of the student loan payment and collection process. It describes the empirical domain to be studied. The next section will build the general hypothesis and describe the model used to perform the study.

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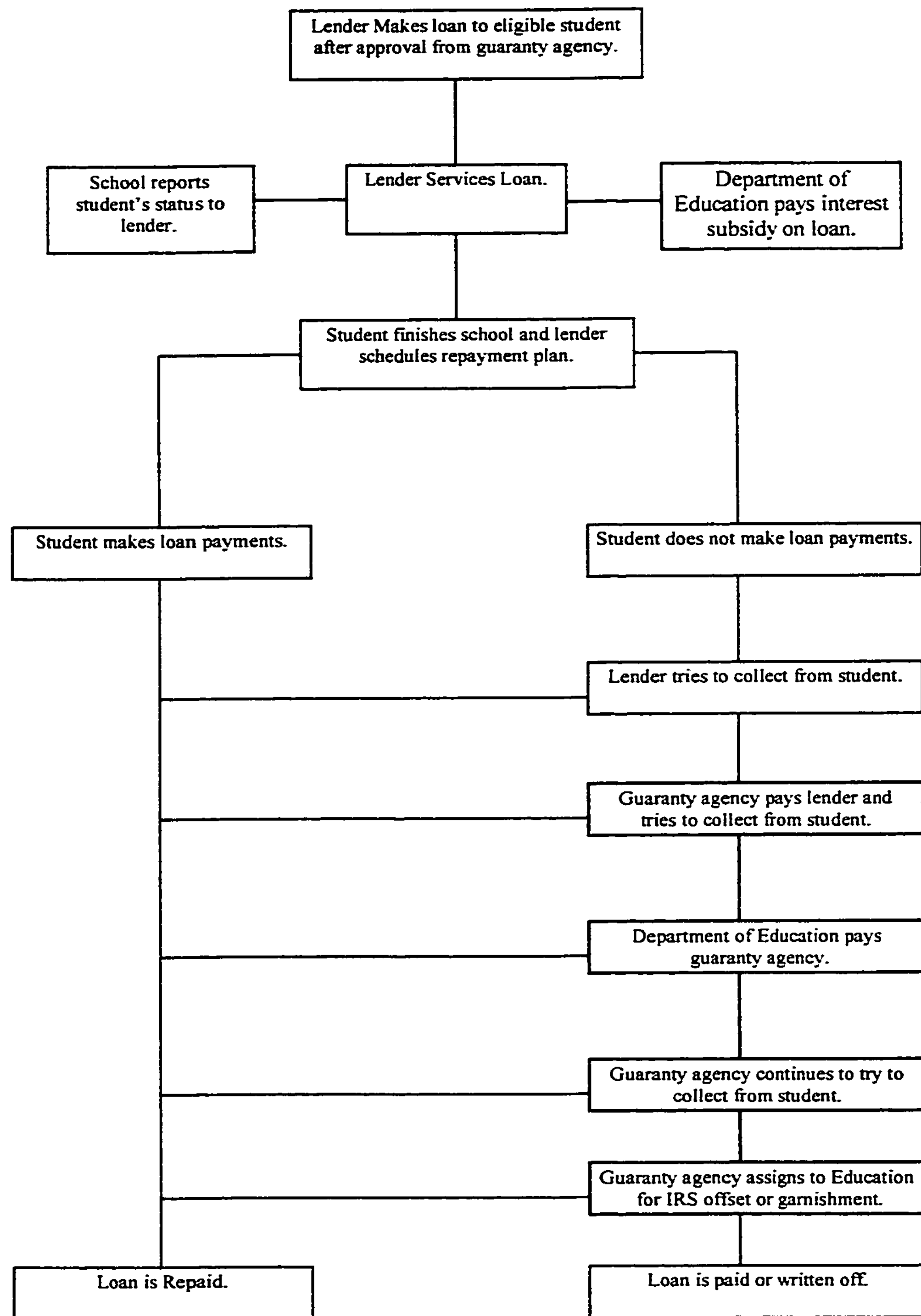
Figure 1. General Life Cycle of a Federally Guaranteed Student Loan. (Darker lines and boxes are the primary focus of this study.)



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The Hypothesis and Causal Model

The independent variable of this study is the information process used to build a case and justify the administrative taking of an income tax refund. This process is tagged as "the mode of information," in Poster's theory and the Focal Process in the Systems Model. The dependent variable of this study is the basis of the administrative taking of a borrower's income tax refund. The information system is built out of the interactions between the student loan guarantor and the consumer. Each of these actors has a role in generating the information system or the record of the loan. They both have independent variables that they affect and to a degree control toward the final composition of the record that is the basis of the administrative taking. These elements of the independent variables are set out in Tables 1 and 2.

The Hypotheses:

> The mode of information is used to prejudice the record, that is the basis of the administrative taking, of a borrower's income tax refund, in the Guaranteed Student Loan Program, in favor of the student loan guarantors.
>
> The mode of information is used to influence the creation of policies that frame the basis of the administrative taking, of a borrower's income tax refund, in the Guaranteed Student Loan Program, in favor of the student loan guarantors.

Simply put, institutional participants structure information to isolate the individual, stereotype the group and request policy changes to support their administrative taking of individual income tax refunds. Figure 2 represents the relationships between these propositions.

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Table 1. Table of Independent Variable Operational Elements - Guarantor

In the Debt Collection Process.
The data-gathering techniques used to contact a consumer.
Representation of law and policies by collector to consumers.
Records of the collection effort presented to the Department of Education for default payment.
Records presented to the Internal Revenue Service for Income to justify Tax Refund offset.
In the Default Payment by Department of Education Process - including disputes.
Representation of data gathering techniques.
Representation of data presented to Department of Education.
Policy arguments regarding applicable laws and policies toward data-gathering techniques of collection efforts.
In the changes in collection effort law and policies.
Representation of dispute outcomes.
Representation of individual cases.
Representation of aggregate consumer behaviors.

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Table 2. Table of Independent Variable Operational Elements - Consumer

In the Debt Collection Process.
Methods of contact with consumers.
Consumer Payment and Non Payment.
Consumer cooperation and non-cooperation.
In the Default Payment by Department of Education Process and in Policy Change Process - including disputes.
Demonstration of default by consumer. Representation of consumer failure to pay or make arrangements to pay.
Representation of Due Diligence in collection efforts by guarantors.
Demonstration of default rate compliance on the part of the guarantors.

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In this model the focal actor (student loan guarantor as federal proxy) is required to collect debts from individual consumers. This is an administrative process involving contact, data gathering techniques and information storage and retrieval systems. These activities are the keys to the focal process of the system. This also constitutes the area occupied by the "mode of information." The foundation of the debt collection process rests on the interactions between the guarantor's collection personnel and the consumer. From these relationships, interactions are recorded and used to justify payment against the default to the guarantor by the government. These records are also used to justify the taking of income tax refunds. From these interactions, aggregate data are assembled for review. This aggregate data can be used to stereotype the population. For example, this stereotyping can be used to train collection personnel or used to justify policy changes to the government.

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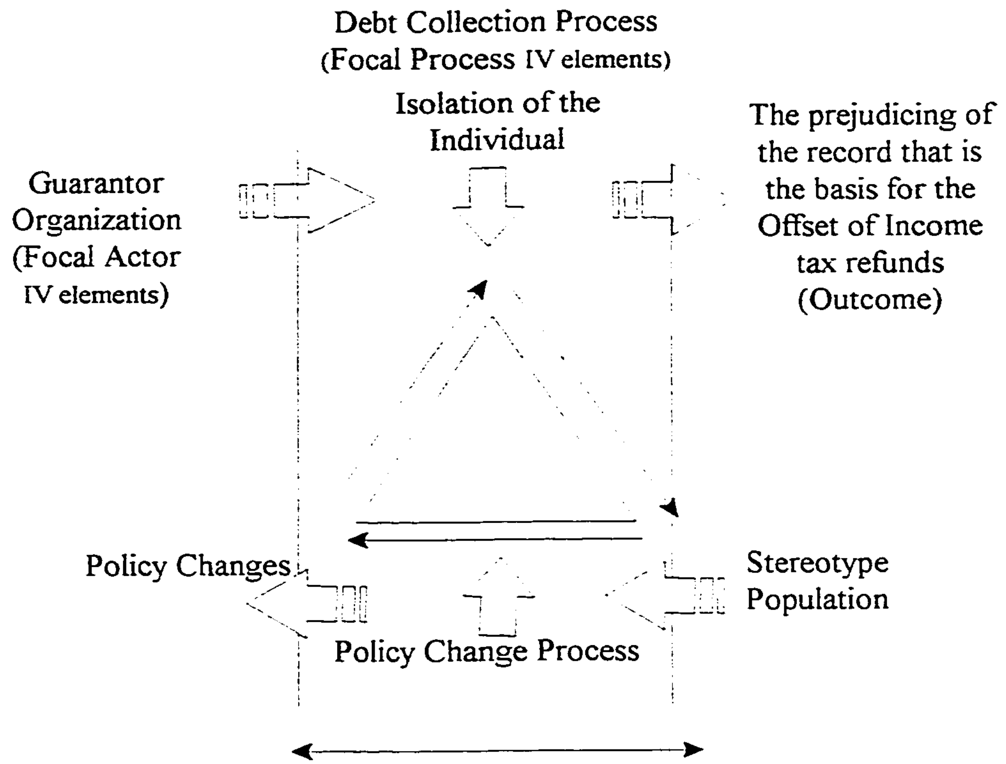
Figure 2. Causal Model - Mode of Information.



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Data Gathering and Units of Analysis

Data gathering for the study involves extensive examination of public records in the form of legislative histories of the public law, legal cases, contractual agreements, congressional testimony and reports, Government Accounting Office (GAO), and Office of Management and Budget reports, media coverage and scholarly research. These data sets include:

1. Relevant case law, including inquiries into the focal cases and searches of the case files.
2. Examination of selected contractual documents between consumers, banks and student loan guarantors.
3. Examination of actual contractual agreements:
   a. Department of Education and Sallie Mae.
   b. Student loan guarantors.
   c. Private collection agencies.
4. Related Federal Agency regulations:
   a. Computer matching agreements.
   b. IRS offset regulations.
5. General Accounting Office (GAO) reports.
6. Congressional Reports and Testimonies.
7. Media coverage of student loan policy related events.
8. Scholarly works related to the GSLP.

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These empirical data elements are linked to three basic units of analysis embedded with the causal model. These three units are first the data gathering from the individual; second, the aggregated data about the consumer population; and third, the policy changes in the form of court cases and legislation. The data sets will be examined and analyzed for inclusion in each unit of analysis. Each unit of analysis is linked to the three parts of "the mode of information." An index will be constructed around these units to determine the validity of the causal propositions offered as the central question of the study.

Significance of the Problem

In the early years of the Clinton administration, the government opened up a program of "direct loans" from the government. This was done with strong opposition from the consumer banking and student loan guarantor industries and interest groups. This is covered extensively in Steven Waldman's, *The Bill* (1995). Waldman demonstrates the depth of financial institution involvement in the student loan business, in stark contrast to the public view of the program as a social program for poor or deadbeat college students.

In spite of these changes in student loan policy the administrative taking of income tax refunds remains a major policy element of the GSLP. The law and policy changes of the focal period of this study are still in effect. Moreover they e been augmented with other changes in the degree of enforcement. In FY94, the Department of Education reports that more than 781,000 individuals had offsets performed against their income tax refunds, garnering more than $598 million in

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loan payments. In FY95 the Department of Education reports the recovery of $585 million from 744,000 borrowers. This computes an average offset of just $765.69 in FY94 and $755.14 in FY95 (U.S. Department of Education, 1996. National Student Loan Default Rate Hits All-Time Low). http://www.ed.gov/PressReleases/01-1996/def96.html). Enforcement has been furthered with change in the Privacy Act in the areas of computer matching and data integrity as applied to student loans.

The constitutional issues of privacy, property, and due process of law are key components of this study. The study examines the balance problem of the individual and the state that is prominent in political systems theory and in American Jurisprudence. It conducts this research by examining the extensiveness of the student loan exemption from key policies available to other citizens but excluded, in balance, if the issue is a student loan.

The basis for the functioning of the student loan program is tied to the gathering and exchange of information among participants in the program. Ellen Alderman and Caroline Kennedy in their book, *The Right to Privacy* (1995), note that "There is simply no comprehensive body of law established to deal with all of the privacy concerns arising in the digital age." Simson Garfinkel in his book *Database Nation* (2000), points out that the European Community utilized the "Code of Information Practices," developed in 1973 in the U.S. as part of the Health Education and Welfare Department, Privacy Commission Report of 1973. In the United States, after the initial thrust of privacy protection legislation in the

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post-Watergate era these "Information Practices" have been generally ignored in U.S. policy making. Garfinkel updates the reader on the growing technological and administrative intrusions brought on by computer technologies (Garfinkel 2000, pages 6-8).

Within the theory oriented scholarly literature, Post-modern theorists address the threat of information toward civil rights but have not conducted a significant examination of the problem as demonstrated in a governmental program or question of law and justice. This study seeks to integrate the models of the post-modern theorist within the framework of a contemporary policy problem. In so doing it seeks to contribute to the policy and scholarly literature on the levels of theoretic understanding of information processes in the framework of real government programs and policies.

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CHAPTER II

Review of the Literature

The research and scholarly contributions toward the framework of this study can be found in three areas. For purposes of organization the first of these three areas is the theoretic background and underpinnings of Poster's "Mode of Information." Closely related to this area are recent developments in technology over the past 25 years and their social impact.

The second area framing the background of this study is the constitutional and historical basis of current American Law and Jurisprudence. At the highest level this literature deals with the Fourth, Fifth and Fourteenth amendments of the Constitution and to an extent with the origins of due process and privacy rights in the Common Law. It also touches upon other property rights elements in the constitution that are found in the prohibitions against "Bills of Attainder," with special attention to Bankruptcy in the constitution.

The second area framing the background of this study also deals with the evolution of the law and legal thinking in the form of Jurisprudence and the development of legal doctrines. This evolution has taken the form of a debate. This debate centers on the conflicts of the dominant school of contemporary American Jurisprudence found in what is called Legal Realism. Most prominent in the conflicts of Legal Realism is its balance doctrine of the rights of the state over the rights of the individual. Also, prominent in the origins of Legal Realism is the emphasis of empiricism, what at that time had been referred to as scientism, instead

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of the emphasis of the Formalist who interpreted individual rights with a more literal reading of the constitution.

The third area that is closely joined to the constitutional and jurisprudence literatures, comprises the reviews and studies of the specific laws and procedural frameworks of the Federal Guaranteed Student Loan Programs (GSLP). This area includes the Higher Education Act of 1965 (HEA), Consumer Credit Protection Act, Federal Bankruptcy Act and Administrative Procedure Act (APA). Additional acts include the Family Educational Rights and Privacy Act of 1974 (FERPA), Federal Financial Right to Privacy Act of 1978 (FRPA) and the Federal Debt Collection Act of 1982 (FDCA). Though each of these areas of law and policy touch in some aspect on student loan policy and debt collection, the extent of scholarly writing and research on these topics has been limited primarily to the Federal Bankruptcy Law and policy. However, significant work has been done in the area of privacy law, especially in regards to the Privacy Act contained within the APA. Also the area of consumer behavior toward loan and debt payment has been significantly researched and will be reviewed by the study.

In the latter two sections, that review the development of the laws surrounding the area of this study, a historical approach is utilized to select the literature. This is done in order demonstrate the presence of themes in the law during the focal period of the study. These may not represent the prevailing view of the law, but they contribute toward the study of the problem.

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The Mode of Information

Mark Poster's, *The Mode of Information: Poststucturalism and Social Context* was published in 1990. The book consists of an extensive introduction and five chapters that review the works of five prominent post-modern Poststructuralist thinkers. Their work is reviewed in relation to contemporary information, communication and technological influences on society.

In this study the focus will be on Poster's Introduction and Chapter One in which he has laid out the foundations of his project. In Chapter Three, Poster examines the framework theoretical and empirical work done by French writer, researcher and philosopher, Michel Foucault. Specifically Poster examines the role of databases as forms of electronically mediated communication, especially the role of database in a culture in which the surveillance of behavior has become increasingly participatory and voluntary without real reflection of any consequences (Poster, 1990, Pages 69-98).

Poststructuralist Framework

First we will examine Poster's framework. *The Mode of Information: Poststructuralism and Social Context*, is first and foremost a theoretical work consisting of a series of integrated essays. Through each of the chapters, Poster's expressed intent is to increase reflective questions about information and society "social context" from a Poststructuralist perspective.

Poststructuralism as described by Poster, is a theoretic and research perspective that acknowledges there may be a structure to social reality. But does

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not presume to know what the structures are in place for any given social context. This is the fundamental proposition that frames the mode of information (Poster, 1990, pages 1- 20)

From this poststructuralist position Poster contends that classical social science of Weber and the less traditional forms of Marxist analysis may be both critiqued and acknowledged for their contributions toward the more recent problem of information. But these approaches may be set aside in favor of a more explanatory theoretic approach. In this way the poststructuralist approach is similar to the Grounded Theory approaches of Barney Glaser and Anselm Strauss (1967, 1978) and Strauss (1995). In these qualitative methods the researcher enters the research domain or social context with a question in mind but not necessarily a theory or model. In the case of the Poster framework the question necessarily involves the role of information within the social context under examination. The researcher enters the social context with the task at hand of filling in what the mode of information will be upon "sorting through the data" Strauss (1995).

Fundamental to both the grounded approach and Poster's approach to post structuralism are Poster's arguments against "totalizing" or "totalization" tendencies in social science theory (Poster, 1990, pages 22-25). Poster spends most of Chapter one in a critique of Daniel Bell's (1967) "totalizing" conceptualization of the "Postindustrial Society." Basic to his critique of Bell is what he considers to be Bell's attempt to use the concept of "industrial" and the

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leap to "postindustrial" as representing something completely different without setting limits on his model. Thus Bell's "postindustrial society" becomes an ideological model. This would leave many researchers who utilize Bell with the choice of approaching the problem of information from a whole-new-world-view position. Poster deconstructs Bell's world view and calls for a more practical research paradigm, one that avoids totalizing conclusions but reveals something new about a social context, (Poster, 1990, pages 22-25).

Framing Propositions

With the operational elements of Poster's mode of information two key theoretical propositions are important. First among these is the concern for issues of control and dominance in the social context under examination. Poster places his mode of information in close alignment with the Frankfurt School's studies of communication, mass media and advertising, focusing as they do on methods of social and cultural domination (Poster, 1990, page 16). The second proposition of importance is the role of language or linguistics in the construction of meaning and the role information processes and systems have taken in defining the meaning of social interaction. This is key to Poster's contribution to theoretical developments in the study of the contemporary role of information in society - social contexts - research domains.

What is key in terms of theory is the shift from action models of relationships found in Weber and Marx which contain "the dilemma of science vs. ideology" (Poster, 1993, page 37). Poster proposes a model that bypasses the

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debate and that will account for language and its restructuring by "electronically mediated" forms of communication that includes, for purposes of this study databases and information systems.

Operational Propositions

In Chapter three Poster examines the problem of databases in the wider social context, constructed primarily as the process as first offered by James Rule (1974) as "participatory surveillance" (in Poster, 1990, page 69). This is a process through which the populations of a society voluntary allow for their own monitoring in exchange for some perceived gain in security or material position. Poster frames this review within the poststructuralist writings of Michel Foucault's work "Discipline and Punishment" on the French prison system (1977). Foucault analogizes the methods of the prison system to the structure of society. The prison system becomes an expression of the operation of society and a testing model for the further control of society. This social context is probably best summarized in the following passage by Poster:

> Today's circuits of communication and the databases they generate constitute a Superpanopticon, a system of surveillance without walls, windows, towers or guards. The quantitative advances in the technologies of surveillance result in a qualitative change in the microphysics of power. Technological change, however, is only part of the process. The populace has been disciplined to surveillance and to participating in the process. Social security cards, drivers' licenses, credit cards, library cards and the like – the individual must apply for them, have them ready at all times, use them continuously. Each transaction is recorded, encoded and added to the databases. Individuals themselves in many cases fill out forms; they are at once the source of the information and the recorded of the information. (Poster 1990, page 93)

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It is the participatory aspect of the new forms of social control that Foucault asserts is the characteristic of democratic discipline that only slightly distinguishes it from the torture of totalitarianism. For the advantages derived from participatory surveillance, the people give up other rights or turn themselves over to various forms of behavioral and marketing programs. Poster takes a less ideological position than Foucault. With an eye toward building the operational theory, Poster links the problem of the database and language most succinctly as:

> I contend that the database imposes a new language on top of those already existing and that it is an impoverished, limited language, one that uses the norm to constitute individuals and define deviants (Poster, 1990, pages 95-96).

The identification of "deviants" and "constitution of the norm," are the two key operational elements involved in this study.

Due Process of Law

In this section the due process framework of the study will be developed. Due process of law evolved primarily out of English Common Law, formalized to an extent as the "law of the land" in the Magna Carta of 1215. The Magna Carta was a compromise between the King and the nobility over the rights of both. In the American Colonies the principle of "the law of the land" was first transformed into "due process of law" in the Massachusetts Charter of 1692 (Sargentich in Hall 1992, page 236). It is quoted most directly from the Magna Carta in the Virginia Declaration of Rights of 1776 (Schwartz, 1993, page 20). The influence of John

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Locke's works was preeminent in the practical and theoretic basis of the founding fathers of the new republic. The influence of Locke helped build the theoretic bridge from the Magna Carta in 1215 to the foundations of the republic, most directly in the Charter of Carolina. In the United States constitution, the combined influences culminate in the Fifth Amendment, ratified in 1791, providing that:

> No persons shall... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The issues of what constituted a "person," whether a "person" could be considered "property," would be key elements in the problems leading to the Civil War. This was resolved in the Thirteenth and Fourteenth Amendments, first in the Thirteenth by outlawing slavery and involuntary servitude and in the Fourteenth by extending citizenship to former slaves. The Fourteenth amendment went further in extending "due process of law" to the states and extending to the states and formalizing for the first time "equal protection of the laws."

Schwartz traces the origins of the actual construction of the Fourteenth amendment beyond the problems of the Civil War to the hands of John A. Bingham as key author of the amendment (Schwartz, 1993, pages 284-292). The original amendment as written by Bingham read:

> The Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each state all privileges and immunities of citizens in the several states and to all persons in the several States equal protection in the rights of life, liberty and property. (Bingham, in Schwartz 1993, page 287)

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Schwartz points out that as written, the original amendment would have had several affects quite different from the final version. As written the amendment would have been a grant of power to the Congress to secure rights for individuals. This would have eliminated the "self executing" (Schwartz, 1993, page 287) aspect of the final amendment that allows individuals to sue for judicial relief. Since state action is not restricted in the language of the original proposal there would have been little need for judicial review in the absence of Congressional action.

After a shift in Congress to the Joint Committee on Reconstruction the essential language was adopted on April 28, 1866. The section on the definition of citizenship was added later by the Senate. Debate ended in June 1866. The states ratified the amendment in 1868. (Schwartz, 1993, pages 287-288). In summary Bingham had copied the language of the Fifth amendment, applying it now to the states, adding the language of "no state shall." This was in order to avoid the problems of *Barron v Baltimore*, 7 Pet. (32 U.S.) 243 (1833) in which Justice Marshall argued the Bill of Rights applied to the federal government, but that citizens would need to look to state constitutions for protection from state actions. Also of importance was the elevation of "equal protection," adding a new cornerstone to American Law and giving a deeper dimension to "due process of law."

Perhaps the most interesting and immediate outgrowth of the Fourteenth amendment was its application to corporations as "persons" under the amendment.

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Though some arguments have been made that "persons" did not include corporations, inclusion of corporations has become an accepted part of the Fourteenth amendment and was integral to the "gilded age" of American industry and commerce in the later half of the Nineteenth century (Schwartz, 1993, pages 290-291). This brings us up through the legislative framework of "due process of law." We can now refer to Schwartz and his treatment of the Judicial framing of "due process of law."

Instrumentalism

In his cornerstone work on American legal thought Schwartz maintains the focus of his analysis on the evolution of instrumentalism into its now dominant form of Legal Realism. The underlying principle of instrumentalism in the law is that the law was a means and not an end. As stated by Alexander Hamilton, the law was "a tool for the ambition and energy of the people." (Schwartz, 1993, page 23)

Schwartz traces the evolution and challenges of instrumentalism through the phases of American history. Through the seven chapters of *Main Currents in American Legal Thought*, Schwartz frames American Jurisprudence as Hamiltonian originated instrumentalism, law as a means rather than an end. Hamilton, Jefferson and Justice Marshall are clearly the founding fathers of this view of law. Schwartz provides us with the supporting cast of scholars, lawyers and jurists who deepen the place of instrumentalism in American law. These include St. George Tucker in his attempts to translate Jeffersonian theory into Law

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(Schwartz, 1993, page 162). Schwartz paints Lemuel Shaw as the "private law instrumentalist," analogizing the culmination of Shaw's work in private law to that of Justice Marshall in public law. Presiding over Massachusetts' highest court for more than 30 years, Shaw presided over this court of this important state during its transformation from an agrarian society to an early industrial society. Shaw began the process of distinguishing American private law from the moralizing code of the English courts. In Shaw's law the court was less concerned with "fault" as a moral shortcoming and more concerned that loss lies where it falls (Holmes in Schwartz, 1993, page 201). Shaw took this laissez faire approach to torts and gave to it an instrumentalist direction, looking at tort resolution as a means of fostering initiative rather than as law for laws sake (Schwartz, 1993, pages 199-206).

Other changes were taking place on other fronts that affected the course of American jurisprudence. Among these was the decline of the American legal profession during the Jacksonian period, when most states removed the growing requirements for membership in the legal profession. This led to a somewhat raucous period in local courts and to differing views on the nature of the law. The disputes and cases leading up to the Civil War were making it more and more apparent that there was in the land, as Schwartz describes, a "Juristic Schizophrenia" (Schwartz, 1993, page 171) in regards to slavery.

Formalism

The post-Civil War era, "The Gilded Age," using the term coined by Mark Twain, was dominated by the jurisprudence of Thomas Cooley and James C.

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Carter (Schwartz, 1993, Chapter Four). Through these two the essential instrumentalist had been replaced with a kind of formalism that was more concerned with unity of doctrine and preservation of the common law from statutory interference (Schwartz, 1993, page 373). It was a period Schwartz describes as a "chill" (Schwartz, 1993, page 373). This pre-Holmesian world was a formalist model described in Schwartz's words;

> Its basic idea was that legal questions could be answered by inquiry into the relations between principles, without more than a superficial examination of their relation to the world of fact. (Schwartz, 1993, page 374).

This period, though allowing for a substantial economic growth, saw the rise of Jim Crow laws in the South and regressive social conditions in the industrial cities. Status quo remained the condition of law of the Gilded Age. However, a new form of instrumentalist was to emerge with the new century.

Legal Realism and Instrumentalism

Schwartz traces the development of law in the twentieth century beginning with Holmes' lectures on *The Common Law* that began in 1880. Schwartz points to Holmes 1897 lecture, *The Path of the Law*, -as the one in which he most clearly defines his view of the law. Paraphrasing Holmes, Schwartz summarizes the main point of the lecture:

> ... if one wanted to know the law and nothing else, he must look at it as a bad man, who cared only for the material consequences which such knowledge enabled him to predict. Jurists of the time urged that the law was a deduction of principles of ethics or admitted axioms or what not, which may or may not coincide with

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> the decisions. But if we take the view of our friend the bad man we shall find that he does not care two straws for the axioms or deductions, but that he does want to know what the Massachusetts or English courts are likely to do in fact. I am much of his mind. The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law. (Holmes Collected Papers in Scwhartz, 1993, page 389).

This was the central theme of the Holmes view of law that would eventually make its way into American Jurisprudence. This approach is summarized by Holmes himself in two key phrases; these are "law as experience" and "judge made law." Scholars and lawyers could argue over whether a particular legal axiom was applicable to their plaintiff or defendant, but ultimately it was the view, the reasoning of the judge that made the law. During the period of his lectures his views were not in line with other American legal scholars or practitioners. As he made his way, first through the Massachusetts court, then to the U.S. Supreme Court and through the scholarly journals, Holmes' views became more popular, though as Schwartz notes, Holmes views would not become the new view until after his tenure on the U.S. Supreme Court passed.

It is Holmes' life in the U.S. Supreme Court that leads to further developments beyond the "law as experience" and "judge made law" maxims. These changes would be brought through the interaction with other Justices on the Court, most prominently Louis D. Brandeis, Benjamin N. Cardozo, and Felix Frankfurter. Schwartz summarizes Brandeis as promoting the "Law as Fact" (Schwartz, 1993, pages 412-423) through his opinions and, most importantly, in

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the development of the fact oriented "Brandeis Briefs." In these briefs, only limited attention was given to the law, while the bulk of the writing was devoted to the presentation of scientific and authoritative anecdotal evidence. Schwartz places Brandeis' activism as second only to Holmes toward social issues. This is a view of the law as the "public interest," that would gain hold by the middle of the twentieth century as the Welfare State.

Cardozo further refines the work of Holmes in expanding upon Holmes common law work. In his, *Our Lady of the Common Law*, Cardozo outlines his historic principles of the evolution of American Common Law representing judges as both pupils and builders. They learned from what was made before but added a little of their own along the way (Schwartz, 1993, page 475). This was integrated with the Holmes and Brandeis views of the day. It should be noted here that Cardozo succeeded Holmes on the bench, taking Holmes' seat upon his retirement. Schwartz quotes Judge Posner's examination of Cardozo's concept of the law in a pragmatic instrumentalist paradigm as the law: "Not the origin, but the goal is the main thing...."

Felix Frankfurter took the seat held by Cardozo. Frankfurter's history with the court extended back to his close association with Justice Brandeis. Frankfurter implemented most closely the work of Roscoe Pound's "balancing" principles set forth in his lectures and article between 1907 and 1912. In these works Pound called for a "sociological jurisprudence" that would balance the rights of society and its institutions with those of the individual (Schwartz, 1993, pages 465 - 473).

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It was Frankfurter who instituted these principles as part of the practice of the U.S. Supreme Court. The balancing showed most distinctively in differences between Frankfurter's earlier career and his subsequent career on the bench. Prior to his appointment he had been viewed as a political radical, a role he could take as an independent attorney and as a Harvard professor. However, on the court he became the picture of restraint. This restraint was born out of the mixture of his predecessors and the principles developed by Pound and others.

The burden of social activism conditioned by the pragmatic instrumentalist and the principle of "judge made law" created in Frankfurter a model for the bench. Justices could view, their responsibilities not only within their own set of experiences, but with an eye toward the popular mind. They could then balance those considerations with the rights of the individual. This balancing principle, in combination with judge made law and the new weight assigned to empirical evidence has become the dominant form of American Jurisprudence known as Legal Realism. We can now turn to the issues of constitutional rights within the administrative state as framed by Legal Realism in the more contemporary setting of the modern administrative and technocratic state.

Administrative Law and Legal Realism

Kenneth F. Warren (1996) sums up the issues inherent in the contemporary problem of Legal Realism when he states "Every time an administrative agency or a court makes a decision which benefits a larger group at the expense of the individual, another liberty is lost and our way of life changes" (Warren, 1996,

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page 510). The challenge as Warren sees it "is to seek solutions to societal problems which do not crush individual liberty for the sake of promoting some abstract noble social goal" (Warren, 1996, pages 511-512).

In Chapter 11 of *Administrative Law in the Political System*, Warren traces the decline of the Fourth and Fifth Amendments under the "balancing" premises of Legal Realism in American Jurisprudence and the political problems of judge made law. Specifically he contrasts the Administrative actions by the state under legal Formalism as represented in the landmark privacy rights case of *Boyd v. United States*, 116 U.S. 616 (1886) in which the absolute standards of the Fourth and Fifth amendments were upheld against the now prevailing Legal Realism and the growing reinterpretation of those rights. Warren points to the growing complexity of modern society and its technological advances as a growing source of increased privacy and Bill of Rights issues.

Student Loans

Scholarly treatment of student loan legislation and cases have focused primarily in the area of Federal Bankruptcy treatment. A secondary area was the brief treatment of draft registration requirements for qualification for federal student loan and aid assistance. Following the Supreme Court's upholding of the draft requirement little has been written on that subject. We will return to a review of the draft registration issue as it pertains to this study after treatment of the more common and contemporary problems of student loan discharge under the Federal Bankruptcy Act.

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Federal Bankruptcy

Woodcock (1997) provides the best and most recent review of the history of Federal Bankruptcy and student loan exception. Woodcock points out that "In 1787, when listing the powers that should reside in the federal government, the frames of the republic deemed bankruptcy worthy of mentioning specifically." (Woodcock, 1997, page. 379). This treatment is contained in Article 1 section 8 clause 4 as allocating to the Congress the power:

> To establish an uniform Rule of Naturalization, and uniform laws on the subject of Bankruptcies throughout the United States.

Woodcock suggests that the inclusion of bankruptcy in the list with the power to tax, print money and raise an army speaks to the importance of bankruptcy and its treatment. In reviewing its history, Woodcock points to the intentions expressed in the house committee reporting, backing the bankruptcy act of 1898:

> [u]nder this bill no assent is required from creditors. If the debtor has acted dishonestly by committing certain acts forbidden in the bill he will not be discharged; if he has acted honestly, he will be. The granting of discharge is justified by wise public policy. (H. R. Rep. No. 55-65, 1897)

"The act of 1898 recognized the overriding public interest in granting discharge to 'honest but unfortunate' debtors because society as a whole benefits when an overburdened debtor is freed from the weight of accumulated debt" (Tabb, supra note 10 at 364).

The Act of 1898 was to remain the essential foundation of the Federal

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Bankruptcy code until its repeal with the Federal Bankruptcy Act of 1978. The history of student loans under the Higher Education Act begins with its passage in 1965.

Kratze and Depperschmidt (1995) assert that "A feature of the 1965 Higher Education Act... was that such loans were fully dischargeable in bankruptcy." The Higher Education Act of 1965 (PL89-329, 79 Stat. 20 USC) did not contain a statement providing that student loans were dischargeable in bankruptcy. Nor were they excepted from dischargeability in the 1965 act. As debts the loans would be dischargeable under the Federal Bankruptcy Act in absence of any congressional action to the contrary. Kratze and Depperschmidt's use of the term "feature" may be an over statement in this case.

However, as early as 1973, the Report of the Commission on the Bankruptcy Laws, reported a rising incidence of consumer bankruptcies by former students motivated to avoid payment on student loans (H.R. Doc No, 93-137). This eventually led to the Education Amendments of 1976 (PL94-482, 20 U.S.C. § 1087-3). The Bankruptcy provisions of these amendments were repealed with the Bankruptcy Act of 1978 (PL95-598, Title III, § 317 Nov. 6 1978, 92 Stat. 2678). In the new Bankruptcy Act the basic language of the Education Amendments was retained and a section on "Undue Hardship" was added. As noted by the Judges' commentary *In Re Pelkowski*, 990 F.2d 737 (3rd Cir. 1993) the legislative implementation of the repealing of the Education Amendment and the effective date of the Bankruptcy Act left an eleven-month period during which there was no

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act excepting student loans from bankruptcy, an interesting omission on the part of the Congress, Clemente (1993).

In November 1990, the Omnibus Budget Reconciliation Act of 1990, containing the Student Loan Default Initiative Act of 1990, 20 U.S.C. 1001, (PL101-508) was passed. This extended the student loan Bankruptcy exception to Chapter 13 of the code (Wage Earner Plans) and changed the waiting period to seven years. Shortly after passage of this act, the Congress corrected the in-balance between the five year Chapter 7 time period and the seven-year Chapter 13 time period by passage of PL101-647, 11 USC. This forms the essential elements of student loans for both the focal period of this study and the status of student loans under the Federal Bankruptcy Act at this writing.

Student Loans and the Principles of Bankruptcy

In the legal scholarship most research has focused on the general principles of bankruptcy and their application toward student loans. These areas include the principles of, undue hardship, fresh start, burden of proof, good faith, moral obligation of contract, treatment of disposable income, disparity with other government loan programs, and disparity with other debtors.

As a starting point in the review of the general principles of bankruptcy and the treatment of student loans we, might begin with the observations of Pollack and Hicks (1993) who ask:

> Why are student loans sacrosanct by comparison to other government claims like Social Security overpayments, improperly received unemployment compensation, ADC overpayments,

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> Veterans Administration foreclosure loan deficiencies on foreclosed property, and even obligations owed to the Department of the Treasury, Internal Revenue Service, all of which contribute to the Federal Deficit? Outside of bankruptcy there is a statute of limitations on tax collection; inside bankruptcy, taxes over three years old are dischargeable. Moreover, other than taxes, none of these creditors have the advantage of risk distribution through the charging of interest that is available to the student loan. (Pollack and Hicks, 1993, page 1620)

Though written in 1993, these have been the tone of overarching questions surrounding the scholarship of student loan exception from bankruptcy dischargeability, before and since.

Undue Hardship

Ahart (1978) first treats the problem of undue hardship that was evident in the Higher Education Act Amendments. Undue hardship was to become the main problem of the courts in the treatment of student loan discharge in bankruptcy. This is the lack of guidance given by Congress regarding its "undue hardship" provisions in the discharge of educational loan debtors. The undue hardship provision was placed in order to attain discharges prior to the five-year waiting period. Ahart is prescriptive and attempts to anticipate the problem and recommend methods. Hardship was and is the central problem for the courts considering student loans under the bankruptcy code.

Kalevitch (1982) provides the best conceptual summary of the basis of student loan discharge. The five-year period can simply be viewed as "old loans" (Kalevitch, 1982, page 343) and "undue hardship." Kalevitch shows the courts

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developing two approaches. Kalevitch groups this as the "rigid 'unique factors'" criteria and the "analytical criteria of the bankruptcy commission." (page. 350). In *Kohn*, (20 Collier Bankr. Cas. 2d (MB) 994 (Bankr. S.D.N.Y. 1980)) the court would discharge only those debtors who are;

> ...severely disadvantaged economically as a result of unique factors which are so much a part of a bankrupt's life, present and in the foreseeable future, that the expectation of repayment is virtually non-existent unless by that effort the bankrupt strips himself of all that makes life worth living. (Kohn at 1008)

The test, as set out by the bankruptcy commission would consider a set of analytical criteria including ability to obtain and retain employment, rates of pay, likelihood of unearned income, minimal standard of living, and payments toward the educational loan. (Bankruptcy Commission Report, supra note 113 at Pt. II, 140-141). The other method was to apply Chapter-13-like standards to the Chapter-7 exclusion problem of student loans.

Kalevitch, writing in 1982, anticipates the problems of Chapter 13 bankruptcies that had not yet come under legislative exclusion of student loans. Many courts did attempt Chapter 13 like plans for repayment of student loans under the Chapter-7-exclusions. Kalevitch notes that Chapter 13 treatment was uncertain, in part because of the exclusion under Chapter 7 (Kalevitch 1982, page 368).

