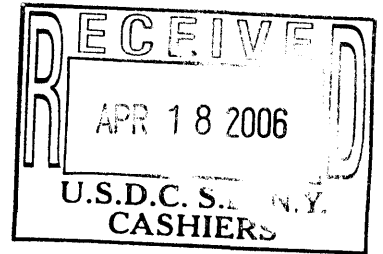


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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ONESIMPLELOAN, :
CARINA D. BALL, and :
NATHAN BAZYK, : Civil Action No.
Plaintiffs, :

- against- : COMPLAINT

U.S. SECRETARY OF EDUCATION and :
SECRETARY'S REGIONAL :
REPRESENTATIVE FOR REGION II, :
Defendants. :

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Plaintiffs, by their attorneys, allege as follows:

1. Plaintiffs bring this action to:

(i) require that the Secretary of Education maintain the *status quo ante* of the extant federal Higher Education Act through at least June 30, 2006, that allows two-step reconsolidation (as described below) of education loans made under the Federal Family Education Loan ("FFEL") program, instead of unlawfully terminating two-step reconsolidation of FFEL loans as of March 31, 2006,

(ii) declare unconstitutional the so-called "Deficit Reduction Omnibus Reconciliation Act of 2005," P.L. 109-171, and prohibit the defendants from enforcing the provisions thereof which purport to terminate two-step reconsolidation of FFEL loans effective July 1, 2006 and to markedly increase the interest rates to be paid by education loan borrowers for FFEL loans, and

(iii) obtain such other and further relief as is proper.

PARTIES AND JURISDICTION

2. Plaintiff OneSimpleLoan is a corporation incorporated under the laws of the State of Florida, having been incorporated under the name American Leads Unlimited, Inc., and does business as OneSimpleLoan, an assumed name under the laws of the State of Florida. OneSimpleLoan is an independent professional student loan firm that has consolidated millions of dollars in Federal student loans for FFEL borrowers with commercial lenders. Plaintiff would be continuing to refinance FFEL consolidation loans for borrowers through two-step reconsolidations, but for the action of the defendants which unlawfully terminated two-step reconsolidations as further alleged hereinafter.

3. Plaintiff Carina D. Ball is a FFEL consolidation loan borrower, resides in New York, has one FFEL loan which is a consolidation loan with a substantial outstanding loan balance at an interest rate in excess of the market rate available for two-step reconsolidations and with borrower benefits less than those available through two-step reconsolidation. She incurred her education loan debt to attend undergraduate school and graduate school in New York to become an elementary education reading teacher. She would be eligible to refinance, and would have refinanced, the FFEL consolidation loan using two-step reconsolidation so as to obtain a lower rate and/or better borrower benefits, but for the action of the defendants which unlawfully terminated two-step reconsolidations as further alleged hereinafter. She received no notice from the defendants that two-step reconsolidations were precluded after March 31, 2006.

4. Plaintiff Nathan Bazyk, an electrical engineer, resides in New York, and also financed his education using federal student loans. He has one FFEL consolidation loan. He received no notice from the defendants that two-step reconsolidations were precluded after

March 31, 2006, but in the absence of the Department of Education's illegal policy change he would be eligible to refinance, and would have refinanced, the FFEL consolidation loan using the two-step reconsolidation so as to obtain a lower rate and/or better borrower benefits.

5. The defendant U.S. Secretary of Education heads the federal Executive Department known as the United States Department of Education and administers federal education loan programs including the FFEL and William D. Ford Direct ("Direct") loan programs under the Higher Education Act.

6. The defendant Secretary's Regional Representative for Region II is the representative of the defendant U.S. Secretary of Education who has responsibility for Department of Education for Region II which includes New York and, among other things, has responsibility encompassing student financial assistance programs for educational institutions and borrowers in New York.

7. This action arises under 20 U.S.C. § 1082(a)(2), 28 U.S.C. §1331 and 5 U.S.C. § 702, as hereinafter more fully appears.

**BY FLOUTING HER MINISTERIAL OBLIGATIONS,
THE SECRETARY DEPRIVES AMERICAN STUDENTS AND PARENTS
OF THEIR RIGHT TO REFINANCE THEIR EDUCATION LOANS
AT BETTER RATES AND WITH BETTER BENEFITS**

8. The importance of a college education cannot be understated. As First Lady Laura Bush explained on February 13, 2003, "Education is the most important long-term investment we can make in our future. Education reflects our love and our belief in freedom. It is freedom itself." Her words from March 22, 2001, are equally apt: "America's colleges and universities provide responsible leaders for our democratic society."