Good Faith

By the mid-eighties, Chapter 13 considerations had risen in the courts and

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treatment had started in the law reviews. In these Chapter 13, "Good Faith" became an overriding consideration of the debtors and the courts. Chapter 13, known as the Wage Earner Plan, provides incentives to debtors to avoid the stigma of straight Chapter 7 bankruptcy, make payment arrangements on certain loans and still be eligible for the discharge of other loans (Organ, 1985, page 1103). The courts at the time of Organ's analysis had evolved a "totality of circumstances" approach, to determine if a debtor's attempt at Chapter 13 relief was in "good faith" or constituted an abuse of the system (Organ, 1985, page 1124). Kauffman and Schupp writing in 1988 support many of the conclusions of Organ but point to continued confusion in the courts over the tension of Chapter 7 and Chapter 13 and the standards for Chapter 13. Finally, Collins (1990) further supports the problems inherent with undue hardship and attempts to propose changes in anticipation of the 1990 exclusion of student loans under Chapter 13.

Undue hardship, since congress made it the key to student loan discharge remains at the heart of the literature. Jonathan L. Marsh (1996) in reviewing *Pennsylvania Higher Education Assistance Agency v. Faish* (72 F.3d 298 (3d Cir. 1995), concludes that despite the best efforts of a consumer to demonstrate both undue hardship and responsible financial management, the court is not likely to provide for discharge of a loan. Zackerman (1997), seven years after inclusion of Chapter 13 under student loan undue hardship provisions, points to the problem still extant in the courts of developing a "uniform undue hardship test" (Zackerman, 1997, page 691) to alleviate the great disparity among the courts in

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treatment of individuals.

Fresh Start and Moral Obligation of Contract

As pointed out by Woodcock earlier in this review of literature. Fresh Start has been a fundamental principle of bankruptcy in both the Congress and the courts. The burden of undue hardship tests, distinct from other debtors, combined with at first five-year and now seven-year waiting periods have been critiqued by Pollack and Hicks (1993), Gerson (1995), Salvin (1996) and Woodcock (1997) as burdens to the debtors and to the courts in making fair decisions. It would appear clear that the most important feature of the American Bankruptcy code, Fresh Start, was intentionally removed by Congress when it comes to student loan debtors.

Ryman (1993) writes about the issue of "moral obligation of contract" in relation to student loans. Ryman contends the judges "moralizing" on the issue of debt, contract and moral obligations induce a myopia in the court.

> Many sincere, law-and-order judges that are late twentieth century Americans uncritically embrace ideals derived from eighteenth century natural law philosophy, which itself reflects the values of middle and upper class English judges. (Ryman, 1993, page 210)

The moralizing comes into direct conflict with the principles of fresh start provided by the bankruptcy (Ryman, 1993, page 212). Ryman cites the *Perez v Campbell*, 402 U.S. 637 (1971) finding that state law may not override fresh start in bankruptcy. The Supremacy Clause, U.S. Const. art. VI, cl. 2., was applied to the case, invoking Justice Black's dissent in *Kesler v Department of Pub. Safety*,

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369 U.S. 153 (1962). Calling the original decision an aberration, the court held that a state law, even if ostensibly made for some purpose other than to frustrate could not stand in face of the Supremacy Clause. Ryman concludes that a court that views financial insolvency as a reflection of moral deficiency is myopically placing property values ahead of human considerations. In his conclusion Ryman writes:

> From the chaos of inventive cross purposes and from overlapping investigations at great universities come the imaginative creations that power this country. An economy that focuses on teaching a labor force rather than on emancipating the intellect of our people is a false economy of the worst kind. The idea of making the plebeians pay for their training with years of service is short sighted taxation of our most productive people, a tax levied for becoming better able to contribute to society.
>
> Congress should address forgiveness of these loans and seek new ways of making college and professional education available. Congress should also encourage Americans to take advantage of the opportunity. We cannot leave this generation enmeshed in years of debt with their whole future indentured. (Ryman, 1993, page 223)

<u>Other Areas</u>

Pollack and Hicks, quoted at the outset of this review point out the disparate treatment of student loan debt in comparison to similar debt owed to other government programs. There has been limited treatment of these comparisons in the literature. The only known full treatment is Kratzke and Depperschmidt (1995), who compare Farmer loan debt to the federal government and student loans. In particular, they treat the issues of "disposable income" and

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“subsistence” level income. They conclude a real need for congressional reexamination of both bankruptcy treatments, especially in the strict, poverty-like conditions placed on student loan debtors necessary to achieve relief.

Student Loans in Bankruptcy - Summary

The student loan program began in 1965 under authority of Higher Education Act, which had no provisions for excepting student loans from bankruptcy. In the absence of guiding legislation, student loans from 1965 to 1976 were eligible for the same bankruptcy relief and treatment as all other consumer loans. In 1973, reports were showing a rise in student loan defaults. Within Congress concerns were expressed on two levels. One level regarded the risks to the viability of the loan program if too many funds were paid out toward defaults and bankruptcies. The other level was toward the legitimacy of the claims of the former students, whether the borrowers were abusing the bankruptcy code and loan program.

Initially, Congress amended the Higher Education Act to except student loan from bankruptcy and include a five-year waiting period from the initial payment start date before discharge could be considered. This amendment ran from October 12, 1976 to November 6, 1978, when it was repealed as part of the overall review of the bankruptcy code. Exception of student loans was incorporated into Chapter 7 of the Bankruptcy Code October 1, 1979, leaving an interesting eleven month gap in exception between November 1978 and October 1979. Student loans coming up as part of bankruptcy during this period were

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generally discharged. The revision in the bankruptcy Code incorporated the major elements of the Higher Education Act Amendments but included provisions for "undue hardship" toward qualifying bankrupts.

These changes were enacted under objections that included the unanimous rejection by the Subcommittee on Civil and Constitutional Rights (H.Rep No. 95-595) and, by the full Judiciary Committee with a vote of 4 to 23. Additionally a General Accounting Office report indicated that less than 1 percent of all matured student loans were being discharged in bankruptcy, Woodcock (1997).

These changes remained in place until 1990 when they were further supported by extension of the same principles to Chapter 13 Wage Earner Plans of the Bankruptcy Code. Additionally, the waiting period for Chapter 13 was made seven years. Later, in the same month, the Chapter 7 waiting period was extended to seven years, a technical amendment that corrected the obvious imbalance. These changes, excepting student loans from bankruptcy, remain in place at this writing in April 2000.

Administrative Offset and Student Loans

Vogt (1990) reviews the case of *Thomas v. Bennett*, 856 F.2d 1165 (8th Cir. 1988), in which the court was faced with determining the applicability of a statute of limitations to the administrative offset of income tax refunds. In the creation of the Income Tax Offset program by the Deficit Reduction Act of 1984, the Congress did not specify a statute of limitations on stale debts to the government. Between the enactment of the program in 1985 and passage in April

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of 1991 of the Higher Education Technical Amendments of 1991 (PL 102-26. U.S.C. 20 § 1091a), in which all state and federal statutes of limitations were removed in respect to federally guaranteed student loans, the courts were left to interpret the act and common law to determine the applicability of a statute of limitations to each administrative offset case brought to a court.

Vogt takes a look back at the original general statute of limitations passed by Congress in 1966 (U.S.C. § 2415 (Supp. II 1984). In that act and related cases, the established legal reasoning was that claims by the government and claims by individuals should be on an equitable footing and that agencies are given an incentive to promptly file claims (Vogt, 1990, page1150). The original time limit of the general statute of limitations was six years. As early as 1978, the Department of Justice issued an opinion memorandum that if a statute of limitation has expired on a particular cause of action, the debt will also not be enforceable through an administrative offset (Vogt, 1990, page 1151). In the case of *Thomas v. Bennett*, Vogt summarizes the issues and questions.

1. Was it the intent of Congress in adopting the general statute of limitations to also apply to administrative offset?

2. Does the federal government has a common law right to offset beyond statutorily-prescribed power?

3. What is the meaning of "legally enforceable debt" in relation to income tax offset? (Vogt,1990, page1160)

In all three questions the court found in favor of the government. Vogt concludes in his analysis that the court appeared more motivated by the desire to

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recover debt on behalf of the government than in legal reasoning. Congress settled the issues definitively by taking the unusual action of eliminating all state and federal statutes of limitations in its passage of The Higher Education Technical Amendments of 1991 (PL 102-26, U.S.C. 20 § 1091a).

Debt Collection - The Road to Bankruptcy

Prior to bankruptcy, many consumers will be faced with the problem of creditors and debt collectors seeking payments on obligations. Mortgages and auto loans are secured by property and generally come under the provisions of the collection and repossession regulations of the commercial code. In the area of unsecured consumer loans, such as credit cards and student loans, original creditors are regulated by the Consumer Credit Protection Act, Truth in Lending Act and provisions within these for Fair Credit Billing Practices. Debt collectors, who are normally secondary owners of a note, are regulated by the Fair Debt Collection Practices Act 15 U.S.C. § 1692-1692o(Supp. I 1977).

In the area of the Fair Debt Collection Practices Act (FDCPA) and student loans both the literature and the law are unclear. Only one case has received any treatment within the courts and on a very limited basis within the literature. Beginning with the case of *Games v Cavasos* 737 F.Supp. 1368 (D.Del 1990), student loan guarantors were effectively removed from coverage by the Fair Debt Collection Practices Act. This was accomplished in spite of contractual agreements, with the Department of Education specifically requiring that guarantor agencies:

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> ...shall perform all collection activity on the assigned account in compliance with the provisions of applicable Federal and State laws governing the activities of debt collectors, including the Federal Privacy Act requirements. (Guarantor Participation Agreement, 1985, page 1)

Though this case was only heard at the Federal District court level, the term "effectively removed" is used here because of the process of consumer law consultation. The fine for a violation of the Fair Debt Collection Practices Act is $1,000.00 per incident. An incident is defined as a violation of a prohibited practice during the collection of a loan. Multiple instances of the same prohibited practice during the collection of the same loan would be one incident. The National Consumer Law Center is the gathering point for information for consumer lawyers. It was their report of the "strangeness" (NCLC Consumer Law Digest 1990) that constitutes the only scholarly comments on the case. It is also their reporting that forms the guidance for most consumer law attorneys. The un-attributed author of the NCLC report in this case was one of the attorneys representing the plaintiff consumer Eric Games. This study will seek to relieve the literature gap in the area of student loans and the Fair Debt Collection Practices Act.

The most significant aspect examined by scholars, and of the most controversy is in the area of what as become known as the mini-"Miranda" notice Yen (1990). The FDCPA in U.S.C. § 1692e(11) if taken literally, requires that all oral and written communication between a debt collection and consumer clearly

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disclose that:

1. The debt collector is attempting to collect a debt and

2. Any information obtained will be used for that purpose.
(Yen, 1990, page 261)

Yen reviews the FDCPA and the case of *Piples v. Credit Bureau*, 886 F.2d 22 (2d Cir. 1989) [BLJD § 39.00]. Prior decisions in the Ninth Circuit and FTC opinions did not require the "Miranda" notice in follow-up communications with consumers. The Second Circuit disagreed, requiring inclusion of the statement in follow-up communication. The mini-Miranda has been the main legislative point of contention between collectors and congress. Controversy surrounds whether the mini-Miranda is required only in written communication with a consumer or required in each communication including phone calls. At this writing a bill, was in progress within congress to clarify and limit the application of the mini-Miranda.

The importance of FDCPA to this study is in its regulation of the relationship between the original creditor, generally a bank, and the government as the guarantor of last resort. Dealing with debt collectors is one of the behaviors that the Federal Bankruptcy Act hopes to provide to consumers. Student loan guarantor agencies occupy a penultimate position in their relationship with the consumer. As stands with *Games v Cavasos* 737 F Supp. 1368 (D. Del 1990), guarantors are relieved of compliance with FDCPA. They are also relieved of a key element in disclosing the information-gathering aspect of their function. If the FDCPA is meant to be a debt collection equivalent to the due process provided by

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the original Miranda, *Miranda v. Arizona*, 384 U.S. 436 (1966), student loan guarantors stand free of the requirement.

Student Loans and the Draft

In 1982 the Congress in the Department of Defense Authorization Act § 113, 50 U.S.C.A app. § 462(f) (West 1982) included an amendment to the Selective Service Act that conditioned receipt of federal financial student aid (loans and grants) on compliance with draft registration laws, Restaino (1984).

Both Restaino (1985) and McLennon (1985) examine the issues of Bill of Attainder, Fifth amendment self incrimination and equal protection of the law. Restaino examines the case prior to the Supreme Court decision on the issue and McLennon examines it after the decision. The primary case, *Selective Service System v. Minnesota Public Interest Research Group et al.* 104 S.Ct. 3348 (1984), held for the Selective Service System on all three issues. The two articles as well as Justice Marshall's dissent and Justice Powell's partial concurrence with the dissent all point to grave questions regarding the constitutionality of the Selective Service Act and the punitive nature of Congress' intent.

The reason that the draft issue is reviewed in this study comes from Justice Marshall's dissent and his citation of the statement from the American Civil Liberties Union regarding the concerns of those dissenting from draft registration as:

> they oppose draft registration as a massive government surveillance system in which the Government collects, stores and exchanges data on individuals in violation of constitutional and statutory

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rights. *Selective Service System v. Minnesota Public Interest Research Group et al.* 104 S.Ct. 3348 (1984) at 3361

The issue of data collection and the link to the rights of the individual which is an issue embedded in this case and to student financial aid, raises a question about the use of information in the administrative offset of income tax refunds. The question would come into play within months of this finding of the court. In July of 1984 Congress created of the Tax Refund Intercept Program by the Omnibus Budget Reconciliation Act of 1985.

Summary of Literature Review

The literature surrounding the administration of justice in the United States as related to due process, privacy, property and civil rights does not point to one overriding world view. The values of judges and legislatures, schools of jurisprudence, values of the people as well as economics and politics have different impacts at different times.

What is notable is that due process guarantees once considered bedrock to the citizens of the United States have been modified. This modification derives from several influences. Technology has assisted the administrative state in further encroachments into the private lives of citizens. The power of judges as final or near final makers of law is a recognized part of the political and administrative process. The power of judges is amplified by the prominence of in jurisprudence of the Legal Realist school.

In the area of student loans consumers find themselves caught up in a

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confluence of forces. One is an ancient regime of old values of moral contract and debt repayment within the congress. Another is the powerful technological and administrative system of debt collection of student loan agencies of the Department of Education and IRS. And another is within the courts where the judge is likely to use legal realist principles to take some side other than the consumer's side. In the next chapter the research methods for conduct of the study will be set forward, including the integration of systems approach, case study method and the analytical basis of the mode of information.

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CHAPTER III

Methodology

The Systems Approach

This study utilizes a Case Study approach comprising three inter-related parts. The first part consists of the systems approach as developed by David Easton (1964) with insights from Kenneth Warren's (1996) application of that approach in the administrative process setting. This is integrated with Mark Poster's (1990) theory of the "mode of information." That theory brings forward the works of Weber and Marx into the contemporary debate over the expanded role of information and power in society. The third part is a case study of historical and archival research into the law, policy making, judicial and administrative processes surrounding the student loan program, especially surrounding the focal period of the study around 1990 through 1992.

Systems Approach - Focal and Other Actors

Each of the parts in this study are connected by the systems framework and model. The study has a focal period as its major historical component. The concept of "actor" is utilized to identify system components of the research setting and environment. Within this study the focal actor would be the major guarantor organization that guarantees Federally Guaranteed Student Loans and that collects those debts from consumers.

Other major actors influencing the process would include Congress and federal Agencies, such as the Department of Education and The Treasury.

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Institutional actors in the student loan program (lenders, guarantors, colleges and universities) and interest groups that are largely associated with the institutional loan actors.

The courts have also been major contributors toward the policies of the student loan program. The media and public opinion contribute toward the cultural and public values environment. These forces interact with public beliefs, myths and values toward the perception of debtors and attitudes toward personal financial obligations.

Systems Approach - Focal Period

A time frame is necessary to limit data gathering in this research. Policy changes unfavorable to consumers began as early as 1976, with changes in Federal Bankruptcy regulation related to student loans. The government's power to perform administrative takings of income tax refunds was authorized in 1985 in the Budget Reconciliation Act. These two events set the stage for the questions of the study.

The savings and loan crisis (S&L Crisis) of the late 80s and early 90s, along with the insolvency of a major student loan guarantor, however, precipitated a relatively concentrated period of legislative changes to the GSLP and court decisions related to default collections. These changes in policy run, roughly, from 1990 through 1992. This period is the focal period of the study and contains the focal policy changes that are key to the study.

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Systems Approach - Allocative Struggles and the Focal Process

This study utilizes a definition of focal process that limits the scope of the study. Focal process is the process of collecting a debt from a consumer and the policy change processes surrounding those activities. Key to this approach is placing the mode of information within the systems model as the analytical model that frames the focal process of the system. At the core of the debt collection process is the struggle between the collector and the consumer over payments, property, and information: a struggle between political actors over money, income tax refunds and the information used to collect both. This analysis can be conducted from within the framework proposed by Easton (Warren 1996, page 11) in which the administrative process is characterized as a struggle with the "authoritative allocation of values . . . the power of political actors to force their values on others." In this study the power struggle plays out in the obtaining or withholding of information, payments and income tax refunds.

Preeminent in this struggle over these allocations is the balancing of the rights of the individual against the rights of the state. In this study, the right of the consumer to receive their income tax refund and the right of the state to seize it in payment of an obligation to the government are the central outcomes that are examined. These struggles are characterized by the struggle of all parties in the system to persist and survive. In the political system, the struggle to survive forms the behavioral underpinning within which the political actors play out their needs, wants and desires.

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The administrative process of debt collection is a continuous process, both in its interaction between administrators and consumers and in the policy changes the program undergoes. The systems approach allows the tracking of these changes in relation to a process that spans the time frame by placing the elements of actors, processes and events in a consistent observable frame of reference, Warren (1996). These survival mechanisms also frame the processes of the other components of the system. In this study, consumers struggle to avoid inquiries or harassment and to be left alone by collectors, to control how they spend their money and to etain ownership of their income tax refunds. The individual collectors seek to do their jobs by collecting debts, while guarantors and lenders seek to meet federal standards as government officials of the executive branch try to meet the demands of congress. This model provides the general framework for the development of the detailed examination of the environment, other actors and related subsystems. The methodology for examining the relationship among the actors focuses on the exchange of information between actors within the focal process. The focus of the regulatory processes is applied to a consumer's loan at the various stages of the loan payment and collection process. The changes in the regulatory environment (legislative and judicial) is also be examined within this same model.

Figure 3. on the following page depicts the systemic relationship of the consumer within the student loan program. Environmental influences include many of the "other actors" covered earlier in this chapter. The environmental

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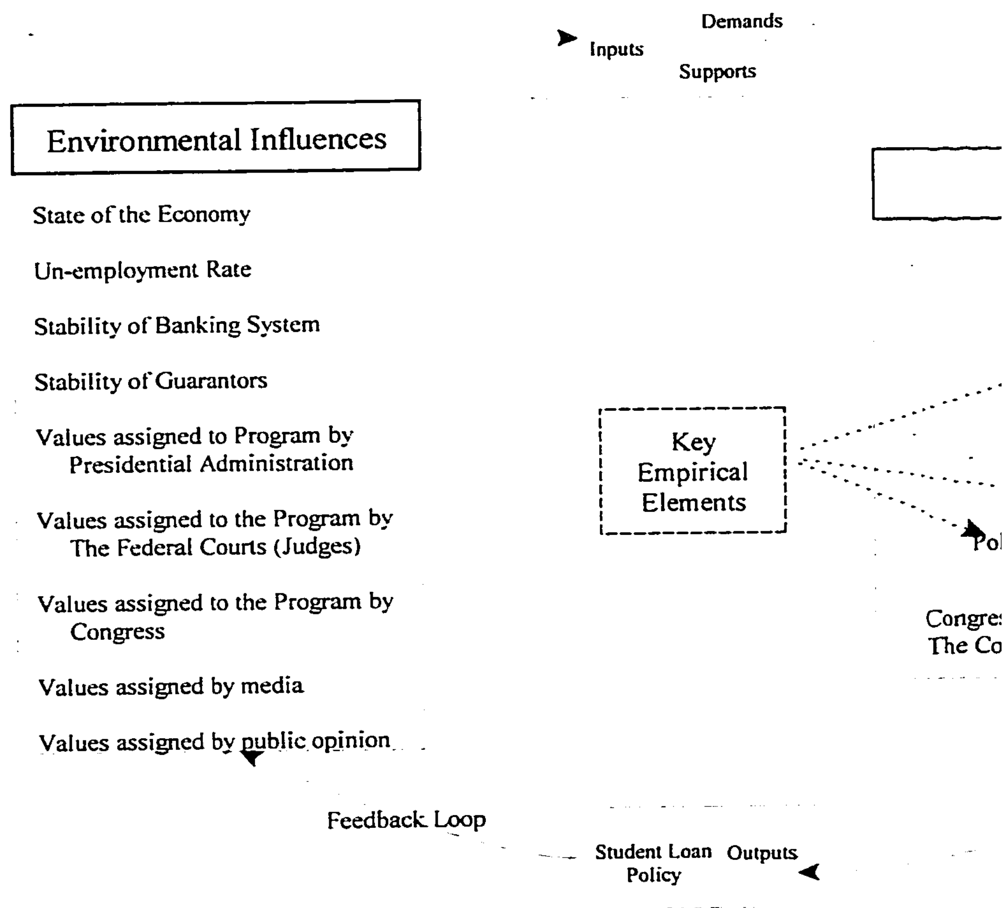
Figure 3. Student Loan Program's Administrative Environment and the Mode of Information



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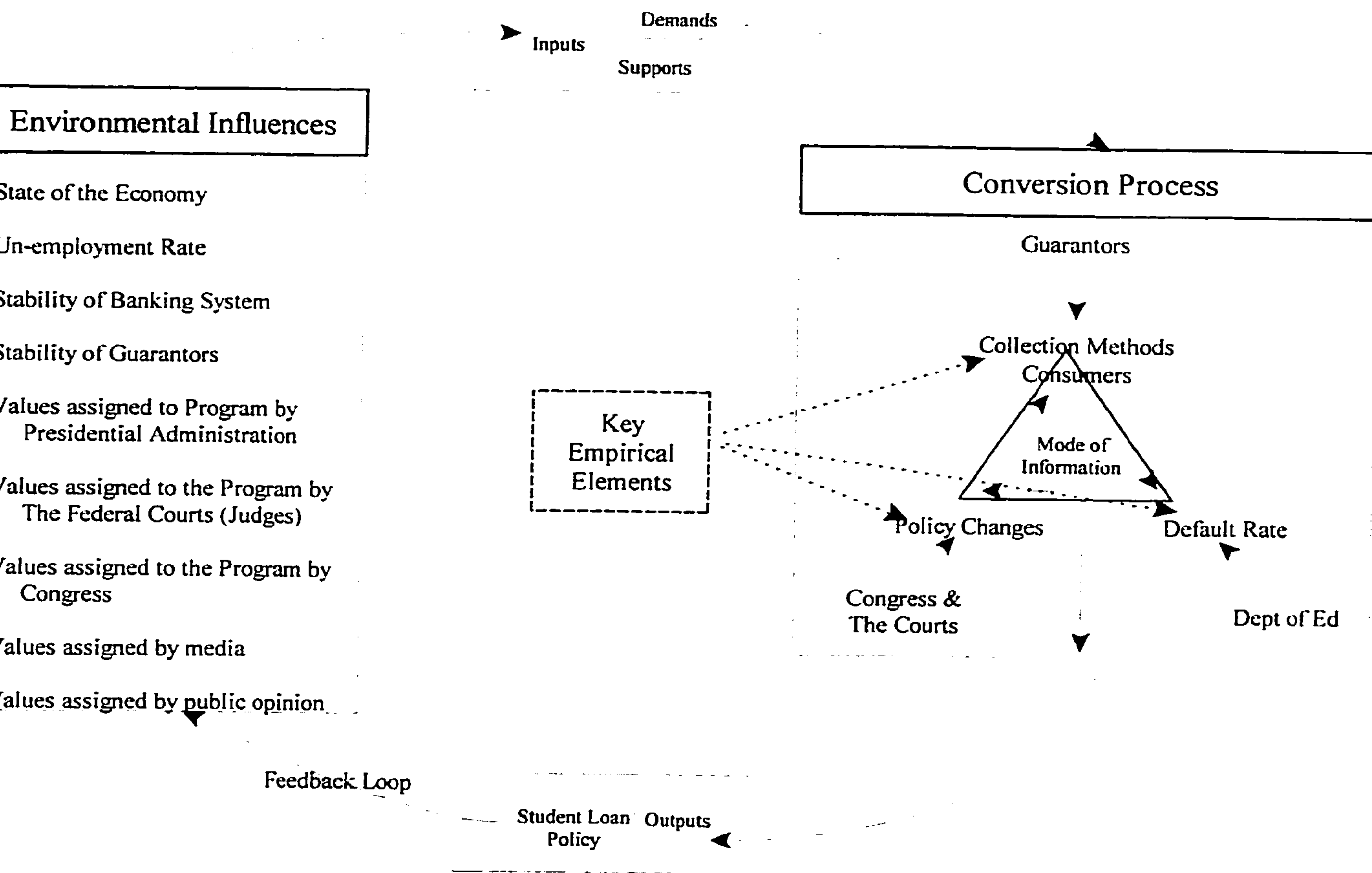
Program's Administrative Environment and the Mode of



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influences can be placed into two general classes. The first are the very identifiable economic influences; state of the economy, unemployment rate, the stability of the banking system and, more specifically, the stability of the student loan guarantors. These concerns are prominent among the legislators and the members of the judiciary. The other class of influences comprise the values that affect how actors value the student loan program. Typical values present in the discussion of student loans are the issues of deadbeat consumers, such as, student loans as public welfare, student loans as big business, and student loans and the concept of moral obligation of contract.

The environmental influences interact with the conversion process by both feeding changes to it and receiving changes from it. The conversion process of this study is focused on the federal student loan program, specifically those processes and policies affecting the collection of debt after default by a consumer with the original lender. Internally, the student loan default collection process is focused on three key empirical elements. These are collection methods, the default rate and policy changes. The triangle in this model linking these elements represents "mode of information" the analytical model used in this study to evaluate the research question and hypothesis. The triangle is the focal process. The guarantors are the focal actors, and within this study, is the largest guarantor, USAFunds.

Case Study Method

Case study methodology allows the researcher the flexibility to set limits on

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the scope and depth of the research project. It is especially useful in combination with the systems approach. The flexibility of case study methodology allows the researcher to incorporate systems model components into the construction of the case study. As the first attempt to examine the "mode of information" within a systems framework, the importance of the issue and the importance of information in the process determined the selection of a domain of investigation.

As stated at the beginning of this chapter, Poster's model asserts that the mode of information is used to monitor and control individuals and groups. This is accomplished through control of databases and data gathering mechanisms. The GSLP is based almost entirely on the administration of information. The GSLP process can also terminate with the taking of property in the form of income tax refunds, making the GSLP process a possible constitutional question.

The GSLP default collection process can eventually terminate at the taking of an individual income tax refund. This taking is based entirely on the information gathered during the collection process. The GSLP met the first set of criteria for a study of the mode of information.

Within the framework of a study of a federal program, the selection of a focal actor in the process might seem obvious. The Department of Education is the authorized administrator of the GSLP under the Higher Education Act of 1965. The study of this administrative and political environment requires a method of identifying the focal actor in way consistent with the constraints of the core processes involved in administering the program which is the gathering data from

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consumers. The Department of Education depends almost entirely on the data that student loan guarantors gather from consumers.

The guarantor that is most extensively engaged in this process, the largest guarantor of student loans since 1990, the oldest guarantor and the one most engaged in disputes with consumers over collection policies is USAFunds. USAFunds is a not-for-profit private corporation headquartered in Indianapolis, Indiana. USAFunds has the most contact with consumers through data gathering and debt collection. In this process, USAFunds is the most prominent actor placed between the government and the consumer. Through a system of systemic support the guarantors like USAFunds are placed in this position by agreement with the government, and in this way, they are a proxy agent of the government.

The focal process of this study is the gathering of data from consumers, data that is used in the administrative offset of an income tax refund. Independent student loan guarantors are the major sources for this data. The Department of Education acts as the final guarantor of the GSLP loan, but it depends on the student loan guarantors as the first line in the default collection process. The Department of Education uses the data from the guarantors to give authorization to the IRS to perform the offset of the income tax refund. The next section addresses questions of reliability and validity that arise out of qualitative research.

Reliability and Validity Issues

Qualitative and quantitative research methods approach the question of reliability and validity from differing perspectives. Michael Patton (1990)

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addresses these differences in the statement:

> The validity, meaningfulness and insights generated from qualitative research have more to do with the information richness of the cases selected and the observation/analytical abilities of the researcher than with sample size. (Patton, 1990 page 185)

This study consists of a single federal program. As a case study it focuses on the evolution of the polices that govern the program through a rich variety of settings and centers on a pivotal period of policy change. The settings include the Federal Courts, Congress, and administrative process. Yin establishes two operational criteria for achieving construct validity.

> 1. Select the specific type of changes that are to be studied.
> 2. Demonstrate that the selected measures of these changes do indeed reflect the specific types of change that have been selected. (Yin 1989 page 42)

Within this study, the type of changes that are analyzed is the due process available prior to the focal change period, versus those available after the changes in policy examined in the focal period of the study. The theoretic framework of the mode of information provides the criteria for categorizing these changes. These links are described in detail in Tables 3a, 3b and 3c.

Internal validity is heightened by following the policy change process through each of the major elements of the political and administrative system. The research is conducted by a former Federal Program Analyst (an internal auditor) who was also a consumer of a federally guaranteed student loan.

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Yin does not call for statistical reliability, but does require that other researchers be able to follow the procedures followed by the analyst (Yin 1989 page 45). The ability of other researchers to reasonably follow the course of a case study and achieve the same basic results constitute reliability for Yin. In this study the first level of the research procedure is the systems approach in the study of policy problems. The second procedural level is provided in the cross validation of documents, historic events as represented in documents, and constitutional law. By focusing on the publicly available documents rather than on aggregated statistical or anecdotal interview data, the degree of interpretation dependent analysis is reduced. The third procedural level is the evaluation of the documents, historic events and constitutional law against the three principal elements of the mode of information.

Operational Definitions

In Tables 3a through 3c, the linkages between the theoretic constructs of the mode of information are tied to the key empirical elements of collection methods, default rate and policy changes (see "Conversion Process" in Figure 3) and then tied to the independent variables of Tables 1 and 2 of Chapter One. These tables form the foundation of the evaluation method of the study and the process of linking the empirical elements found in the environment to the theory of the mode of information. In the section following the tables is a discussion of the research protocol and plan is made.

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Table 3a. Operational and Theoretical links of the study.

Key Theoretical Element	**Key Empirical Elements**	**Guarantor Independent Variable Elements**	**Consu Variab**
Monitoring and surveillance.	Collection methods	The data gathering techniques used to contact a consumer.	Metho consun
		Records of the collection effort presented to the Department of Education for default payment.	Consur collecti
		Records presented to the Internal Revenue Service to justify tax refund offset.	Consur non-pa
		Representation of law and policies by collector to consumers.	Consur non-co

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ı. Operational and Theoretical links of the study.

Key Theoretical Element	Key Empirical Elements	Guarantor Independent Variable Elements	Consumer Independent Variables Elements
Monitoring and surveillance.	Collection methods	The data gathering techniques used to contact a consumer.	Methods of contact with consumers.
		Records of the collection effort presented to the Department of Education for default payment.	Consumer understanding of collection law and policies.
		Records presented to the Internal Revenue Service to justify tax refund offset.	Consumer payment and non-payment.
		Representation of law and policies by collector to consumers.	Consumer cooperation and non-cooperation.

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Table 3b. Operational and Theoretical links of the study continued....

Key Theoretic Element	Key Empirical Element	Guarantor Independent Variable Elements
Using the norm to constitute the individual.	Default rate	Representation of data gathering techniques.
		Representation of data presented to Department of Education.
		Policy arguments regarding applicable laws and policies toward data gathering techniques of collection efforts.

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onal and Theoretical links of the study continued....

retic Element	Key Empirical Element	Guarantor Independent Variable Elements	Consumer Independent Variables Elements
norm to the individual.	Default rate	Representation of data gathering techniques.	Demonstration of default by consumer. Representation of consumer failure to pay or to make arrangements to pay.
		Representation of data presented to Department of Education.	Representation of due diligence in collection efforts by guarantors.
		Policy arguments regarding applicable laws and policies toward data gathering techniques of collection efforts.	Demonstration of default rate compliance on the part of the guarantors.

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Table 3c. Operational and Theoretical links of the study continued....

Key Theoretic Element	Key Empirical Element	Guarantor Independent Variable Elements	Co Va
Define the deviants.	Policy changes	Representation of dispute outcomes.	Der by c Rep con to n pay.
		Representation of individual cases.	Rep dilig effo
		Representation of aggregate consumer behaviors.	Den rate of tl

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3c. Operational and Theoretical links of the study continued....

Key Theoretic Element	**Key Empirical Element**	**Guarantor Independent Variable Elements**	**Consumer Dependent Variables Elements**
Define the deviants.	Policy changes	Representation of dispute outcomes.	Demonstration of default by consumer. Representation of consumer failure to pay or to make arrangements to pay.
		Representation of individual cases.	Representation of due diligence in collection efforts by guarantors.
		Representation of aggregate consumer behaviors.	Demonstration of default rate compliance on the part of the guarantors.

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Research Protocol

Data gathering for the study involves examination of public records in the form of legislative histories of the public law, legal cases, contractual agreements, congressional testimony and reports, Government Accounting Office (GAO), and Office of Management and Budget reports, media coverage and scholarly research. These data sets are limited to those documents, that are directly related to debt collection, student loan debt collection processes and related information gathering processes and policies. The selection of these documents clusters around the focal period of 1990 through 1992, during which the greater number of policy changes occurred.

These data elements are linked to three basic units of analysis embedded with the causal model. These three units are first the data gathering from the individual, second the aggregated data about the consumer population and third the policy changes as results of court cases and legislation. The data sets are examined and analyzed for inclusion in each unit of analysis. Each unit of analysis is linked to the three parts of the mode of information. An index has constructed around these units to determine the validity of the causal propositions offered as the central question of the study. The final section of this chapter discusses the limited ethical and human subject concerns of this research.

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Ethical and Human Subject Concerns

Ethical and human subject concerns are marginal. No interventions are performed by the researcher in the conduct of this study. This includes interventions in the activities of subjects or their organizations. Research consists of the reviews and analysis of archival documents. These documents are publicly available either in public repositories or through Freedom of Information Act requests under the Administrative Procedure Act.

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CHAPTER IV

The Study and Findings

The Environment of the Federal Student Loan Program

Within the systems approach, the environment is the framing component that places the study within the real world of an identifiable empirical context. In the first section of this chapter, the environment of the student loan program will be described, focusing on the actors within the system and their roles. This environment frames the conversion process that is at the center of this study. The conversion process will be treated in the second half of this chapter. In that section the mode of information will be examined as an explanatory theory of the conversion process of the student loan program.

By applying the systems approach, the environment of the Guaranteed Student Loan Program (GSLP) can be viewed in a general sense as a cross section of actors who have an interest in the program. There are actors who are involved in the administrative process of the program and actors whose values influence perceptions about the program.

Utilizing the systems approach, these actors and processes can be organized first, as the administrators and participants of the student loan program, comprising Federal, State, and not-for-profit organization administrators of student loan funds; second as the colleges and universities that qualify for participation in the program; third, as the financial institutions that offer loans to consumer borrowers, and fourth as the consumers' borrower who takes on the

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obligation of the debt.

The administrative process of the GSLP is made up of actors, who generate funds to finance the program, build reserve funds to provide insurance against consumer defaults, make loans to consumers, collect regular loan payments, administer default collection processes including income tax refund offset and wage garnishment, and review the eligibility of lenders, colleges, and universities (U.S. Department of Education, The Federal Financial Aid Handbook, 1994-1995).

The administrative process and the administrators of the student loan program, like other actors in the political system, are engaged with interacting, influencing, and being influenced by other key actors of the political and administrative system. These include Congress, the courts, the President, and other executive departments, agencies, and offices. Additionally interest groups are also engaged with these political actors in a process to influence the allocation of resources and values. Public opinion and media attention to the program also influence the administrative process (Warren, 1996, pages 35-67).

This first set of actors, and related processes generate another systemic element that is less defined but nonetheless important: the values and perceptions that arise out the interaction among the actors. These are however, less defined because of the ways in which they are shared by individuals across the organizational and institutional boundaries of the system. The most important

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aspect of these values and perceptions is the pressure they put on the administrators of the program to perform and to regulate (Warren, 1996, pages 54-55).

These values find expression in agencies and in Congress in the treatment of inefficiency, allegations of fraud, evidence of waste, and abuse of power (Warren, 1996, pages 60-68). It is found in the courts in the view of student loans as social welfare versus the view of student loans as a business. Finally it is found in the media and public opinion in the view of defaulted borrowers as deadbeats as opposed to good-faith borrowers who have encountered bad times, (H. R. Rep. No. 35-041 1990).

The concern of this study is in how the political and administrative system, its environment and conversion process, can lead to violations of due process. Kenneth F. Warren (1996) discusses the problem of how the political system influences administration and administrative law. This process can lead to the government becoming a “due process violator” (Warren, 1996, page 67). This study will examine the conversion process and environmental influences of the student loan program as a possible source of due process violations through the explanatory theory of the mode of information. In the next section we will take each part of environment and briefly describe its members and their roles.

The Administrative Process of the Student Loan Program

The lenders, schools, guarantors, Department of Education, and IRS are

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the organizations that comprise the actors in the policy process that creates and manages the records systems of the student loan program. These record systems represent the status of a borrower within the program. They also represent the efforts made to collect on the account by the lender, guaranty agency, Department of Education, or the IRS (U.S. Department of Education, The Federal Financial Aid Handbook, 1994-1995).

The acceptance of each set of records from participant to participant is based on policies which set and establish stringent criteria of acceptance and eligibility. Guaranty agencies and the Department of Education review both the lender for program eligibility and the borrower applications for accuracy and completeness. In many instances the guarantor provides part of the loan application forms and packages. If the borrower completes school and pays the loan without default, the loan remains on record as a subsidized loan to the lender and is reported as a paid account for the borrower's credit reporting files (U.S. Department of Education, The Federal Financial Aid Handbook, 1994-1995). If the borrower defaults or the lender produces a record alleging a default by a borrower, the lender may file a claim for payment with the guaranty agency. In filing the claim, the lender must produce records of the borrower's payment history and records of the lender's "due diligent" effort to collect on the loan. *Black's Law Dictionary* (1992) defines due diligence as

> Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and

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> prudent man under the particular circumstance: not measured by any absolute standard but depending on the relative facts of a special case. (*Blacks*, 1992, page 457)

Within the Higher Education Act of 1965 as amended by the Higher Education Amendments of 1986 through PL99-498 section 435(f), 20 U.S.C. 1078-5 "due diligence" is defined:

> The term "due diligence" requires the utilization by a lender, in the servicing and collection of loans insured under this part, of collection practices at least as extensive and forceful as those generally practiced by financial institutions for the collection of consumer loans.

This definition has been similarly applied to guaranty agencies in their collection efforts. Proof of an organization's due diligence is generally contained as a system of records that track notices mailed and telephone calls made to consumers. These are combined with payment histories and copies of correspondence from the borrower to validate a consumer's default. These records are sent from lender to guarantor and later from guarantor to the Department of Education as part of the process of filing for a claim on the defaulted loan. (U.S. Department of Education, The Federal Financial Aid Handbook, 1994-1995).

The payment of these claims and review of the records is made within a broader context of each lender or guaranty agency's default rate. A rate above 9 percent will cause a decrease in the percentage of the claims paid until the lender or guarantor makes efforts to decrease its default rate (U.S. Department of Education, The Federal Financial Aid Handbook, 1994-1995).