9. A college education can be expensive. Many Americans must borrow to afford such an education. Upon completing that education, which may include graduate school, many education loan borrowers carry substantial debt burdens, incurred to finance their educations.

10. As with personal debt in general, the importance of the ability to take advantage of opportunities to refinance that debt at lower rates and/or with additional benefits to the borrowers cannot be legitimately contested. Just as homeowners understandably and legitimately take advantage of opportunities to refinance their mortgages at lower rates and better terms, so should and do education loan borrowers.

11. To aid students and their parents in meeting the costs of a college education, Congress enacted the federal Higher Education Act (codified at 20 U.S.C. §§ 1001, *et seq.*). It established, among other things, the FFEL and Direct loan programs, which include consolidation loans.

12. The loaned monies and interest rate setting for FFEL consolidation loans come from the private financial marketplace, subject to rate ceilings imposed by the Higher Education Act.

13 Federal legislation provides for several types of federal education loans and allows for various multi-step processes by which borrowers may refinance federal education loans.

14. This Complaint addresses the two-step process by which a borrower who has only a FFEL consolidation loan may refinance that loan as a different FFEL consolidation loan through a two-step process that involves the Department of Education. For purposes of this Complaint we refer only to the refinanced loans obtained through the two-step process, by which

a borrower who has only a FFEL consolidation loan refinances that loan as a different FFEL consolidation loan, through the process described below that involves the Department of Education, as “two-step reconsolidation loans.” Those “two steps” consist of going into and out of the Direct loan program. (The Higher Education Act allows for more than one “two-step” refinancing process.)

15. These two-step reconsolidation loans allow a borrower who has only a FFEL consolidation loan to refinance it, thereby in effect moving it from one private lender to another more favorable competitor, and/or otherwise refinance the consolidation loan at lower rates and/or with better benefits. The mechanism entails reconsolidating the old FFEL consolidation loan as a Direct consolidation loan and then reconsolidating that Direct consolidation loan as a new FFEL consolidation loan.

16. The importance of the two-step reconsolidation mechanism to education loan borrowers and the vitality of the American education process is easy to demonstrate. Over the years, education loan interest rates have varied widely. Also, borrowers, such as university graduates, often need to consolidate their loans in order to reduce their monthly payments and to better manage what otherwise could be multiple loan payment requirements. A borrower who consolidated under the FFEL consolidation loan program can have an interest rate much higher than those of recent years. The ability to refinance that FFEL consolidation loan to obtain lower and competitive rates and/or benefits, which helps make a college education affordable and aids the USA as a country.

17. Two-step reconsolidation provides such a FFEL borrower with access to such lower and competitive rates and/or benefits

18. Two-step consolidations also generate revenue for the federal government because the maker of each new FFEL consolidation loan pays a lender fee to the Secretary of Education equal to one-half percent (0.5%) of the loan principal amount (20 U.S.C. §1087-1(d)).

19. Each year thereafter the reconsolidated loan holder also pays the federal government a fee of one and five-one hundredths percent (1.05%) of the loan principal amount and accrued interest (34 CFR §682.406(a)(12)(iv)).

20. The flow of funds to the federal government remains the same after two-step reconsolidation as it was prior to the two-step consolidation. The other fiscal attributes to the government of two-step reconsolidated loans, and the old FFEL consolidation loan, that was refinanced are the same. The “special allowance payment” (“SAP”) remains unchanged by the two-step consolidation and the SAP for the new FFEL consolidation loan equals the same SAP applicable to the original FFEL consolidation loan being refinanced.

21. Through the mechanism of a two-step reconsolidation, the borrower can beneficially refinance and change from one commercial FFEL consolidation loan lender to a competing FFEL lender so as to benefit from competition and obtain a FFEL consolidation loan at a lower rate and/or with more beneficial borrower benefits. The two-step reconsolidation mechanism maximizes competition among consolidation loan lenders and provides substantial economic benefits to education loan borrowers.