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Lenders are private, generally for-profit organizations participating in government subsidized loan programs to stimulate the generation of loans for individual enrollments in higher education institutions. The guarantors have a unique mix of actors, as noted earlier in the chapter. When a borrower defaults with the lender, the lender must demonstrate a concerted effort to collect within the criteria of due diligence and consumer law. Demonstrated due diligence is particularly important, since as a guaranteed or insured loan the potential for false or unsupported claims may arise.

Most consumer loan programs are based on a lender's assessment of the risk of extending credit to individuals based on their credit histories. Within the student loan programs the risk is underwritten by interest subsidies to the lender, and payment of claims is based on a valid, due diligent effort to collect.

The government does not pay the initial claim filed by the lender. This first claim payment is made by the guaranty agency. This has the effect of making the guarantor the new owner of the loan by way of the paid claim. The guarantor must similarly make due diligent effort to collect. The guaranty agency compiles records of payment histories, collection efforts, and borrower correspondence. If the guarantor is likewise unable to collect from the borrower, the guarantor may file a claim with the Department of Education (U.S. Department of Education, The Federal Financial Aid Handbook, 1994-1995).

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The typical procedure after the claim is paid to the guarantor is for the Department of Education to turn the loan back over to the guarantor. In this phase the loan is now treatable as a debt to the federal government. The guarantor is able to use the authority of this status to increase its collection efforts. It may cooperate with the IRS in an income tax offset or perform an administrative garnishment of wages (U.S. Department of Education, The Federal Financial Aid Handbook, 1994-1995).

If the income tax offset program is utilized, records from the guarantor are forwarded through the Department of Education to the IRS. The IRS depends upon the Department of Education to assure due process has been followed in the compilation of the records used to base an offset. The proof of default resides in the records generated by the collection efforts of lenders and guarantors. Reimbursement of lenders by guarantors and of guarantors by the Department of Education is based on the proof of due diligence documented by the lender and guarantor. The performance criteria used to determine regular continued reimbursements are the default rates of consumers contained in each lending organization's loan portfolio and the student default rates of educational institutions. This default rate is the core of any compliance review of a lender, school, or guarantor participant in the student loan program. Defaulting borrowers and the default rates of the lenders, the guarantors, and the schools are central to the regulatory debate over student loans (S. Hrg. 101-1116, 1990).

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The Administrators and Participants of the Student Loan Program

Steven Waldman (1995) provides the most comprehensive review of the wide range of participants within the federally guaranteed student loan program. The administrative participants within the student loan program consist of the Department of Education, the Student Loan Marketing Association (Sallie Mae), the 46 student loan guaranty agencies, the Internal Revenue Service (IRA), the lenders, the schools, and the borrowers.

The Department of Education is the administrator of the Higher Education Act of 1964 and administers the federal financial aid programs which include both grants and loans to students. The department is responsible for assuring that the program actors meet the minimal qualification for program participation. That responsibility extends to student and parent borrowers, schools, lenders, and guaranty agencies. The department does few of these reviews directly but has implemented a system of review in which guaranty agencies, schools, and lenders conduct most of the reviews (U.S. Department of Education, The Federal Financial Aid Handbook, 1994-1995).

The IRS is engaged by the Department of Education in the offset of federal income tax refunds. This part of the program has been in effect since 1985 with the implementation of the Deficit Reduction Act of 1984. This allows the government to seize the income tax refund owed to a taxpayer until payment of a defaulted student loan is complete. This is acknowledged as a taking of property

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under the Fourteenth Amendment of the Constitution and as such has required stringent adherence to due process as an administrative offset. This role of the IRS is relatively passive. The IRS depends upon the Department of Education and its guarantors to assure the due process and integrity of the information it receives (U.S. Department of Education, The Federal Financial Aid Handbook, 1994-1995).

There have been student loan guaranty agencies in existence since 1960 with the first development of student loans under the Higher Education Act of 1965. The Education Amendments of 1976 strengthened and expanded the role and position of student loan guarantors in the administrative process. At present 46 guaranty agencies can be classified in three groups:

1. State agencies organized as guaranty agencies to guarantee loans made to residents of a particular state.

2. Not-for-profit corporations organized as guaranty agencies to guarantee loans made to residents of a particular state.

3. Not-for-profit corporations organized as guaranty agencies to guarantee loans made to residents across many states (S. Hrg. 101-1116, 1990).

The guarantors, by their contracts (Participation Agreements) with the Department of Education, are responsible for assuring borrower and lender eligibility for program participation. More importantly they pay lenders for loans defaulted on by borrowers and make collection efforts on those defaulted loans. This effort can include use of income tax offset and garnishment of wages in

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conjunction with the Department of Education and the Internal Revenue Service.

Thousands of institutions qualify for participation in the GSLP. These can include vocational schools and programs, community colleges, private for-profit and not-for-profit colleges and universities, and state colleges and universities. Qualifying programs can be as short as six months and extend through graduate and professional degree programs. The institutions and programs are highly sensitive to the demographics of the student enrollment marketplace. Because this is so, assuring that programs meet federal student loan guidelines is important in attracting enrollments (U.S. Department of Education, The Federal Financial Aid Handbook, 1994-1995).

The growth in proprietary vocational school participation has had consequences for the student loan program. The students who attend or enroll in these schools have had the highest rates of default. Both program size and lack of federal direction kept their numbers small until passage of Pub. Law 99-374, the Education Amendments of 1980 20 U.S.C. 1088. This Reagan-era act expanded eligible institutions to proprietary vocational schools.

The Student Loan Marketing Association (Sallie Mae) was organized in 1972 as a government-sponsored enterprise and a for-profit corporation through passage of The Education Amendments of 1972. The express purpose of its charter has been to generate funds and make these funds available to qualified lending institutions and student loan guarantors for the purpose of making and

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guaranteeing student loans. Since that time it has grown to become one of the top 20 diversified financial institutions in the United States. It participates in the student loan process not only as a lender to banks but also as a direct lender to student consumers and as a participant in the secondary student loan market, the trading in student loans among institutions (H. R. Rep. No. 99-C, pages 2-4, 1984).

The lenders which participate in the student loan program range from credit unions, saving and loan associations, local, regional and national banking institutions, to secondary loan market companies which purchase accounts from original lenders. In addition to these organizations, both Sallie Mae and a number of the guaranty agencies participate as lenders in the secondary loan market . Participation as a lender is made profitable by federal subsidy payments. Student loans are made to the consumer at below market rates. The lenders are able to do this because of the subsidies made by the Department of Education. The guaranty agency assumes any loans from a lender that a borrower defaults upon. As long as the institution maintains a reasonably low default rate, it can remain a participant in the program (S. Hrg. 101-1116, 1990).

Millions of consumers apply for loans each year. These include aspirants for professional and graduate degrees as well as undergraduate and vocational education seekers. Underlying the demand for student loans is both the marketplace demand for qualified, professional, certified personnel and for well-

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trained employees. The cultural values associated with the pursuit of higher education also guides consumer decisions regarding educational choices. There have been additional incentives developed in welfare regulations which require recipients to seek training and education. This has consequently contributed to the demand for vocational education and training.

Other Policy Actors

Other policy actors that affect the regulatory process and influence the debate on student loan programs and problems can be divided among several executive agencies, the Office of Management and Budget (OMB), and the Federal Trade Commission (FTC). Congress, General Accounting Office (GAO) and a number of interest groups also influence student loan policy. Additionally the courts and those appearing before the courts influence policy in the student loan program. Finally, public opinion and media coverage, by framing debates throught perception and value allocations, also have significant influence as forces in the political system. (Warren, 1996).

Other Executive Agencies

The OMB provides administrative and budgetary services to the executive. OMB, which has administrative authority over the Federal Privacy Act, also conducts studies and issue reports on government operations on behalf of the president and other executive department, agencies, and offices.

The FTC administers the Consumer Credit Protection Act. It receives

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complaints from consumers and has discretion in calling hearings on consumer problems with industry practices. The FTC also issues advisory opinions to consumers and industry officials on questions regarding specific practices.

Congress and Interest Groups

Among the interest groups are the National Council of Higher Education Loan Programs, the Career College Association, the Consumer Banker's Association, the National Association of Independent Colleges and Universities, the American Association of State Colleges and Universities, and the National Association of Student Financial Aid Administrators (Waldman 1995).

In the House of Representatives, the principal committee engaged in higher education legislation is the Labor and Education Committee. Issues related to consumer legislation are handled through the House Banking Committee. Programs face further review and authorizations through the House Appropriation Committee. In the Senate the Committee on Labor and Human Services is the focal point of education legislation. The Senate Banking Committee deals with consumer finance and banking legislation. The Senate Budget and Senate Finance committees review for program funding and authorization (Waldman, 1995).

The General Accounting Office (GAO) reports the findings of its program and organizational audits, reviews, and studies to Congress. In this capacity GAO can make recommendations to the organization under review and recommend to Congress possible legislative solutions to policy problems and issues. The GAO

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has performed a number of studies of the federal guaranteed student loan programs. Important adopted recommendations have included modification of status of student loan guarantor excess reserve funds and improvements in data processing and accounting systems (Waldman, 1995).

Interest groups which lobby for issues within and surrounding the student loan programs have largely consisted of institutional beneficiaries of the program rather than student consumers.

The National Council of Higher Education Loan Programs (NCHELP) represents the student loan guaranty agencies. This representation extends not only to expressions of guaranty agency legislative interest but has also found expression in judicial matters in the form of amicus briefs in cases involving conflicts between the guarantors and the Department of Education (Waldman, 1995).

Technical, vocational, and proprietary schools have expressed their interests through several organizations, including the Career College Association (CCA). The CCA represents the interest of these groups. The principal direction of this representation has been in the expansion and retention of qualifying programs. High default rates among vocational, technical, and proprietary schools have led to stronger oversight of these organizations. Problems with defaults continue to exist within the group of organizations which CCA represents (Waldman, 1995).

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The Consumer Bankers Association (CBA) represents banks engaged in the consumer lending industry, which includes most lending other than mortgage and investing banking. Student loans form an important market for consumer bankers. Expansion of the loan program, its continuation, and the level of federal subsidy payments form the main concerns of CBA's legislative interests (Waldman, 1995).

The National Association of Independent Colleges and Universities (NAICU) represents private higher education institutions that are characterized by their high tuition costs compared to many of their state college and university competitors. These costs can affect student enrollment. Lending ceilings, program eligibility, and family income issues are chief concerns of NAICU and its members (Waldman, 1995).

The American Association of State Colleges and Universities (AASCU) represents the interests of state colleges and universities. They share many of the issues of NAICU. In states which have a well-developed group of private colleges and universities, the state universities and colleges often have evolved similarly high tuition rates (Waldman, 1995).

National Association of Financial Aid Administrators (NAFAA) represents the concerns of college and university financial aid administrators. These concerns include the ease of program administration, program and school qualification and eligibility. Activity of NAFAA also extends to concerns about other aid programs

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such as grants (Waldman, 1995).

The Judicial Policy Actors

This group contains the federal courts, consumer plaintiffs, plaintiff representatives, the Department of Justice and the Department of Education. Important Judicial Actors within this study is the United Auto Workers Legal Services Plan and, for its influence through the dissemination of information, the National Consumer Law Center.

The courts participate in student loan policy making through their findings and interpretations of the law and use by attorneys of the case law developed within the courts. Both the Department of Justice and the Education have represented education's concerns to the courts as plaintiffs and as defendants. In many important cases of consumer and student loan case law, private individual plaintiffs have been represented by not-for-profit legal service organizations.

The Department of Justice has functioned as local counsel for the Department of Education in a number of cases involving consumer plaintiff actions filed against the Department of Education. The Department of Justice has also represented the Department of Education and the United States in suits brought against consumers who have defaulted on their student loans. Justice has also represented the Department of Education in major criminal and civil cases brought by Education against schools and lenders.

Chief among the not-for-profit legal service organizations representing

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consumers in disputes regarding debt collection practices in general and student loan debt collection has been the United Auto Workers Legal Services Plan (UAW-LSP). Though it is a national organization, it is organized locally by company as UAW-GM LSP, UAW-Ford LSP, and UAW-Chrysler LSP. The restructuring and layoffs within the auto industry and resulting debt payment problems of UAW members have led UAW-LSP to be a leader in consumer debt collection case law. In both *Jones v Cavasos* and *Games v Cavasos*, UAW-LSP represented the plaintiffs, and at least one UAW-LSP attorney was involved in each case.

The National Consumer Law Center (NCLC) is an independent not-for-profit organization which grew out of the Boston University College of Law. Its publication of annual reports on consumer legislation and case law has centralized and eased the research process for consumers, consumer attorneys, and consumer organizations. NCLC's interpretation can influence public policy by way of the strategies utilized by consumer representatives based on NCLC reporting. In fact some of the case law interpretations have been provided by attorneys involved in some of the cases. The 1990 NCLC Debt Collection Practices Manual presentation of *Games v Cavasos* was originated by one of the plaintiff's attorneys in the case.

The Media, Public Opinion, and the Pressure to Perform and Regulate

By the late 1980s with nearly 22 million loans having been made through

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various GSLP loans, hardly any family in America was untouched by the program. News coverage of defaults, especially defaults by professionals such as medical doctors and lawyers, were becoming well publicized in the professional, national, and local media (S. Hrg. 101-1116, 1990).

Though defaults on student loans are rarely front page material, the values associated with such concepts as "deadbeat" consumer and "feeding at the public trough" strike an emotional chord in the public mind. However, the desire for the opportunity of higher education is also highly valued.

In the professional press the most extensive coverage has come from the Chronicle of Higher Education (CHE). The CHE, with its obvious audience of administrators and professionals engaged in institutional compliance, has demonstrated the most in-depth and extensive coverage of the GSLP.

National coverage has usually been through the major national newspapers and news magazines. Among the newspapers the Wall Street Journal, Washington Post, New York Times, Los Angeles Times, and Chicago Tribune have led coverage. Among the news magazines Time, Newsweek and U.S. News and World Report have been most prominent.[1]

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[1] The Wall Street Journal provided the most extensive coverage of the problems of the Higher Education Assistance Foundation, 07/23/90, 07/25/90, 08/06/90, 09/21/90 among others. Followed closely by The Washington Post similarly on 5/10/90, 7/25/90, 7/26/90, 08/07/90, 09/26/90, 09/29/90. Media coverage can be categorized as focusing on three areas. Crises such as the HEAF bankruptcy. Major legislative initiatives such as President Clinton's National Service Plan. And the problems of consumer defaults and delinquencies.

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Broadcast coverage, with the exception of reportage of the Clinton administration's National Service Bill of 1992, has usually been local. This has been largely local television news reports of high-profile local consumer abuses of student loans. An example of this was St. Louis KMOX-TV, when Mike Owen reported on local defaulters of the Department of Education's Medical Education Loan Program (KMOX-TV, 1995).

Public opinion and shared values are perhaps the most important elements within this part of the environment. The media serves to translate these values into several basic points. The first, most obvious, of the points are the attitudes of the public toward people who are unable or unwilling to repay debts or obligations which find expression in the term "deadbeat." The second is the concern of the taxpaying public over use of the taxpayer's money. The third is the view that people seeking public assistance, regardless of its form, should be required to submit to special requirements that assure the protection of the public interest. These public values help form the debate among decision makers in Congress and the courts about the pressure to regulate and to perform. This will be treated next.

The confluence of actors, default rates, student loan records, and public opinion can be seen to form the heart of student loan collection regulation. The policy outcomes of these debates in Congress have resulted in decreased rights of consumers from their status prior to the change in policy. In the courts, when a consumer case results in increased or affirmed rights, it is soon followed by

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amendments in Congress to stop similar consumer victories. This has been the case in both bankruptcy law and in the statute of limitations. It is the relationship between the pressure to perform and regulate, on the one hand, and the government as due-process violator on the other, that forms the basis of this study. That study is the next part of this chapter.

History of the Student Loan Program

The purpose of the historical review will be to give the reader a feel for the historical place of the student loan program within the context of the times. The administration of student loan programs has been influenced by the history that has taken place around it. The names of these historic periods have become familiar in the study of United States history. They are used here to describe the factors, events, actors, processes, and advocates that contributed to the development of the student loan program.[2] The seven sometimes overlapping periods are demarcated as

1. The Cold War, 1958 to 1965.
2. The Great Society, 1965 to 1968.
3. The Consumer Movement, 1968 to 1972.
4. Watergate, 1973 to 1976.
5. Recession, Hostages and Reaganomics 1977 to 1988.

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[2] The researcher utilized a variety of accepted sources for the definitions of the historical periods. These include the works of authors cited elsewhere in the study such as James L. Sunquist, Kenneth F. Warren and Steven Waldman. Additional sources for general reference but not quoted in the study include Richard Neustadt's *Presidential Power*, James MacGregor Burns' *To Build and to Heal*, Dwight Eisenhower's *Waging Peace* and Robert W. Hartman's *Credit for College*.

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6. The Savings and Loan Crisis, 1988 to 1992.
7. The Clinton Era, 1993 to the present.

The Cold War

The embryonic period of the program was 1958 through 1965. The initial birth of the program was in large part due to the events of the Cold War and such strides in Soviet science such as the Sputnik satellite. In response the United States embarked on a student loan program in the form of the National Defense Education Act of 1958 (NDEA). The original emphasis of the program was to stimulate scientific study in the United States by providing a way for talented students to continue on through College. The student loan program of the National Defense Education Act, like many Eisenhower programs was created under the banner of improved national defense. In order for many Eisenhower agendas to succeed, it was necessary to adopt the national defense position, the best example of this probably being the federal interstate highway system.

Another political concern accelerated Eisenhower initiatives in higher education. Prior to passage of NDEA proposals for local school construction, funds had been made to Congress. Blocking this was the civil rights issue of providing federal construction funds and aid to segregated schools. With a stall in local school programs, the administration bolstered its efforts toward higher education (Sundquist, 1968, pages 173-80). In 1960, shortly after leaving the presidency, Eisenhower became honorary chairman of the newly formed United Student Aid Funds (USAFunds Website, USA Group Timeline: A Look into Our

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History, 1998. See Appendix C).

The Great Society

Higher Education became one the initiatives of President Johnson's "Great Society" of the 1960s. The program was moved from Defense to Health Education and Welfare (HEW). By way of the Higher Education Act of 1965 (HEA), student loans were moved to the jurisdiction of the Commissioner for Education within the Department of Health Education and Welfare. This formative period was characterized by few federal restraints on either the consumer or debt collectors. Other than state laws and the Federal Bankruptcy Act, there was no comprehensive body of consumer law. This short period extended from 1965 through 1968.

The Consumer Movement

Consumers organized to demand both better products and fairer treatment in credit transactions. Behavioral studies were used to demonstrate the basic integrity of consumers versus the predatory practices of many lenders and debt collectors. The Consumer Credit Protect Act is the umbrella for the Truth in Lending Act, Equal Credit Opportunity Act, Fair Billing Practices Act, and Fair Credit Reporting Act. Through this legislation the federal government first moved to regulate the private sector's information practices. It does this several years in advance of regulating its own practices.

This period is the first marked by changes in the forms of consumer

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protection available to all consumers. The growth in consumer credit legislation had its origins in the expansion of consumer interest groups and in concerns about credit practices within the consumer credit industry. Classified as consumer loans, student loans came under the same consumer credit protection laws as credit cards and revolving charges. This period saw the passage of extensive consumer legislation. Under the general heading of the Consumer Credit Protection Act, a series of laws beneficial to consumers was passed. This included the Truth in Lending Act of 1968 (TILA), the Fair Credit Reporting Act (FCRA), the Equal Credit Opportunity Act (ECOA), Fair Credit Billing Act (FCBA), and also the Fair Debt Collection Practices Act 1976 (FDCPA), The Right to Financial Privacy Act of 1978, and the Amendments to the Fair Debt Collection Practices Act 1986 that extended that law's provisions to attorneys. Table 4 depicts the chronology of this legislation.

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Table 4. The Development of Consumer Credit Protection Legislation.

Date	Law	Title and Major Sub-Titles
5/29/68	PL90-321	Consumer Credit Protection Act of 1968 Title I Truth in Lending Title II Extortionate Credit Transactions Title III Restrictions on Garnishments
10/26/70	PL91-508	Fair Credit Reporting Act
10/28/74	PL93-495	Equal Credit Opportunity Act Fair Credit Billing Act
9/20/77	PL95-109	Fair Debt Collection Practices Act
11/10/78	PL95-630	Right to Financial Privacy Act of 1978
8/9/86	PL99-361	Amendment to Fair Debt Collection Practices Act

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One of the most important features of this legislation was the reporting standard encompassed within the FCRA. Passed in 1970, four years prior to the Federal Privacy Act, this legislation established standards for consumer access to credit reporting files. This access included the consumer's right to challenge or reasonably amend the information contained in his or her files. The reasoning behind the FCRA was not so much motivated by privacy as it was by concerns that in the loan marketplace accurate information was required for fair and proper operation of the market.

In 1974 the ECOA was passed as a means to again assure fairness in the credit marketplace. This legislation focused on the alleviation of discrimination based or race, gender, or religious affiliation, assurances that certain kinds of information did not influence the granting of credit.

Though many of the changes in consumer credit regulation dealt with the ways information was utilized, these laws were developed to address specific industry practices and have generally not been viewed as information law or policy. The consumer credit laws regulated how information was presented to the consumer, regulated how information about consumers was compiled, proscribed how consumers could attain access and change information about themselves, and defined what constituted valid information for presentation in a court of law. In this respect each of these sets of laws, written from the point of view of regulating

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very specific behaviors, was in fact regulations on how information about individuals could be used by credit marketers and debt collectors.

Watergate and its Aftermath

The break-ins, wiretaps, and coverups surrounding Watergate led to new laws governing how the federal government regulates access to information on its activities and on information it has gathered about private citizens. Central to this period are the changes in the Freedom of Information Act and the new Federal Privacy Act, which expanded the role of the Administrative Procedures Act. However, this post-Nixon legislative initiative toward a federal policy begins with the Family Education and Privacy Rights Act, regulating how education institutions treat the information of private individuals.

During this period three other important acts were passed which likewise regulated how information about individuals was obtained and used. These acts were the Freedom of Information Act of 1974, the Family Education and Privacy Rights Act of 1974, and the Privacy Act of 1974. Arising out of the milieu of the Watergate hearings, these important initiatives greatly expanded individual and public access to information and information gathering processes of the federal government. These acts exposed government activities to greater public and individual scrutiny.

Both the Freedom of Information and Privacy Acts are promulgated within the framework of the Administrative Procedure Act (APA) in much the same

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manner of codification as consumer legislation is codified within the Consumer Credit Protection Act. The individual acts must therefore be viewed within the broader context of each body of code. The APA is codified to address government-wide administrative issues. Table 5 depicts the entire scope of APA evolution to demonstrate the seriousness Congress gives to any exemption to the FOIA or Privacy Act. The original FOIAs were considered weak and ineffectual. The 1974 Amendment addressed many of these issues, widening access and limiting bureaucratic abilities to limit access. Exceptions and exemptions are specific. Within the 1974 amendment the principal exemptions to access are given to cover criminal investigations and information considered proprietary. In the Central Intelligence Agency Information Act of 1984, Congress created the framework for management of Central Intelligence Agency information and the FOIA. With the Anti-Drug Abuse Act of 1986 Congress established the framework for the Drug Enforcement Administration and the FOIA. In each of these cases national security and law enforcement were the overriding concerns which created the special provisions within FOIA.

The Privacy Act heavily regulated the nature and purposes of federal information gathering on private individuals. The location and structure of record systems on individuals were to be published and were to be compiled only for expressed programmatic or statistical purposes. Special provisions were included which forbade the compilation of records related to a person's exercise of First

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Amendment rights except for criminal investigations. Individuals were to be allowed access to their files and given the opportunity to amend their records.

Amendments to the Privacy Act have tended to expand its application with two important exceptions. The Congressional Reports Elimination Act of 1982 reduced the reporting requirements by the Department of Education and other federal agencies. In this amendment agencies were no longer required to continuously publish notices of their record systems in each Federal Register but merely had to publish once at the implementation of a system of records or with changes in those record systems. The other significant exception was the allowance for agency reporting to private credit reporting agencies of credit information on individuals owing money to the federal government. Otherwise amendments to control computer matching have aided the private citizen in assuring a framework for regulating exchange among computerized databases which might otherwise be freely accessed by federal officials.

The Sunshine Act, Administrative Resolution Act, and Negotiated Rule Making Act are included in Table 5 to emphasize the scope of APA and to demonstrate the relationship between the FOIA and Privacy Act to the due process and access dimensions which comprise the APA. Though it is not codified under the APA, The Family Education Rights and Privacy Act of 1974 (FERPA) is also included in Table 5. The chronological proximity of FERPA to the Privacy Act, and in fact its preceding of the Privacy Act, causes it to be placed here as an aspect

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of federal information policy. The emphasis of FERPA is on the removal of federal funding from any educational organization (inclusive of state agencies and state educational institutions) if that organization distributes information on individuals to third parties without the consent of the individual or the individual's parent or guardian.

Taken together, the body of consumer legislation and federal privacy and freedom-of-information legislation may be viewed as the beginnings of a still changing body of information law and policy. It may be possible to create an umbrella concept of federal information law. Under this concept there is a body of law dealing with private information. Under private information law, segments dealing with private sector activities (consumer law) and government sectors (privacy law) can be classified.

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Table 5. Freedom of Information and Federal Privacy Legislation.

Date	Law	Title or Synopsis
6/11/46	PL79-404	Administrative Procedure Act of 1946 (APA)
8/12/58	PL85-619	Amendment of Section 161
7/4/66	PL89-487	Amendment to APA Chapter 4
9/16/66	PL89-554	Freedom of Information Act of 1966
6/5/67	PL90-23	Amendment to 552(a) FOIA
8/21/74	PL93-380	Family Education Right and Privacy Act of 1974
11/21/74	PL93-502	Freedom of Information Act of 1974
12/31/74	PL93-579	The Privacy Act of 1974
9/13/76	PL94-409	Government and the Sunshine Act
12/21/82	PL97-375	Report to Congress FOIA Amendment
10/15/84	PL98-477	Central Intelligence Agency Information Act
10/27/86	PL99-570	Subtitle N DEA and FOIA
10/18/88	PL100-503	Privacy and Computer Matching
7/9/89	PL101-56	Computer Matching
11/15/90	PL101-552	Administrative Resolution
11/29/90	PL101-648	Negotiated Rule Making

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In the FDCPA of 1977, third parties engaged in debt collection were regulated at the federal level. Again, this was done from the perspective of market fairness and to alleviate abusive collection practices that had become rampant within the debt collection industry. In the FDCPA extensive attention was give to how information was collected. The provisions of the act can be grouped into two categories: prohibited practices and required practices.

Recession, Hostages, and Reaganomics

The Carter administration had been brought to a standstill by the hostage situation in Iran and a recession at home. The country began an ideological shift to Reagan-brand conservatism. With Reagan's election and the appointment of David Stockman as head of the OMB, discussions of shutting down the student loan program had gained public attention. However, instead of shutting down it was expanded. Private proprietary schools were allowed to qualify for loans for their students. A federal student aid mix of 70 percent grants and 30 percent loans was quickly flipped to 30 percent grants and 70 percent loans (S. Hrg. 101-1116, 1990). The government increased its default collection efforts. In 1982 it moved first against its own employees in allowing offset of income tax refunds and wages via the Federal Debt Collection Act of 1982. In 1985 it moves against other consumers through income tax offset legislation in the Omnibus Budget Reconciliation Act of 1985.

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Fears of graduating students filing for bankruptcy led to changes in both the Higher Education Act and to changes in the Federal Bankruptcy Act. Changes were made in both laws to prevent use of these rights against the government. This period ends under President Carter with the Fair Debt Collection Practices Act amendment to the Consumer Credit Protection Act, perhaps the most extensive regulation of information gathering practices of either a public or private sector organizations.

These changes contained two provisions that marked the beginning of the process of separation of the student loan program from consumer law. Student loans were exempted from Chapter 7 Bankruptcy unless the borrower had been in repayment on the loan for at least five years. The Department of Education was created in 1979.

Progress was made in the area of some consumer privacy rights. In November 1978 the issues of privacy and personal financial information came together in the Federal Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 (FRFPA). This did not significantly affect the information provisions of the Fair Credit Reporting Act. FRFPA was primarily concerned with account and transaction information rather than with credit reporting information. The FRFPA formalized protection of personal account information, especially transaction history, but in so doing also established specific procedures and exemptions for federal access to that information.

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The scope of qualifying programs and institutions had been broadened by passage of the Education Amendments of 1980, especially for proprietary vocational schools. In the early 80s the student assistance mix was changed from 30 percent loans and 70 percent aid to 70 percent loans and 30 percent aid (S. Hrg. 101-1116, 1990), where it remains at the time of this writing. At the same time the number of audits was dramatically reduced. In 1982, as a move to reduce administrative costs to lenders, student loans were exempted from TILA in the Garn-St. Germain Depository Institution Act of 1982. In the Budget Reconciliation Act of 1985, student loans were included in a test program for the Administrative Offset of Federal Income Tax Refunds. Under this program, defaulted borrowers, whose loans have ended their administrative collection cycle at the Department of Education, could have their income tax refunds seized as payment on their student loans. Each of these changes and programs is still in effect. Table 6 depicts the beginning period of restrictions on consumer rights of student loan program actors.

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Table 6. Beginning Exemptions of Student Loans from Consumer Law.

Date	Cases - Laws	Synopsis of Student Loan Provisions
10/12/76	PL94-482	Exempted guaranteed student loans from dischargeability under Chapter 7 of the Bankruptcy Act. Required loans to be in repayment for five years before they could be considered for discharge. Effective on any proceeding on or after 9/30/77. Provision retained in later bankruptcy acts.
10/15/82	PL97-320	Exempted guaranteed student loans from the Truth In Lending Act (Title I of the Consumer Credit Protection Act). This was justified as a reduction in notification paperwork during the time period when no payments were due on loans.
7/18/84	PL98-369	As part of the Deficit Reduction Act of 1984, the administrative offset program was established. This allowed the Department of Education to forward defaulted loans to the IRS. There the income tax refund of defaulting individuals could be offset to provide payments on the loan.
12/6/89	*Jones v Cavasos*	US Court of Appeals 11th Circuit upholds administrative offset process.

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The Savings and Loan Crisis

The savings and loan industry was in crisis over poorly regulated lending activities, with thousands of institutions headed to bankruptcy. The earlier change in student aid mix toward more loans and the onset of the recession of 1990 precipitated a sharp rise in student loan defaults. To top off the situation, the leading non-state student loan guarantor at the time, the Higher Education Assistance Foundation (HEAF), teetered into bankruptcy. Congress and the Department of Education responded to the situation with an extensive legislative agenda that severely curtailed consumer rights within the student loan program. In the courts the Department of Education moved to gather in the disputed reserve funds of guarantors. The Department of Education and United Student Aid Funds (USAF) teamed up to prevent validation of the Fair Debt Collection Practices Act against student loan guarantors. Vice President Dan Quayle, who was a United States Senator from Indiana prior to becoming Vice President under Reagan, had assembled the core of his presidential campaign staff in senior-level positions at the Department of Education during this period. Indianapolis headquartered, United Student Aid Funds ende up taking over the better part of the bankrupted HEAF portfolio and became the nation's largest student loan guarantor. USA Funds was not involved in any of the legal battles with the Department of Education over reserve fund ownership.

Serious changes occurred in case law and legislation related to student loan

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coverage under consumer and administrative law. At the time several external factors may have also influenced legislation. The nation was still in the midst of the savings and loan crisis. Program costs associated with defaults were growing at the Department of Education. Then in early 1990 the nation's largest not-for-profit guarantor, the Higher Education Assistance Foundation (HEAF), began to experience serious financial instability that would force it into reorganization before the end of the year.

Beginning with the case of *Games v Cavasos* 737 F. Supp. 1368 (D.Del 1990) student loan guarantors were effectively removed from coverage by Fair Debt Collection Practices Act. This was accomplished in spite of contractual agreements with the Department of Education specifically requiring that guarantor agency

> shall perform all collection activity on the assigned account in compliance with the provisions of applicable Federal and State laws governing the activities of debt collectors, including the Federal Privacy Act requirements. (Guarantor Participation Agreement, 1985, Page 1) See Appendix A.

The standard civil statute of limitations on defaulted loans was removed. The Amendments to the Bankruptcy Act of 1990 was again modified to exempt student loans from Chapter 13, and the Federal Debt Collection Act was amended to increase the bankruptcy qualifying period from five to seven years. Finally, wage garnishments by administrative process was authorized. This went beyond the kind of logic used in the administrative offset of the federal income tax refund.

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A wage garnishment would represent the seizure of property not in the custody of the United States government.

The Clinton Era

As part of his presidential campaign, Clinton had promised to reform student loans. With default rates at an all-time high, the issue gained some attention. This resulted in passage of a new program of national service and direct loans from the government. Through approved national service a direct loan could be repaid. Otherwise through direct loans a system of "pay as you can" could be devised that made payments proportionate to income, thus avoiding default. The plans passed, with restricted budgets and against vigorous opposition from banking and guarantor interest groups. An economic boom set in that helped reduce the default rate to an all-time low. However, the Clinton administration enforced the restrictions passed in 1990 to 1992 with immense increases in income tax offsets, wage garnishments, and taking of consumers to court (U.S. Department of Education, The Federal Financial Aid Handbook, 1994-1995).

The Life of a Student Loan – A Policy Perspective, 1988

In this section we will review the life cycle of a student loan from the perspective of the various participants within the student loan program. We will begin with the consumers and the real and assumed rights and agreements they possess as participants in the student loan program. The same model will be applied to the schools, financial institutions, guarantors, and federal agencies.

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The Student Loan and the Consumer

A student loan occurs when of a person needs to finance a professional, graduate, undergraduate, or vocational education. The phrase "a loan" may be misleading in describing this process; a consumer may generate several loans over the course of his or her education. They may also refinance and combine these loans later into a single loan. Student loans fall into the class of loans called consumer loans because they are unsecured by any real property such as a title in a car loan or home mortgage. Under those kinds of loans the lender holds the title until the loan is paid.

Typically the consumer will make a student loan through a bank. However, other financial institutions such as credit unions, savings and loan companies, and specialty, secondary market lenders may also be sources of loans. These speciality lenders are similar to mortgage loan companies in this regard. The specialty lenders often participate in what is known as the secondary student loan market. In the secondary student loan market, lenders buy student loan portfolios from other lenders.

As a consumer loan the student loan is regulated in the same way as a credit card. At least that is the case for as long as the loan is being processed and being repaid to the original bank or lender. The consumer is most concerned with his or her rights as a consumer. The difference at this time in terms of rights is that the consumer is not obligated to make payments until after leaving school or

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graduation. Otherwise the consumer assumes he or she are entitled to all rights provided under the umbrella of the Consumer Credit Protection Act. These include the right to equal opportunity to apply and receive loans as provided by the Equal Credit Opportunity act, the right to have an accurate bill stating what is owed and what has been paid under the Fair Billing Act, and the right to have payment history accurately reported under the Fair Credit Reporting Act. Also the consumer is given assurance that information will not be shared with third parties without direct consent to those parties by the consumer, under the Right to Financial Privacy Act.

Additionally, because the main recipient of these borrowed funds is the educational institution where the consumer is enrolled as a student and the records of those institutions determines the student's continued enrollment, the student is entitled to access to those documents under the Family Educational Rights and Privacy Act.

At this point the consumer appears to have a firm set of rights. He or she is entitled to all the protections of a credit card holder with an additional edge against the main vendor with whom the consumer deals, the schools. Additionally, payments are not due until the consumer stops going to school full time. On top of all of that, regulations have been enacted that provide for up to twenty-four months of forbearance on certain classes of student loans if the consumer certifies that he or she is not fully unemployed but is seeking full-time employment.

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The design of the forms for the making of student loans is standardized by federal guidelines. A copy of an application from 1991 can be found in Appendix B. Figure 4 is a copy of the key language describing the rights of the borrower as they are provided to the consumer in the loan application that were described earlier in this section (Citibank-HEAF Privacy Act Notice, 1983) .

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Figure 4. Citibank-HEAF Privacy Act Notice.

PRIVACY ACT NOTICE

The Privacy Act of 1974 (5 U.S.C. [illegible]a) requires that an agency provides the following notice to each individual whom it asks to supply information.

1. The authority for collecting the information requested on the attached application is found in sections 429(a)(1) and 428(a) of the Higher Education Act of 1965, as amended (20 U.S.A. 1079(a)(1) and 1078(a)). Applicants are advised that the requested information is necessary for participation in the Auxiliary Loans to Assist Students Program (ALAS).
2. The principal purposes of this information are as follow: to verify the identity of the student; to determine program eligibility and benefits; to permit servicing of the loan; and, in the event it is necessary, to locate the borrower and to collect on a delinquent or defaulted loan.
3. The routine uses of this information includes its disclosure to federal, state, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, to guarantee agencies, to educational and financial institutions, to credit bureaus and collection agencies, and to agency contractors, in order to verify the identity of the parent and student, to determine program eligibility and benefits, to permit servicing or collecting of the loan, to enforce the conditions or terms of the loan, to counsel the borrower in repayment efforts, to investigate possible fraud and to verify compliance with program regulations, or to locate a delinquent borrower.
4. Applicants must provide all of the information requested in order to have their applications processed.

Section 7(b) [illegible] the Privacy Act of 1974 (5 U.S.C. 552a note) requires that when a [illegible] federal, state, or local government agency requests an individual to disclose his or her social security number (SSN) that the individual must also be advised whether that disclosure is mandatory or voluntary, by what statutory or other authority the SSN is solicited, and what uses will be made of it.

Section 7(a)(2) of the Privacy Act provides that an agency may continue to require disclosure of an individual's SSN as a condition for the granting of a right, benefit, or privilege provided by law in cases in which the agency required this disclosure under statute or regulation prior to January 1, 1975, in order to verify the identity of an individual.

Disclosure of the student's SSN is required as a condition for participation in the ALAS. The U.S. Department of Education has, prior to 1975, consistently required the disclosure of the SSN on application forms and other necessary documents adopted pursuant to published regulations.

The SSN will be used to verify the identity of the borrower and as an account number (identifier) throughout the life of the loan in order to record necessary data accurately. As an identifier, the SSN is used in such program activities as: determining program eligibility; certifying school attendance and student status; determining eligibility for deferment or repayment; determining eligibility for disability or death claims; and for tracing and collecting in cases of delinquent or defaulted loans.

RIGHT TO FINANCIAL PRIVACY ACT NOTICE

Under the Right to Financial Privacy Act of 1978 (12 U.S.A. 3401), the U.S. Department of Education will have access to financial records in your ALAS loan file maintained by the lender in connection with the administration of the ALAS program.

CRIMINAL PENALTIES 20 U.S.C. 1087-4(a)

Any person who knowingly and willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery any funds, assets, or property provided or insured under this part shall be fined not more than $10,000 or imprisoned for not more than five years, or both; but if the amount so embezzled, misapplied, stolen or obtained by fraud, false statement or forgery does not exceed $200, the fine shall be not more than $1,000 and imprisonment shall not exceed one year, or both.

NOTICE

HEAF, the U.S. Department of Education or the lender may report the status of this loan to a credit bureau. Therefore, in order to maintain a good credit rating, it is to your advantage to comply with all the terms of the loan agreement and to meet your responsibilities as a borrower under this program.

EQUAL CREDIT OPPORTUNITY ACT NOTICE

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

The names and addresses of the federal agencies which administer compliance with this law are listed below. During the course of the loan application process, your lender will, upon request, inform you of the proper body which regulates the lender.

A. Federal Reserve System
   20th Street & Constitution Avenue NW
   Washington, D.C. 20551

B. Office of the Comptroller of the Currency
   490 L'Enfant Plaza East SW
   Washington, D.C. 20219

C. Federal Deposit Insurance Corporation
   550 - 17th Street NW
   Washington, D.C. 20429

D. Federal Home Loan Bank Board
   101 Indiana Avenue NW
   Washington, D.C. 20552

E. National Credit Union Administration
   2025 M Street NW
   Washington, D.C. 20456

F. Federal Trade Commission
   6th Street & Pennsylvania Avenue NW
   Washington, D.C. 20580

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In Figure 4 a large section is devoted to the "Privacy Act Notice", in which the applicable Higher Education Act sections requiring use of the Social Security Number (SSN) are disclosed. Curiously, the first sentence of the notice contains the phrase "requires that an agency provides the following notice." The form, in this case, was provided by the not-for-profit Higher Education Assistance Foundation, customized to the relationship with Citibank. (HEAF Form P152, Citibank 6/83). So the request for the SSN is not actually from the agency but from a bank and a student loan guarantor. The closing paragraph tells the consumer how the SSN will be used but does not say how the SSN will move from the bank to the government. The Right to Financial Privacy Act Notice indicates that the U.S. Department of Education will have access to the financial records in the loan file. Again, it is a private organization delivering these notices several steps removed from the actual government notification to the consumer. Also it is a statement of access and not necessarily of transfer to the third party, in this case the government.

The loan forms do not provide information about the status of the consumer's rights under the Federal Bankruptcy Act. The form shown in Figure 4 was made prior to passage of the Consolidated Omnibus Budget Reconciliation Act of 1984, in which income tax offset for defaulted loans was authorized. However, the bankruptcy exception for Chapter 7 Bankruptcy was in effect and

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represented a risk to borrowers. The forms, however, do not inform the consumer of this risk.

By 1991 this had changed. Figure 5 depicts the notification by Citibank and USAFunds of the legal notices (USA Funds Form 2615C 2 91, 1991). In this the same basic "notices" are listed with indication of the acts that are the sources of authority for the borrower and guarantor. It also contains blunt language regarding offset of the consumer's income tax refund, collection agency activity, wage garnishment, and the filing of suits. None of this language contains references to the authority under which these statements are made, and there is still no reference to the consumer's rights under bankruptcy.

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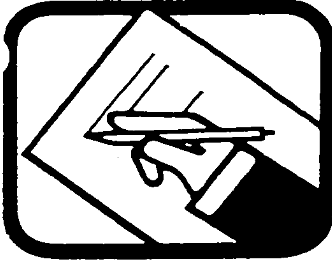
Figure 5. Citibank - USAFunds Privacy Act Notice.



CREDIT BUREAU NOTIFICATION. Information concerning the amount of this loan and its repayment will be reported to one or more credit bureau organizations.

If you default on this loan, the Lender, Holder or Guarantee Agency will also report the default to credit bureau organizations. This may significantly and adversely affect your ability to obtain other credit.

The Lender, Holder or Guarantee Agency must notify you at least 30 days in advance that information about the default will be disclosed to credit bureau organizations unless you enter into repayment on the loan within the 30 days.

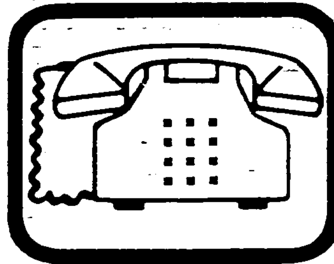
The Lender must provide a timely response to a request from any credit bureau organization regarding objections you might raise with that organization about the accuracy and completeness of information reported about you.

AVOID DEFAULT PENALTIES. You are applying for a PLUS/SLS Loan which you must repay. Do not borrow more than you need. Remember that your future use of credit may be seriously affected if you do not meet your repayment obligations.

If you fail to repay your loan, you may

- **Lose your federal and/or state tax refund.**
- **Damage your credit rating for other loans.**
- **Be sued by your Guarantor.**
- **Have to deal with a private collection agency.**
- **Lose part of your wages or salary to pay your loan.**
- **Be prevented from selling any land or personal property you own until the loan is repaid.**
- **Lose your eligibility for further federal financial aid.**

IF YOU STILL HAVE QUESTIONS, CALL THE TELEPHONE NUMBER COMPUTER-PRINTED ON THE FRONT COVER OF THIS BOOKLET.



Privacy Act Notice

The Privacy Act of 1974 [5 U.S.C.552(a)] requires that a federal agency provide the following notice to each individual whom it asks to supply information and disclose his/her Social Security Number (SSN).

1. The authority for collecting the requested information and SSN is Sections 428 and 484 of the Higher Education Act of 1965, as amended. Applicants are advised that participation in the Title IV, Part B Programs (which includes the PLUS and SLS Programs) is voluntary, but the requested information is necessary for participation in the Title IV, Part B Programs.
2. The principal purposes of this information and SSN are as follows: to verify the identity of the applicant; to determine program eligibility and benefits; to permit servicing of the loan; and, in the event it is necessary, to locate a missing Borrower and collect on a delinquent or defaulted loan.
3. The routine uses of this information and SSN include the following: the information may be furnished during the life of the loan to Holders of this and other loans made to the Borrower under the Title IV, Part B Programs; to educational institutions in which the Borrower is enrolled or is accepted for enrollment; to guarantee agencies; to contractors which assist the U.S. Department of Education in the administration of the Title IV, Part B Programs; to federal or State agencies or private parties who may be able to provide information necessary for the collection of the loan, or to assist in the servicing or collection of the loan.

The Privacy Act of 1974 requires that when the federal, state, or local government agency requests an individual to disclose his/her SSN, that individual must also be advised whether that disclosure is mandatory or voluntary, by what statute or other authority the number is solicited, and what uses will be made of it.

Disclosure of the applicant's SSN is required as a condition for participation in the Title IV, Part B Programs, as the U.S. Department of Education has consistently required the disclosure of the SSN on application forms and other necessary Title IV, Part B Program documents adopted pursuant to published regulations governing the Title IV, Part B Programs.

Right To Financial Privacy Act Notice

Under the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401-3421), the U.S. Department of Education will have access to financial records in your student loan file maintained by the Lender in accordance with the administration of the Title IV, Part B Programs.

ECOA Notice

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); or because all or part of the applicant's income derives from any public assistance program; or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act.

The names and addresses of the federal agencies which administer compliance with this law are listed below. During the course of the loan application process, your lender will, upon request, inform you of the proper body which regulates the lender.

A. Federal Reserve System
   20th Street & Constitution
   Avenue NW
   Washington, D.C. 20551
B. Office of the Comptroller
   of the Currency
   490 L'Enfant Plaza East SW
   Washington, D.C. 20219
C. Federal Deposit Insurance
   Corporation
   550 17th Street NW
   Washington, D.C. 20429
D. Federal Home Loan Bank Board
   101 Indiana Avenue NW
   Washington, D.C. 20552
E. National Credit Union
   Administration
   2025 M Street NW
   Washington, D.C. 20456
F. Federal Trade Commission
   6th Street & Pennsylvania
   Avenue NW
   Washington, D.C. 20580

7

USA Funds Form 2075C 2-91

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A shift in the rights of student loan consumers had occurred from 1984 to 1991. The shift in rights began around 1988 with the onset of a recession, a savings and loan crisis, and a rise in the default rate in the consumer loan industry. The period 1988 to 1992 would be characterized with a number of civil cases and legislative changes that were the frameworks for these changes. Table 7 provides a comparison of contractual terms, consumer rights, and lender rights.

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Table 7. Comparison of Terms, Rights and Privileges of Participants within Guaranteed Student Loan Program.

Borrower	Lender	Guarantor
Equal Opportunity to apply for a loan.	Privilege to participate in program based on contractual requirements.	Privilege to partici program based on requirements.
Right to Privacy Act notification for use of SSN.	Right to receive interest subsidy from Federal Government.	Right to receive in subsidy from Fede Government.
Right to request forebearance of payments based on employment status.	Right to collect on loan upon consumer exit or graduation from ed. institution within regulatory time frames.	Right to audit lenc institutions for prc compliance.
Responsibility to make payments on loan.	Right to report consumer payment history to credit reporting agencies.	
	Right to receive payment from guarantor upon default of consumer.	Right to collect lo consumer upon de payment to lender
		Right to report co payment history tc reporting agencies
		Right to receive pa government upon consumer.

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, Rights and Privileges of Participants
ıdent Loan Program.

	Lender	Guarantor	Federal Government
to apply for	Privilege to participate in program based on contractual requirements.	Privilege to participate in program based on contractual requirements.	Right to audit guarantor and lender program participanats for program compliance.
t of SSN.	Right to receive interest subsidy from Federal Government.	Right to receive interest subsidy from Federal Government.	
rebearance on	Right to collect on loan upon consumer exit or graduation from ed. institution within regulatory time frames.	Right to audit lender institutions for program compliance.	
ake	Right to report consumer payment history to credit reporting agencies.		
	Right to receive payment from guarantor upon default of consumer.	Right to collect loan from the consumer upon default payment to lender.	Right to collect loan from the consumer upon default payment to guarantor.
		Right to report consumer payment history to credit reporting agencies.	Right to report consumer payment history to credit reporting agencies.
		Right to receive payment from government upon default of consumer.	Right to seize consumer income tax refund or garnish wages prior to administrative or judicial hearing.

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The Student Loan and the Schools

The schools, or more accurately the colleges, community colleges, universities, law schools, medical schools, and vocational colleges which participate in the student loan program, provide the bulk of the services and goods that are consumed by student loan borrowers. At minimum they are the main recipients of the funds consumer borrowers spend. Though borrowers may use their funds for general living expenses, the schools, in the form of tuition, book purchases, fees, and payment of room and board, usually receives the bulk of the money the consumers borrow.

Educational institutions are not allowed to participate on an at-will basis in the student loan program. For borrowers to be qualified for loans to attend a particular educational institution, the institution must also be qualified to participate in the student loan program. The keys to this participation are

1. The school must be accredited by an independent regional or national accreditation council or conference.

2. The school must have implemented approved and reviewed procedures for financial aid administration that have been examined by a student loan guarantor and the Department of Education.

3. The school must maintain a cohort default rate of under 9 percent. This influences the recruitment of students and offering of programs that will enable both completion of study and attainment of employment after graduation, assuring a low default rate.

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The economics of competition drives the administration of financial aid at these institutions. The term *financial aid* is used because schools often combine student loans and other forms of financial aid such as federal grants, non-federal scholarships, fellowships, and assistantships, and work study programs. This creates an educational marketplace in which those schools with the better resources, generally their endowment foundation, can attract more funds to provide better assistance packages and thereby attract the best students. The problem of this kind of market structure led to anti-trust suits against several ivy-league institutions. It had been suspected that financial aid planners and higher level administrators at these institutions had worked together to offer similar aid packages in order essentially assure each other's position in the student enrollment marketplace.

At the other end of the spectrum, many student loan consumers, in search of more basic job skills, borrow for the purpose of attending vocational schools that offer short-term programs. These schools offer courses in areas as diverse as cosmetology, auto repair, electrical, plumbing, air conditioning, heating, physician assistant, emergency medical technician, computer science, secretarial science, security, and truck driving, to name just a few.

Initially these organizations, often proprietary and for profit, did not qualify as participants in the student loan program. Through the efforts of their interest group, these schools achieved the right to participate in the program with

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Education Amendments of 1980. Generally consumers who seek vocational education come from lower income backgrounds than those seeking education and accredited four-year baccalaureate institutions. Studies have indicated that lower income students are more likely to default on student loans whether for vocational, baccalaureate or higher degrees (U.S. Department of Education, The Federal Financial Aid Handbook, 1994-1995).

Generated by the closure of these schools, fraud at these schools or lack of placement of students in the skill areas offered by the schools, the default rate at vocational schools created the need for special regulations within the student loan program for many of these defaulted borrowers. The concern for fly-by-night colleges that open and close without issuing accredited certificates led the Department of Education to offer forgiveness of these loans to individuals whose schools qualified by their closures.

Figure 6 is an excerpt from the September 1, 1994, "United States Department of Education – Cumulative List of Schools That Closed Since January 1, 1986." This listing contains 148 pages listing 2,651 schools closed since 1986. The vast majority of these schools were proprietary vocational schools. A few may have been small baccalaureate institutions with declining enrollments and management problems.

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Figure 6. U.S. Department of Education Cumulative List of Schools that Closed Since January 1, 1986.

ST	OPE-ID	SCHOOL NAME	ADDRESS	CITY	BR	CRL	ACCRE
TX	02300500	CONTINENTAL BEAUTY COLLEGE	1611 F SPENCER HWY	HOUSTON		3	NACCA
TX	02300600	CONTINENTAL BEAUTY COLLEGE	6715 BISSONNET	HOUSTON		3	NACCA
MO	02605100	CONTINENTAL CAREER COLLEGE	2210 CHOUTEAU AVE	ST. LOUIS		3	ACCET
		Teach-out School: VATTEROTT, ST. LOUIS, MO FORMER ADDRESS: 3905 S GRAND AVE, ST LOUIS					
IL	01317900	CONTINENTALE SCHOOL OF BEAUTY CULTURE	7645 WEST BELMONT AVENUE	ELMWOOD PARK		3	NACCA
		Teach-out School: CURV-METRIX SCHOOL OF HAIR DESIGN, INC.					
CA	00905300	CONTROL DATA INSTITUTE	262 GRAND AVENUE	OAKLAND		3	AACSB
CA	02329500	CONTROL DATA INSTITUTE	20301 VENTURA BLVD	WOODLAND HILLS		3	CCATT
MA	00907100	CONTROL DATA INSTITUTE	ONE ALWIFE PLACE	CAMBRIDGE		3	CCATT
PA	02157400	CONTROL DATA INSTITUTE	FOUR PENN CENTER STE 600	PHILADELPHIA		3	CCATT
FORMER NAME OF SCHOOL WAS MEDIX SCHOOL							
PA	00946300	CONTROL DATA INSTITUTE	400 STANWIX STREET	PITTSBURGH		3	CCATT
TN	02151800	COOPER INSTITUTE	724 N 5TH AVE	KNOXVILLE		3	CCAIC
		CLOSURE DATE FROM DEC/IDS NOTE					
CA	02061200	CORONA COLLEGE OF COSMETOLOGY	1307 W. 6TH STREET, #132	CORONA		3	NACCA
		School Added 07/27/94.					
IL	02219700	CORTEZ W PETERS BUS COLL OF CHICAGO	1633 W 95TH ST	CHICAGO		3	CCAIC
		LOST ELG DATE USED FOR CLOSURE DATE					
IL	00811500	COSME-TECH INST OF COSMETOLOGY TECH	206 W MARKET ST	TAYLORVILLE		3	NACCA
MO	02603900	COSMETOLOGY CAREERS	1340 BIG BEN SQ	BALLWIN		3	NACCA
MN	02171000	COSMETOLOGY CAREERS UNLIMITED	4031 GRAND AVENUE	DULUTH		3	NACCA
		Teach-out School: STUDENTS TRANSFERRED TO OTHER SCHOOL LOCATION					
MN	02165500	COSMETOLOGY CAREERS UNLIMITED	233 CHESTNUT STREET	VIRGINIA		3	NACCA
		Teach-out School: COSMETOLOGY CAREERS UNLIMITED SCHOOL HAS A $10,000 BOND WITH STATE, EXPIRING					
CO	02575900	COSMETOLOGY COLLEGE	1421 N. CLEVELAND AVENUE	LOVELAND		3	NACCA
		Teach-out School: CHEEKS BEAUTY SCHOOL					
MN	01103900	COSMETOLOGY TRAINING CENTER	5164 CENTRAL AVENUE, NORTH	COLUMBIA HEIGHTS		3	NACCA
		School Added 08/12/94.					
		Teach-out School: STUDENTS TRANSFERRED TO MANAKATO, MN CAMPUS OF CTC CURRENT ADDRESS: 888 HIGH					

UNITED STATES DEPARTMENT OF EDUCATION -- CUMULATIVE LIST OF SCHOOLS THAT CLOSED SINCE JANUARY 1, 1986

• BR or B = Branch. • CRL (Control): 1 = State School, 2 = Private Non-Profit, 3 = Proprietary.
• T/O = Teach-out (Yes, No, Unknown --Teach-out includes train-out by closing school). • REC (Location of School' records): ST = State, SC = School. • "Y" under CH indicates a change since the July 8, 1994 Cumulative List of C

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	ADDRESS	CITY	BR	CRL	ACCRED	T/O	LOST-EL	CLOSE	VERIFIED	REC	CH
EGE	1611 F SPENCER HWY	HOUSTON		3	NACCAS	Y	09/29/89	09/29/89	STATE AGENCY		
EGE	6715 BISSONNET	HOUSTON		3	NACCAS	Y	09/29/89	09/29/89	STATE AGENCY		
EGE	2210 CHOUTEAU AVE	ST. LOUIS		3	ACCET	Y	11/12/91	11/26/91	STATE AGENCY		
TTEROTT, ST. LOUIS, MO FORMER ADDRESS: 3905 S GRAND AVE, ST LOUIS											
EAUTY CULTURE	7645 WEST BELMONT AVENUE	ELMWOOD PARK		3	NACCAS	Y	12/29/92	03/22/93	STATE AGENCY		
RV-METRIX SCHOOL OF HAIR DESIGN, INC.											
	262 GRAND AVENUE	OAKLAND		3	AACSB	N	10/26/90	10/26/90	STATE AGENCY		
	20301 VENTURA BLVD	WOODLAND HILLS		3	CCATTS	N	07/31/87	07/31/87	STATE AGENCY		
	ONE ALWIFE PLACE	CAMBRIDGE		3	CCATTS		/ /	08/21/86	REG 1		
	FOUR PENN CENTER STE 600	PHILADELPHIA		3	CCATTS	N	07/31/88	07/31/88	STATE AGENCY		
	400 STANWIX STREET	PITTSBURGH		3	CCATTS	U	/ /	06/30/88	STATE AGENCY		
	724 N 5TH AVE	KNOXVILLE		3	CCAICS		07/01/90	07/01/90			
C/IDS NOTE											
OLOGY	1307 W. 6TH STREET, #132	CORONA		3	NACCAS	N	02/28/88	03/31/93	STATE AGENCY	UK	Y
4.											
OF CHICAGO	1633 W 95TH ST	CHICAGO		3	CCAICS		01/04/91	01/04/91			
OR CLOSURE DATE											
TOLOGY TECH	206 W MARKET ST	TAYLORVILLE		3	NACCAS	U	11/26/91	09/30/92	STATE AGENCY		
	1340 BIG BEN SQ	BALLWIN		3	NACCAS	U	06/30/90	06/30/90	STATE AGENCY		
MITED	4031 GRAND AVENUE	DULUTH		3	NACCAS	Y	/ /	04/01/94	STATE AGENCY	SC	
UDENTS TRANSFERRED TO OTHER SCHOOL LOCATION											
MITED.	233 CHESTNUT STREET	VIRGINIA		3	NACCAS	Y	/ /	10/31/93	STATE AGENCY	SC	
SMETOLOGY CAREERS UNLIMITED SCHOOL HAS A $10,000 BOND WITH STATE, EXPIRING 10/31/93											
	1421 N. CLEVELAND AVENUE	LOVELAND		3	NACCAS	Y	/ /	12/04/92	STATE AGENCY		
EEKS BEAUTY SCHOOL											
TER	5164 CENTRAL AVENUE, NORTH	COLUMBIA HEIGHTS		3	NACCAS	Y	04/14/94	08/05/94	STATE AGENCY	SC	Y
4.											
UDENTS TRANSFERRED TO MANAKATO, MN CAMPUS OF CTC CURRENT ADDRESS: 888 HIGHWAY 10 NORTHEAST BLAINE, MN 55434.											

-- CUMULATIVE LIST OF SCHOOLS THAT CLOSED SINCE JANUARY 1, 1986

1 = State School, 2 = Private Non-Profit, 3 = Proprietary:
Teach-out includes train-out by closing school). ● REC (Location of School's
"Y" under CH indicates a change since the July 8, 1994 Cumulative List of Closed Schools.

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In Figure 6, the third record appearing on the page is for Continental Career College of St. Louis, Missouri. During the course of the author's research of the student loan program, the Continental Career College, specializing in welding and related trades, opened about 10 blocks north of the author's residence in south St. Louis city. One evening in 1991, the author received a phone call from a representative of the college inquiring whether I or a member of my household would be interested in attending the school. Their marketing efforts appeared effective enough to locate people near the school, but not quite effective enough to identify their educational attainment. Though the author felt a desire to apply in order to research this particular aspect of the student loan market, that method and data set were outside the scope of the study.

Today, as in 18\988, it is among the students who have attended vocational schools that the default rate is the highest. The media, however, publicizes defaulted medical doctors, attorneys, and college professors, because these individuals have high dollar amounts in their defaults. However, most default dollars are clustered among the low-income consumers of vocational education (U.S. Department of Education, The Federal Financial Aid Handbook, 1994-1995).

The costs of higher education have run significantly ahead of the rate of inflation over the 1980s and 90s. These costs have had little effect on consumer demand for education, at least at the vocational and baccalaureate level. In basic

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economic terms though the price continues to climb, the demand has not diminished. This has fueled a huge growth in consumer borrowing to finance enrollment and has resulted in greater levels of debt by consumers, (Berry 1992).

Student Loans and the Financial Institutions

The federal government provided the initial influx of funds into the student loan market through the interest subsidy to lenders. The growth in student loan demand necessitated a method for providing funds to lending institutions to initiate and maintain an effective student loan program. The presence of a subsidy was not enough for some banks to commit funds.

This problem was solved by the creation of a federal for-profit corporation the Student Loan Marketing Association, known most commonly as Sallie Mae. It was modeled on Fannie Mae and Ginnie Mae, the housing organizations initially sponsored by the federal government. Created in 1972, Sallie Mae is able to participate in the secondary loan market by purchasing loan portfolios from other lenders and makes loans to student loan guarantors and banks to stimulate the student loan business of these organizations. By 1992 Sallie Mae held more than $20.8 billion in loans, making it one of the top lending institutions in America (S. Hrg.101-1116, 1990).

The influx of money by Sallie Mae combined with two additional events in the early 1980's to fuel student loan lending. The first of these, as mentioned earlier in this section on student loans and educational institutions, was inclusion of

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vocational colleges and schools in the GSLP. This added hundreds of thousands of borrowers to the market. The second event involved the distributing of overall financial aid mix. Prior to 1982 the financial aid proportions at the Department of Education were roughly 70 percent grants and 30 percent loans. These proportions were inverted to 30 percent grants and 70 percent loans. As Senator Claiborne Pell indicated in senate hearings "we made a decision to go the credit window." This new mixture of financial aid fueled lending throughout the decade of the 1980s (S. Hrg. 101-1116, 1990).

Banks, savings and loan associations, credit unions, and secondary loan market companies all must meet standards and procedures similar to those of the schools. The financial institutions must

1. Meet financial accreditation standards.
2. Provide adequate procedures for administration of loan application process.
3. Maintain a cohort default rate of under 9 percent.

Within the finance industry most of these conditions can be grouped under the heading of "due diligence." Due diligence in financial institutions is both a legal and business concept that applies the principle of the "prudent man (person)" toward the administration of financial agreements, *Black's Law Dictionary* 1990. This is particularly important in the student loan program, in which financial institution's risks are essentially underwritten with public funds provided by the taxpayers via the interest subsidies paid by the Department of Education and by

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direct payment on defaulted notes to these financial institutions, first by guarantors then by the government.

The potential for lack of due diligence is assumed in conditions where a third party, such as an insurance company, bears substantial risk, yet has no hand in the daily operation of the business. In the history of student loans the best example of this was the data recovery disaster at the Bank of America in 1987. In a computer system crash, thousands of student loan account records were lost, representing millions of dollars in loans. Inadequate care had been taken in maintaining backups of the data. The bank applied to the government for insurance coverage under the GSLP but was denied under the principle of due diligence or the prior lack thereof.

By 1988 student loan lending was a booming industry. However, the savings and loan industry was growing increasingly unstable with the emergence of broad-based real estate and other financial scandals. By this time the structure of the student loan industry consisted of Sallie Mae as the provider of startup funds and two national not-for-profit corporations functioning as multi-state student loan guarantors. These were the Higher Education Assistance Foundation (HEAF) and USAFunds. More than 30 state and state-based not-for-profit guarantors were operating, with California, Illinois, New York, Pennsylvania, and Texas being by far the largest. Lending was structured much the same way as the banking

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industry. The large banks led the way in lending, followed proportionately by regional and local institutions.

Student Loans and Student Loan Guarantors

Student loan guarantors grew out of the need for intermediary insurers between the banks and other lending institutions that were making loans and the federal government that is the ultimate guarantor of a bank's risk. USAFunds claims to be the oldest guarantor (USAFunds Website, USA Group Timeline: A Look into Our History, 1998, See Appendix C). USAFunds was founded in 1960 with former president Dwight D. Eisenhower as its honorary Chairman of the Board. Though the Higher Education Act was not enacted until five years after USAFunds-founding, it again takes credit for lobbying Congress for a guarantor framework within the act. The development of the guarantor structure was relatively weak from 1965 through 1978. In that year the system was strengthened through amendments to the Higher Education Act that helped state agencies and not-for-profit companies' bolster their involvement in the student loan market.

The roles, as stated earlier, of the guarantors are to act as the intermediate guarantors of student loans. The guarantor pays the bank for a defaulted loan before the government pays. In this way the government is able to limit the number of organizations it must pay. The guarantors pay the many financial institutions for defaulted loans; the government pays a few student loan

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guarantors. The difference is between paying thousands of banks or fewer than 50 guarantors, an obvious administrative saving to the government.

When a consumer defaults on a loan, the bank may submit the loan to a guarantor for payment. If the record indicates that the bank has been duly diligent in its collection efforts, the guarantor will pay the bank the remaining balance on the loan. The guarantor is, at this point, the holder of the note and must make duly diligent collection efforts on the loan prior to its filing of a claim of default with the government.

With the addition of certain levels of regulatory authority over review of bank practices and default rates, the guarantors operate under the same basic formulas as the schools and the banks. They are obligated to review the due diligence and practices of the banks' student loan business.

By the late 1980s the institutional structure of the guarantor system consisted of two highly dominant multi-state guarantors in the Higher Education Assistance Foundation (HEAF) and United Student Aid Funds (USAFunds). These two organizations offered banks agreements to assure their student loans in many states . They would also contract with state governments, typically those of smaller states, to operate as the state's official guarantor. Similarly, smaller not-for-profits would be operated under agreement with a state as the state guarantee agency, as in the case of Great Lake Higher Education Foundation and the state of Wisconsin.

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Otherwise, states having large public and private higher education systems and markets operated their own state agency guarantor. As mentioned earlier, this was the case in California, Florida, Illinois, Massachusetts, New York, Ohio, Pennsylvania, and Texas.

Recession, the growth in the coverage of proprietary school loans, increased borrowing, and the savings and loan crisis began to take its toll on HEAF by the end of 1988. HEAF's policies had led it to be over-obligated in the higher risk loan market.

Additionally, growing concerns over the stability of the student loan market led the Department of Education to request the turnover of guarantor-managed reserve funds. This set off a series of Fourteenth Amendment cases filed by a number of guarantors against the Department of Education. In these suits the guarantors claimed the reserve funds were their property and not the federal government's. The government prevailed in all the cases at both the district and appellate levels.

It would be the filing of protection under Chapter 11 of the Bankruptcy Code by HEAF that would precipitate congressional hearings into the stability and financial status of HEAF, Sallie Mae, USAFunds, and the entire student loan industry (S. Hrg. 101-1116, 1990).

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Student Loans and the Federal Government

By the end of 1990, the crisis in the financial services industry had affected the student loan business. The conditions of 1990 were formed by the savings and loan crisis, tremendous growth of the number of student loans in both traditional and vocational colleges and universities, with significant increases in the vocational area. HEAF, the largest private student loan guarantor, had filed for bankruptcy. The federal government had prevailed in claiming guarantor-managed reserve funds as federal funds. Student loan default rates had reached an all-time high that has not been seen since. The government had by this time begun to take steps to assure the collection of debt from consumers through limits on Chapter 7 Bankruptcy toward student loan debt beginning in 1976 and through income tax refund offset since 1985.

The Student Loan Crisis and the Conversion Process

Within this section we will link the environment and history of the student loan program to the conversion process of the systems approach. The environment of the student loan program, primarily its growth and the economic conditions of the late 80s and early 90s, precipitated a crisis at the administrative level in the form of loan defaults. These administrative and environmental processes led to a series of policy changes aimed at bolstering the collection efforts of the government, guarantors, and lenders.

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The conversion process as outlined here is the interaction of the debt collection process, on the one hand, and the move toward policy changes on the other. Within this study the debt collection process is linked to the "monitoring and surveillance" part of the mode of information, while the policy change process is linked to the "using the norm to constitute the individual" and "disciplining the population" parts of the mode of information.

The government moved to further bolster debt collection. These moves were both legislative and judicial. Several of the legislative initiatives were made to counter consumer victories at the judicial level. Each of these policy changes will be examined within the framework of the study's hypothesis and the model of the mode of information. An aggregate summary of student loan consumer, bankruptcy, and related laws are shown in Table 8. Table 8 is the focus of the study.

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Table 8. The Historical Focus of the Study.

Date	Cases - Laws	Synopsis of Student Loan Provisions
5/23/90	*Games v Cavasos*	U.S. District Court D. Delaware. Court accorded not-for-profit student loan guarantors the same status as state agencies which function as student loan guarantors, exempting those organizations from the Fair Debt Collection Practices Act (FDCPA).
9/29/90	*Grider v Cavasos*	U.S. Court of Appeals 5th Circuit. Court upheld statute of limitations established by IRS procedures for administrative offset program.
11/5/90	PL101-508	Amended the Bankruptcy Act to exempt guaranteed student loans from Chapter 13 of the Bankruptcy Act. See Appendix E.
11/29/90	PL101-647	Amended Federal Debt Collection Act of 1982 to require a 7-year period of repayment for guaranteed student loans to qualify for consideration for discharge under the Bankruptcy Act. See Appendix F.
4/9/91	PL102-26	Eliminated all statute of limitations in the collection of defaulted guaranteed student loans. See Appendix G.
11/15/91	PL102-164	Provided student loan guarantors the authority to garnish wages without benefit of a lawsuit. See Appendix H.

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This study is focused on two court cases and four legislative acts. However, these will be grouped as follows:

4. Due Diligence, the Fair Debt Collection Practices Act, and the Mode of Information. This section will treat the first hypothesis.

5. Bills of Attainder, Policy Change, and the Mode of Information. This section will treat the second hypothesis.

Focus of the Study – Due Diligence, the Fair Debt Collection Practices Act and the Mode of Information

We begin the core of the study with *Games v. Cavasos*, primarily because of its convenient placement in the history of the student loan program. However, it is also important in that it addresses and reveals key aspects in the relationship between student loan guarantors as debt collectors and the individual consumer. Within this section we will treat the first hypothesis of the study. It deals most directly with the process of collecting the debts owed by consumers to the government, the guarantors, and the lenders.

It is also essential that the importance of the case be framed within the context of research evaluation and practice of public case law. One view of public case law research is that the only truly important cases are played out at the level of the appellate and supreme courts. On this issue of the importance of cases that do not make it to the appellate or supreme courts, we should consider the observation of Justice Oliver Wendell Holmes:

My keenest interest is excited, not by what are called great

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> questions and great cases, but by little decisions which the common run of selectors would pass by because they did not deal with the Constitution or a telephone company, yet which have in them the germ of some wider theory, and therefore of some profound interstitial change in the very tissue of law. (Holmes in White, 1993, page 298).

Consumer law is structured to rarely be heard at the appellate or supreme court levels. This is done through several administrative and market mechanisms. The first is the establishment of legislatively directed monetary penalties within the acts that limit incentives to pursue extensive litigation outside the possibility of class action. Within the FDCPA this limit in 1990 was one thousand dollars per incident, an incident actually defined as the entire history of contact between the collector and consumer, for each infraction prescribed within the act. In other words, a single prohibited act during the process of collection may occur multiple times but only counts as one violation. In the area of debt collection, credit denial, and bankruptcy, the key problem for a lawyer is that the client is not likely to have much money to pay for legal services and the legislatively set fines offer little additional incentive.

The other mechanism is the Federal Trade Commission (FTC), which can intercede on behalf of consumers against flagrant violators of acts under its authority as administrator. Organizations violating consumer law under FTC authority may be fined extensively by the FTC if the FTC finds against the organization in court or administrative hearings.

The FTC does not regulate student loan guarantors, ostensibly because

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they are created by the Higher Education Act, therefore, all their activities presumably fall under the regulation of the Department of Education. The FTC would need a decision by a court to bring student loan guarantors under its authority.

Consumer law in this area has also been affected by the activities of the National Consumer Law Center (NCLC). NCLC is an independent body that assists lawyers, consumers, and Congress on consumer law issues. One of its more important functions is the aggregating of the many decisions of district courts and providing regularly published commentary on these cases. In doing this NCLC assists consumer law attorneys in more quickly and effectively providing reasonable service to clients, reducing the fees charged.

The third factor that affects consumer loan law has been the development of union sponsored legal services plans. These organizations assist union members and their families in a limited number of legal problems, most prominently in the area of consumer law such as debt collection. The most active of these organizations has been the United Auto Workers Legal Services Plan (UAWLSP).[3] UAWLSP is headquartered in Detroit, Michigan, with regional offices usually affiliated with the automaker. For example St. Louis, Missouri, has two offices: UAWLSP-GM and UAWLSP-Chrysler.

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[3] The researcher's examination of prominent consumer cases in the National Consumer Law Center Supplements indicated a predominance of UAWLSP involvement in the most major cases.

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UAWLSP has been closely linked with the NCLC. In the case of *Games v. Cavasos*, attorney Orlando Bragg wrote the NCLC commentary on the court's decision in the case. Both attorneys for plaintiff Games were affiliated with the UAWLSP. The UAWLSP was in fact the Games' representative of record in the case. Games was able to use UAWLSP services through his union membership.

Eric Games, the plaintiff in the case, sought to validate the applicability of the Fair Debt Collection Practices Act (FDCPA) toward the debt collection activities of student loan guarantors. In the student loan program, as well as the mode of information, this is where the rubber meets the road. The FDCPA regulates debt collector contact with consumers. As such it is one of the few federal laws that actually stipulates required and prohibited methods of contact between business organizations and people.

Finally consumer law outside areas such as the Equal Credit Opportunity Act rarely touches upon constitutional questions that would more likely supercede legislatively prescribed penalties and elevate the case to appellate or supreme court hearings. All of these factors influenced the case of *Games v. Cavasos*.

Due Diligence

To treat the theoretical elements of the mode of information within the context of American public law, the underlying legal and administrative principle(s) involved should be identified as the empirical frame of the hypothesis. In the case of the first hypothesis, which deals with the operation of the student loan default

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collection process, that administrative principle is "due diligence" as defined within the Higher Education Act of 1965, the Federal Debt Collection Act of 1982, and public case law.

Due diligence is the operational framework established by the Department of Education for the payment of defaulted loans to lenders and guarantors. Due diligence is the standard set by the department for acceptance of records of loans for payment. Due diligence was extensively reviewed earlier in this chapter. We return to those now:

Black's Law Dictionary (1992) defines due diligence as

> Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstance: not measured by any absolute standard but depending on the relative facts of a special case. (*Blacks*, 1992, page 457)

Within the Higher Education Act of 1965 as amended by the Higher Education Amendments of 1986 through PL99-498 section 435(f), 20 U.S.C. 1078-5 defines due diligence as follows:

> The term "due diligence" requires the utilization by a lender, in the servicing and collection of loans insured under this part, of collection practices at least as extensive and forceful as those generally practiced by financial institutions for the collection of consumer loans.

The hypothesis can now be framed within the framework of the administrative standard of due diligence:

> The "due diligence" (record of monitoring and surveillance) represented to the Department of Education is used to justify the

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> basis of the administrative taking of a borrower's income tax refund in the Guaranteed Student Loan Program in favor of the student loan guarantors.
>
> The mode of information is used to prejudice the record, that is the basis of the administrative taking of a borrower's income tax refund in the Guaranteed Student Loan Program in favor of the student loan guarantors.

How the administrative record is built and the legal and policy frameworks from which the process operates are the key issues of the first part of our examination of the mode of information. *Games v. Cavasos* provides the best publicly available insights into this process.

The Fair Debt Collection Practices Act and *Games v. Cavasos*

In this case the plaintiff, Eric Games, filed separate suits against United Student Aid Funds and the Department of Education in 1988. The federal district court in Newark, Delaware, combined both complaints into a single suit under the title *Games v. Cavasos*, Lauro Cavasos being the Secretary of Education at the time of the combining of the complaints. Games complained on three primary issues:

1. The taking of his income tax refund without due process under the Fifth and Fourteenth Amendments of the constitution.
2. Lack of a hearing to present his case to prevent offset of his federal income tax refund.
3. Violations of the federal Fair Debt Collection Practices Act in USAFunds communication with him, contributing to both the due process and income tax offset issues.

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The default involved the default of $600.00 by Games on a student loan for enrollment at a vocational college. Games was also a member of the Delaware National Guard. Because of a debtor's National Guard participation, student loans owed by guard members were often provided an exemption from payments during time of service or were paid by the guard. Games contended that his assumptions about the National Guard's handling of his loan left him unaware of any default problem. Games also contended that the notification process and the lack of FDCPA compliance contributed toward the problem of due process and subsequent offset of his federal income tax refund.

Key to the case was the applicability of the FDCPA to a private student loan guarantor. The National Consumer Law Center Fair Debt Collection 1990 Supplement summarized this issue as follows:

> The Federal Fair Debt Collection Practices Act specifically excludes from its coverage any officer or employee of the United States government or any state to the extent that their collection activities are in the performance of their official duties. While the Department of Education is thus excluded if it collects its own debts, the FDCPA applies to private collection agencies hired by DOE. Where a school on a Direct Loan or a lender of a guaranteed student loan attempts to collect on its own loan, the FDCPA generally does not apply because the Act does not apply to creditors, but only to collection agencies.
>
> Less clear is the FDCPA's application to student loan agencies, some of which are state-created and some of which are private entities. State-created student loan agencies may be exempt under the Act's exclusion of state employees, but in some states they may be private corporations (e.g. employees not subject to civil service). (National Consumer Law Center, Fair Debt Collection Supplement,

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1990)

The wording of the FDCPA has been such that it has sought to insure that organizations not evade applicability to the Act. Thus collection agencies may be persons, companies, or organizations that "regularly collect debts owed another."

Summarizing the case of *Games v. Cavasos,* the court found that it could not have been the intent of Congress to exclude not-for-profit guarantors from the state agency exemption provided by the Act. Because the not-for-profit guarantors perform the same basic function as a state guarantor. For that reason they must be excluded from FDCPA. The court was required to determine the applicability of a law rather than a point of fact. The facts as presented in the case seem to indicate a lack of guidance from Congress regarding not-for-profit student loan guarantors.

However, missing from the casefile was a key document that bear heavily upon the issue of the facts of the case – the applicability of FDCPA and the intent of the Congress.

The missing key document was the latest "Addendum to Agreement" papers governing the student loan program participation agreement between the Department of Education and USAFunds[4]. This addendum consists of a single

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[4] The researcher contacted the UAWLSP office that represented Games and the Clerk for the District Court in Delaware and the Department of Education General Counsel's office. A copy of the addendum was provided to the head attorney at UAWLSP in Newark to the clerk reporting to Judge Murray Schwartz and to a staff attorney at the Department of Education. All reported to the researcher that the document was not present in either the court case file or the case files

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cover sheet with Department of Education and USAFunds signatures. This is followed by an "Appendix" of nine pages. This "Appendix" does not appear in the archives of the case (see note). This document was originally done in October of 1985 according to the signature dates of Roy A. Nicholson, President of USAFunds, and William L. Moran, Director within the Department of Education. On page one of the Appendix, paragraph (4), the statement is made:

> (4) The agency shall perform collection activity on the accounts it assigns to ED which is a least equal to the level of collection effort which the contractor must expend as part of its normal exercise of due diligence in collection of the accounts it does not assign. The agency shall not initiate litigation on any account which it assigns to ED. The agency shall perform all collection activity on the assigned accounts in compliance with the provision of Federal and State laws governing the activities of debt collectors, including the Federal Privacy Act requirements. (Guarantor Participation Agreement, 1984, page 1).

If we were arguing on behalf of Games, we would contend that USAFunds coverage under FDCPA is obvious as a "provision of Federal and State laws governing the activities of debt collectors..." (above). The Department of Education and USAFunds still might make three counters. One is that "compliance" might be interpreted as guidelines rather than full inclusion. The second is that because of the exclusion along the lines of state guarantors the language of paragraph (4) does not mean FDCPA, since FDCPA is not explicitly

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maintained by UAWLSP or the Department of Education. USAFunds was not contacted. The office of the USAFunds legal department suffered a major fire in November of 1990, several months after the close of the case, see Appendix A.

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specified. The third possibility is that Congress still did not intend for not-for-profit guarantors to be under the FDCPA and that they are leaving the matter up to the courts to clarify.

However paragraph (4) contains the word "contractor." What possible congressional light might there be regarding the coverage of FDCPA if we follow the concept of "contractor"? The federal law that governs the contracting of debt collection services with private organizations to collect federal debt is the Federal Debt Collection Act of 1982. In the 1982 amendment to the Act under Public Law 97-365, a section was devoted to "Contracts for Collection Services" that amended the Federal Tort Claims Act of 1966 31 U.S.C. 3718. That section reads as follows:

> (f)(1) Notwithstanding the provisions of any other law governing the collection of claims owed the United States, except for collections of unpaid or underpaid debts under the Internal Revenue Code of 1954, the head of an agency or his designee may enter into a contract with any person or organization, under such terms and conditions as the head of the agency or his designee considers appropriate for collection services to recover indebtedness owed to the United States. Any such contract shall include provisions specifying that the head of the agency or designee retains the authority to resolve disputes, compromise claims, terminate collection action, and refer the matter to the Attorney General to initiate legal action, and that the contractor shall be subject to section 552a of title 5, United States Code, to the extent provided in subsection (m) of that section, and shall be subject to Federal and state regulations pertaining to debt collection practices, including the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.).

That Congress was so specific in defining the applicability of the FDCPA in the amendments to the Federal Tort Claims Act and Federal Debt Collection Act is

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interesting. The specificity given to FDCPA might lead to the exclusion of other subsequent federal acts. Also, it is interesting that the language varies between this act and the "Appendix" of the "Addendum to Agreement" between USAFunds and the Department of Education. However, when we follow the legislation a little further, we find that technical amendments were made a few months later under the Money and Finance United States Code Amendments of 1983. The code was amended via Pub. Law 97-452 as follows:

> (a) Under conditions the head of an executive or legislative agency considers appropriate, the head of the agency may make a contract with a person for collection services to recover indebtedness owed the United States Government. The contract shall provide that –
>
> (1) the head of the agency retains the authority to resolve dispute, compromise a claim, and collection action, and refer a matter to the Attorney General to bring a civil action; and
> (2) the person is subject to –
> (A) section 552a of title 5 to the extent provided in section 552a(m); and
> (B) laws and regulations of the United States Government and State governments related to debt collection practices.

With this technical amendment Congress made clear what language is required within "contracts for collection services." It would appear that the "Appendix" of the "Addendum to Agreement" is such a contract under the Federal Debt Collection Act of 1982.

What now seems unusual is that quite the opposite condition exists from what Judge Murray Schwartz contends in his decision. In his decision Schwartz contends that the Congress could not have intended to exempt state agencies from FDCPA and allowed private organizations to come under its regulation. The

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judge's argument is that if state agency student loan guarantors are exempt from FDCPA, so too must be the private student loan guarantor. At the time of this case the same agreements were sent to the state agencies. Given the language contained in the missing page, it is apparent that instead of exempting states from FDCPA, it was the intent that if a state agency acts to collect a federal debt it must do so under a contract governed by the Federal Debt Collection Act.[5]

Is the state exemption from FDCPA universal, or intended only for when a state collects on a debt owed to it? In the area of debt collection contracts on student loans, it would appear to be that the federal supremacy rule would apply and these state agencies are acting as debt collectors under contract with the federal government. At this writing, however, the author is not aware of any such case having yet been filed. So we will not dwell on it any further.

A key element in the case of *Games v. Cavasos* and in many other situations is that a guarantor may turn over a loan to the Department of Education upon default, as in the case of Games. The Department of Education may then reassign the note back to the guarantor for collection, again as in the case of Games. It is only after federal payment on the loan that the issue of collecting on

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[5] Further evidence of the blanket intent of Congress and the original administrators of the program within the Department of Education can be seen in the "Contract for Debt Collection Services," made between the Department of Education and certified debt collection agencies. Though the Federal Privacy Act normally applies only toward federal agencies, the language and intent of the Money and Finance United States Code Amendments of 1983 are clearly stated just as in the guarantor's participation agreements. See Appendix D.

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the part of the federal government comes into play. This us one of the confusing areas when a guarantor calls on a consumer. What is the status of the loan in terms of the holder of the note? What rules apply at any given time in the process?

The lawyers in *Games v. Cavasos* accepted the evidence at face value. They did not investigate beyond what was presented to the court according to the accepted procedures of discovery. An end run around the discovery procedures could have easily been accomplished with a Freedom of Information Act request to the Department of Education for guarantor participation agreements. This would have revealed the evidence problems in *Games v. Cavasos* and the contradictions that guided the case. Questions about the absence of the documents and the politically charged environment of the Department of Education during this period might deserve further investigation. However, they are beyond the scope of this study.

The FDCPA, Information, and Consumers

The FDCPA, in comparison to nearly every other act related to privacy, is probably the single most comprehensive set of regulations between the organizations it regulates and the private citizens it seeks to protect. Whereas the Federal Privacy Act regulates how private citizens may access, correct, or amend information the federal government has acquired about them, the Federal Privacy Act does not address how information may be gathered by federal officials from private citizens. Consumer laws governing financial privacy are primarily concerned with the sharing of information with third parties without the permission

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of the consumer. Similar to federal privacy law, these laws also have procedures for accessing, correcting, and amending information.

The FDCPA is the exception to all of these. It directly specifies required and prohibited information gathering and sharing practices of individuals collecting debts in their contact with consumers. Tables 9a, 9b, and 9c summarize these practices.

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Table 9a. Practices Forbidden by Fair Debt Collection Practices Act.

Section	Class of activity	Practices
804(2)	Location Information.	The collector will not state that the consumer owes a debt.
804(3)		Will not communicate with person more than once to acquire information.
804(4)		Will Not communicate by postcard.
804(5)		Will not use symbols or wording to indicate they are a debt collector.
804(6)		Will not contact anyone other than the debtor's attorney once collector knows that an attorney represents the debtor.
805(1)	Communication about debt.	Will not communicate at any unusual time or place.
805(3)		Will not communicate at consumers' place of employment once collectors knows employer forbids such communication.
805(3)(b)		Will not communicate with third parties.
805(3)(c)		Will not communicate with consumer once consumer has notified the collector he or she wishes communication ceased.
806(1)	Harassment and abuse.	Will not threaten or use violence.
806(2)		Will not use obscene or profane language.
806(3)		Will not publish list of debtors.
806(4)		Will not advertise the loan as for sales.
806(5)		Will may not cause telephone to ring continuously.
806(6)		Will not refuse to disclose identity.
807(1)	False or misleading representation.	Will not represent themselves as affiliated with the U.S. government or state government.
807(2)(A)		Will not misrepresent character, amount or legal status of debt.
807(2)(B)		Will not misrepresent any charges that may be due the collector.

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Table 9b. Practices Forbidden by FCDPA, continued....

Section	Class of Activity	Practices
807(4)	Implied legal action or claims.	Imply that arrest or imprisonment may result.
807(5)		Imply or threaten to take action that cannot be legally taken or that is not intended to be taken.
807(6)(A)		Imply that sale or transfer of debt will cause consumer to lose claim or defense.
807(6)(B)		Imply the debtor will become subject to any practice prohibited by the act.
807(7)		Imply debtor committed any crime.
807(8)	False or misleading representation, continued.	Will not communicate credit information about the debt to any person which is known or should be known as false or disputed.
807(9)		Represent any form or document as originating from a court or government office, official, or agency.
807(10)		Use any false representation or deceptive means to collect the debt or information about the consumer.
807(12)	Implied legal action or claims.	Falsely represent that debts have been turned over to innocent purchasers of value.
807(13)		Falsely represent that documents are legal process.
807(14)	False or misleading representation, continued.	Use any business, company, or organization name other than debtor's business, company, or organization name.
807(15)	Implied legal action or claims	Falsely represent that documents are not legal process and do not require action by the consumer.

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Table 9c. Practices Forbidden by FCDPA, continued...

Section	Class of activity	Practices
808(1)	Unfair practices regarding amounts owed.	Collection of any amount unless such amount is expressedly authorized by the agreement creating the debt or permitted by law.
808(2)	Post-dated checks.	Will not accept post dated-checks as payment.
808(3)		Will not solicit a post dated-check from debtor.
808(4)		Threatening to deposit a post-dated check prior to the date of the check.
808(5)	Charges for communication.	Cause charges for communication to be made to debtor.
808(6)	Property repossession.	Taking or threatening to take non-judicial action to effect dispossession of property if:
808(6)(A)		There is no present right to possession claimed as collateral.
808(6)(B)		There is no present intention to take the property.
808(6)(C)		The property is exempt by law from dispossession or disablement.
808(7)	Vulnerable communication.	Communicating with consumer about the debt by postcard.
808(8)		Will not use any symbol other than business name or any wording to indicate the collector is in the collection business.
812(a)	Furnishing deceptive forms.	Unlawful to compile or design forms to create a false belief that a person other the creditor or collector is participating in the collection of the debt.

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Monitoring, Surveillance, and the FDCPA

We now return to the hypothesis of this study:

> The mode of information is used to prejudice the record, that is the basis of the administrative taking of a borrower's income tax refund in the Guaranteed Student Loan Program in favor of the student loan guarantors.

In its requirements to demonstrate due diligence, the guarantor must contact the consumer in order to attempt to collect the debt. On one level this is simply the interaction between people – the collector and the consumer. However, the collector has a method of documenting and recording these interactions and their outcomes. This recording method is usually through a computer terminal that posts to a centrally maintained database. Through this electronically mediated process, the collector is able to monitor the behavior of the consumer and compare and analyze this data in comparison with that of other consumers.

In the collection of debts the FDCPA regulates and mediates the kinds of interaction that are used to attain payments from consumers. The requirements of FDCPA are an obvious acknowledgment of the relationship between valid due diligence and abusive and manipulative practices.

The key to the hypothesis at this juncture is whether the lack of FDCPA moderating influence affects the due diligence of the collector's activities. Operationally, does the absence of FDCPA moderation compromise the due diligence of the collector's activities toward the consumer and in so doing compromise the record of the consumer?

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To answer this we return to *Games v. Cavasos* and the effort by USAFunds and the Department of Education to stop the application of the FDCPA. We will review here the weight of the efforts in *Games v. Cavasos* as indicators of USAFunds and the Department of Education's dedication to the preferred outcome in the case. An overview of the case turns up the following aspects:

1. The curious absence of the latest participation agreement, which is the one document that would have shifted the judge's role from determining a point of law to determining a point of fact.

2. The arguing for and accepting the judge's opinion that the not-for-profit USAFunds was the same as a state agency for all practical purposes.

3. Fear of the addition of the Federal Trade Commission to the regulatory framework if FDCPA were to be applied to guarantors.

4. Fear of compliance with Federal Privacy Act requirements as prescribed by the Federal Debt Collection Act.

5. Costs associated with FDCPA and Federal Privacy Act requirements should Games prevail.

6. The implications for possible class action if Games were to prevail on the FDCPA issue.

The strict removal of FDCPA frees the guarantors and their personnel to construct the record of the consumer with the consumer having none of the rights of FDCPA. It is obvious in the behavior of USAFunds and the Department of Education in *Games v. Cavasos* that monitoring and surveillance of a consumer in the collection of student loan debt be unfettered by the intrusive and bothersome

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details of FDCPA.

The Mode of Information – Monitoring and Surveillance Findings

In part one of the model of the mode of information the outcome of this analysis of the data shows that

> The absence of FDCPA moderation upon due diligence is used to prejudice the record of the consumer that is the basis of the administrative taking of a consumer's income tax refund in the Guaranteed Student Loan Program in favor of the student loan guarantor.
>
> The "due diligence" (record of monitoring and surveillance) represented to the Department of Education is used to justify the basis of the administrative taking of a borrower's income tax refund in the Guaranteed Student Loan Program in favor of the student loan guarantors.
>
> The mode of information is used to prejudice the record that is the basis of the administrative taking of a borrower's income tax refund in the Guaranteed Student Loan Program, in favor of the student loan guarantors.

Through a three-step process, a positive relationship exists from

1) The operational level of the government's chief student loan guarantor's successful evasion of the FDCPA.

2) The creation of the guarantor's record of due diligence, that is the asserted duly diligent practices of collecting monies owed by contractual agreement.

3) The successful manipulation of the information-gathering process, the mode of information, in order to prejudice the taking of income tax refunds in favor of student loan guarantors.

We turn next to the issues of the policy change process and the mode of information.

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In this section we will treat the remaining two elements of the mode of information under the conversion process dimension of the policy change process. Those remaining elements of the mode of information are:

1. Using the norm to constitute the individual, which we call by the more familiar term of stereotyping, and

2. Defining the deviants and disciplining the population, which are identified by policy changes directed at the population.

In this section we will cover the legislative initiatives affecting student loan consumer rights during the period of 1990 through 1992. This period was characterized by many hearings in both the House and Senate regarding, debt collection practices, policies, and the financial condition of the student loan program.

Focus of the Study – Bills of Attainder

As in the treatment of the first hypothesis, the theoretical elements of the mode of information must be treated in the context of American public law. The underlying legal principles identified as the empirical frame for the second hypothesis is the bills of attainder principles as identified in the Constitution, in case and common law. The rationale for selection of the bills of attainder as the frame of this evaluation is the criterion upon which administrative takings are authorized. That is, Congress has legislated the taking of property prior to judicial or administrative hearing and has done so based on being able to identify specific individuals. These are two of three of the criteria established as constituting bills

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of attainder by the Supreme Court in such cases as *Nixon v. Director, General Services*, .Ct. 2777 53 L.Ed. 2d 861 (1976) and *Selective Ser. Sys. v. Minn. Public Int Research*, 104 S.Ct 3348 (1984). Whether the third criteria of "punitive purpose" is met will be examined within the study.

Framing the Deadbeat

A prominent environmental factor affecting the student loan program has been the issue of characterizing defaulted borrowers as deadbeats. On June 14, 1990 in house hearings on federal debt collection procedures before the Subcommittee on Economic and Commercial Law of the Committee on the Judiciary, Robert J. Hobbs, Deputy Director of the National Consumer Law Center, summarized what the NCLC considers to be one of the overriding problems of debt collection legislation:

> One of the most frequent fallacies concerning debt collection legislation is the contention that the primary beneficiaries are "deadbeats." In fact, however, there is universal agreement among scholars, law enforcement officials and even debt collectors that the number of persons who willfully refuse to pay just debts is minuscule. Prof. David Caplovitz, the foremost authority on debtors in default, testified that after years of research he had found that only 4 percent of all defaulting consumers fit the description "deadbeat." The conclusion is supported by the National Commission on Consumer Finance which found that creditors list the willful refusal to pay as an extremely infrequent reason for default.
>
> The Commission's findings are echoes in all major studies: the vast majority of consumers who obtain credit fully intend to repay their debts. When default occurs, it is nearly always due to an unforeseen event such as unemployment, overextension, serious illness or marital difficulties or divorce (H. R. Rep. No. 35-041 1990).

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Since the beginning of the policy separation of student loan consumers from other types of consumer loans with the changes in the Federal Bankruptcy Act in 1976, Congress has consistently ignored this fundamental research on consumer and student loans that finds no real differences in behaviors that would justify inflicting punishments without any conviction in the course of judicial or administrative hearings.

The Crisis and the Policy Changes

The hearings, in late 1990, surrounding the HEAF crisis and its possible impact on Sallie Mae and the student loan industry established the crisis tone of the upcoming fall legislative session of the lame-duck 101st Congress. Also, on the horizon were the beginnings of the presidential campaign organizing efforts of both President Bush and Vice President Dan Quayle. Quayle's closest advisors were lying in wait for the campaign within the wall of the Department of Education[6]. Also, affecting legislative activity were the events surrounding Iraq's invasion of Kuwait.

The November 1991 session brought on two changes in the traditional arena of student loan concern, the Federal Bankruptcy Act. The courts and

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[6] Significant members of the management team at the Department of Education were soon to take up key campaign positions in the Quayle or Bush campaign staffs. These included Department General Counsel Wendell Wilke an Indiana native who would become the Quayle campaign's counsel and William Kristol, the now prominent conservative commentator, an official within a guarantor agency of a mid-western state stated confidentially that Quayle had been known as the "Senator from USAFunds."

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scholars in a number of cases and articles had complained in their decisions and research of the imbalance between Chapter-7 loan forgiveness and Chapter-13 wage-earner plans. In early November this problem was addressed in passage of Public Law 101-508 that applied the exemption of student loans found in Chapter 7 to Chapter 13. It also required a 7-year time requirement for eligibility for bankruptcy consideration, two years longer than the Chapter-7 requirement.

By the end of November, Congress addressed the five-year and seven-year discrepancies between Chapters 7 and 13 with passage of technical amendment in Public Law 101-647. Now both chapters had the same 7-year qualification requirement for a borrower's loan to be considered in bankruptcy court.

At the end of September the United States Court of Appeals Fifth Circuit found in the case of *Grider v. Cavasos* 911 F.2d. 1158 (5 th Cir 1990) that the statute of limitation applied to the collection of student loans via income tax offset. The court of appeals held that

> An assigned student loan debt which is time barred for collection by lawsuit cannot be collected by tax refund offset if ten years have passed since debt became delinquent in the hands of the Secretary of Education's assignor.

By April 1991 the 102nd Congress was in place and the nation was preparing for its first major war since Vietnam. In Public Law 102-26 Congress addressed the problem confronted by the Department of Education in *Grider v. Cavasos*. Through passage of the Higher Education Technical Amendments of 1991, Congress, at least partly under the banner "to prevent undue burden on

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participants in Operation Desert Storm," provided a waiver on student loan payments for military personnel while engaged in operations Desert Shield or Desert Storm. However, Congress also legislated the "Elimination of Statute of Limitations for Student Loan Collections." The legislation provided broad-based exemptions from all state and federal statutes of limitation. The act provided that

> (a) In General– (1) It is the purpose of this subsection to ensure that obligations to repay loans and grant overpayments are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the period with which debts may be enforced.
> (2) Notwithstanding any provision of statute, regulation or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgement may be enforced, or any offset, garnishment, or other action initiated or taken by–
> (A) an institution that receives funds under this title that is seeking to collect a refund due from a student on a grant made, or work assistance awarded, under this title:
> (B) a guaranty agency that has an agreement with the Secretary under section 428(c) that is seeking the repayment of the amount due from a borrower on a loan made under part B of this title after such guaranty agency reimburses the previous holder of the loan for its los on account of the default of the borrower;
> (C) an institution that has an agreement with the Secretary pursuant to section 453 or 463(a) that is seeking repayment of the amount due from a borrower on a loan made under part D or E of this title after the default of the borrower on such loan; or
> (D) the Secretary, the Attorney General, or the administrative head of another Federal agency, as the case may be, for payment of a refund due from a student on a grant made under this title, or the repayment of the amount due from a borrower on a loan made under this title that can be assigned to the Secretary under this title.
> (b) Conforming Amendment.– Section 16041 of the Consolidated Budget Reconciliation Act of 1985 (Public Law 99-272) is amended–
> (1) by striking out subsection (e);
> (2) in subsection (f), by striking out "The amendment made by section 16034" and inserting in lieu thereof "The amendments made by sections 16033 and 16034"; and

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> (3) by redesignating subsection (f) as subsection (e)
> (c) Effective Date. – The amendments made by this section shall be effective as if enacted by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and shall apply to any actions pending on or afer the date of the enactment of the Higher Education Technical Amendments of 1991 that are brought before November 15, 1992.

The extent of this exemption from any statute of limitations leaves little doubt regarding its intent to ensure the collection of debts owed the government by the borrowers of student loans. No other category of loan, grant, or tax payment has such an extensive exemption from statutes of limitation, Pollack and Hicks (1993).

Given the extent of the statute of limitations exemption, we must again return to the issue of due diligence. However, at this juncture it is the relationship between the absence of a statute of limitation upon the due diligence that is the main concern. It is the affect this absence has on the business practices and records of student loan lenders, guarantors, and federal officials that is of concern.

The obvious question regarding due diligence and statutes of limitation in all other settings has to do with whether a business is seriously due diligent if it has taken beyond the standard 3, 5, 7, or ten years to press its claim. The Federal Tort Claim Act of 1966 originally accepted six-year limits on claims against and by the government. The serious pressing of a claim prior to the horizon of a statute of limitation's date would normally be a final test of due dilegence for any business. In regard to student loans and similar obligations of citizens to the government, we repeat the observations of Pollack and Hicks (1993):

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> Why are student loans sacrosanct by comparison to other government claims like Social Security overpayments, improperly received unemployment compensation, ADC overpayments, Veterans Administration foreclosure loan deficiencies on foreclosed property, and even obligations owed to the Department of the Treasury, Internal Revenue Service, all of which contribute to the Federal Deficit?
>
> Outside of bankruptcy there is a statute of limitations on tax collection; inside bankruptcy, taxes over three years old are dischargeable. Moreover, other than taxes, none of these creditors have the advantage of risk distribution through the charging of interest that is available to the student loan.

What the Fifth Circuit Federal Appeals Court held as equitable seven months before was not corrected by Congress. Now consumers of student loans were distinguished from every other class of loan, grant, or benefit category recipient or beneficiary or borrower.

In November of 1991, Congress took its last major step in the complete standardization of exemptions and penalties of student loan borrowers. Up to this time only federal employees were subject to an administrative wage garnishment by the federal government for defaulted student loans. With the passage of Public Law 102-164, this power was extended to include the general public. This at least made all consumers of student loans subject to the same strict penalties. Congress had assured at least equity within the class if not with other classes.

It is the preemptive nature of both the wage garnishment and income tax offset that raises serious constitutional issues for this study. Under either conditions the federal government is allowed to offset wages and refunds in advance of a hearing. The constitutionally protected property has been taken

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without a hearing. One may be made later, but the deed has essentially been done. Whether people who have little money or limited ability to manage their money will be able to manage a hearing is, of course, problematic.

Policy Change, Bills of Attainder, and the Mode of Information

The frame of the legislative changes began with the underlying stereotyping of the student loan borrower population. The stereotyping is further compounded by legislative acts designed to prevent members of the population from avoiding payment of their debts. The legislation sets up penalties and methods of discipline to assure voluntary or involuntary compliance with payment of the debt. These scenarios provide two key elements of Poster's model for the defining of the deviant and the disciplining of the deviant population. The deviant is defined by defaulting on the student loan. The forms of relief available to such a person have been limited relative to similar programs offered elsewhere by the government. Deviancy and the need for discipline are assumed a priori to the actual act of noncompliance. The data do not show a student loan defaulter to be any different from any other defaulter who have all the remedies available that has been taken from the GSLP participant who has defaulted.

With the possible exception of "involuntary servitude," one of the most ancient and detrimental practices the Constitution sought to eliminate was the passage of bills of attainder and bills of pain and penalty. As the most severe form of possible legislative behavior, the framework of bills of attainder and bills of pain and penalty provide an absolute standard for examining the components of the

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mode of information of defining deviants and disciplining that population.

Bills of Attainder in the Contemporary Political System

Article 1, section 9, clause 3, of the U.S. Constitution forbids the passage of bills of attainder by Congress or by state legislatures in Article 1, section 10, clause 1. The Supreme Court has recognized this prohibition on attainder to also apply to bills of pain and penalty. In, summary a bill of attainder directed at a particular individual or identifiable group of individuals is a legislative act calling for their arrest and execution without trial, usually for acts of treason against the state. A bill of pain and penalty is based on the same action but extracting a lesser penalty such as loss of citizenship, property, or imprisonment.

Rarely has the issue of execution without trial as a result of federal legislative action been brought forward. However, the administrative state has given rise to a number of interesting cases in the less severe area of bills of pain and penalty. The law, surrounding bills of attainder, has evolved through the decisions of the Supreme Court. In one of the more recent cases, *Selective Ser. Sys. v. Minn. Public Int Research*, 104 S.Ct 3348 (1984), under Chief Justice Burger's writing the court reviewed the history and tests for bills of attainder:

> In forbidding bills of attainder, the draftsmen of the constitution sought to prohibit the ancient practice of the Parliament in England of punishing without trial "specifically designated persons or groups." *Unites States v. Brown*, 381 U.S. 437, 447, 85 S.Ct. 1707, 1714, 14 L.Ed.2d 484 (1965). Historically, bills of attainder generally named the persons to be punished. However, '[t]he singling out of an individual for legislatively prescribed punishment constitutes an attainder whether the individual is called by name or described in terms of conduct which, because it is past conduct,

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> operates only as a designation of particular persons." *Communist Party of the United States v. Subversive Activities Control Board*, 367 U.S. 2, 86, 81 S.Ct. 1357, 1405, 6 L.Ed.2d 625 (1961). When past activity serves as "a point of reference for the ascertainment of particular persons ineluctably designated by the legislature" for punishment, id., at 87, 81 S.Ct., at 1405, the Act may be an attainder. [See *Cummings v. Missouri*, 4 Wall. 277, 324, 18 L.Ed. 356 (1867).]

In the Burger court's decision on *Selective Ser. Sys. v. Minn. Public Int Research*, the court relied on *Nixon v. Director, General Services Administration*, .Ct. 2777 53 L.Ed. 2d 861 (1976), and the three basic tests developed there for determining the existence of a bill of attainder. Those are

> 1. whether the challenged statute falls within the historical meaning of legislative punishment;
>
> 2. whether the statute, "viewed in terms of the type and severity of the burdens imposed, reasonably can be said to further nonpunitive legislative purposes"; and
>
> 3. whether the legislative record "envinces a congressional intent to punish." *Nixon v. Director, General Services Administration*.

We can now examine Poster's mode of information components with a set of standards established within the constitutional and judicial framework of American law.

<u>Legislative Punishment, Intent and Non-punitive Purposes</u>

First, we should clarify that the issue is bills of attainder in the plural sense of the term. There is a set of interrelated bills that constitute a program of administration. With the question of "legislative punishment," the most obvious points are the garnishments of wages and offset of income tax refunds without

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opportunity of a hearing prior to the actual offset once the administrative process has been started by the government. Both wages and income tax refunds are recognized as property with Fourteenth and Fifth Amendment protections.

Second is the severity with which the statute of limitations exemption is applied. Unlike the generic wording of time limits upon a particular activity, the detail and length of specificity given to the statute of limitation exemption on a student loan debt is unusual and may be asserted to demonstrate the legislature's further intent to punish.

Within the record of Congress we have seen at nearly every juncture, the tendency on its part to ultimately ignore scholarly studies of consumer behavior in favor of more restrictive regulation upon the consumers of student loans.

The Mode of Information – Constituting the Individual and Punishing the Population Findings

The second hypothesis can now be viewed within the framework of the mode of information and bills of attainder. At the general level the findings surrounding the second hypothesis may be summarized as follows:

> The identification of the defaulting individuals and the special legislative treatment of their property, a method of identification based on the records of the debt collecting organizations is used to punish the population and prevent them from escaping payment and to ease the administrative taking, of a borrower's income tax refund in the Guaranteed Student Loan Program in favor of the student loan guarantors and the federal government.

Regarding the removal of the federal and state statutes of limitations, the finding is

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> The removal of any statue of limitations, a time limit based on the records of debt collecting organizations is used to discipline the population from escaping payment and ease the administrative taking of a borrower's income tax refund in the Guaranteed Student Loan Program in favor of the student loan guarantors and the federal government.

In respect to the restrictions placed on borrowers relative to qualifying their student loan obligations under federal bankruptcy the finding is

> The placing of stringent requirements for bankruptcy eligibility, a time limit based on the records of debt collecting organizations, is used to discipline and punish the population from escaping payment and to ease the administrative taking, of a borrower's income tax refund, in the Guaranteed Student Loan Program, in favor of the student loan guarantors and federal government.

In the first hypothesis it was found that within the conversion process the focal actor, the student loan guarantor, controls the information-gathering process and successfully evades attempts by others to control or influence that process. The conversion of information done by the guarantor feeds back into the environment, primarily at the legislative policy-making level.

At the environmental level, information about consumer behavior, provided primarily by the guarantors, is used as the basis of policy making aimed at identifying "deadbeats." Legislative policy makers have responded to consumer attempts to utilize statute of limitations and bankruptcy laws by substantially exempting student loan borrowers from those protections.

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This study supports the position of Pollack and Hicks (1993). Those authors have pointed out the disparity between the treatment of student loan borrowers and similar consumers of other federally backed benefit or tax programs. This study finds that a linkage exist between

1. The records compiled by the guarantors,
2. The qualification of the guarantor for federal reimbursement,
3. The qualification of the borrower for income tax offset or wage garnishment,
4. The relief consumers seek through the law, and
5. The policies developed by the government to limit consumer relief from student loans.

The extent of the policy-level exemptions and the information basis of those policy changes is indicative of a positive relationship between the mode of information and the effect of these policy changes upon consumer property rights.

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CHAPTER V

Conclusions

In this final chapter of the study, we will examine both the theoretical conclusions surrounding the mode of information and the policy conclusions surrounding due process and property rights. Both the scholarly literature and media coverage are awash in warnings of how the technological advances of the information age will encroach on our privacy and erode our rights. Most of these warnings are supported with only the broadest suggestions of how this will happen. Writers proficient in both technology and legal issues such as Garfinkel (2000), demonstrate the encroachment of technology, but offer no study of how it will happen. Similarly, legal writers such as Alderman and Kennedy (1995), raise a concern for personal privacy, but, again, provide no study of the possible root of the problem.

Information means control, control means power, more information means more power, more power means fewer rights. This rough calculus is based on Baconian and Weberian assumptions about the accumulation of information into bureaucratic hierarchies. Postmodern and Marxist models have only slightly modified this calculus, adding the duplicitous hierarchies of the mass media and popular culture to the behavioral control programs of the bureaucracies. Researchers have not focused an effort toward an examination of the operational elements of this alleged process in a contemporary realistic setting. The purpose of this study was to provide at least a pilot study of how control of information

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might result in fewer rights.

In the contemporary American political system, the creators of federal programs seek to balance the needs of regulators, the needs of benefit recipients, and the needs of the public. The presence of the public creates both real and perceived pressures on policy makers to act. Values inspired by such as "the taxpayer's money" and "deadbeat" weigh heavily upon the policy-making process. The passion to protect the taxpayer's money and to corner the deadbeat is realized in current judicial thinking by the philosophy of legal realism. Judicial practitioners of legal realism frame their decisions in an ostensibly empirical and rationalist paradigm that attempts to account for the needs of the state in balance with the needs of the individual. However, analysts such as Schwartz and Warren have argued that legal realism has subordinated constitutional and social contract principles in favor of this balance principle.

A key constitutional and social contract principle that is at the forefront of the balance principle in both the judiciary and Congress is privacy. It could be argued that information processes and technologies have changed what might be considered "the right of the people to be secure in their persons, house, papers, and effects..." In *Griswold v. Connecticut*, 1965, page 509, Justice Black described privacy as "a broad, abstract and ambiguous concept." Information systems and processes and the massive public and private data gathering bureaucracies that support them, have furthered the abstract and ambiguous problem of individual privacy versus the rights assumed by the state to protect

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society.

In this study an examination of the balance problem has been made within the systems model and within the theoretic frame of the mode of information. Specifically, does the mode of information provide the kind of empirical model that demonstrates how information systems and their owners affect key constitutional and social contract principles? If so, can the mode of information provide the kind of framing needed to further the arguments on the individual's side of the balance argument?

The Mode of Information

Poster's mode of information would fall within the "broad assertions" of scholars with the exception that Poster wrote with the intent of deepening research into the dynamics of monitoring and surveillance, using the norm to constitute the individual and discipline the population.

The mode of information is a difficult model to apply to a complex policy problem. Each component could just as easily constitute a distinct study in itself. However, demonstration of the interrelationships in order to give a full accounting and examination of the theory would be incomplete without inclusion of all components within the study.

This study endeavored to see whether there was a basis for a mode of information process within the framework of the Federally Guaranteed Student Loan Program. In the study the components of the mode of information were grouped into two hypotheses. The first hypothesis resided primarily at the

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conversion process level in the systems model and accounted for the monitoring and surveillance component of the mode of information. The second hypothesis resided primarily in the environmental level of the systems model and accounted for the other two components of the mode of information: using the norm to constitute the individual and disciplining the population.

The findings of the study within the first hypothesis indicate that the focal political actors of the leading student loan guarantor strive to control the debt collection and data-gathering process to prejudice the property rights outcomes in their favor. At the administrative and operational level the student loan guarantor strives to limit application of federal policies that regulate debt collection behavior and data gathering. Control over the data gathering process is used to influence the records that are the basis for federal reimbursement of the guarantor and the basis for federal taking of income tax refunds and for wage garnishments. This administrative process provides feedback to the environmental level.

In the second hypothesis the data and information about debt repayment behaviors and loan default rates generated at the monitoring and surveillance level are transformed into feedback used in the process of determining policy changes. At this level the information derived from the debt collection process can be used in aggregate forms that policy makers can use to draw pictures of this population.

The political system contains values that will frame any policy. "Deadbeat" plays an important role in the formation of student loan policy. "Deadbeat" is reinforced by data provided by the administrative process. In the name of

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administrative efficiency, stricter laws are developed for this population than for any similar population. The "norm," at least of the deviant behavior, is used to constitute the individual. That is, individual rights are constituted within the framework of the aggregated deviants within the selected population. Anyone falling into default will suffer the same disproportionate consequences, regardless of whether he or she acted in good faith or not.

Policy makers have modified the laws governing student loan debt collection by removing many bankruptcy protections, removing state and federal statutes of limitations, and, most importantly, by allowing administrative offsets of income tax refunds and garnishment of wages prior to judicial or administrative hearing. With the goal of disciplining or punishing the deviant population, all based on how information about the population is viewed within the political system. The mode of information transforms the data from the monitoring and surveillance stage into aggregated databases analyzed and presented as evidence for supporting the "deadbeat" character of the population, using the norm to constitute the individual, and to justify policy changes that discipline and punish that population.

Policy Conclusions

The policy conclusions of the study return again to the problem of the gap in the scholarly literature surrounding the examination of information and basic constitutional rights in a realistic setting. The underlying policy and scholarly question are how, given the constitutional protections, can information systems

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and processes undermine our rights? In this study two policy-process conclusions can be reached with regards to the above question.

In the case of the first hypothesis and the mode of information component of monitoring and surveillance, individual rights are compromised chiefly by the absence of data gathering controls on the actor who controls the key databases used in the administration of the federal program. Rights are further compromised by the absence of policy links between the process of debt collection and the process of personal bankruptcy.

The same absence of controls over the processes of gathering data on debt collection data-gathering processes also compromises the key administrative, legal, and financial principle of due diligence. Due diligence is usually a simple standard of determining whether a collector of a debt demonstrated a normal effort toward proper collection. To become abusive through the evasion of controls casts a shadow over the records that are compiled in the debt collection process. While some consumers may respond to abusive debt collection practices with more payments, others may rebel and protest through nonpayment. In both cases the consumers lose rights. In the case of those who rebel through nonpayment this may mean federal action against their property in the taking of their income tax refund or garnishment of their wages.

In the second hypothesis, policy makers worked within a political system with certain latent values about people who do not pay their debts. For reasons not entirely clear, the legislative policy makers have come down harder on

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consumer participants in the student loan program than on any other group participating in any other federal program involving the lending of money, the distribution of a federal benefits, or the collection of taxes owed. Ostensibly, the reason for the difference is the default rate of student loans, based on the data submitted by guarantors. However, empirical studies submitted to Congress demonstrated the similarity in default rates between student loan consumers and defaulters on other consumer loans.

Policy makers isolated individuals that voluntarily participated in a federal program. Policy makers accepted values latent in the political system that generated labels such as "deadbeat" that were placed on nearly anyone not fully complying with a repayment plan. From this position the policy makers used data from a broken data-gathering process, as found in the first hypothesis, to form the foundations of new policies. Policy makers placed more restrictions on consumers and exempted consumers from other protections. These acts were all done under the assumption that the population was misbehaving and needed to be controlled and properly disciplined to achieve payments and compliance.

In the final analysis, the legislative policy makers set up a system that allowed for the identification of specific individuals, and allowed for the taking of property prior to judicial or administrative hearing. Both allowances were punitive upon examination of the legislative record, and both weighed disproportionately upon one particular set if individuals relative to other sets having similar relationships with financial institutions and the government. Without realizing

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what they were doing, the legislative policy makers, with the assistance of private and executive branch organizations, established a set of policies that meet the criteria for a Bill of Attainder, or more accurately a Bill of Pain and Penalty.

Bills of attainder and their prohibition by the Constitution, though an infrequently visited principle of contemporary law, are the problem and the solution of the information age. In the Anglo-American tradition the legislature is supposed to make general laws applicable to all members of the society. Exceptions are based on principles and not upon the ability of the legislature to identify specific individuals for punishment. Political actors may cloak their information systems with science and empiricism, hiding their underlying self-serving agendas. The empiricism can be used to justify the isolation and segregation of a group of people. However, the legislature reasons this is administrative efficiency and not a bill of attainder.

In one respect it makes sense that an older, now less well-known, area of the law is the area in which new battles will be fought over use of new technologies. Policy makers and policy making have not kept up with the changes brought on by information systems. The legislatures have addressed how the public can get to the information held by others. They have addressed how one can request correction of one's information. They have addressed how information may be shared with others. But very little has been done outside the Federal Fair Debt Collections Practices Act to address how information can be drawn out of the public. Additionally, the Federal Fair Debt Collections Practices

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Act only deals with one narrow area of private business activity and has little to do with the activities of government.

Drawing information out of a person is the same as building a case file of evidence that can be used against him or her. The methods of acquiring this evidence are poorly regulated. Powerful actors such as student loan guarantors can build a case against an individual that has consequences upon the individual's property rights. Powerful actors can free themselves of restrictions on their monitoring and surveillance activities through lobbying and other means. The data aggregated from these systems can be used to build a basis of punitive laws designed to label individuals as deviants and provide laws that discipline the population.

The unregulated nature of the technologies and practices of the information age brought on a kind of accuracy and veil of empiricism that plays off well on the contemporary values of administrative efficiency. In the case of student loans, the veil of empiricism and the desire for administrative efficiency have been further corrupted by the label of the "deadbeat." Unchecked, the desire to make deadbeats pay and the desire to be efficient have caused the political system to generate bills of attainder against a class of individuals who, through their participation in the student loan program, are supposed to be part of the driving force of growth in that nation. Instead this population is selected out for punishment.

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Future Research

This study has been a pilot study. It draws some conclusions about the forces of information technology and processes that have implications for an infrequently visited area of law. Demonstration in the courts of bills of attainder surrounding information policies and practices is probably years away if it is ever undertaken. New social forces, such as information technology, will continue to reshape legal thinking. New social forces can also raise old questions. The tests for a bill of attainder established by the Supreme Court and used in this study should be revisited in future studies of information policy. Scholars may wish to examine policies toward populations based on bills-of-attainder criteria and the interaction with information systems, processes and practices. Legislators should keep bills of attainder in mind when formulating laws, administrators should watch for whether their practices aid the attainder process, and the citizenry needs to draw a line regarding how data are gathered from them.

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Glossary of Terms

Scientific Theory

Poststructuralism - School of thought within social sciences which acknowledges the existence of structure within social scientific theory but rallies against pre-supposing an explanatory theory for any particular research setting.

Totalizing/totalization - A condition of a social scientific theory in which an attempt is made generalize its principles to the status of a major explanatory model.

Electronic mediation of communication - Situations in which electronic storage and transmission of symbols and language plays a significant role in the exchange between people.

Mode of information - A poststructuralist theory used to guide research within contemporary social settings in which the electronic mediation of communication plays a role.

Monitoring and Surveillance - Key element in application of the mode of information toward use of databases within society. Data is stored in order to track and control behavior of individuals and groups.

Using the Norm to Constitute the Individual - Key element in application of the mode of information toward use of databases within society. Data is stored and analyzed to develop a picture of the typical member of the database in order to develop behavioral programs to further track and control.

Define the Deviant - Key element in application of the mode of information toward use of databases within society. Data is stored and analyzed to develop a picture of the deviant in the group under analysis. Behavioral program can then be developed to further track and control.

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Student Loan Program

Guaranteed Student Loan Program (GSLP) - Umbrella term for all student loan programs authorized under the Higher Education Act of 1965 and its amendments. Guarantee is made to lenders by state and not-for-profit student loan guarantor agencies. Guarantor of last resort in the federal government through the Department of Education. GSLP is a category of student financial assistance the other primary program being grants.

Student loan guarantor/guarantor agency - State agencies or not-for-profit company that is authorized by the Department of Education to insure (guarantee) student loans to lenders. Relationship is authorized through a participation agreement between the organization and the Department of Education. Responsibilities of guarantors are the payment of lenders upon default of consumer, collection of debts from consumers, monitoring lender compliance and monitoring education institution compliance.

Participation Agreement - Agreement between Department of Education and state agency or not-for-profit company to manage and participate in the GSLP.

Reserve funds - Accumulated funds by student loan guarantor's to assure financial integrity of their participation and ability to manage GSLP activities. These reserve funds have been determined to be the property of the federal government.

USAFunds - United Student Aid Funds, Inc.. Since 1991, the nation's largest student loan guarantor. Founded in 1960, with former President Dwight D. Eisenhower as Honorary Chairman. Not-for-profit company incorporated in Delaware, based in Fishers, Indiana.

Income tax refund - Accumulated federal income tax overpayment, paid to taxpayers upon annual filing of taxes and assessment of any funds owed to the government.

Administrative taking/Administrative Offset - The taking of property by the government from a person to offset other debts owed to the government by the person. Offset or taking is legislatively authorized and can occur prior to judicial hearing.

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Bankruptcy and Debt Collection

Deadbeat - Popular term to describe a person who does not pay a legal debt and does so with either a intentional malevolence or cavalier attitude. Often applied as a stereotype toward anyone having trouble paying debts even though they behave in good faith.

Fresh Start - Key concept in Bankruptcy. The principle that a person behaving in good faith should be relieved of burdensome debt. Given prominence by Supreme Court in major bankruptcy cases. Not only does the individual benefit but society benefits as well in freeing a person and family from the weight of debt.

Undue Hardship - Principle developed in student loan amendments to the Federal Bankruptcy Code requiring demonstration that payment of loan would constitute an extraordinary burden upon the bankrupt and their dependents in order to qualify for relief under the law.

Good Faith - Principle and test of a person filing as bankrupt that they have acted with well meaning intentions in payment and contracting of loans.

Moral obligation of contract - Ethical principle in the law that a person's agreement to a contract constitutes a moral obligation to fulfill its terms with only marginal regard for changed circumstances or nature of the agreement.

Mini-Miranda - Major provision of the Federal Fair Debt Collection Practices Act of 1976. Requires debts collectors to inform consumer that all information obtained during the contact, usually by phone, will be used toward collection of the debt.

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Appendix A

Student Loan Program Participation Agreement
Assignment of Loans and Related Services

Agreement to Participate in the Loan Rehabilitation Program

I. Pursuant to Section 428F of the Higher Education Act of 1965, as amended (the HEA), this agreement is entered into between the United States Department of Education (ED) and the **United Student Aid Funds, Inc.**, a guaranty agency participating in the Federal Family Education Loan program through agreements with ED pursuant to Title IV-B of the Act.

II. A. On securing 12 consecutive full payments owed on a loan for which ED has made a payment under section 428(c)(1) of the HEA, the guaranty agency may sell the rehabilitated loan to an eligible lender. A full payment shall not exceed a reasonable and affordable amount. If the guaranty agency determines that the reasonable and affordable payment is less than $50, the guaranty agency must document the basis for the determination in the borrower's file. A loan also may be eligible for sale to a lender notwithstanding that payments have not been secured if it is determined that the loan was in default due to a clerical or data-processing error and would not, in the absence of such error, be in delinquent status. A loan shall not be sold to an eligible lender who has been found by the guaranty agency or the Secretary to have failed substantially to exercise the due diligence required of lenders in the Federal Family Education Loan (FFEL) program.

B. The agency will require a lender purchasing a rehabilitated loan to establish a repayment schedule that provides for the borrower to make monthly payments at least as great as the average of the 12 consecutive monthly payments received by the agency. A loan that is rehabilitated is subject to the same terms and conditions and qualifies for the same benefits as any other FFEL program loan but does not qualify for rehabilitation in the event of a subsequent default. The agency will require a lender purchasing a rehabilitated loan to notify promptly at least one credit bureau of the loan's new status in accordance with 34 CFR 682.208(b).

III. A. The guaranty agency shall pay to the Secretary 81.5 percent of the amount of the principal balance outstanding at the time of the sale, multiplied by a percentage equal to the reinsurance percentage in effect when payment on the rehabilitated loan was made under the guaranty agreement. For purposes of this agreement, the principal balance is defined as that amount received by the lender from the guaranty agency for the default claim. After a loan is rehabilitated, the agency must report the rehabilitation to all national credit bureaus.

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An agency must track each rehabilitated loan so that it can be identified if it should later be submitted for claim payment by the lender.

B. On receipt of the agency's payment, ED shall reinstate: 1) the obligation to reimburse the agency for the amount expended by it in discharge of its insurance obligation under its loan insurance program subject to Section 428(c)(1) of the Act; and 2) the obligation to pay the holder of the loan a special allowance pursuant to section 438 of the Act.

C. An otherwise eligible borrower whose loan has been rehabilitated pursuant to this agreement will not be precluded from additional Title IV assistance by reason of defaulting on the loan prior to its rehabilitation.

D. For purposes of calculating the agency's reinsurance percentage under §428(c)(1)(B) of the HEA, the amounts received by the Secretary from a guaranty agency for the sale of rehabilitated loans will be deducted from claims for reimbursement paid to the agency. If an agency has already hit a default reinsurance "trigger" for the current year, a credit will be applied to the next year's default claims paid.

IV. This agreement is subject to further statutory or regulatory changes and does not supersede any provisions of law or regulation.

V. This agreement is effective upon receipt by ED of a signed copy of the agreement and its subsequent execution by ED.

United Student Aid Funds, Inc.

Date: ~~12-22-92~~ 6-17-93

By:

Title: Robert R. Meck, Vice President

United States Department of Education

Date: July 21, 1993

By: Robert W. Evans

Title: Director, Division of Policy Development

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USAF

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR POSTSECONDARY EDUCATION

Addendum to Agreement Pursuant to Section 428(b) of The Higher Education Act of 1965, as amended, with a State or Private Non-Profit Institution or Organization for Coverage of its Student Loan Insurance Program under the Interest Benefits Provisions of Section 428(a) of the Act

The UNITED STUDENT AID FUNDS, INC. (the Agency) and the Secretary of Education (the Secretary) hereby agree to modify the "Agreement Pursuant to Section 428(b) of The Higher Education Act of 1965, as amended, with a State or Private Non-Profit Institution or Organization for Coverage of its Student Loan Insurance Program under the Interest Benefits Provisions of Section 428(a) of the Act" (the Basic Agreement), executed by the parties on June 20, 1966 (date) to add the following paragraph:

(11) The Agency shall assign to the Secretary certain student loans and perform services for the Secretary on those assigned loans in accordance with the attached Appendix A to this agreement.

The Secretary shall compensate the Agency for those services in the amount described under "Prices" in the Appendix pursuant to section 428(f)(1) and (2) of the Act.

The sum of all amounts paid for any fiscal year under this paragraph of the Basic Agreement and any other amounts paid under section 428(f) of the Act, exclusive of agency retentions as described in the Appendix, shall not exceed the lesser of:

(i) the sum of the amounts payable to the Agency under section 428(f)(1), and the amounts payable under section 428(f)(2), if the agency is eligible for such payments; and

(ii) the actual amount of expenses incurred during that fiscal year for which the agency is eligible for reimbursement under this paragraph and section 428(f).

In witness whereof, this Addendum to the Basic Agreement has been executed by the undersigned as duly authorized representatives of the parties.

UNITED STUDENT AID FUNDS, INC. Name of Agency	SECRETARY OF EDUCATION
Roy A. Nicholson, President Print Name and Title of Agency Official	By Director, DPPD Print Name and Title of ED Official
[signature] Signature	[signature] Signature
October 2, 1985 Date	10/11/85 Date

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

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Appendix: Assignment of Loans and Related Services

Introduction

The Deficit Reduction Act of 1984 provides the authority for the Internal Revenue Service to offset the Federal income tax refunds of taxpayers who are indebted to the U.S. Government. To collect defaulted student loans under this authority, the Department of Education is implementing a program whereby the participating Guarantee Agency will assign certain defaulted reinsured loans meeting criteria specified below to the Department of Education. These loans must be assigned to the Department of Education in order to qualify for this offset program because the Deficit Reduction Act of 1984 clearly states that the debts in question must be debts owed to the Federal Government.

In order to effectively accomplish the objective of this project, ED has established the following criteria:

(1) The agency must be a State Guarantee Agency or private non-profit organization which has executed a reinsurance agreement under section 428(c) of the Higher Education Act, 20 U.S.C. 1078(c).

(2) The agency shall maintain a central location where Guaranteed Student Loans are processed. It must be able to store these loan records in a secure location, access these notes in response to requests from debtors and/or ED, provide information and attendant services to debtors, lenders, credit agencies, etc., and produce reports to interested parties on critical aspects of its operations.

(3) The agency shall use an assignment format, provided by ED, which captures borrower information in a standardized, coherent fashion.

(4) The agency shall perform collection activity on the accounts it assigns to ED which is at least equal to the level of collection effort which the contractor must expend as part of its normal exercise of due diligence in collection of the accounts it does not assign. The agency shall not initiate litigation on any account which it assigns to ED. The agency shall perform all collection activity on the assigned accounts in compliance with the provisions of applicable Federal and State laws governing the activities of debt collectors, including the Federal Privacy Act requirements.

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Assignment of Defaulted Reinsured Loan Notes

The agency will assign to ED any defaulted guaranteed student loan on which ED has paid a reinsurance claim that has an unpaid balance of twenty-five dollars ($25) or more and on which there have been no payments in the last year. The agency need not assign accounts on which a judgement has been obtained or is in the process of being obtained, accounts with a collection agency where the guarantee agency will incur a financial penalty for withdrawal, accounts on which an administrative garnishment has been obtained or is in the process of being obtained, or for any other reason that has the prior approval of the Secretary or the Secretary's representative. In addition, the agency may assign other accounts of the agency's choosing on which payments have been received in less than one year, or that are beyond the 10 year limitation imposed by the IRS. The agency shall identify each account assigned by name, social security number and account balance in a letter provided as Attachment A to this addendum.

Sixty (60) Day Letter

The agency shall generate and mail, no later than October 3 of each calendar year of the agreement (unless otherwise approved by the Secretary or the Secretary's representative), a one page letter (also known as the "60 day" letter) to each debtor whose account has been assigned to ED. The letter advises the debtor that his/her account has been assigned to ED, which will collect the outstanding balance by offset against any Federal tax refund due to the debtor. The text of this letter is included as Attachment B.

Inquiries and Complaints

Initial Inquiries and Complaints

The agency shall handle timely all initial inquiries and complaints related to accounts assigned to ED. The agency must allow inquirers access to the records relating to that inquirer's account. The agency must abide by the Federal Privacy Act and the Freedom of Information Act.

Referred Inquiries and Complaints

If the agency determines that an inquiry or complaint cannot be resolved satisfactorily without the intervention of ED, the inquiry must be referred to ED. The appropriate ED Regional Office contact for that referral and complaint procedures is listed in Attachment F. If ED needs information in the possession of the agency, the agency agrees to provide this information within one week.

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Criteria for Certification of Past Due Accounts

The agency will identify to ED, any assigned loan note on which satisfactory repayment arrangements have not been made by the debtor after the mailing of the 60-day letter.

The agency must certify, in writing, that the obligation is legally enforceable, that the obligation is past-due, and that, unless judgement has been entered on the note, no more than nine years have elapsed since the date on which the agency paid the lender or the date on which it received a payment from the debtor. Each obligation must be identified by social security number. The agency shall identify these loan notes as described in the section entitled "Forwarding of Tapes and Certification Letter."

Data Compilation and Transmission to ED

The agency is required to compile individual loan information in an ED-prescribed format and transmit such data to ED on magnetic tape by December 5 unless otherwise approved by the Secretary or the Secretary's representative. The magnetic tapes will then be fowarded to a designated ED address via such carrier as the agency chooses but with the delivery guarantee that the magnetic tapes arrive by the established deadline. The agency must maintain a back-up tape of the forwarded set of records until ED or its agent indicates that the first set of records is acceptable. ED will return all tapes to the agency following successful data receipt.

Record Format

ED will prescribe the tape format as determined by the IRS for data regarding the notes being assigned to ED under this project. A copy of the most recent format, provided by the IRS, is included as Attachment C. ED will immediately notify the agencies if this format is changed by the IRS. Based on the format provided by ED, the agency shall finalize the technical specifications to create and forward records. ED also requires that a hard-copy "Magnetic Tape Transmittal Form" accompany each tape submitted to ED. A copy of this form is included as Attachment D.

Processing Problems

The agency shall contact ED whenever technical assistance is required for the resolution of system problems that would adversely affect the performance of the tasks included in this agreement, regardless of whether such assistance will be eventually provided by ED, its agent, or the IRS.

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<u>Forwarding of Tapes and Certification Letter</u>

The agency shall produce magnetic tape(s) containing the required data from those loans to be certified to ED. These tapes shall be delivered to ED no later than December 5 of the contract period unless otherwise approved by the Secretary or the Secretary's representative. Updates to this tape to delete or adjust records will be accepted on a weekly basis as necessary.

The agency shall also provide with each tape a letter certifying that the accounts are all "past-due, legally enforceable debts" and that each has been sent a 60-day notice. A copy of this certification letter is included as Attachment E.

<u>Record Updating</u>

The agency shall maintain a system to collect, record, and enter changes and adjustments to records to ensure that the borrower accounts reflect the most recent status. This activity will take place prior to the forwarding of the data tape(s) to provide the most accurate record possible for each record that is sent to ED.

<u>Record Adjustments</u>

The agency shall promptly provide ED with data required to adjust any debtor record after it has been certified to ED for offset. The agency shall do this by ensuring that all accounts transferred to ED are accurate and current at the time of transmission and by notifying ED no more frequently than weekly but at least monthly by tape update of any changes to an account. The agency is not responsible for notifying ED of changes to the accounts if ED has reassigned that loan to the agency, or if the assignment has been recinded

<u>Account Compromise</u>

If the debtor agrees to pay, by certified check within 30 days, all of the principal, the agency may agree to compromise the interest on accounts assigned to ED. The agency should not use this authority unless it judges that a compromise is in the best interest of the government.

<u>Reassignment of Accounts not Satisfied by Offset against Federal Tax Refunds</u>

On or before July 1 of the year in which offset occurs, ED agrees to reassign to the agency, and the agency agrees to accept, assignment of a loan on which there is an outstanding balance after an offset has occurred, and any loans for which ED determines that no offset is likely to be effected.

The agency should understand that the same accounts may need to be reassigned and re-certified to ED in subsequent years.

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Quality Control

The Department of Education is committed to the concept of quality control as a means for ensuring quality performance in contractor activities. To this end, the agency shall establish appropriate measures to ensure accurate data entry and tape transmission.

Agency Staff

The agency shall provide the name(s), title(s) and telephone number(s) of its staff who will be responsible for the design, testing, implementation and operation of this project as soon as possible after signing the addendum to the Basic Agreement, but before sending the 60-day notice

Department of Education Staff

All questions related to policy matters and changes in procedures affecting this project must be directed to the Student Receivables Branch, Division of Credit Management and Debt Collection on (202) 755-1467. Technical operational questions may be directed to the Guaranteed Student Loan Branch, Division of Program Operations on (202) 472-6537. Questions related to inquiries and complaints must be directed to the appropriate ED Regional Office contact.

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PRICES

ED will pay the agency different unit prices depending on the volume of accounts which are certified to the IRS each year this agreement covers. The following unit prices will be paid for each borrower whose loans are certified by the agency:

-- Five dollars ($5) per account certified and accepted up to and including the first ten thousand (10,000) accounts; and,

-- Two dollars ($2) per account for all accounts certified over the first ten thousand (10,000).

An "account" is all debts owed by one debtor with one social security number. The agency agrees to submit any information necessary to allow ED to determine the amount owed to the agency.

Retention Rate Structure

For each account on which the agency forwards a 60-day notice of pending IRS offset action, the retention rate will be ten percent (10%) of the dollars collected between the mailing date of the 60-day notice and January 1 of the following year, plus the complement of reinsurance percentage if applicable.

For each account on which the agency forwards a 60-day notice of pending IRS offset action, but does not eventually certify for IRS offset, the retention rate on collections received by the agency after January 1 of the following year is determined by the appropriate provisions of the Higher Education Act of 1965, Section 428(c)(6)(A), as amended.

For each account on which the agency forwards a 60-day notice of pending IRS offset action and certifies to ED, the agency shall be permitted to retain thirty percent (30%) of the dollars collected by the agency after January 1 of the following year, plus the complement of reinsurance percentage if applicable.

The agency shall receive no share of any sums received by ED from the offset against a debtor's Federal Tax Refund. The agency will likewise receive no credit for those sums against any exception taken with regard to that debtor's account in an audit or review conducted by ED or on its behalf, of the agency's administration of its GSL activities. Once an account is reassigned, the retention rate is then determined by the appropriate provisions of the Higher Education Act of 1965, Section 428 (C) (6) (A), as amended.

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Periods of Performance

The period of performance for this project will be from the date the addendum to the Basic Agreement is signed through September 1, 1986.

Subject to the agreement of both parties, the period may be extended as follows:

Option Year One -- The period of performance will be August 1, 1986 through September 1, 1987.

Option Year Two -- The period of performance will be August 1, 1987 through September 1, 1988.

Agency Deliverables

The following items are required agency deliverables for each period of performance the agency will operate under this addendum to the Basic Agreement:

Items	Due Date to ED
Assignment of loans	Postmarked before mailing of first 60-day Notice
Completion Date for mailing of all Sixty-Day Notices	October 3
Certification Letter and transfer of information via magnetic tape sent to ED	December 5
Account Record Updates	Minimum of Monthly
Monthly Reports	No later than two (2) weeks after the end of each reporting month
Final Report	No later than September 1

Monthly Progress Report

The Monthly Progress Report shall contain the following information on all accounts assigned to ED:

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-- Total number of accounts on which 60-day notices were sent;
-- Total dollar value of outstanding balances on loans which were sent the 60-day notice;
-- Number of accounts for which payment was received subsequent to the 60-day notice, but before January 1;
-- Dollar value of accounts for which payment was received subsequent to the 60-day notice, but before January 1;
-- Total number of accounts certified to ED;
-- Total dollar value of outstanding balances certified to ED;
-- Number of accounts actually offset by the IRS;
-- Total outstanding balance on accounts actually offset by the IRS;
-- Total amount collected via offset by the IRS, net of injured spouse claims;
-- Number of accounts for which payment was received after January 1;
-- Total dollar value of accounts for which payment was received after January 1;
-- Number of complaints filed against the agency related to its performance under this agreement.

Figures for each of these categories are to be provided as follows:

CURRENT REPORTING MONTH PERFORMANCE PERIOD TO DATE

This Monthly Progress Report may also include narrative discussion by the agency on the following:

-- Nature of the complaints reported above relative to agency performance of the terms and conditions of this agreement;

-- Other items of interest to ED that may include recommendations for future activity, anticipated problems or proposed changes to procedures.

Final Evaluation Report

The agency shall submit a Final Evaluation Report no later than September 1. This report shall provide analysis of the operation of the IRS offset initiative, which shall include, but not be limited to:

-- Discussion of problems experienced during performance period;
-- Recommendations for operational revisions and improvements;
-- Evaluation of the communication links among the agency, ED, and the IRS;
-- Discussion of overall data entry error rates, tape rejection rates and reasons, and corrective actions employed by the agency to reduce these rates;
-- Nature, number and disposition of borrower complaints.

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Government Furnished Materials

ED will provide to the agency a monthly update tape of all offsets performed by the IRS on accounts the agency certified to ED. The agency will return all tapes to ED after successful data receipt.

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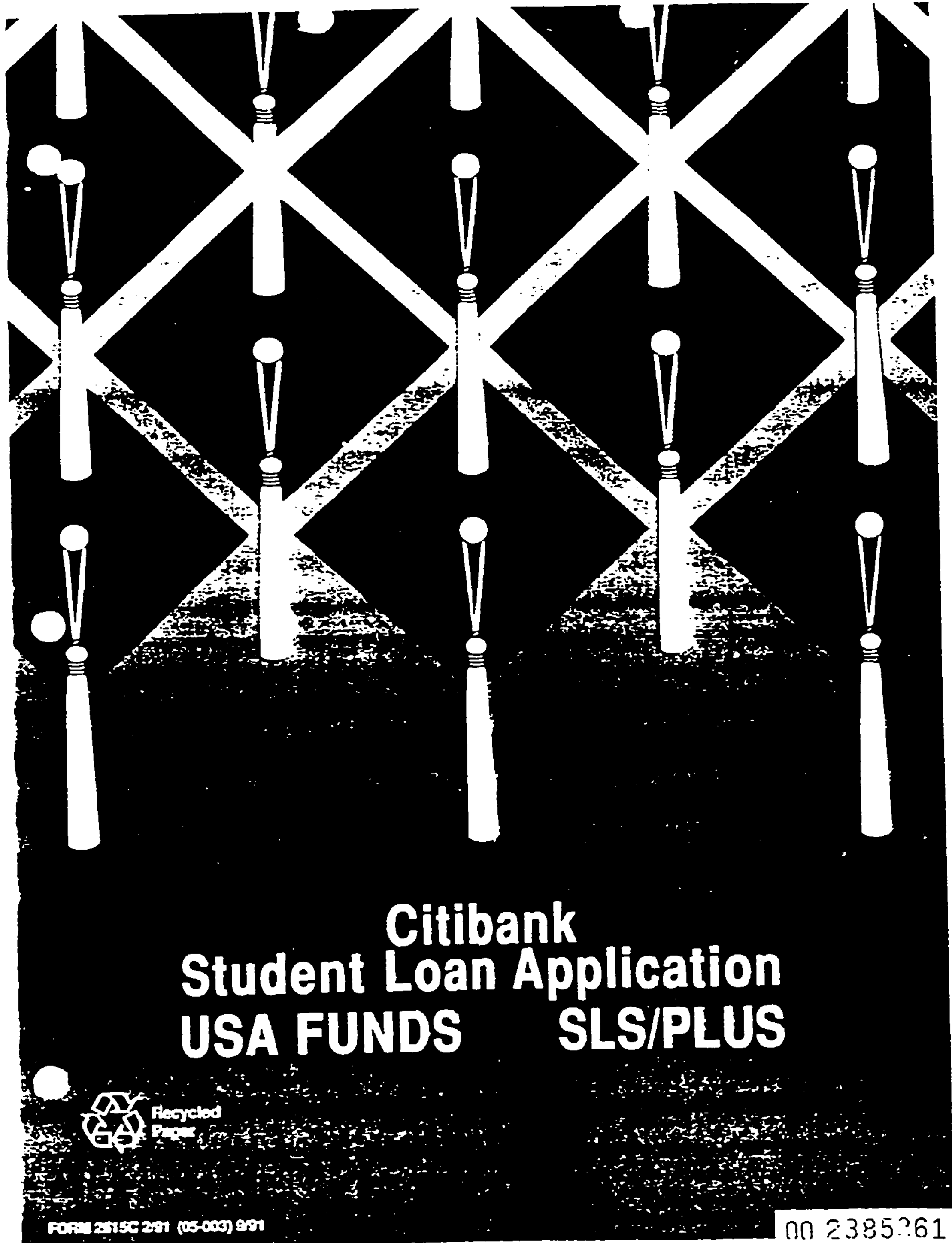
Appendix B

Student Loan Application



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Citibank Application Steps for Supplemental Loans for Students (SLS), Parent Loan Program (PLUS)

1 You must complete a Financial Aid form to determine your eligibility for a Pell Grant and Stafford Loan (formerly Guaranteed Student Loan – GSL) **before** applying for an SLS. Check with your Financial Aid Office to see which Financial Aid form is required. A Financial Aid form is not required for PLUS.

2 Complete Section 1A and 1B of the application in ink. Please use your actual street address, not a Post Office Box number. Be sure to read, sign, and date the promissory note. Don't forget to fill in all information in the reference section including Zip Codes.

3 Detach three copies of the Application and submit to your Financial Aid Office for certification. Retain the Borrower Copy for your records.

Then...

Your Financial Aid Office will review your application for completeness and accuracy. In addition, they will complete Section II. The School will mail your application to Citibank Student Loan Business c/o United Student Aid Funds (USA FUNDS).

USA FUNDS, upon reviewing your application in accordance with their procedures, will forward all applications to Citibank. You will be notified if your loan request is denied.

Following approval, USA FUNDS will send Citibank a Notice of Loan Guarantee. Citibank will send you a Disclosure Statement along with your check and:

- For a SLS LOAN, will send the check (minus the guarantee fee) directly to the school's Financial Aid Office.
- For a PLUS LOAN, will send the check (minus the guarantee fee) directly to the address as indicated on the application.

According to Federal regulations, checks may not be mailed more than 30 days prior to the start of the school period.

Notice to Borrower – When you complete the Application and Promissory Note contained in this booklet, you are applying for a student loan and promising to repay the amount, plus interest, that is loaned to you

At the time of printing, the information contained in this booklet was correct. Citibank is not responsible for program or regulatory changes that occur in the future

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Citibank Student Loan Programs

Call Citibank For An Application at **1-800-692-8200, Operator 440**

	Stafford Loan (formerly Guaranteed Student Loan - GSL)	Supplemental Loan for Students (SLS)	Parent Loan for Undergraduate Students (PLUS)	Loan Consolidation
Program Description	*This is a long-term, low-interest loan designed to provide students with additional funds for college. You must repay this aid.*	*Graduate students and independent undergraduates could be eligible for additional funds under this program. You must repay this aid.*	*These are loans made to parents of full-time or half-time dependent undergraduate or graduate students. You must repay this aid.*	*Combining a number of student loans into one new loan, to lower your monthly payment.*
Eligibility	• Full- or part-time undergraduate and graduate students. • Need Analysis is required* • A lender application is required. • Limited to U.S. citizens and permanent residents.	• Full- or part-time independent undergraduate and graduate students. • Need Analysis is required* • A lender application is required. • You must first apply for a Stafford Loan and Pell Grant, if you are eligible, before applying for an SLS. • Limited to U.S. citizens and permanent residents.	• Parents of full- or part-time dependent undergraduate and graduate students. • A lender application is required. • Amount borrowed cannot exceed student's financial need. • Limited to U.S. citizens and permanent residents. • A credit check may be required.	• You must have a combined total of $5,000 or more in outstanding loans from: Stafford Loans (formerly GSL), ALAS, SLS, HPSL, NDSL and FISL programs. • A lender application is required.
Maximum Annual Amount	Years 1 & 2 - $2,625 Years 3, 4, 5 - $4,000 Graduate/5 yrs. - $7,500	$4,000 - may be lower based on length of program.	$4,000 per student	Not Applicable
Minimum Annual Amount	$100**	$100**	$100**	Not Applicable
Maximum Lifetime Amount/Student	$54,750	$20,000	$20,000 per student	Not Applicable
Interest Rate	New borrowers on or after July 1, 1988 - 8% for the first four years of repayment, 10% for the remainder. Borrowers with loans prior to July 1, 1988 will continue to borrow at original rate of 7%, 8% or 9%.	Variable - may change annually each July. Determined by federal government, cannot go above 12%.	Variable - may change annually each July. Determined by federal government, cannot go above 12%.	Greater of 9% or the weighted average.
Repayment Terms	Up to 10 years	Up to 10 years	Up to 10 years	Up to 25 years
Minimum Monthly Payment	$50	$50	$50	Not Applicable
Postponement of Repayment	Yes - no payments are due while the student is in school. There is also a grace period of 6 or 9 months after completion of studies, based on when first loan was taken.	Yes - both principal and interest can be postponed while in school. If interest is postponed it will be capitalized (added to the principal) just once prior to repayment. If you do not choose to defer repayment, you will begin repaying within 60 days. You must complete a deferment application each time you want to postpone payment.	Yes - both principal and interest can be postponed while in school. If interest is postponed it will be capitalized (added to the principal) just once prior to repayment. If you do not choose to defer repayment, you will begin repaying within 60 days. You must complete a deferment application each time you want to postpone payment.	Yes - but only the principal. You must pay back the interest. If you do not choose to defer repayment, you will begin repaying within 60 days.
Deadlines	Loan applications will be accepted throughout the school term. To be sure you get your check when you need it, ask your Financial Aid Administrator for recommended times.	Loan applications will be accepted throughout the school term. To be sure you get your check when you need it, ask your Financial Aid Administrator for recommended times.	Loan applications will be accepted throughout the school term. To be sure you get your check when you need it, ask your Financial Aid Administrator for recommended times.	Not Applicable

*A Need Analysis Form is required for each year you want to be considered for aid. Check with your Financial Aid Administrator to determine which Need Analysis Form is required by the college to which you are applying (for example: FAF, FFS).

**California minimum is $150, as required by the California Student Aid Commission.

We hope this chart has helped you to better understand the various student loan programs. This information was compiled using the most accurate material available at the time of printing. However, we cannot be held responsible for regulatory changes that may have occurred since then.

Quick Reference

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Citibank Student Loan Programs (cont.)

Call Citibank For An Application at **1-800-692-8200, Operator 440**

	CITIBANK•TERI	CITIBANK•PEP with Co-Borrower	CITIBANK•PEP without Co-Borrower
Program Description	*This is a credit based loan for graduate **and undergraduate students.** It may be used to supplement other forms of financial aid. You must repay this aid.*	*This is a credit based loan for graduate **and professional students.** It may be used to supplement other forms of financial aid. You must repay this aid.*	*This is a credit based loan for graduate **and professional students.** It may be used to supplement other forms of financial aid. You must repay this aid.*
Eligibility	• Full- or part-time undergraduate and graduate students. • Must be an accredited degree granting school in the United States. • Applicant must be a U.S. citizen or have permanent residency status.* • Applicants are required to have a good credit history, solid employment record and demonstrate ability to repay the loan.	• Full- or part-time graduate and professional students. • Must be an accredited degree granting school in the United States. • Applicant must be a U.S. citizen or have permanent residency status.* • Applicants are required to have a good credit history, solid employment record and demonstrate ability to repay the loan.	• Full- or part-time graduate and professional students. • Must be an accredited degree granting school in the United States. • Applicant must be a U.S. citizen or have permanent residency status.* • **No credit history is required.** However, any negative credit history may have an impact on eligibility.
Maximum Annual Amount	$20,000	$20,000	$7,500
Minimum Annual Amount	$2,000	$2,000	$2,000
Maximum Lifetime Amount	$80,000	$80,000	See cumulative debt limits†
Interest Rate	A quarterly variable interest rate based on the lowest Prime Rate as quoted in the *Wall Street Journal* Money Market section.**	A quarterly variable interest rate based on the lowest Prime Rate as quoted in the *Wall Street Journal* Money Market section **	A quarterly variable interest rate based on the lowest Prime Rate as quoted in the *Wall Street Journal* Money Market section **
Repayment Term Maximum	Long repayment term available.	Long repayment term available	Long repayment term available.
Monthly Payment	Low monthly payment	Low monthly payment	Low monthly payment
Repayment Options	*Immediate* – Pay principal and interest in a fixed monthly amount. Repayment begins within 45 days of when the loan was disbursed. *Deferred Principal* – Pay interest only while student is in school up to four consecutive years. Payment of principal and interest starts within 45 days of graduation or withdrawal from school.	*Full Deferment* – Postpone principal and interest up to four consecutive years while enrolled in school. Medical students may request a second deferment up to four years while completing an internship or residency. Full principal and interest payments begin six months after graduation, completion of residency or withdrawal from school	*Full Deferment* – Postpone principal and interest up to four consecutive years while enrolled in school. Medical students may request a second deferment up to four years while completing an internship or residency. Full principal and interest payments begin six months after graduation, completion of residency or withdrawal from school.
Deferments	Limited forbearance available.	Limited forbearance available Medical residency	Limited forbearance available. Medical residency.
Interest Capitalization	Not an option.	Once at the end of in school period. Again at the end of medical deferment.	Once at the end of in school period. Again at the end of medical deferment.
Guaranty Fees	5%	6%	8%
Deadlines	Loan applications will be accepted throughout the school term. To be sure you get your check when you need it, ask your Financial Aid Administrator for recommended times	Loan applications will be accepted throughout the school term. To be sure you get your check when you need it, ask your Financial Aid Administrator for recommended times	Loan applications will be accepted throughout the school term. To be sure you get your check when you need it, ask your Financial Aid Administrator for recommended times.

*A copy of INS Form I-151 or I-55 must be submitted with the application (if applicable).

**Any fluctuation in interest rate will be reflected in the length of repayment, not in the monthly amount, unless the payment is not sufficient to repay the loan over the maximum term available.

†[illegible]lative Education Debt Limits – Before a Citibank•PEP Loan is approved, your cumulative education debt (all undergraduate and graduate loans) will be obtained [illegible] bank to ensure the debts, including the amount of the Citibank•PEP Loan requested do not exceed the following limits. (Graduate students who apply with a creditworthy co-borrower are not limited to the cumulative debt totals.) Engineering – $40,000, Business – $45,000, Law – $70,000, Dentistry – $40,000, Medicine (MD or equivalent) – $50,000, Physical Sciences – $30,000, All Other – $25,000

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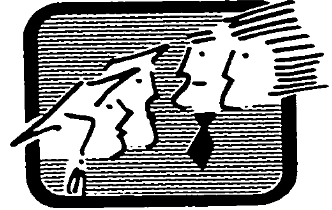
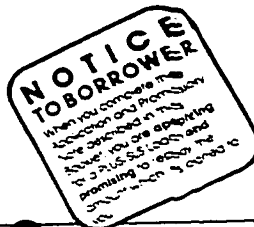
UNITED STUDENT AID FUNDS, INC.
P.O. BOX 6156
INDIANAPOLIS, IN 46250-6156
(800) 824-7044



Application and Promissory Note for a PLUS/SLS Loan

Parents use PLUS
Students use SLS



READ THIS BOOKLET

This Booklet contains complete instructions which will help you fill out the Application for a PLUS/SLS Loan. To avoid delays, please read and follow the instructions carefully.

1. PARENT BORROWER INFORMATION (PLUS)
2. STUDENT BORROWER INFORMATION (SLS)
3. GENERAL INFORMATION (PLUS AND SLS)
4. APPLICATION INSTRUCTIONS (PLUS AND SLS)
5. DEFERMENTS FOR PARENTS
6. DEFERMENTS FOR STUDENTS

WHEN COMPLETING THE APPLICATION PLEASE PRESS FIRMLY

CITIBANK STUDENT LOAN BUSINESS

IF YOU HAVE ANY QUESTIONS ABOUT YOUR LOAN OR NEED MORE INFORMATION, PLEASE CALL OUR CUSTOMER SERVICE LINE AT:

1-800-828-6103

FROM 8 a.m. TO 9 p.m.

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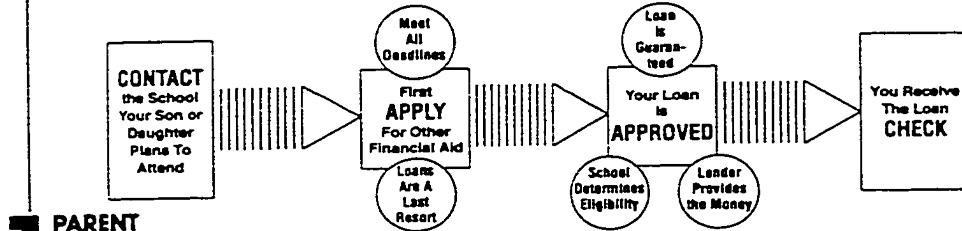
PARENT BORROWERS pay special attention to the shaded information. By signing the Application and Promissory Note you are certifying you have read and understand this material.

STUDENT BORROWERS applying for an SLS Loan, please turn to Page 4.

A PLUS LOAN is a low interest installment loan authorized by the federal government for parent borrowers to help pay for a dependent student's education beyond high school. The federal government does not pay the interest on this loan for you. The interest rate varies on an annual basis. The PLUS Loan requires the first payment within 60 days after final disbursement of the loan check.



1 PARENT BORROWERS

You may be **ELIGIBLE TO BORROW** as a parent if:

1. You are the natural parent, adoptive parent or legal guardian of a dependent student. The student may be either an undergraduate (including vocational school student) or a graduate or professional student, and
2. Your son or daughter has been accepted for enrollment or is enrolled at least half-time at an educational institution approved by the U.S. Department of Education and the Guarantor, and is making satisfactory progress either in a degree or certificate program or in a program necessary for a professional credential (excluding medical residency) or certificate required by a state for employment as an elementary or secondary school teacher; and
3. You and your son or daughter are both U.S. citizens, nationals or eligible non-citizens (See Instructions, Item 6), and
4. You and your son or daughter neither are obligated to repay a defaulted education loan nor owe a refund to an education grant program.

Parent borrowers may receive PLUS Loans for more than one student at the same time. A separate application is required for each student. The school will determine the student's dependency status.

Additional eligibility requirements of the Guarantor, if any, will be specified on the [illegible]

LOAN CHECKS are sent directly to you no more than 30 days before school starts. Use of a post office box address may delay the delivery of any loan proceeds check. The loan check equals the amount of your loan minus the guarantee fee. You will receive a copy of the Notice of Loan Guarantee and Disclosure Statement with your check. See the General Information Section on Page 6 for a description of this Notice and an explanation of the guarantee fee.

SPENDING THE MONEY. A PLUS Loan can only be used to pay for education expenses for your dependent student at the school which completes this Application. These expenses include tuition, fees and other reasonable expenses such as room and board, books, supplies and transportation. If the student decides to change schools during the application process, reapply for the loan through the new school.

REPAYMENT begins immediately. The Lender will schedule the first payment within 60 days after the disbursement of the loan check.

Your Lender may combine multiple PLUS Loans into a new PLUS Repayment Schedule in order to facilitate the maintenance of the loan, as well as for your convenience in making payments.

For additional information on repayment terms, read the REPAYMENT Section of the Promissory Note. There are some conditions under which you may not be required to make payments.

LOAN LIMITS FOR PARENTS (PER STUDENT)

For each academic year of undergraduate (including vocational study) or graduate/professional study	$ 4,000 per year
Cumulative Limit for each student	$20,000

The loan you receive can never exceed the cost of the student's education less any financial aid awarded for the same loan period (including Stafford Loans). Not all Lenders will lend the maximum amount.

If you receive loans from more than one Lender, make certain that each Lender is aware of all other PLUS Loan obligations you have incurred.

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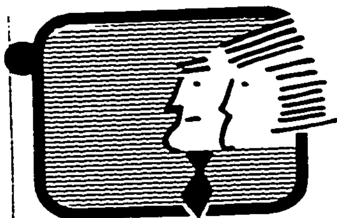

PARENT BORROWERS cont'd

DEFERMENT:

FOR PARENT BORROWERS, a deferment means you can postpone making the required principal payments for specific periods of time. You are responsible for paying the interest during any deferment, but at your Lender's option (and if agreed to by you), the interest may be accrued and added to the principal balance no more frequently than quarterly, and at the end of the deferment.

In order to receive a deferment, you must 1. request the deferment, and 2. provide your Lender with all the documentation required to establish your eligibility (as set forth in the federal regulations governing the program). Read more about deferments on the separate page attached to the Application Booklet. Look for Number 5, Deferment Information for Parent Borrowers.

FORBEARANCE: Under certain hardship conditions or other special circumstances not covered by a deferment, the Lender may grant you a temporary cessation or reduction of payments known as a forbearance. During a forbearance, you are responsible for all interest which accrues. Interest may be paid periodically as it accrues or it may be capitalized, that is, added to the outstanding principal owed.

The FULL AMOUNT OF THE LOAN IS IMMEDIATELY DUE if the student on whose behalf the loan was made has not enrolled by the latest date for which academic credit may be obtained during the period of the loan.

OTHER REPAYMENT OPPORTUNITIES may be available to you. If you already have outstanding PLUS Loans, you may be eligible to refinance them along with this loan at a variable rate. Contact your Lender or Guarantor.

NOW GO TO THE IMPORTANT GENERAL INFORMATION SECTION ON PAGE 6. READ IT CAREFULLY.

GUIDE TO ESTIMATING REPAYMENT TERMS

Use this chart to estimate the monthly payment amount, total interest charge and the total amount of payment you would make based on the amount you borrow. The chart is based on a 12% interest rate. Your loan is a variable rate loan which will never exceed a 12% interest rate. The interest rate is subject to change each July 1 of the following year. See the Promissory Note for the explanation of how the variable interest rate is calculated each year. Since the rate can change every year, the calculations you make using this chart will serve as a guide for you to understand approximately what you can expect to repay to the Lender for your PLUS Loan.

Term Number of Months	Payment Factor Per $1 of Loan	Total Interest Factor Per $1 of Loan
12	088849	.06618596
24	047073	.12976333
36	033214	.19571515
48	026334	.26402910
60	022244	.33460626
72	.019550	.40761386
84	.017653	.48282955
96	.016253	.56027278
108	.015184	.63989712
120	.014347	.72165138

CALCULATION METHOD

Monthly Payment = Loan Amount × Payment Factor
Total Interest Charge = Loan Amount × Total Interest Factor
Total of Payments = Loan Amount – Total Interest Charge

SAMPLE CALCULATION

You need $2,000.00.

You want to repay this loan in 36 monthly payments.

Find the row in the chart for a 36-month term.

Monthly Payment = $2,000 × .033214 = $ 66.43
Total Interest Charge = $2,000 × .19571515 = $ 391.43
Total of Payments = $2,000 – $391.43 = $2,391.43

Estimated Repayment Terms: 35 payments at $66.43, 1 payment at $66.3[illegible]*

*Note: The final payment should be adjusted so it will repay the remaining principal and interest due.

Federal regulations require that the monthly payment amount be not less than $50.00. Keep this in mind when you do your own calculations.

USE THIS WORKSHEET FOR YOUR LOAN

Calculation #1

Monthly Payment = ________ (Loan Amount) × ________ (Payment Factor) = ________ (Monthly Payment)

Total Interest Charge = ________ (Loan Amount) × ________ (Total Interest Factor) = ________ (Total Interest Charge)

Total of Payments = ________ (Loan Amount) – ________ (Total Interest Charge) = ________ (Total of Payments)

Calculation #2

Monthly Payment = ________ (Loan Amount) × ________ (Payment Factor) = ________ (Monthly Payment)

Total Interest Charge = ________ (Loan Amount) × ________ (Total Interest Factor) = ________ (Total Interest Charge)

Total of Payments = ________ (Loan Amount) – ________ (Total Interest Charge) = ________ (Total of Payments)

IF YOU STILL HAVE QUESTIONS, CALL THE TELEPHONE NUMBER COMPUTER-PRINTED ON THE FRONT COVER OF THIS BOOKLET.

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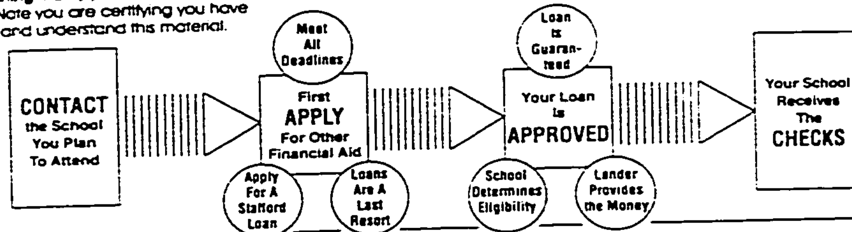
Loans for Students Program (formerly called Student PLUS). The SLS Loan is a low interest installment loan authorized by the federal government for

the cost of your education beyond high school. The federal government does not pay the interest on this loan for you.

2 STUDENT BORROWERS

STUDENT BORROWERS pay special attention to the shaded information. By signing the Application and Promissory Note you are certifying you have read and understand this material.



You may be **ELIGIBLE TO BORROW** as a student if:

1. You are an independent undergraduate student (including vocational school students) or a professional or graduate (dependent or independent) student; or

   You are a dependent undergraduate student and your school determines that extenuating circumstances preclude your parents from obtaining a PLUS Loan or from otherwise meeting the expected family contribution; and

2. You are accepted for enrollment or are enrolled on at least a half-time basis at an educational institution approved by the U.S. Department of Education and the Guarantor, and are making satisfactory progress either in a degree or certificate program or in a program necessary for a professional credential (excluding medical residency) or certificate required by a state for employment as an elementary or secondary school teacher; and

3. You are an undergraduate student, the school determined your eligibility for a Pell Grant and, if you were eligible, you filed an application for a Pell Grant; and

4. The school determined your need for a Stafford Loan and, if you demonstrated need, you applied for the Stafford Loan; and

5. You are a U.S. citizen, national or eligible non-citizen (See Instructions, item 6); and

6. You neither are obligated to repay a defaulted education loan nor owe a refund to an education grant program.

Additional eligibility requirements of the Guarantor, if any, will be specified on the booklet cover.

LOAN CHECKS are sent directly to the school. The amount of your loan (minus the guarantee fee) will be sent in two or more separate loan checks unless circumstances require a single check.

Your loan check(s) will be sent to the school named on the Application no sooner than 30 days before school starts. If you are a first year student and first time Borrower, your first check will not be released by the school until 30 days after classes have begun. The school will require you to come in to sign the check(s) and apply the money to any unpaid school bills.

SPENDING THE MONEY. An SLS Loan can only be used to pay for education expenses at the school which completes this Application. These expenses include tuition, fees and other reasonable expenses such as

LOAN LIMITS FOR STUDENTS

Annual	$ 4,000
Cumulative	$20,000

THESE LOAN LIMITS do not include amounts borrowed under the Stafford Loan Program or amounts borrowed by parents under the PLUS Program. These loan amounts apply for the entire SLS Program, and include any portion of an SLS Loan which was included in a Consolidation Loan. If you receive loans from more than one Lender, make sure each Lender is aware of all your other Stafford Loan and SLS Loan obligations.

THE LOAN YOU RECEIVE may never exceed your cost of education less any other financial aid awarded for the same loan period. If you are eligible for a Stafford Loan, this amount will be subtracted from the cost of education as financial aid when calculating your eligibility for an SLS Loan. Be aware that receipt of a Stafford Loan will affect the amount of any awards you may receive from other programs except the Pell Grant Program.

REDUCED ANNUAL SLS AMOUNT If you are enrolled in a program of study less than a full academic year in length and have not successfully completed the first academic year of the program of undergraduate education in which you are currently enrolled, your annual maximum eligibility will be less than $4000. If the program of study is at least two-thirds of an academic year, but less than a full academic year, the annual maximum is $2500. If the program of study is at least one-third of an academic year but less than two-thirds, the annual maximum is $1500. First-year undergraduate students in programs of less than one-third of an academic year are not eligible for SLS Loans.

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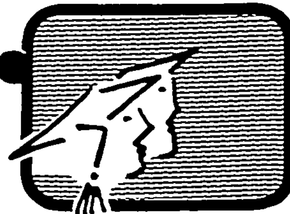
room and board, books, supplies and transportation. If you decide to change schools during the application process, reapply for the loan through the new school.

REPAYMENT begins immediately. The Lender will schedule the first payment no later than 60 days after the last disbursement of your loan if it is disbursed in two or more checks or within 60 days of the only disbursement, if a single disbursement is permitted.

If you are at least a half-time student, the payment of principal may be postponed if you qualify for a deferment. (See Deferment Information Number 6.) However, you are responsible for the interest which accrues while you are in school. Some Lenders, at their option, may also allow you to postpone the payment of interest (the interest will be added to the principal balance) during this in-school period. Other Lenders will require you to pay the interest quarterly or monthly during the deferment.



FORBEARANCE: Under certain hardship conditions or other special circumstances not covered by a deferment, the lender may grant you a temporary cessation or reduction of payments known as a forbearance. During a forbearance, you are responsible for all interest which accrues. Interest may be paid periodically as it accrues or it may be capitalized, that is, added to the outstanding principal owed.

CAPITALIZATION OF INTEREST means your Lender allows you to postpone the periodic payments of interest. This unpaid interest is added to your loan balance. Lenders may capitalize interest no more frequently than quarterly, and after the last disbursement of your loan and at the end of each deferment.

Your Lender may combine multiple SLS Loans into a new SLS Repayment Schedule in order to facilitate the maintenance of the loan, as well as for your convenience in making payments.

A GUIDE FOR ESTIMATING YOUR LOAN OBLIGATION

This chart uses a 12% interest rate when calculating interest charges and assumes a single disbursement of your loan amount. These figures over-estimate the capitalized interest amount for loans made in two or more disbursements.

FOR STUDENT BORROWERS RECEIVING IMMEDIATE DEFERMENT FOR IN-SCHOOL STATUS – Lender capitalizes the interest quarterly

Original Principal Loan Amount	In-School Period	Capitalized Interest	Principal Loan Amount To Be Repaid
$1,000	one year	$ 125.51	$1,125.51
	two years	$ 266.77	$1,266.77
	three years	$ 425.76	$1,425.76
	four years	$ 604.71	$1,604.71
$2,000	one year	$ 251.02	$2,251.02
	two years	$ 533.54	$2,533.54
	three years	$ 851.52	$2,851.52
	four years	$1,209.41	$3,209.41
$3,000	one year	$ 376.53	$3,376.53
	two years	$ 800.31	$3,800.31
	three years	$1,277.28	$4,277.28
	four years	$1,814.12	$4,814.12
$4,000	one year	$ 502.04	$4,502.04
	two years	$1,067.08	$5,067.08
	three years	$1,703.04	$5,703.04
	four years	$2,418.83	$6,418.83

This chart demonstrates the effect on a loan if you receive an immediate deferment for in-school status and the Lender allows you the option to capitalize the accrued interest during the time you are in school rather than require you to pay it quarterly or monthly.

For example, if you borrow $1,000 and remain in school and eligible for a deferment for one year, when you leave school your loan amount will have grown to $1,125.51. If you remain in school for two years, your loan amount will have grown to $1,266.77.

When you leave school and negotiate repayment terms with the Lender, the Principal Loan Amount To Be Repaid is the amount which must be repaid in full plus interest on this declining principal balance for the life of the loan.

IF YOU DO NOT ATTEND THE SCHOOL NAMED ON THE APPLICATION, THE LOAN MUST BE REPAID IN FULL IMMEDIATELY.

WHEN YOU ARE NO LONGER ENROLLED AT LEAST FULL-TIME AND ARE INELIGIBLE FOR ANY DEFERMENT, REPAYMENT OF PRINCIPAL AND INTEREST WILL BEGIN IMMEDIATELY.

For additional information on repayment terms, read the REPAYMENT Section of the Promissory Note. There are some additional conditions under which you may postpone the payment of principal for specified periods called deferments. Read more about deferments on the separate page attached to the Application Booklet. Look for Number 6, Deferment Information for Student Borrowers.

OTHER LOAN REPAYMENT OPPORTUNITIES are available. If you already have outstanding SLS Loans, you may be eligible to refinance them along with this loan at a variable rate. Contact your Lender or Guarantor.

A Loan Consolidation Program is available under which you may be able to consolidate loans you receive under the Stafford Loan Program, the Supplemental Loans for Students (SLS) Program, the Perkins Loan Program, and the Health Professions Student Loan Program. For further information, contact your Lender or Guarantor.

Under certain circumstances, military personnel may have their loans repaid by the Secretary of Defense, in accordance with Section 902 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141, note). Questions concerning the program should be addressed to the local recruiter for the services involved. This program is a recruiting program and does not pertain to prior service by an individual or to those not eligible for enlistment in the Armed Forces.

5

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NOW GO TO THE IMPORTANT GENERAL INFORMATION SECTION.

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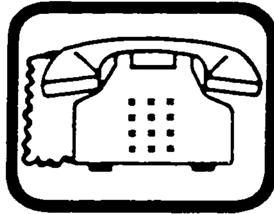
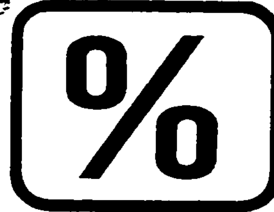


3 GENERAL INFORMATION

For Parent and Student Borrowers

RECEIPT OF A PLUS/SLS LOAN will affect the amount of any awards the student may receive from other programs except the Pell Grant Program.



INTEREST RATE AND FEES for your loans will be specifically listed on your Notice of Loan Guarantee and Disclosure Statement. You will be charged (a) interest on the unpaid principal balance of the loan plus (b) a guarantee fee payable in advance to your Lender or deducted from the loan proceeds.

INTEREST is charged on the unpaid principal balance of the loan. The loan principal is the amount you have borrowed which remains outstanding plus any accrued unpaid interest which has been capitalized, i.e., made part of the outstanding principal balance. The interest rate is variable. See the "INTEREST" Section of the Promissory Note for details on how the variable rate is determined. The Notice of Loan Guarantee and Disclosure Statement will specify the current interest rate at the time your loan is made.

GUARANTEE FEE. You may be required to pay the Lender a portion, up to the legal maximum, of the approved loan amount. The Lender is required to pay this fee, if any, to the Guarantor to obtain a guarantee on your loan. The Lender will either collect this fee in advance or will deduct this guarantee fee from the disbursement of principal of your loan. The exact amount of the guarantee fee, if any, will be on the Notice of Loan Guarantee and Disclosure Statement.

There is no origination fee for a PLUS/SLS Loan.

A **GUARANTOR** is an independent organization or a department of a state's government which "guarantees" education loans made by banks, savings and loan associations, credit unions and insurance companies approved by the Guarantor and the Department of Education. The guarantee means the loan will be repaid if a Borrower does not repay a loan, the Guarantor pays the Lender and enforces the loan repayment from the Borrower. The Guarantor will pursue all legal remedies to obtain full payment of all defaulted loans. The "guarantee" role by a Guarantor assures future borrowers that Lenders will make funds available for student loans.

The Guarantor is indicated on the top of the Application.

A **PROMISSORY NOTE** is a legal obligation to pay the full amount of the loan plus interest for the life of the loan. It is the legal document that describes terms of the loan, the amount you are borrowing, the interest rate you will pay, and when repayment starts. You will have to sign a Promissory Note in order to receive a loan.

This Application and Promissory Note are one document. When you complete the Application, you also complete the Promissory Note.

You will be required to indicate a Requested Loan Amount on the Application and Promissory Note. However, the Lender and school make the final decision on what the loan amount will be. It will never be greater than what you request or the allowable maximum amount under the regulations governing the PLUS/SLS Program. The Notice of Loan Guarantee and Disclosure Statement will specify the final loan amount.

THE NOTICE OF LOAN GUARANTEE AND DISCLOSURE STATEMENT is the official notification from the Guarantor that the loan has been approved and contains essential information about the terms and conditions of the loan.

The Lender will send you additional information which highlights the important responsibilities you assume when you get a loan. It warns you of the possible actions which can be taken against you **if you do not repay the loan.** Read this information carefully.

If you have any questions about the information on the Statement or if you want to cancel the loan, contact the Lender **before** you sign your loan check. Keep the Statement for future reference.

Parent and student borrowers are eligible for DEFERMENTS under certain conditions. A deferment means you can postpone making the required principal payments for specific periods of time. To learn more about which types of deferments you may be eligible for, go to the separate sheet attached to the back of the Application and Promissory Note.

YOUR LOAN MAY BE SOLD OR SERVICED. Lenders have three options for handling your loan.

1. The original Lender keeps your loan and deals directly with you until the loan is paid in full.
2. The Lender keeps the loan, but hires a company (Servicer) to deal directly with you on the Lender's behalf, until the loan is paid in full.
3. The loan is sold to another Lender or secondary market which may hire a company (Servicer) to deal directly with you until the loan is paid in full.

If your loan is sold or transferred to another company, keep in contact with the Holder or Servicer of the loan. You will be notified if this happens. Follow the instructions you receive.

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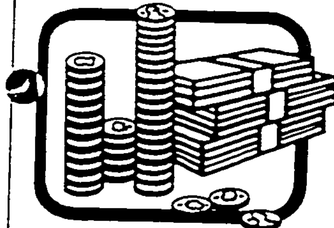
ITEM 7

Enter the amount which you will need to pay for education expenses for the academic period indicated in ITEM 19. The Lender may not be able to lend all the money which you have requested. If the Lender makes a loan to you, the specific amount of the loan will be indicated on the Notice of Loan Guarantee and Disclosure Statement which you will receive after the loan has been approved and guaranteed.

ITEM 8

Indicate if you have ever defaulted on a Stafford Loan or a Federal Insured Student Loan or a Health Education Assistance Loan or a PLUS/SLS (Parent Loan, Supplemental Loans for Students), or a Perkins Loan, an Income Contingent Loan or a Consolidation Loan. Default means your loan was purchased from the Lender by the Guarantor. You then owe the money to the GUARANTOR.



If you check **YES**, attach a written letter from the Guarantor indicating the status of your defaulted loan(s). You may be required to repay your defaulted loan in full in order to restore eligibility for this loan. Also attach a written statement indicating the original Lender's name and address, the academic periods for which the loan(s) was obtained, the amount(s) still owed and the circumstances of the default. **In all cases, your Application will be individually reviewed to determine if you should receive an additional loan. WITHOUT THIS DOCUMENTATION, YOUR APPLICATION WILL BE RETURNED.**

ITEM 9

If the student is also the Borrower, items 9 through 9D refer to all prior SLS Loans for the student, including the unpaid SLS portion of any Consolidation Loan. If the Borrower is the student's Parent or Guardian, items 9 through 9D refer to all PLUS Loans borrowed for **the student identified** in **SECTION 18.**

ITEM 9A

Enter the outstanding balance of the **most recent** PLUS/SLS Loan for the student. See the instructions for Item 9.

ITEM 9B

Use the code number below to enter the grade level of the student's most **recent** PLUS/SLS Loan. See the instructions for Item 9.

Correspondence	= 0
1st year (Freshman)	= 1
2nd year (Sophomore)	= 2
3rd year (Junior)	= 3
4th year (Senior)	= 4
5th year (Undergraduate) or students enrolled in programs required for teaching certificate	= 5
Graduate or Professional	
1st year	= 6
2nd year	= 7
3rd year	= 8
4th year	= 9
Beyond 4th year	= A

ITEM 9C

Enter the beginning and ending date from the student section of your copy of the student's **most recent** PLUS/SLS Loan Application. See the instructions for Item 9.

ITEM 9D

Enter the total unpaid balance you owe on all your prior PLUS/SLS Loans for the student identified in SECTION 18. See the instructions for Item 9.

ITEM 10

Enter the requested information for three adults with different addresses. (If your Application contains ITEM 13B, complete the first reference section with information about your cosigner.) The Application will be returned if ITEM 10 is not complete with **all** street addresses, cities, states, zip codes, telephone numbers and employers. If there is no street or post office box, please enter N/A. Preferred references are parents, guardians and adult relatives. The people you list may be contacted and should know your address at all times. Two of the three references must reside in the United States or its territories.

ITEM 11

By answering "Yes" to this question you are **requesting** a deferment. However, the Lender will make the final eligibility determination.

ITEM 13A

BORROWER SIGNATURE AND DATE ARE REQUIRED. Sign your legal name, including first name, middle initial and last name. **USE A BALLPOINT PEN.** You are making several copies so press firmly.

Fill in the date you are signing the Application and Promissory Note. By signing you accomplish two things:

1. You acknowledge you have read, understand and agree to the provisions in the Borrower Certification Section on the reverse side, and
2. You agree to repay the loan in full in accordance with all the terms and conditions on the Promissory Note.

ITEM 13B

If your Application contains ITEM 13B, your Lender may require your loan to be cosigned. Please check with your Lender. If required, the cosigner must sign and date ITEM 13B and also complete the first reference section in ITEM 10 providing his/her complete name, address, telephone number and employer.

SECTION 18:

TO BE COMPLETED BY THE STUDENT. If the student is the Borrower, a few items may be duplicated. However, every item must be completed.

ITEM 14

Enter your social security number. An Application without your social security number will be returned. Read the Privacy Act and The Right to Financial Privacy Notices on Page 7 before completing this item.

ITEM 15

Enter your last name first, then your first name and middle initial.

ITEM 16

Enter the month, day and year of your birth. Use only numbers.

ITEM 17

See instructions for ITEM 6.

(Instructions continued on Page 10)

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ITEM 18

Use the code numbers below to complete this item

Students enrolled in degree-granting institutions

00. Correspondence
01. Liberal Arts
02. Graduate or Professional
03. Engineering
04. Education
05. Business
06. Science
07. Vocational
08. Other

Students enrolled in vocational schools

15. Other
16. Accounting
17. Air Conditioning/Heating
18. Allied Health
19. Auto/Diesel/Motorcycle Repair
20. Barbering
21. Broadcasting
22. Business Administration/Marketing
23. Commercial/Fine Arts
24. Construction Technology
25. Cosmetology
26. Court Reporting
27. Culinary Arts/Food Processing
28. Data Processing/Computer Programming
29. Dental Assisting
30. Dental Laboratory Technology
31. Drafting
32. Electronics
33. Engineering Technology
34. Fashion Design/Merchandising
35. General Secretarial/Word Processing
36. Horology
37. Hotel/Motel Management
38. Interior Design
39. Legal Secretary
40. Machine Tool/Die Technology
41. Medical Assisting Technology
42. Medical Laboratory Technology
43. Medical Office Assisting/ Management
44. Optometric Assisting
45. Paralegal Training
46. Pet Grooming/Kennel Management
47. Photography
48. Pilot/Aviation Mechanics
49. Printing
50. Private Secretary
51. Radio/TV/Appliance Repair
52. Recreation Management
53. Tailoring/Dressmaking
54. Travel/Tourism
55. Truck Driving
56. Veterinarian Assisting
57. Welding
58. X-Ray Technology

ITEM 19

Enter the starting and ending dates (for example from 09-90 to 06-91) of the academic period for which this loan is to be used. These dates should coincide with a regular school period such as semester, quarter, trimester, academic year, etc. FROM START DATE TO END DATE CANNOT BE LONGER THAN 12 MONTHS.

ITEM 20

If you cannot check 1 or 2, you are not eligible for a loan. You must be enrolled or accepted for enrollment on at least a half-time basis to be eligible for this loan.

ITEM 21

The New Borrower question applies to the student on this application although the student may not be the **Borrower** on this application. Your response to this question will be used by the Lender to assist with determining deferment eligibility. A **NEW BORROWER** is one who has no outstanding balance on a Stafford, PLUS, SLS or Consolidation Loan(s) on the date he or she first signs a Promissory Note for a loan to cover a period of enrollment beginning on or after or with a first disbursement on or after July 1, 1987

ITEM 22

Indicate if you have ever defaulted on a Stafford Loan or a Federal Insured Student Loan or a Health Education Assistance Loan or a PLUS/SLS (Parent Loan, Supplemental Loans for Students), or a Perkins Loan, an Income Contingent Loan or a Consolidation Loan. Default means your loan was purchased from the Lender by the Guarantor. You then owe the money to the GUARANTOR.

If you check YES, attach a written letter from the Guarantor indicating the status of your defaulted loan(s). You may be required to repay your defaulted loan in full in order to restore eligibility for this loan. Also attach a written statement indicating the original Lender's name and address, the academic periods for which the loan(s) was obtained, the amount(s) still owed and the circumstances of the default. **In all cases, your Application will be individually reviewed to determine if you should receive an additional loan. WITHOUT THIS DOCUMENTATION YOUR APPLICATION WILL BE RETURNED.**

ITEM 23

If you have Stafford/PLUS/SLS Loans with a Lender other than the one identified in ITEM 38 of this Application, furnish the name and address of that Lender.

NOTE:

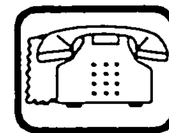
If ITEM 38 is not completed with the name and address of a Lender and you do not have a Lender, contact the financial aid office at your school.

ITEM 24

BY SIGNING THIS PART OF THE APPLICATION, YOU ARE AGREEING TO THE TERMS AND CONDITIONS IN THE STUDENT CERTIFICATION.

WHAT TO DO AFTER COMPLETING THE APPLICATION AND PROMISSORY NOTE

- **CHECK TO BE SURE SECTIONS 1A AND 1B OF ALL COPIES ARE LEGIBLE AND COMPLETE.**
- **DETACH BORROWER COPY D AND THE DEFERMENT INFORMATION SHEET FOR YOUR RECORDS. KEEP COPIES A, B, AND C TOGETHER AS A SET.**
- **UNLESS THERE ARE DIFFERENT INSTRUCTIONS INCLUDED WITH THIS BOOKLET, FORWARD COPIES A, B, AND C OF THE APPLICATION AND PROMISSORY NOTE TO YOUR SCHOOL.**
- **KEEP THIS BOOKLET FOR FUTURE REFERENCE.**
- **IF YOU HAVE ANY QUESTIONS ABOUT THE PROCESSING OF YOUR LOAN, CALL THE TELEPHONE NUMBER COMPUTER-PRINTED ON THE FRONT COVER OF THIS BOOKLET.**



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Appendix C

USA Group Timeline: A Look Into Our History

Page Revised 9/24/95

USA Funds

WhizKid

USA Group Loan Services

Loan Consolidation

Scholarships

USA Group Guarantee Services

USA Group Information Solutions

USA Group Financial Aid Services

USA Group Timeline: A Look into Our History

Many of you visiting our Web site may not be familiar with USA Group; some of you may have come into contact with us only recently; still others of you may know us only through one or two of our affiliated companies; and a select few of you may remember more about us than we do. In any case, we've constructed this "through the years" look at USA Group to give you a glimpse of where we've been. . .because, as any good historian knows, the best way to understand the present--and see the future--is to look into the past.

What you'll notice as you peruse our lifeline is USA Group's ongoing commitment to providing access--whether it's through loan guarantees, loan servicing, computer system support, need analysis processing, tuition payment plans, admissions software, or management consulting--to the people pursuing, providing, and promoting education. For example, you might find it interesting to know that early in the history of education loans, USA Funds was often the only source of loan guarantees and processing services available. And though many others have come and gone from our industry, we are proud to note that, for more than 34 years, lenders, schools, guarantors, parents, and students have relied with confidence on USA Group's experience to provide the administrative, operational, and technical support necessary to enable millions of Americans to achieve their postsecondary education goals.

And now, a look at where we have been.

The '60s
1960

- USA Funds incorporated
- Dwight D. Eisenhower named honorary chairman of USA Funds

1961

- USA Funds created education loan programs from donations and earnings on reserves
- USA Funds guaranteed its first loan to a Wabash (Ind.) College student

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1962

- USA Funds created the College Reserve Program that called for deposits by the colleges as a condition to endorse education loans

1963

- USA Funds introduced the Corporate Loan Program (now the Help America Learn Program) for children of private corporation employees

1965

- Congress introduced the Federal Insured Student Loan Program (FISL)
- USA Funds and the American Bankers Association led successful effort to amend the Higher Education Act, shifting significant portion of the administration of the student loan programs from the federal government to the states
- USA Funds established special reserve fund for Maryland Higher Education Loan Corporation (MHELC), enabling USA Funds to guarantee loans on its behalf

1966

- USA Funds contracted with federal Office of Student Financial Assistance to establish programs in states without state-created guarantors

The '70s
1976

- Congress passed amendments to the Higher Education Act of 1965, encouraging the creation of 50 state guarantee agencies; a strong supporter of the concept that state governments and the private sector could manage the country's education loan programs, USA Funds played major role in passage of amendments

1977

- USA Funds signed its first federal reinsurance agreement under new federal amendments that encouraged loan collection and offered a challenge to prove that local agencies could effectively administer the program

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1979

- Education Loan Servicing Center, Inc. (ELSC, now USA Group Loan Services) founded to provide low-cost, high-quality servicing of lender and secondary market portfolios

The '80s
1980

- USA Funds introduced Assured Access Program (National Access Program) to ensure student access to Guaranteed Student Loans (GSL)
- Congress created the PLUS (Parent Loans for Undergraduate Students) Program, making it possible for parents to use guaranteed loans to pay for their children's college expenses; USA Funds introduced the first national PLUS Program
- ELSC licensed a third-party servicing system to automate its student loan processing

1981

- USA Funds became designated guarantor for Arizona and the Pacific Islands while retaining that status in Hawaii
- USA Funds' conversion to new fully integrated data base management computer system, EAGLE (Effective Administration of Guaranteed Loans for Education), provided state-of-the-art automated education loan processing
- Student Loan Marketing Association (Sallie Mae) contracted with ELSC to service a portion of its guaranteed student loan portfolio

1982

- PLUS Program expanded to enable independent undergraduate and graduate students to borrow PLUS loans; USA Funds one of first guarantors to extend the new borrower eligibility to students nationwide
- ELSC incorporated

1983

- ELSC licensed second, more advanced servicing system to increase its flexibility in servicing student loans
- ELSC began serving its first state secondary market, Montana Higher Education Student Aid Commission (MHESAC), and its first lender client, Tower Grove Bank

1984

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- USA Funds introduced several innovations, including a combined application and promissory note, a pre-approval method of guarantee for lenders (the Fast Loan Applications Guarantee Service, or FLAGS), and the remote printing of loan guarantees on lenders' premises (RGP) to speed receipt of funds by borrowers and schools

1985

- USA Funds implemented WhizKid, our pioneering electronic loan guarantee software: WhizKid provides electronic transmission of loan application data from schools and lenders to USA Funds' mainframe computer using IBM-compatible personal computers

1986

- USA Funds developed forms and procedures that enabled lenders to refinance fixed rate PLUS and SLS loans to the new variable rate
- ELSC one of first servicers to offer the benefits of Loan Consolidation and PLUS Refinancing to clients

1987

- USA Funds successfully obtained approval from ED to implement a Congressional Methodology-based need analysis formula for the 1987-88 school year; our innovative use of this formula provided loan eligibility to many independent and graduate students who otherwise would have been ineligible for guaranteed student loans under the Uniform Methodology
- USA Funds introduced a U.S. Department of Education-certified need analysis module for WhizKid
- USA Funds began processing and guaranteeing federally sponsored consolidation loans, introduced its Loan Consolidation Program to participating lenders, and, with ELSC, began an active campaign to offer the benefits of Loan Consolidation to eligible borrowers

1988

- USA Funds named designated guarantor for Nevada
- USA Funds introduced SNAP APP, an abbreviated loan delivery system that permits schools to use need analysis data to create Stafford loan applications
- USA Funds added scholarship processing to its Help America Learn Program

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- ELSC and USA Funds added computerized voice response systems to customer service areas to assist in responding to routine questions from borrowers, lenders, and schools
- ELSC instituted credit bureau reporting and on-site, online report viewing for clients

1989

- USA Funds awarded a federal contract to serve as a Multiple Data Entry (MDE) processor and introduced SINGLEFILE, the nation's easiest-to-complete need analysis form
- USA Funds initiated the Option 4 program, a supplemental loan program for creditworthy borrowers whose need for financial assistance is not fully met by federally guaranteed loans
- USA Funds broke ground on its new corporate headquarters and processing center, a 401,598- square-foot facility that would include a state-of-the-art data center, offices, and extensive training and conference areas for USA Funds clients

The '90s
1990

- To expand its role in the education financial services industry and maintain its legally mandated nonprofit status, the USA Funds board oversaw the incorporation of nonprofit USA Group, Inc. as the parent corporation of USA Funds and ELSC
- On Saturday, November 12, a fire destroyed office and work stations in the USA Group complex; by Monday morning, the recently implemented disaster recovery plan effectively restored all services
- USA Funds named designated guarantor for Alaska and Kansas

1991

- USA Funds named designated guarantor for Wyoming
- During February and March, USA Group moved its offices to its new building in Fishers, Indiana; all service turnaround times and quality standards were maintained during the move
- USA Funds added Electronic Data Exchange (EDE) capabilities to WhizKid and integrated these features with other USA Services need analysis and loan products, particularly for guarantor clients
- USA Group and the Hudson Institute, a private, not for profit research organization, sponsored a colloquium on The Future of Higher Education, held in conjunction with the dedication of USA Group's new headquarters and featuring William Bennett, former secretary of education, as keynote speaker

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- Teddy Bear II, USA Group's on-site child care facility, opened

1992

- USA Group, secondary markets, education and banking associations, and congressional offices worked to positively influence Reauthorization
- WhizKid enhanced with Local Area Network (LAN) and WhizFund (electronic funds transfer) connection capabilities
- USA Group opened the Western Regional Center (WRC) to provide closer contact and even faster turnaround processing times for clients in the western United States
- USA Enterprises, Inc. created to serve the corporate mission with new enterprises such as America's Tuition Assistance Corporation (ATAC, now USA Group Tuition Payment Plans), which administers school-sponsored education tuition assistance plans to parents and students
- Secondary Market Services, Inc. (SMS), now USA Group Secondary Market Services (link to SMS page under lenders), and its affiliate, SMS-Hawaii, created to help lenders in buy and sell portfolios of student loans
- USA Group staff upgraded the Amdahl central processing unit to a Model 5990-1400, nearly doubling the processing rating of the USA Group mainframe computer system

1993

- SMS began operations on January 1, buying and selling education loan portfolios on behalf of lenders wanting to reinvest loan capital
- USA Services, Inc. (Now USA Group Guarantee Services) created to provide financial aid services to students, schools, lenders, and guarantors and assist in administering their education loan programs
- USA Funds restructured to focus on its mission as a guarantor of student loans
- USA Enterprises formed Enrollment Technologies, Inc.

1994

- USA Collegiate, Inc. (now USA Group Capital Financing) incorporated in January to provide capital financing directly to colleges, universities, and teaching hospitals
- ELSC implemented the UNITY USA loan servicing system, establishing new standards for the servicing process and enhancing information delivery to lenders, secondary markets, schools, employees, and education loan borrowers
- USA Funds named designated guarantor for Mississippi

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- USA Group acquired the assets of The Robinson Group, Ltd., and formed TRG, Inc. (now USA Group TRG), to ensure development of technology-based solutions to help educational institutions
- USA Enterprises acquired the assets of The Financial Aid Office, Inc. and incorporated America's Financial Aid Office (now part of USA Group Enrollment Financial Aid Services)
- ETI released IntroApp, a software program that enables college-bound high school juniors to present scholastic resumes for prospective college choices

1995

- Nellie Mae, the nation's largest nonprofit source of student loan capital, announced a plan to transfer the servicing of $1.4 billion of its education loan portfolio to ELSC
- USA Enterprises acquired Noel-Levitz Centers, Inc. (now called USA Group Noel-Levitz)
- USA Services released WhizKid for the Windows operating system, further enhancing electronic loan application processing.
- USA Group, Sallie Mae, and the National Council of Higher Education Loan Programs jointly developed the framework for CommonLine, a standard student loan delivery system that streamlines the application process for colleges and universities
- Michigan renewed its servicing contract with USA Services
- *Working Mother* magazine has named USA Group one of the nation's 100 best companies for working moms
- USA Group companies now include a combined total of 3,000 employees

That's it in a nutshell. If you have any questions about USA Group and our affiliated companies, just click around our Web site for more information. And if you have any questions about anything you see here, just drop us an e-mail, and we'll get back to you in a day or two.

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U.S. Department of Education Debt Collection Contract except

Page 22
PC92002002

H.8 PRIVACY ACT NOTIFICATION
(FAR 52.224-1) (APRIL 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

H.9 PRIVACY ACT
(FAR 52.224-2) (APRIL 1984)

(a) The Contractor agrees to--

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies--

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the design, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor and any employee of the Contractor is considered to be an employee of the agency.

(c) (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection,

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Appendix E

Public Law 101-508, Omnibus Budget Reconciliation Act of 1990 - Title III Student Loan Default Prevention Initiative Act of 1990

management programs (including the costs of mapping activities under section 1360); and".

(4) ADMINISTRATIVE EXPENSES.—Section 1375 of the National Flood Insurance Act of 1968 (42 U.S.C. 4126) is amended by striking "program" and all that follows and inserting the following: "and floodplain management programs authorized under this title may be paid with amounts from the National Flood Insurance Fund (as provided under section 1310(a)(4)), subject to approval in appropriations Acts.".

(5) EXCEPTION TO LIMITATION ON PREMIUM INCREASES.—Notwithstanding section 541(d) of the Housing and Community Development Act of 1987 (42 U.S.C. 4015 note) (as amended by this section), the premium rates charged for flood insurance under any program established pursuant to the National Flood Insurance Act of 1968 may be increased by more than 10 percent during fiscal year 1991, except that any increase in such rates not resulting from the inclusion in chargeable premium rates of administrative expenses of the flood insurance and floodplain management programs (pursuant to the amendments made by this subsection) may not exceed 10 percent.

42 USC 4015 note.

Subtitle E—Effective Date

SEC. 2101. EFFECTIVE DATE.

If the Cranston-Gonzalez National Affordable Housing Act is enacted before the enactment of this Act, the provisions of subtitles B and C (of this title) and the amendments made by such subtitles shall not take effect. This section shall apply notwithstanding any provision relating to effective date or applicability contained in subtitle B or C.

TITLE III—STUDENT LOANS AND LABOR PROVISIONS

Subtitle A—Student Loan Program Savings

Student Loan Default Prevention Initiative Act of 1990
20 USC 1001 note.

SEC. 3001. SHORT TITLE.

This subtitle may be cited as the "Student Loan Default Prevention Initiative Act of 1990".

SEC. 3002. SUPPLEMENTAL PRECLAIMS ASSISTANCE PAYMENTS.

(a) ELIMINATION OF SUPPLEMENTAL PRECLAIMS ASSISTANCE REIMBURSEMENTS.—Section 428(c) of the Higher Education Act of 1965 (20 U.S.C. 1078(c)) is amended—

(1) in the first sentence of paragraph (1)(A), by striking ", including the administrative costs of supplemental preclaim assistance for default prevention as defined in paragraph (6)(C)";

(2) in paragraph (6)(C)(i), by striking "this paragraph" and inserting "subsection (l)";

(3) in paragraph (6)(C)(i)(I), by striking "required or permitted under paragraph (2)(A) of this subsection and subsection (f)" and inserting "generally comparable in intensiveness to the level of

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preclaims assistance performed, prior to the 120th day of delinquency, by the guaranty agency as of October 16, 1990";

(4) in paragraph (6)(C)(ii)—

(A) by striking "reimbursement" and inserting "payment under subsection (l)"; and

(B) by striking "which the guaranty agency is required or permitted to provide pursuant to paragraph (2)(A) of this subsection and subsection (f)" and inserting "described in division (i)(I) of this subparagraph"; and

(5) by striking the first sentence of paragraph (6)(C)(iv).

(b) FIXED PAYMENTS FOR PRECLAIMS ASSISTANCE.—Section 428 of such Act is further amended by adding at the end thereof the following new subsection:

"(l) PRECLAIMS ASSISTANCE AND SUPPLEMENTAL PRECLAIMS ASSISTANCE.—

"(1) ASSISTANCE REQUIRED.—Upon receipt of a proper request from the lender, a guaranty agency having an agreement with the Secretary under subsection (c) of this section shall engage in preclaims assistance activities (as described in subsection (c)(6)(C)(i)(I)) and supplemental preclaims assistance activities (as described in subsection (c)(6)(C)) with respect to each loan covered by such agreement.

"(2) PAYMENTS FOR SUPPLEMENTAL PRECLAIMS ASSISTANCE.—The Secretary shall make payments in accordance with the provisions of this paragraph to any guaranty agency that engages in supplemental preclaims assistance (as defined in subsection (c)(6)(C)) on a loan guaranteed under this part. Such payments shall be equal to $50.00 for each loan on which such assistance is performed and for which a default claim is not presented to the guaranty agency by the lender on or before the 150th day after the loan becomes 120 days delinquent.".

SEC. 3003. INITIAL DISBURSEMENT AND ENDORSEMENT REQUIREMENTS.

(a) AMENDMENT.—Section 428G(b)(1) of the Higher Education Act of 1965 (20 U.S.C. 1078-7(b)(1)) is amended to read as follows:

"(1) FIRST YEAR STUDENTS.—The first installment of the proceeds of any loan made, insured, or guaranteed under this part that is made to a student borrower who is entering the first year of a program of undergraduate education, and who has not previously obtained a loan under this part, shall not (regardless of the amount of such loan or the duration of the period of enrollment) be presented by the institution to the student for endorsement until 30 days after the borrower begins a course of study, but may be delivered to the eligible institution prior to the end of that 30-day period.".

20 USC 1078-7 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective for loans made on or after the date of enactment of this Act to cover the cost of instruction for periods of enrollment beginning on or after January 1, 1991.

SEC. 3004. INELIGIBILITY BASED ON HIGH DEFAULT RATES.

20 USC 1085.

(a) IN GENERAL.—Section 435(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)) is amended by adding at the end thereof the following new paragraph:

"(3) INELIGIBILITY BASED ON HIGH DEFAULT RATES.—(A) An institution whose cohort default rate is equal to or greater than the threshold percentage specified in subparagraph (B) for each

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of the three most recent fiscal years for which data are available shall not be eligible to participate in a program under this part for the fiscal year for which the determination is made and for the two succeeding fiscal years, unless, within 30 days of receiving notification from the Secretary of the loss of eligibility under this paragraph, the institution appeals the loss of its eligibility to the Secretary. The Secretary shall issue a decision on any such appeal within 45 days after its submission. Such decision may permit the institution to continue to participate in a program under this part if—

"(i) the institution demonstrates to the satisfaction of the Secretary that the Secretary's calculation of its cohort default rate is not accurate, and that recalculation would reduce its cohort default rate for any of the three fiscal years below the threshold percentage specified in subparagraph (B); or

"(ii) there are, in the judgment of the Secretary, exceptional mitigating circumstances that would make the application of this paragraph inequitable.

During such appeal, the Secretary may permit the institution to continue to participate in a program under this part.

"(B) For purposes of determinations under subparagraph (A), the threshold percentage is—

"(i) 35 percent for fiscal year 1991 and 1992; and

"(ii) 30 percent for any succeeding fiscal year.

"(C) Until July 1, 1994, this paragraph shall not apply to any institution that is—

"(i) a part B institution within the meaning of section 322(2) of this Act;

"(ii) a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978; or

"(iii) a Navajo Community College under the Navajo Community College Act.".

(b) REFUSAL TO PROVIDE STATEMENT TO LENDER.—Section 428(a)(2)(F) of such Act (20 U.S.C. 1078(a)(2)(F)) is amended by inserting before the period at the end thereof the following: ", except that, in individual cases where the institution determines that the portion of the student's expenses to be covered by the loan can be met more appropriately, either by the institution or directly by the student, from other sources, the institution may refuse to provide such statement or may reduce the determination of need contained in such statement".

(c) EXTENSION OF DEFAULT RATE LIMITATIONS ON SLS LOANS.—Section 2003(a)(3) of the Omnibus Budget Reconciliation Act of 1989 is amended—

20 USC 1078-1 note

(1) by inserting "paragraph (1) of" after "amendments made by"; and

(2) by striking out "October 1, 1991" and inserting "October 1, 1996".

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective July 1, 1991, except that the amendment made by subsection (b) shall be effective upon enactment.

20 USC 1085 note

SEC. 3005. ABILITY TO BENEFIT.

(a) IN GENERAL.—Section 484(d) of the Higher Education Act of 1965 (20 U.S.C. 1091(d)) is amended to read as follows:

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"(d) ABILITY TO BENEFIT.—In order for a student who is admitted on the basis of ability to benefit from the education or training offered to be eligible for any grant, loan, or work assistance under this title, the student shall, prior to enrollment, pass an independently administered examination approved by the Secretary.".

(b) CONFORMING AMENDMENT.—Section 481(b) of the Higher Education Act of 1965 (20 U.S.C. 1088(b)) is amended in the fourth sentence by inserting ", except in accordance with section 484(d) of this Act," after "shall not".

20 USC 1088 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any grant, loan, or work assistance to cover the cost of instruction for periods of enrollment beginning on or after January 1, 1991.

SEC. 3006. MAXIMUM SLS LOAN AMOUNTS.

20 USC 1078-1 note.

(a) EFFECTIVE DATE EXTENSION.—Section 2003(b)(2) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "1991" and inserting "1996".

(b) PERIOD FOR DETERMINATION OF MAXIMUM LOAN AMOUNTS.—Section 428A(b)(1) of the Higher Education Act of 1965 (20 U.S.C. 1078-1(b)) is amended by striking "9 consecutive" and inserting "7 consecutive".

SEC. 3007. AMENDMENTS TO BANKRUPTCY LAWS.

(a) AUTOMATIC STAY AND PROPERTY OF THE ESTATE.—(1) Section 362(b) of title 11, United States Code, is amended—

(A) in paragraph (12), by striking "or" at the end thereof;

(B) in paragraph (13), by striking the period at the end thereof and inserting a semicolon; and

(C) by inserting immediately following paragraph (13) the following new paragraphs:

"(14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;

"(15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution; or

"(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act.".

(2) Section 541(b) of title 11, United States Code, is amended—

(A) in paragraph (1), by striking "or" at the end thereof;

(B) in paragraph (2), by striking the period at the end thereof and inserting a semicolon and "or"; and

(C) by adding at the end thereof the following new paragraph:

"(3) any eligibility of the debtor to participate in programs authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; 42 U.S.C. 2751 et seq.), or any accreditation status or State licensure of the debtor as an educational institution.".

11 USC 362 note.

(3) The amendments made by this subsection shall be effective upon date of enactment of this Act.

(b) TREATMENT OF CERTAIN EDUCATION LOANS IN BANKRUPTCY PROCEEDINGS.—(1) Section 1328(a)(2) of title 11, United States Code, is amended by striking "section 523(a)(5)" and inserting "paragraph (5) or (8) of section 523(a)".

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(2) The amendment made by paragraph (1) shall not apply to any case under the provisions of title 11, United States Code, commenced before the date of the enactment of this Act.

11 USC 1325 note

11 USC 362 note

SEC. 3008. SUNSET PROVISION.

The amendments made by this subtitle shall cease be effective on October 1, 1996.

Subtitle B—Labor Related Penalties

SEC. 3101. OCCUPATIONAL SAFETY AND HEALTH.

Section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666) is amended—

(1) in subsection (a), by striking "$10,000 for each violation" and inserting "$70,000 for each violation, but not less than $5,000 for each willful violation;[1] and

(2) in subsections (b), (c), (d), and (i), by striking "$1,000" and inserting "$7,000".

SEC. 3102. MINE SAFETY AND HEALTH.

Section 110 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 820) is amended—

(1) in subsection (a), by striking "$10,000" and inserting "$50,000"; and

(2) in subsection (b), by striking "1,000" and inserting "$5,000", and [2]

SEC. 3103. FAIR LABOR STANDARDS.

Section 16(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)) is amended—

(1) in the first sentence—

(A) by striking "or any person who repeatedly or willfully violates section 6 or 7"; and

(B) by striking "not to exceed $1,000 for each such violation" and inserting "not to exceed $10,000 for each employee who was the subject of such a violation";

(2) by inserting after the first sentence the following: "Any person who repeatedly or willfully violates section 6 or 7 shall be subject to a civil penalty of not to exceed $1,000 for each such violation.".

(3) by striking "such penalty" each place the term appears except after "appropriateness of" and inserting "any penalty under this subsection", and

(4) in the last sentence, by striking "Sums" and inserting "Except for civil penalties collected for violations of section 12, sums"; and

(5) by inserting at the end the following new sentence: "Civil penalties collected for violations of section 12 shall be deposited in the general fund of the Treasury.".

[1] So in original. Probably should be "violation";".

[2] So in original. The ", and" probably should be a period.

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Appendix F

Public Law 101-647, Crime Control Act of 1990. Title XXXVI – Federal Debt Collection Subtitle B – Amendments to Other Provisions of Law

TITLE XXXVI—FEDERAL DEBT COLLECTION

Federal Debt Collection Procedures Act of 1990.
Courts.
28 USC 1 note.

SEC. 3601. This title may be cited as the "Federal Debt Collection Procedures Act of 1990".

Subtitle A—Debt Collection Procedures

SEC. 3611. Title 28 of the United States Code is amended by inserting after chapter 175 the following:

"CHAPTER 176—FEDERAL DEBT COLLECTION PROCEDURE

"Subchapter

"A. Definitions and general provisions 3001
"B. Prejudgment remedies 3101
"C. Postjudgments remedies 3201
"D. Fraudulent transfers 3301

"SUBCHAPTER A—DEFINITIONS AND GENERAL PROVISIONS

"Sec.

"3001. Applicability of chapter.
"3002. Definitions.
"3003. Rules of construction.
"3004. Service of process; enforcement; notice.
"3005. Application of chapter to judgments.
"3006. Affidavit requirements.
"3007. Perishable personal property.
"3008. Proceedings before United States magistrates.
"3009. United States marshals' authority to designate keeper.
"3010. Co-owned property.
"3011. Assessment of surcharge on a debt.
"3012. Joinder of additional defendant.
"3013. Modification or protective order; supervision of enforcement.
"3014. Exempt property.
"3015. Discovery as to debtor's financial condition.

"§ 3001. Applicability of chapter

"(a) IN GENERAL.—Except as provided in subsection (b), the chapter provides the exclusive civil procedures for the United States—

"(1) to recover a judgment on a debt; or

"(2) to obtain, before judgment on a claim for a debt, a remedy in connection with such claim.

"(b) LIMITATION.—To the extent that another Federal law specifies procedures for recovering on a claim or a judgment for a debt arising under such law, those procedures shall apply to such claim or judgment to the extent those procedures are inconsistent with this chapter.

"(c) AMOUNTS OWING OTHER THAN DEBTS.—This chapter shall not apply with respect to an amount owing that is not a debt or to a claim for an amount owing that is not a debt.

"§ 3002. Definitions

"As used in this chapter:

"(1) 'Counsel for the United States' means—

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exceed the judgment on a debt. The judgment may be entered against—

"(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

"(2) any subsequent transferee, other than a good faith transferee who took for value or any subsequent transferee of such good-faith transferee.

"(c) VALUE OF ASSET.—For purposes of subsection (b), the value of the asset is the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

"(d) RIGHTS OF GOOD FAITH TRANSFEREES AND OBLIGEES.—Notwithstanding voidability of a transfer or an obligation under this subchapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to—

"(1) a lien on or a right to retain any interest in the asset transferred;

"(2) enforcement of any obligation incurred; or

"(3) a reduction in the amount of the liability on the judgment.

"(e) EXCEPTIONS.—A transfer is not voidable under section 3304(a) or section 3304(b)(2) if the transfer results from—

"(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

"(2) enforcement of a security interest in compliance with article 9 of the Uniform Commercial Code or its equivalent in effect in the State where the property is located.

"(f) LIMITATION OF VOIDABILITY.—A transfer is not voidable under section 3304(a)(2)—

"(1) to the extent the insider gives new value to or for the benefit of the debtor after the transfer is made unless the new value is secured by a valid lien;

"(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

"(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured both present value given for that purpose and an antecedent debt of the debtor.

"§ 3308. Supplementary provision

"Except as provided in this subchapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause shall apply to actions and proceedings under this subchapter.".

Sec. 3302. The table of chapters for part VI of title 28, United States Code, is amended by adding at the end the following:

"176. Federal Debt Collection Procedures".

Subtitle B—Amendments to Other Provisions of Law

SEC. 3621. Section 523(a)(8) of title 11, United States Code, is amended—

(1) by striking "for an educational" and all that follows through "unless", and inserting the following: "for an educational benefit overpayment or loan made, insured or guaran-

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teed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless"; and

(2) by amending subparagraph (A) to read as follows:

"(A) such loan, benefit, scholarship, or stipend overpayment first became due more than 7 years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or".

SEC. 3622. Section 3142(c)(1)(B)(xi) of title 18, United States Code, is amended to read as follows:

"(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require;".

SEC. 3623. Section 3142(c)(1)(B)(xii) of title 18, United States Code, is amended to read as follows:

"(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;".

SEC. 3624. Section 3142(g)(4) of title 18, United States Code, is amended by—

(1) striking out "(c)(2)(K)" and inserting in lieu thererof "(c)(1)(B)(xi)"; and

(2) striking out "(c)(2)(L)" and inserting in lieu thereof "(c)(1)(B)(xii)".

SEC. 3625. Section 3552(d) of title 18, United States Code, is amended by adding at the end the following: "The court shall provide a copy of the presentence report to the attorney for the Government to use in collecting an assessment, criminal fine, forfeiture or restitution imposed.".

Reports.

SEC. 3626. (a) Section 550 of title 28, United States Code, is amended—

(1) in the heading by striking "and messengers" and inserting ", messengers, and private process servers"; and

(2) by striking "and messengers on" and inserting ", messengers, and private process servers on".

(b) The table of sections of chapter 35 of title 28, United States Code, is amended by striking the item relating to section 550 and inserting the following:

"550. Clerical assistants, messengers, and private process servers.".

SEC. 3627. Section 1962 of title 28, United States Code, is amended by inserting after the first sentence the following: "This section does not apply to judgments entered in favor of the United States.".

SEC. 3628. Section 1963 of title 28, United States Code, is amended by inserting after the first sentence the following: "Such a judgment

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Appendix G

Public Law 102- 26, Higher Education Technical Amendments of 1991.

Public Law 102-26
102d Congress

An Act

To resolve legal and technical issues relating to Federal postsecondary student assistance programs and to prevent undue burdens on participants in Operation Desert Storm, and for other purposes.

Apr. 9, 1991
[H.R. 1285]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Higher Education Technical Amendments of 1991.
Colleges and universities.
20 USC 1001 note.

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Higher Education Technical Amendments of 1991".

(b) REFERENCES.—References in this Act to "the Act" are references to the Higher Education Act of 1965.

SEC. 2. ABILITY TO BENEFIT.

(a) DEFINITION OF ELIGIBLE INSTITUTION.—

(1) STAFFORD LOANS.—Section 435(c)(1) of the Act (20 U.S.C. 1085(c)(1)) is amended by striking out "and who have the ability to benefit (as determined by the institution under section 481(d)) from the training offered by such institution" and inserting in lieu thereof "or who are beyond the age of compulsory school attendance in the State in which the institution is located".

(2) DEFINITION OF PROPRIETARY INSTITUTION OF HIGHER EDUCATION.—Section 481(b) of the Act (20 U.S.C. 1088 (b)) is amended—

(A) by striking out "and who have the ability to benefit (as determined by the institution under section 484(d)) from the training offered by the institution"; and

(B) by striking out the last sentence thereof.

(3) DEFINITION OF POSTSECONDARY VOCATIONAL INSTITUTION.—Section 481(c) of the Act (20 U.S.C. 1088(c)) is amended by striking out "and who have the ability to benefit (as determined by the institution under section 484(d)) from the training offered by the institution".

(4) DEFINITION FOR INSTITUTIONAL AID PROGRAMS.—Section 1201(a) of the Act (20 U.S.C. 1141(a)) is amended by striking "and who meets the requirements of section 484(d) of this Act" in the third sentence.

(b) DEFINITION OF ELIGIBLE STUDENT.—Section 484(d) of the Act (20 U.S.C. 1091(d)) is amended to read as follows:

"(d) TESTING OF STUDENTS WHO ARE NOT HIGH SCHOOL GRADUATES.—In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible for any assistance under subparts 1, 2, and 3 of part A and parts B, C, D and E of this title, the student shall pass an independently administered examination approved by the Secretary.".

(c) CONFORMING AMENDMENTS.—

20 USC 1078-1.

(1) SUPPLEMENTAL LOANS.—Section 428A(a)(1) of the Act is amended by striking the last sentence thereof and inserting "No

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student shall be eligible to borrow funds under this section until such student has obtained a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate.".

·1. (2) STUDENT ELIGIBILITY.—Section 484(a)(1) of the Act is amended by inserting before the semicolon at the end thereof the following: ", and not be enrolled in an elementary or secondary school".

4. (3) PROGRAM PARTICIPATION AGREEMENTS.—Section 487(a)(11) of the Act is amended by striking "which admits" and all that follows through "484(d))," and inserting "whose students receive financial assistance pursuant to section 484(d),".

(d) EFFECTIVE DATE.—

-1 (1) IN GENERAL.—The amendments made by this section shall apply to any grant, loan, or work assistance to cover the cost of instruction for periods of enrollment beginning on or after July 1, 1991.

(2) ELIMINATION OF CONFLICTING PROVISIONS.—(A) Section 3005 of the Omnibus Budget Reconciliation Act of 1990 is repealed. Sections 484(d) and 481(b) of the Act shall be applied as if such section 3005 had not been enacted.

s and

(B) The last proviso of the paragraph under the heading "STUDENT FINANCIAL ASSISTANCE" of title III of Public Law 101-517 (104 Stat. 2213) is repealed.

SEC. 3. ELIMINATION OF STATUTE OF LIMITATIONS FOR STUDENT LOAN COLLECTIONS.

(a) AMENDMENT.—Section 484A(a) of the Act (20 U.S.C. 1091a(a)) is amended to read as follows:

"(a) IN GENERAL.—(1) It is the purpose of this subsection to ensure that obligations to repay loans and grant overpayments are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced.

"(2) Notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken by—

"(A) an institution that receives funds under this title that is seeking to collect a refund due from a student on a grant made, or work assistance awarded, under this title;

"(B) a guaranty agency that has an agreement with the Secretary under section 428(c) that is seeking the repayment of the amount due from a borrower on a loan made under part B of this title after such guaranty agency reimburses the previous holder of the loan for its loss on account of the default of the borrower;

"(C) an institution that has an agreement with the Secretary pursuant to section 453 or 463(a) that is seeking the repayment of the amount due from a borrower on a loan made under part D or E of this title after the default of the borrower on such loan; or

"(D) the Secretary, the Attorney General, or the administrative head of another Federal agency, as the case may be, for payment of a refund due from a student on a grant made under this title, or for the repayment of the amount due from a

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borrower on a loan made under this title that has been assigned to the Secretary under this title.".

(b) CONFORMING AMENDMENT.—Section 16041 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272) is amended—

20 USC 1071 note.

(1) by striking out subsection (e);

(2) in subsection (f), by striking out "The amendment made by section 16034" and inserting in lieu thereof "The amendments made by sections 16033 and 16034"; and

(3) by redesignating subsection (f) as subsection (e).

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective as if enacted by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272), and shall apply to any actions pending on or after the date of enactment of the Higher Education Technical Amendments of 1991 that are brought before November 15, 1992.

20 USC 1091a note.

SEC. 4. OPERATION DESERT SHIELD/DESERT STORM WAIVER AUTHORITY.

Armed Forces. 20 USC 1070 note.

(a) PURPOSE.—It is the purpose of this section to ensure that—

(1) the men and women serving on active duty in connection with Operation Desert Shield or Operation Desert Storm who are borrowers of Stafford Loans or Perkins Loans are not placed in a worse position financially in relation to those loans because of such service;

(2) the administrative requirements placed on all borrowers of student loans made in accordance with title IV of the Act who are engaged in such military service are minimized to the extent possible without impairing the integrity of the student loan programs, in order to ease the burden on such borrowers, and to avoid inadvertent, technical defaults; and

(3) the future eligibility of such an individual for Pell Grants is not reduced by the amount of such assistance awarded for a period of instruction that such individual was unable to complete, or for which the individual did not receive academic credit, because he or she was called up for such service.

(b) WAIVER REQUIREMENT.—Notwithstanding any other provision of law, unless enacted with specific reference to this section, the Secretary of Education shall waive or modify any statutory or regulatory provision applicable to the student financial aid programs under title IV of the Act that the Secretary deems necessary to achieve the purposes stated in subsection (a), including—

(1) the length of, and eligibility requirements for, the military deferments authorized under sections 427(a)(2)(C)(ii), 428(b)(1)(M)(ii), and 464(c)(2)(A)(ii) of the Act, in order to enable the borrower of a Stafford Loan or a Perkins Loan who is or was serving on active duty in connection with Operation Desert Shield or Operation Desert Storm to obtain a military deferment, under which interest shall accrue and shall, if otherwise payable by the Secretary, be paid by the Secretary of Education, for the duration of such service;

(2) administrative requirements placed on all borrowers of student loans made in accordance with title IV of the Act who are or were engaged in such military service;

(3) the number of years for which individuals who are engaged in such military service may be eligible for Pell Grants under subpart 1 of part A of title IV of the Act;

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(4) the point at which the borrower of a Stafford Loan who is or was engaged in such military service is required to resume repayment of principal and interest on such loan after the borrower completes a period of deferment under section 427(a)(2)(C)(ii) or 428(b)(1)(M)(ii) of the Act;

(5) the point at which the borrower of a Stafford Loan who is or was engaged in such military service is required to resume repayment of principal and interest on such loan after the borrower completes a single period of deferment under section 427(a)(2)(C)(i) or 428(b)(1)(M)(i) of the Act subsequent to such service; and

(6) the modification of the terms "annual adjusted family income" and "available income," as used in the determination of need for student financial assistance under title IV of the Act for such individual (and the determination of such need for his or her spouse and dependents, if applicable), to mean the sums received in the first calendar year of the award year for which such determination is made, in order to reflect more accurately the financial condition of such individual and his or her family.

(c) NOTICE OF WAIVER.—Notwithstanding section 431 of the General Education Provisions Act (20 U.S.C. 1232) and section 553 of title 5, United States Code, the Secretary shall, by notice in the Federal Register, publish the waivers or modifications of statutory and regulatory provisions the Secretary deems necessary to achieve the purposes of this section. Such notice shall include the terms and conditions to be applied in lieu of such statutory and regulatory provisions. The Secretary is not required to exercise the waiver or modification authority under this section on a case-by-case basis.

(d) DEFINITIONS.—For purposes of this Act—

(1) Individuals "serving on active duty in connection with Operation Desert Shield or Operation Desert Storm" shall include—

(A) any Reserve of an Armed Force called to active duty under section 672(a), 672(g), 673, 673b, 674, or 688 of title 10, United States Code, for service in connection with Operation Desert Shield or Operation Desert Storm, regardless of the location at which such active duty service is performed; and

(B) for purposes of waivers of administrative requirements under subsection (b)(2) only, any other member of an Armed Force on active duty in connection with Operation Desert Shield or Operation Desert Storm, who has been assigned to a duty station at a location other than the location at which such member is normally assigned.

(2) The term "active duty" has the meaning given such term in section 101(22) of title 10, United States Code, except that such term does not include active duty for training or attendance at a service school.

SEC. 5. TUITION REFUNDS OR CREDITS.

(a) SENSE OF CONGRESS.—It is the sense of the Congress that all institutions offering postsecondary education should provide a full refund to any member or Reserve of an Armed Force on active duty service in connection with Operation Desert Shield or Operation Desert Storm for that portion of a period of instruction such individual was unable to complete, or for which such individual did not receive academic credit, because he or she was called up for such

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Appendix H

Public Law 102-164, Emergency Unemployment Compensation Act of 1991. Title VI Guaranteed Student Loans

such employee meets the eligibility requirements of this section and the Railroad Unemployment Insurance Act.

(3) REACHBACK PROVISIONS.—If an employee has exhausted that employee's rights to normal unemployment benefits under section 2(c) of the Railroad Unemployment Insurance Act after February 28, 1991, but before November 17, 1991, such employee shall, for the purposes of the application of this section, be deemed to have exhausted such rights after November 17, 1991.

(c) LIMITATION ON PAYMENT.—Extended benefits under this section shall be payable for a maximum of 65 days of unemployment, including any extended benefits payable by reason of the application of the reachback provisions.

TITLE VI—GUARANTEED STUDENT LOANS

SEC. 601. CREDIT CHECKS; COSIGNERS.

(a) FISL PROGRAM.—Section 427(a)(2)(A) of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), hereafter in this title referred as "the Act", is amended to read as follows:

"(A) is made without security and without endorsement, except that prior to making a loan insurable by the Secretary under this part a lender shall—

"(i) obtain a credit report, from at least one national credit bureau organization, with respect to a loan applicant who will be at least 21 years of age as of July 1 of the award year for which assistance is being sought, for which the lender may charge the applicant an amount not to exceed the lesser of $25 or the actual cost of obtaining the credit report; and

"(ii) require an applicant of the age specified in clause (i) who, in the judgment of the lender in accordance with the regulations of the Secretary, has an adverse credit history, to obtain a credit worthy cosigner in order to obtain the loan, provided that, for purposes of this clause, an insufficient or nonexistent credit history may not be considered to be an adverse credit history;".

(b) GSL PROGRAM.—Section 428(b)(1) of the Act is amended— 20 USC 1078.

(1) in subparagraph (U), by striking "and" at the end thereof;

(2) in subparagraph (V), by striking the period at the end thereof and inserting a semicolon and "and"; and

(3) by adding at the end thereof the following new subparagraph:

"(W) provides that prior to making a loan made, insured, or guaranteed under this part (other than a loan made in accordance with section 428C), a lender shall—

"(i) obtain a credit report, from at least one national credit bureau organization, with respect to a loan applicant who will be at least 21 years of age as of July 1 of the award year for which assistance is being sought, for which the lender may charge the applicant an amount not to exceed the lesser of $25 or the actual cost of obtaining the credit report; and

"(ii) require an applicant of the age specified in clause (i) who, in the judgment of the lender in accordance with the regulations of the Secretary, has an

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adverse credit history, to obtain a credit worthy cosigner in order to obtain the loan, provided that, for purposes of this clause, an insufficient or nonexistent credit history may not be considered to be an adverse credit history.".

SEC. 602. BORROWER INFORMATION.

20 USC 1077.

(a) FISL PROGRAM.—Section 427 of the Act is amended by adding at the end thereof the following new subsection:

"(d) BORROWER INFORMATION.—The lender shall obtain the borrower's driver's license number, if any, at the time of application for the loan.".

20 USC 1078.

(b) GSL PROGRAM.—Section 428 of the Act is amended—

(1) in subsection (a)(2)(A)—

(A) in clause (i)(I), by striking out "and" at the end thereof;

(B) in clause (ii), by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(C) by adding at the end thereof the following new clause:

"(iii) have provided to the lender at the time of application for a loan made, insured, or guaranteed under this part, the student's driver's number, if any.".

SEC. 603. ADDITIONAL BORROWER INFORMATION.

20 USC 1092.

Section 485(b) of the Act is amended—

(1) by striking the subsection heading and inserting "EXIT COUNSELING FOR BORROWERS; BORROWER INFORMATION.—"; and

(2) by adding at the end thereof the following: "Each eligible institution shall require that the borrower of a loan made under part B, part D, or part E submit to the institution, during the exit interview required by this subsection, the borrower's expected permanent address after leaving the institution, regardless of the reason for leaving; the name and address of the borrower's expected employer after leaving the institution; and the address of the borrower's next of kin. In the case of a loan made under part B, the institution shall then submit this information to the holder of the loan.".

SEC. 604. CONFESSION OF JUDGMENT.

Section 428(b)(1) of the Act is further amended—

(1) in subparagraph (V), by striking "and" at the end thereof;

(2) in subparagraph (W), by striking the period at the end thereof and inserting a semicolon and "and"; and

(3) by adding at the end thereof the following new subparagraph:

"(X) provides that the lender shall obtain, as part of the note or written agreement evidencing the loan, the borrower's authorization for entry of judgment against the borrower in the event of default.".

SEC. 605. WAGE GARNISHMENT.

(a) AMENDMENT.—Part G of title IV of the Act is amended by inserting immediately following section 488 the following new section:

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"WAGE GARNISHMENT REQUIREMENT

"SEC. 488A. (a) GARNISHMENT REQUIREMENTS.—Notwithstanding any provision of State law, a guaranty agency, or the Secretary in the case of loans made, insured or guaranteed under this title that are held by the Secretary, may garnish the disposable pay of an individual to collect the amount owed by the individual, if he or she is not currently making required repayment under a repayment agreement with the Secretary, or, in the case of a loan guaranteed under part B on which the guaranty agency received reimbursement from the Secretary under section 428(c), with the guaranty agency holding the loan, as appropriate, provided that—

"(1) the amount deducted for any pay period may not exceed 10 percent of disposable pay, except that a greater percentage may be deducted with the written consent of the individual involved;

"(2) the individual shall be provided written notice, sent by mail to the individual's last known address, a minimum of 30 days prior to the initiation of proceedings, from the guaranty agency or the Secretary, as appropriate, informing such individual of the nature and amount of the loan obligation to be collected, the intention of the guaranty agency or the Secretary, as appropriate, to initiate proceedings to collect the debt through deductions from pay, and an explanation of the rights of the individual under this section;

"(3) the individual shall be provided an opportunity to inspect and copy records relating to the debt;

"(4) the individual shall be provided an opportunity to enter into a written agreement with the guaranty agency or the Secretary, under terms agreeable to the Secretary, or the head of the guaranty agency or his designee, as appropriate, to establish a schedule for the repayment of the debt;

"(5) the individual shall be provided an opportunity for a hearing in accordance with subsection (b) on the determination of the Secretary or the guaranty agency, as appropriate, concerning the existence or the amount of the debt, and, in the case of an individual whose repayment schedule is established other than by a written agreement pursuant to paragraph (4), concerning the terms of the repayment schedule;

"(6) the employer shall pay to the Secretary or the guaranty agency as directed in the withholding order issued in this action, and shall be liable for, and the Secretary or the guaranty agency, as appropriate, may sue the employer in a State or Federal court of competent jurisdiction to recover, any amount that such employer fails to withhold from wages due an employee following receipt of such employer of notice of the withholding order, plus attorneys' fees, costs, and, in the court's discretion, punitive damages, but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph;

"(7) if an individual has been reemployed within 12 months after having been involuntarily separated from employment, no amount may be deducted from the disposable pay of such individual until such individual has been reemployed continuously for at least 12 months; and

"(8) an employer may not discharge from employment, refuse to employ, or take disciplinary action against an individual

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subject to wage withholding in accordance with this section by reason of the fact that the individual's wages have been subject to garnishment under this section, and such individual may sue in a State or Federal court of competent jurisdiction any employer who takes such action. The court shall award attorneys' fees to a prevailing employee and, in its discretion, may order reinstatement of the individual, award punitive damages and back pay to the employee, or order such other remedy as may be reasonably necessary.

"(b) HEARING REQUIREMENTS.—A hearing described in subsection (a)(5) shall be provided prior to issuance of a garnishment order if the individual, on or before the 15th day following the mailing of the notice described in subsection (a)(2), and in accordance with such procedures as the Secretary or the head of the guaranty agency, as appropriate, may prescribe, files a petition requesting such a hearing. If the individual does not file a petition requesting a hearing prior to such date, the Secretary or the guaranty agency, as appropriate, shall provide the individual a hearing under subsection (a)(5) upon request, but such hearing need not be provided prior to issuance of a garnishment order. A hearing under subsection (a)(5) may not be conducted by an individual under the supervision or control of the head of the guaranty agency, except that nothing in this sentence shall be construed to prohibit the appointment of an administrative law judge. The hearing official shall issue a final decision at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing.

"(c) NOTICE REQUIREMENTS.—The notice to the employer of the withholding order shall contain only such information as may be necessary for the employer to comply with the withholding order.

"(d) DEFINITION.—For the purpose of this section, the term 'disposable pay' means that part of the compensation of any individual from an employer remaining after the deduction of any amounts required by law to be withheld.".

(b) ABOLITION OF ADDITIONAL COST PAYMENTS.—

20 USC 1078-5 (1) Section 428E of the Act is repealed.

20 USC 1078 (2) Section 428(c)(6) of the Act is amended by striking subparagraph (D).

SEC. 606. DATA MATCHING.

Part G of title IV of the Act is further amended by inserting immediately following section 489 the following new section:

"DATA MATCHING

"SEC. 489A. (a)(1) The Secretary is authorized to obtain information from the files and records maintained by any of the departments, agencies, or instrumentalities of the United States concerning the most recent address of an individual obligated on a loan held by the Secretary or a loan made in accordance with part B of this title held by a guaranty agency, or an individual owing a refund of an overpayment of a grant awarded under this title, and the name and address of such individual's employer, if the Secretary determines that such information is needed to enforce the loan or collect the overpayment.

"(2) The Secretary is authorized to provide the information described in paragraph (1) to a guaranty agency holding a loan made under part B of this title on which such individual is obligated.

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"(b)(1) Notwithstanding any other provision of law, whenever the head of any department, agency, or instrumentality of the United States receives a request from the Secretary for information authorized under this section, such individual or his designee shall promptly cause a search to be made of the records of the agency to determine whether the information requested is contained in those records.

"(2)(A) If such information is found, the individual shall, in conformance with the provisions of the Privacy Act of 1974, as amended, immediately transmit such information to the Secretary, except that if disclosure of this information would contravene national policy or security interests of the United States, or the confidentiality of census data, the individual shall immediately so notify the Secretary and shall not transmit the information.

"(B) If no such information is found, the individual shall immediately so notify the Secretary.

"(3)(A) The reasonable costs incurred by any such agency of the United States in providing any such information to the Secretary shall be reimbursed by the Secretary, and retained by the agency.

"(B) Whenever such information is furnished to a guaranty agency, that agency shall be charged a fee to be used to reimburse the Secretary for the expense of providing such information.".

Approved November 15, 1991.

LEGISLATIVE HISTORY—H.R. 3575 (S.J. Res. 232) (S. 1945):

HOUSE REPORTS: No. 102-273 (Comm. on Ways and Means).
CONGRESSIONAL RECORD, Vol. 137 (1991):
Nov. 14, considered and passed House.
Nov. 15, S.J. Res. 232 and H.R. 3575 considered and passed Senate.

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VITA AUCTORIS

Timothy C. Bagwell was born October 9, 1955 in Olney Illinois, where he spent the first 18 years of his life. He graduated from East Richland High School in Olney in 1973. He attended Olney Community College for one year before moving on to Southern Illinois University at Carbondale (SIU-C). He graduated from SIU-C in 1979 with a Bachelor of Arts degree with a double major in Political Science and History and a Bachelor of Science degree in Radio and Televison. He spent a year working on his master's degree in Speech Communication prior to moving to Washington, D.C. where he worked at the Defense Mapping Agency Combat Support Center as a Program Analyst. While in Washington he completed additional studies at The American University. He returned to SIU-C in 1984 to spend a year finishing the masters degree.

Mr. Bagwell returned to Washington and taught communication courses at the University of Maryland at College Park, The American University, Howard University and Northern Virginia Community College. Mr. Bagwell switched careers, moving into information systems while in Washington prior to coming to the St. Louis area.

In St. Louis Mr. Bagwell continued work in the information systems arena, first with Metlife Health Care Management Corporation and later as a consultant to a variety of major St. Louis Companies including Health South, Anheuser-Busch Companies, Mallinkrodt Medical, Deutsche Financial Services and BJC Health System.

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In 1998 Mr. Bagwell formed New World Sciences Corporation. The company has developed products such as "CI!-Community Mental Health Management Suite" (communitymentalhealth.com), "The Illustrators Archive", a graphic arts archive dedicated to preserving the works of historic illustrators. The company also originates internet based publications such as "The Spinoza Net" (spinoza.net).

Mr. Bagwell's interest in Public Policy stems from his desire to integrate multiple approaches and disciplines into a coherent framework to be applied in the critical examination of the political and policy process. Mr. Bagwell began work on his Ph.D. in Public Policy Analysis and Administration at Saint Louis University in the early 1990s. Mr. Bagwell hopes to receive his degree in May 2001.

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