22. The two-step reconsolidation process is straightforward:

a. The Higher Education Act and implementing regulations authorize a borrower to consolidate his or her FFEL loans (including FFEL consolidation loans) into a Direct consolidation loan whenever no FFEL lender is able to

consolidate those loans as a FFEL consolidation loan that meets the criteria specified in Section 428C(b)(5) of the Higher Education Act (20 U.S.C. § 1078-3(b)(5)); *see* 34 CFR § 685.220(d)(1)(i)(B)(1-2).

b. Borrowers whose only federal education loans are FFEL consolidation loans cannot reconsolidate such loans with their existing loan holders as a FFEL consolidation loans that meets the specified criteria. *See* Section 428C(a)(3)(B)(i) of the Higher Education Act (20 U.S.C. § 1078-3(a)(3)(B)(i)).

c. The Secretary of Education is therefore required by law to honor Direct Loan Consolidation applications submitted by a borrower who has only a FFEL consolidation loan outstanding.

d. Congress amended the Higher Education Act in 1997 specifically to allow the refinancing of all Direct program loans into FFEL consolidation loans (20 U.S.C. § 1078-3(a)(4)(C)).

e. Direct loans, including Direct consolidation loans, are “Part D” loans for purposes of 20 U.S.C. § 1078-3(a)(4)(C). The legislative directive occurred in 1997, when Congress specified in Section 428C(a)(4) of the Higher Education Act (20 U.S.C. § 1078-3(a)(4)) that “Part D” loans were eligible for refinancing under Section 428C(a)(1) of the Higher Education Act (20 U.S.C. § 1078-3(a)(1)).

f. The only holder of Direct consolidation loans is the Secretary of Education. Thus, the 1997 amendment to the Higher Education Act authorized Direct program loans (i.e., loans made under Part D of the Higher Education Act) to be refinanced into FFEL consolidation loans in which a new, non-governmental

lender would hold the resulting FFEL consolidation loan, in place of the sole prior holder, the Secretary of Education.

g. To effectuate a two-step reconsolidation, a borrower who identifies a lender that offers more favorable rates and/or borrower benefits refinances his or her existing FFEL consolidation loan through a process that involves two steps. The refinancing borrower applies, in the first step, for a Direct consolidation loan to be used to reconsolidate the existing FFEL consolidation loan. In the second step, the borrower applies for a new FFEL consolidation loan to be used to reconsolidate the Direct consolidation loan received in the first step.

h. The result is borrowers (students and parents) are better able to carry the financial burdens of college education, and a positive revenue flow of money to the federal government as a result of the 50 basis point fee that the lender of the new FFEL consolidation loan pays the Secretary of Education. Both the borrowers and the federal government win from the process.

23. The two-step reconsolidation process has been popular for the past several years. Its popularity is understandable because of the large cost savings that it allows education loan borrowers to obtain through refinancing.

24. As part of the processing of a FFEL or Direct consolidation loan application, it is legally required that a Loan Verification Certificate (“LVC”) be requested of and completed and returned by the underlying lender(s). An LVC attests to the borrower’s underlying education loan indebtedness under the FFEL or Direct loan program, providing a “payoff balance” that

enables the consolidating lender to make the requested loan in the correct amount. Requesting and providing proper LVCs are ministerial acts mandated by law.

25. For the two-step reconsolidation to occur, the Secretary of Education receives and processes the Direct consolidation loan application as part of the first step, requests and receives LVC(s) from the underlying FFEL lender(s) in order to complete that step, and provides an LVC to the new FFEL consolidation loan lender to enable the second step to be completed.

26. The Secretary's processing of the first step loan applications and requesting and providing the LVCs on the second step loan are ministerial acts.

27. Large financial institutions dislike the consolidation away from them of existing FFEL loans. As part of the lobbying over the proposed "Deficit Reduction Omnibus Reconciliation Act of 2005," lobbyists for a large for-profit corporation SLM Corporation (commonly known as "Sallie Mae") and other large financial institutions sought to change the Higher Education Act so as to preclude reconsolidation of existing consolidation loans. Language precluding reconsolidation of both FFEL consolidation loans and Direct consolidation loans, effective as of July 1, 2006, is part of the putative "Deficit Reduction Omnibus Reconciliation Act of 2005," P.L. 109-171.

28. In a misleadingly titled "Dear Colleague" letter DCL FP-06-03, that the Department of Education sent on or about March 17, 2006, to financial institutions and other entities on the mailing list of the Department of Education, the Department of Education took final agency action, without public notice or hearing, and determined not to process: