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OPINION	:	No. 80-1108
of	:	JULY 2, 1981
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The California Student Aid Commission requests an opinion on the following: question:

Is the California Student Aid Commission authorized by Education Code section 69760, as part of its administration of the state guaranteed loan program, to perform these new functions:

a. Be an escrow agent;

b. Act as a guarantor and administrator of loans to parents;

c. Act as an agent for the Student Loan Marketing Association for loan consolidation,

which functions were authorized by Congress as part of Public Law No. 96–3 74 (1980)?

CONCLUSION

The California Student Aid Commission is authorized by the provisions of the state guaranteed loan program to:

a. Be an escrow agent;

b. Act as a guarantor and administrator of loans to parents;

c. Act as an agent for the Student Loan Marketing Association for loan consolidation,

which functions were authorized by Congress as part of Public Law No. 96–3 74 (1980).

ANALYSIS

Both federal and state law provide for a student loan guarantee program at the postsecondary education level. The federal program is contained in title IV, part B of the Higher Education Act of 1965 (Pub. L. 89–329), as amended. The state program is contained in the State Guaranteed Loan Program, administered by the California Student Aid Commission. (Ed. Code,[1] 69760 *et seq*.) The state program is "to be consistent with title IV of the act of Congress entitled the 'Higher Education Act of 1965' (P.L. 89–329) and extensions thereof, the Education Amendments of 1976 (P.L. 94–482), or any similar act of Congress and the rules and regulations adopted thereunder." (§ 69760.) Of further import, the provisions of the state act "shall be applicable to the extent that its provisions do not conflict with Title IV . . ." (§ 69771.)

The federal act has been extended several times and it has been amended by five different acts of Congress. (See discussion post.) The latest amendments of that federal act by Congress occurred in the Education Amendments of 1980. (Pub. L. 96–374.) These 1980 amendments, inter alia, authorized as part of the federal student loan program certain new functions to be performed by the public entity designated by each state to participate in the federal program.

There is presently no specific reference in the state act to the 1980 amendments by Congress of the Higher Education Act of 1965. We are to determine whether the California Student Aid Commission is authorized by state law to perform some of the new functions specified in the Higher Education Act of 1965, as amended.

[1] All unidentified section references are to the Reorganized Education Code.

In resolving this question, there are two basic issues: first, whether the state Legislature has authorized the Commission to exercise additional powers or responsibilities, if any, that might be contained in federal amendments to the Higher Education Act of 1965 in the absence of specific state legislative consideration of such congressional changes, and, secondly, if the Legislature has so authorized, whether its action resulted in any unconstitutional delegation of legislative power to the Commission.

There are two rules of statutory construction applicable where the Legislature enacts a statute that contains a reference to another body of law. The distinction between the two rules turns upon whether the legislative reference in the statute is deemed to be a specific reference or a general reference. The two rules are summarized in *Palermo v. Stockton Theatres, Inc.* (1948) 32 Cal. 2d 53, 58–59 as follows:

> "It is a well established principle of statutory law that, where a statute adopts by specific reference the provisions of another statute, regulation, or ordinance, such provisions are incorporated in the form in which they exist at the time of the reference and not as subsequently modified, and that the repeal of the provisions referred to does not affect the adopting statute, in the absence of a clearly expressed intention to the contrary. (*Rancho Santa Anita v. City of Arcadia* [1942], 20 Cal. 2d 319, 322; *Brock v. Superior Court* [1937], 9 Cal. 2d 291, 297–298 [114 A.L.R. 127]; *In re Burke* [1923], 190 Cal. 326, 327–328; *Don v. Pfister* [1916], 172 Cal. 25, 28, 31; *Ramish v. Hartwell* [1899] 126 Cal. 443, 447; *Ventura County v. Day* [1896], 112 Cal. 65, 72; *People v. Clunie* [1886], 70 Cal. 504, 506; *People v. Whipple* [1874], 47 Cal. 592, 593–594; *Spring Valley Water Works v. San Francisco* [1863], 22 Cal. 434, 439; 59 C.J. § 548, p. 937.)
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> "This principle applies to the adoption of a statute of another jurisdiction (Brock v. Superior Court, *supra*, at page 297; In re Burke, *supra*, at page 328); and inasmuch as treaties have the force and effect of federal statutes (52 Am. Jur. § 4, 17, pp. 807, 815), it [ ] [seems reasonable to hold) that it applies to a treaty to the same extent that it would to an act of Congress.
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> "It also [ ] [must] be noted that there is a cognate rule, recognized as applicable to many cases, to the effect that where the reference is general instead of specific, such as a reference to a system or body of laws or to the general law relating to the subject in hand, the referring statute takes the law or laws referred to not only in their contemporary form, but also as they may be changed from time to time, and or may be assumed although no such case has come to our attention) as they may be subjected to elimination altogether by repeal. (*Kirk v. Rhoads* [1893], 46 Cal. 398, 403; *Bolton v. Terra Bella*

> *Irr. Dist.* [1930], 106 Cal. App. 313, 322; *Thoits v. Byxbee* [1917], 34 Cal. App. 226, 231; 50 Am. Jur. 58–59; 59 C.J., § 624, pp. 1060–1061. And see *Vallejo etc. R.R. Co. v. Reed Orchard Co.* [1918], 177 Cal. 249. 254.)" (Brackets in original text.)

(See also *State School Bldg. Finance Com. v. Betts* (1963) 216 Cal. App. 2d 685, 692.)

Further, if the question whether the reference is either special or general is a close question, concerning which reasonable minds might differ, then the preferred construction is that the reference is special, not general. That rule of construction is also set forth in *Palerino v. Stockton Theatres, Inc.*, *supra*, 32 Cal. 2d at pages 59–60 as follows:

> "The question whether the reference to the treaty contained in the California Land Act should be deemed specific or general within the meaning of the foregoing rules might, as an abstract proposition, admit of different opinions. The language is 'any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject.' However, in view of the fact that there is grave doubt whether our Legislature could constitutionally delegate to the treaty-making authority of the United States the right and power thus directly to control our local legislation with respect to future acts (*Rancho Santa Anita v. City of Arcadia*, *supra*, at pages 319, 322; *Brock v. Superior Court*, *supra*, at page 297; *In re Burke*, *supra*, at pages 328–329), we are constrained to hold that the reference is specific and not general, since such a construction is at least a reasonable one (see *[In] re Heath* [1891], 144 U.S. 92, 93–95) and therefore to be preferred to one of doubtful validity (II Am. Jur. § 97, pp. 729–730; *Matthews v. Matthews* [1925], 240 N.Y. 28 [147 N.E. 237, 239, 38 A.L.R. 1079]).
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> "According to the text of the former of these two last cited authorities, 'The duty of the courts so to construe a statute as to save its constitutionality when it is reasonably susceptible of two constructions includes the duty of adopting a construction that will not subject it to a succession of doubts as to its constitutionality, for it is well settled that a statute must be construed, if fairly possible, so as to avoid nor only the conclusion that it is unconstitutional but also grave doubt upon that score.

Thus, we must examine the references to federal law contained in the State Guaranteed Loan Program so as to ascertain whether they are special or general. Preliminarily, we note that the Legislature has specified in Education Code section 4 that "[w]henever reference is made to any portion of this code or of any other law of this state, such reference applies to all amendments and additions now or hereafter made." This provision is a standard provision and as such reflects the Legislature's consistent approach when resolving the issue. (See, e.g., Gov. Code, § 9, Welf. & Inst. Code, § 9, and Health and Saf. Code, § 9, which contain identical language.)

These sections do not resolve any issue concerning a reference in state law to federal law. These provisions may be helpful, however, because they reveal a general tendency on the part of the Legislature to incorporate subsequent amendments as a matter of legislative policy.

As stated, the references in the State Guaranteed Loan Program must be examined in order to ascertain whether they are specific or general for purposes of exclusion or inclusion of subsequent amendments. (*Palermo v. Stockton Theatres, Inc.*, *supra*, 32 Cal. 2d 53.)

The language 'or any similar act of Congress" that is contained in section 69760 operates to make it clear that the reference to the Higher Education Act of 1965 is general, not specific.

This inference is fully supported by the language utilized by the Legislature in section 69761 wherein the purpose of the State Guaranteed Loan Program is set forth as:

> "(a) To provide a source of credit to students who are residents of California . . . and (b) To accept, receive and administer the funds provided under Title IV of the 'Higher Education Act of 1965,' and extensions thereof, *or any similar act of Congress*." (Emphasis added.)

Thus, the reference to the Higher Education Act of 1965 is a broad reference in the sense that the state Legislature has established as its parameters those of the federal statutory scheme which it is authorizing the commission to implement. Thus, it is readily apparent that the Legislature is *first* of all acting to provide a source of credit to students and second of all acting to obtain federal funds to implement that program. The particular provisions of the Higher Education Act of 1965 are of interest because they are a major source of funds to finance the state program, but they are merely a means to achieve an end. Viewed in this light, there is no reason to believe that the reference to federal law in section 69760 *et seq*. is specific but rather there is reason to believe that it is general, i.e., what is meant is *that* federal act or *any similar act* which provides funds permitting the state program to operate so as to provide a source of credit to students.

This conclusion is reinforced by the fact that the Higher Education Act of 1965 was amended by Congress in each of several different years and the state Legislature did not respond with an amendment of any provision of the State Guaranteed Loan Program that referred to that Act, with one exception, the 1976 Educational Amendments, which subject we shall address further, *post*.

The amendments of the Higher Education Act of 1965 which did not result in the state Legislature amending the State Guaranteed Loan Program were: Public Law No. 89–572, section 11, November 3, 1966, 80 Statutes 1243; Public Law No. 90–460, August 3, 1968, 82 Statutes 635 *et seq*.; Public Law No. 90–575, October 16, 1968, 82 Statutes 1021 *et seq*.; Public Law 92–318, June 23, 1972,86 Statutes 261 *et seq*.; Public Law 95–43, June 15, 1977,91 Statutes 2l4 *et seq*. (See generally, Pub. L. 89–752, 1966 U.S. Code Cong. & Adm. News, p. 3927; Pub. L. 90–460, 1968 U.S. Code Cong. & Adm. News, p. 3116; Pub. L. 90–575, 1968 U.S. Code Cong. & Adm. News, p. 4035; Pub. L. 95–43, 1977 U.S. Code Cong. & Adm. News, p. 333.)

The exception to this pattern is the Education Amendments of 1976, by which amendments Congress both extended and amended the Higher Education Act of 1965, which fact makes it facially analogous to the Educational Amendments of 1980, at issue in this opinion. However, in this context, it is equally relevant to observe that Congress both *extended* and *amended* title IV of the Higher Education Act of 1965 in 1968 (Pub. L. 90–575) and in 1972 (Pub. L. 92–3 18). The State Guaranteed Loan Program was *not* amended by the Legislature to refer to these changes, although they also are facially analogous to the 1976 and 1980 amendments by Congress of the Higher Education Act of 1965. If the California Student Aid Commission were not to be deemed to be authorized to implement these federal amendments of prior years, even though the particular federal amendatory acts were not specified in the state statute, the state program would be so divergent from the federal program that there would be a serious question of state eligibility for federal grants as well as administrative chaos in attempting to reconcile the two programs. State law clearly contemplates the Commission achieving both goals: continued state eligibility for federal financial aid and a state program that implements the federal program.

We need not dwell extensively on the question of why the Legislature amended the State Guaranteed Loan Program in 1977 to include a reference to the federal Education Amendments of 1976. We think the answer is reasonably clear. The Congress changed the federal program in a material respect. The federal change of program gave the state a choice as to whether it would maintain its old program or adopt a new program consistent with the additional option now made available by the Educational Amendments of 1976. In essence, the state Legislature responded to the federal incentives added by the Education Amendments of 1976 and changed the state program. That conclusion is directly supported by the language of sections 69760.5 and 69761.5 (added in 1977 at the same time that § 69760 was amended to include a reference to the federal Educational

Amendments of 1976, Stats. 1977, ch. 1201), which sections read as follows:

Section 69760.5:

"In authorizing commission participation in the federal Guaranteed Student Loan program, pursuant to the 1976 Higher Education Act Amendments (P.L. 94–482), the Legislature finds and declares:

"(a) Direct federal administration of the Guaranteed Student Loan program has resulted in bureaucratic problems, high default rates, and rapidly decreasing participation of private lenders.

"(b) The Congress has moved positively to diminish student abuse of the program and encourage state participation through creation of state student loan guarantee agencies.

"(c) Twenty-six states now operate student loan guarantee agencies; student loan volume in these states increased seventy million dollars ($70,000,000) last year compared to a ninety-three million dollar ($93,000,000) drop in student loans in states without guarantee agencies, including California.

"(d) Commission participation as a student loan guarantee agency, at no cost to the General Fund, will increase available student loans for needy students, especially for middle-income students and families."

Section 697615

"The commission shall serve as a state student loan guarantee agency, pursuant to Pt. 94–482, and subsequent federal regulations including but not limited to the following provisions:

"(a) The commission shall be the designated state agency for receiving any federal advances for administrative costs and payments of insurance obligations.

"(b) Student loans to undergraduate and graduate students shall not exceed the limits provided in federal law.

"(c) Students from families with adjusted incomes under twenty-five thousand dollars ($25,000), as defined by the commission shall be eligible for federal subsidy of loan interest.

> "(d) Participating educational institutions shall notify lenders and the commission of participating students enrollment status changes and current address.
>
> "(e) No educational institution shall lend to more than 50 percent of its undergraduate students; this provision may be waived by the United States Commissioner of Education if such a limitation creates a hardship for present or prospective students.
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> "(f) A student may receive a guaranteed student loan only if he or she is maintaining satisfactory progress in a course of study pursuant to practices of the institution in which the student is enrolled, and provided the student has not previously defaulted on any student loan.
>
> "(g) An insurance premium may be charged student borrowers nor to exceed the maximum rate allowable, pursuant to federal statutes and regulations.

The Legislature appropriated $2,000,000 from the General Fund as a loan to the Student Aid Commission for the succeeding three fiscal years to be utilized for "administrative startup costs." (Stats. 1977, ch. 1202, § 14, P. 4011.) The congressional history of the federal Amendments of 1976 support the legislative action of 1977, *supra*. (See generally, Sen. Rep. No. 94–882, 1976 U.S. Code Cong & Admin, News, 4713, 4730–4739.) One quote from that report is indicative of the general tenor of the congressional materials, as follows:

> "After consideration of all these factors, the Committee concluded that it was necessary to buttress and augment existing state loan programs, and to encourage new state loan programs. The Committee prefers an approach based on optional incentives to induce voluntary State participation, as opposed to mandates or elimination of Federal programs where a State does not choose to operate its reinsured loan program. Thus, the guaranteed student loan statute is amended in the Committee bill to provide options [by] which an existing or a new State program may enter a new agreement with HEW to increase its percentage of reinsurance and to have collection and preclaims assistance costs reimbursed by the Federal Government. Currently, State programs are reinsured 80% by the Federal Government, and States which have no State program receive a direct Federal program for their citizens. The original program purpose stated in

> the 1965 Act was to encourage State programs. However, the anomalous situation of States without programs having no expenses and States with programs have 20% expense of defaults and 100% expense of administration creates a disincentive to States running their own loan programs. Based on testimony, research, and its own analysis, the committee concluded that States are in a superior administrative position to efficiently and effectively operate loan programs. However, the Committee wishes to induce all State programs to be brought to the same level of service and' availability as the Federal (direct) program. Therefore, the Committee has provided an option to State programs to act as an inducement, based on their general conformity with the Federal program regarding the eligibility of students, educational institutions, and lenders. No State program shall be required to make any change in order to maintain its current 80% reinsurance. Those States which choose the option of generally conforming with the Federal eligibility standards may receive 95% or, under separate conditions, 100% reinsurance. Additionally, under similar conditions, a State program may qualify for Federal payment or reimbursement of its cost of collecting defaulted loans and its costs of prevention of defaults through preclaim assistance. The Committee believes that this administrative cost provision will provide lower overall operating costs to the program by avoiding unnecessary defaults by proper servicing of loans and in expanding collection efforts by removing disincentives for State programs to undertake an aggressive collection operation. (1976 U.S. Code Cong. & Admin. News 4738.)

Thus, the Congress changed its program and the state responded by changing its program. The reference in section 69760 to the Education Amendments of 1976 does not, therefore, imply that a reference to a particular act of Congress amending the Higher Education Act of 1965 is necessary before the state agency charged with implementing the state program may begin implementing changes in the federal program. On the contrary, the general indication is that the state program *is to be implemented* in such a way as to take maximum advantage of any federal funds that may be made available to fund the state program, which program has been designed by the Legislature to flex in accordance with changes in the federal program.

At this point in our analysis we have established that the Legislature intends that amendments to the federal Higher Education Act of 1965 be included within the operation of the state program. The question of whether that intent may be effectuated involves a discussion of the second major issue—the limitation upon such legislative action resulting from the doctrine of separation of powers, which in this instance involves an issue concerning possible improper delegation of legislative authority. The discussion of the specific changes in the federal program resulting from the Education Amendments of 1980 becomes relevant in the context of that discussion. We turn then to the issue of delegation of power by the Legislature in the context of the state guaranteed loan program.

The doctrine prohibiting delegation of legislative power has been cogently summarized in *Kugler v. Yocum* (1968) 69 Cal. 2d 371, 375–377 as follows:

> "At the outset, we note that the doctrine prohibiting delegation of legislative power, although much criticized as applied (see, e.g., Witkin, Summary of Cal. Law (7th ed. 1960) p. 1834; 1 Davis, Administrative Law Treatise (1958) $2.01), is well established in California. 'The power . . . to change a law of the state is necessarily legislative in character, and is vested exclusively in the legislature and cannot be delegated by it . . .' (*Dougherty v. Austin* (1892) 94 Cal. 601, 606–607; see also *People v. Johnson* (1892) 95 Cal. 471, 475; *People v. Wheeler* (1902)136 Cal. 652, 655; *Coulter v. Pool* (1921)187 Cal. 181, 190; *Duskin v. State Board of Dry Cleaners* (1962) 58 Cal. 2d 155, 161–162.) Moreover, the same doctrine precludes delegation of the legislative powers of a city (*City of Redwood City v. Moore* (1965) 231 Cal. App. 2d 563, 576, and cases cited therein; see generally 2 McQuillin, The Law of Municipal Corporations (3d ed. 1966) $10.39, p. 843, and cases cited at fn. 63).
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> "Several equally well established principles, however, serve to limit the scope of the doctrine proscribing delegations of legislative power. For example, legislative power may properly be delegated if channeled by a sufficient standard. 'It is well settled that the legislature may commit to an, administrative officer the power to determine whether the facts of a particular case bring it within a rule or standard previously established by the legislature . . .'(*Dominguez Land Corp. v. Daugherty* (1925) 196 Cal. 468, 484; see also *State Board of Dry Cleaners v. Thrift-D-Lux Cleaners, Inc.* (1953) 40 Cal. 2d 436, 448; Case Note (1959) 6 U.C.L.A. L. Rev. 312 and cases cited therein.)
>
> "A related doctrine holds: 'The essentials of the legislative function are the determination and formulation of the legislative policy. Generally speaking, attainment of the ends, including how and by what means they are to be achieved, may constitutionally be left in the hands of others. The Legislature may, after declaring a policy and fixing a primary standard, confer upon executive or administrative officers the "power to fill up the details" by prescribing administrative rules and regulations to promote the purposes of the legislation and to carry it into effect. . . .' (*First Industrial Loan Co. v. Daugherty* (1945) 26 Cal. 2d 545, 549.) Similarly, the cases

establish that '[w]hile the legislative body cannot delegate its power to make a law, it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend.' (*Wheeler v. Gregg* (1949) 90 Cal. App. 2d 348, 363.)

"We have said that the purpose of the doctrine that legislative power cannot be delegated is to assure that 'truly fundamental issues [will] be resolved by the Legislature' and that a 'grant of authority [is] . . . accompanied by safeguards adequate to prevent its abuse.' (*Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Contro*l (1966) 65 Cal. 2d 349, 369; see also Jaffe*, An Essay on Delegation v. Legislative Power* (1947) 47 Colum. L. Rev. 359, 561; 1 Davis, Administrative Law Treatise, supra, § 2.15; *Gaylord v. City of Pasadena* (1917) 175 Cal. 433, 437; *Waren v. Marion County* (1960) 222 Ore. 307, 313–315; *Lien v. City of Ketchikan* (Alaska 1963) 383 P. 2d 721, 723–724; *Group Health Ins. v. Howell* (1963) 40 N.J. 436, 445–447; *Heath v. Mayor & City Council of Baltimore* (1946) 187 Md. 296, 303 (dictum).) This doctrine rests upon the premise that the legislative body must itself effectively resolve the truly fundamental issues. It cannot escape responsibility by explicitly delegating that function to others or by failing to establish an effective mechanism to assure the proper implementation of its policy decisions."

Thus, there is no improper delegation when the legislative body itself "declares) a policy" (*id*., at p. 376) or "resolve[s] the truly fundamental issues' (*ibid*.), and then "fix[es] a primary standard" (*id*., at p. 376) or establishes adequate "safeguards" (*id*., at p. 381) sufficient "to assure the proper implementation of its policy decisions." (*Id*., at p. 377; see also 63 Ops. Cal. Atty. Gen. 566, 572 (1980).)

There is no great issue concerning whether the Legislature has resolved the truly fundamental issue concerning state participation in the federal program; it clearly has done so. First, section 69761 establishes that the broad policy of the program is to provide a source of credit to students who are residents of California to assist them in meeting educational costs. A major purpose of the state program is "to accept, receive and administer the funds provided under Title IV of the 'Higher Education Act of 1965,' and extensions thereof, or any similar act of Congress." An important safeguard instituted by the Legislature and controlling upon the Commission is the provision that:

"[T]he total amount of all outstanding debts, obligations, and liabilities which may he incurred or created under this chapter, including any obligation to repay to the United States any funds provided under Title IV of the 'Higher Education Act of 1965,' and extensions thereof, or any similar

> act of Congress, is limited to the amount contained in the State Guaranteed Loan Reserve Fund, and the state shall not be liable beyond the amount contained in such fund/or such debts, obligations, and liabilities." (Emphasis added; § 69766; see also § 69760.5(d).)

Specific provisions establishing the Legislature's policy are contained in sections 69761.5, 69762, 69764 and 69765. The state program thus established is in essence an authorization to participate in the federal program. (See, e.g., section 69760.5 wherein it is stated, "[i]n authorizing commission participation in the federal Guaranteed Student Loan program . . .," which federal program is intended itself to operate through individual state participation.)

A somewhat analogous situation was upheld in *Gillum v. Johnson* (1936) 7 Cal. 2d 744, 754–755 wherein it was stated that:

> "The provisions of titles III and IX of the federal act make it plain that the purpose of the federal legislation was to encourage and bring about a uniform system of unemployment compensation throughout the United States. Those provisions are held out as an inducement to the states to enact unemployment compensation laws in accordance with certain general standards provided in the federal law, but leaving the actual operation of unemployment insurance and generally the numerous details in connection therewith, including the payment of benefits, to the states under their own laws.
>
> *"The legislature of this slate anticipated the enactment of the federal statute and passed the state act (approved June 25, 1935), before the effective date of the federal law* (August 14, 1935). The federal bill was in the process of enactment but had not become law when our legislature was considering the enactment of the state law on the subject. The legislature took notice of the terms of the pending bill, generally, and caused the state law to conform to the requirements of the federal law if the same should be enacted. Soon after the state law went into effect the provisions thereof were approved by the social security board." (Emphases added.)

The court concluded at page 761 that:

> "We now discover no insuperable obstacle to the accomplishment of the plan so far as the state Constitution is concerned. And there appears no lack of power in the legislature to adopt as a part of the state plan certain provisions of the federal law on the same subject. (In re Burke, 190 Cal. 326.)

In the case of *Bartosh v. Bd. of Osteopathic Examiners* (1947) 82 Cal. App. 2d 486, 493 it is stated that:

> "It contends that the initiative act in adopting the existing medical practice act could not by such method adopt 'laws hereafter enacted.' By this it means amendments to the Medical Practice Act that might be enacted in the future. (See In re Opinion of the Justices, 239 Mass. 606 [133 N.E. 453, 454].) Indeed, it is the law that an act which adopts by reference the whole or a portion of another act means the law existing at the time of the adoption, and does not include subsequent additions or modifications of the statutes so adopted unless it does so by express language or strongly implied intent. (*Vallejo & N.R.R. Co. v. Reed Orchard Co*., 177 Cal. 249, 254 [170 P. 426]; *People v. Crossley*, 261 Ill. 78 [103 N.E. 537, 540]; *Crohn v. Kansas City etc. Co.*, 131 Mo. 313 [109 SW. 1068, 1070]; *Savage v. Wallace*, 165 Ala. 572 [51 So. 605, 607]; *Culver v. People*, 161 Ill. 89 [43 N.E. 812, 814]; *City of Charleston v. Johnston*, 170 Ill. 336 [48 N.E. 985, 986]; *Town of Cicero v. McCarthy*, 172 III. 279 [50 N.E. 188, 190]; *Knapp v. City of Brooklyn*, 97 N.Y. 520, 525; *Darmstaetter v. Maloney*, 45 Mich. 621 [8 N.W. 574, 576]; *In re Main Street*, 98 N.Y. 454, 457.) Also, see *In re Burke*, 190 Cal. 326, 328 [212 P. 193], *which intimates the nullity of a statute purporting to adopt future laws*." (Emphasis added.)

In re Burke (1923) 190 Cal. 326, cited in *Gillum v. Johnson*, *supra*, 7 Cal. 2d 744 and in *Bartosh*, *supra*, contains a caveat, as follows:

> "The second point which the petitioner urges is that the act is made void by reason of the fact that it adopts not only the existing provisions of the Volstead Act, but purports to adopt also the future provisions which may be hereafter enacted by Congress. It may be conceded that this provision is not valid, although we do not decide it, since it is not involved. The only effect of putting that provision into the statute would be, at most, that the provision itself would be void, leaving the remainder of the act valid. It is not such a component part of the act itself as would be necessary to require us to hold that it invalidated the entire act. (*In re Kinney*, 53 Cal. App. 792 [200 Pac. 966].) We find nothing in the act which makes the law invalid so far as it adopts the existing provisions of the Volstead Act."

The case of *In re Burke* is noted in footnote 6 by the Supreme Court in *Kugler v. Yocum*, *supra*, 69 Cal. 2d at pages 379–380. The court noted that:

> "The California cases of *In re Burke* (1923) 190 Cal. 326, and *Adams v. Wolff* (1948) 84 Cal. App. 2d 435, cited by defendants, do not pass upon the present issue. *Burke* involves an attempted adoption of a future statute of another state [sic]; the court specifically reserves the point here at issue, as does *Wolff*. The cited case of *Mitchell v. Walker* (1956) 140 Cal. App. 2d 239 [295 P. 2d 90], does conflict with part of our ruling in the instant case, and to that extent it is disapproved.
>
> "In upholding the definition of prohibited drugs by future decision of a recognized private pharmaceutical institution, the Supreme Court of Wisconsin, in *State v. Wakeen* (1953) 263 Wis. 401, 411 [57 N.W.2d 364], held 'This is not a case of the *delegation* of legislative powers. The publications referred to in the statute are not published in response to any delegation of power, legislative or otherwise, by the statute. The compendia are published independently of the statute and not in response to it.' (Italics added.) Similarly, in our case an independent, authorization source determines the comparable Los Angeles rates, and such decision is made 'independently of the statute and not in response to it.' For other out-of-state cases, see *Crowley v. Thornbrough* (1956) 226 Ark. 768, and cases cited at page 774 [294 S.W.2d 62], and *State ex rel. Kirschner v. Urquhart* (1957) 50 Wn.2d 131 [310 P.2d 261]. See generally 1 Davis, Administrative Law Treatise, *supra*, § 2.14; Note (1934) 34 Colum. L. Rev. 1077, 1084–1086."

Thus, the precise point reserved in the case of *In re Burke*, *supra*, was decided by the court in *Kugler v. Yocum*, *supra*.

When one examines the issue of possible improper delegation of legislative authority in the context of state participation in a federal program, there is an additional factor controlling the state program, i.e., the supremacy clause of the United States

When a state, through legislative action, elects to participate in a federal program, its program must comply with the mandatory provisions of the federal program and any state provisions in conflict therewith are invalid under the Supremacy Clause and unenforceable irrespective of whether such state provisions are contained in a statute or regulation. (*Van Lare v. Hurley* (1975) 421 U.S. 338; *Carleson v. Remillard* (1972) 406 U.S. 598, 600–601; *California Human Resources Dept. v. Java* (1970) 402 U.S. 121, 135; *Lewis v. Martin* (1970) 397 U.S. 552; *Rosado v. Wyman* (1970) 397 U.S. 397; *King v. Smith* (1968) 392 U.S. 309; *Ogdon v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal. 3d 192, 199; *County of Alameda v. Carleson* (1971) 5 Cal. 3d 730, 739; *Camp v. Swoap* (1979) 94 Cal. App. 3d 733, 743; *Garcia v. Swoap* (1976) 63 Cal. App. 3d 903, 909.)

Thus, subsequent amendments by Congress of a federal act in which a state is participating, if mandatory, would be binding upon the states irrespective of state legislative intent so long as the state continued to participate in the federal program. Given the force of this imperative, it is not unreasonable for a state, participating in a federal program by which it receives federal funds, to enact enabling legislation by which it seeks to maintain conformity with the federal law so as to maintain its eligibility by complying with changing congressional requirements.

The state program being reviewed in this opinion does more than seek to conform its provisions with mandatory federal law, it seeks to conform its features with permissive features of federal law in order to maximize the state's potential to receive federal funds for the purpose of operating a student guaranteed loan program. There is little reason to believe that such effort by the state Legislature to fashion a state program which defers to federal law in order to obtain federal financing will be viewed by the courts as improperly delegating legislative power. The concern of the courts is with respect to the presence or absence of "standards" or "safeguards" that protect individuals against "arbitrariness" or from "abuse" in the exercise by subordinant public entitles of such delegated power. (See particularly, the discussion in *Kugler v. Yocum*, *supra*, 69 Cal. 2d at p. 38 1–384.) In this connection, the court in *Kugler* concluded that:

> "Only in the event of a total abdication of that [policy-making] power, through failure either to render basic policy decisions or to assure that they are implemented as made, will this court intrude on legislative enactment because it is an 'unlawful delegation,' and then only to preserve the representative character of the process of reaching legislative decision." (Op. cit., at p. 384.)

It seems apparent that in respect of the Guaranteed Student Loan Program, the state Legislature has made the basic policy choices and there is no potential for arbitrary or abusive decision making by the Commission in implementing the details of the program, as authorized by the state and by Congress. (See *Bock v. City Council* (1980)109 Cal. App. 3d 52, 57.)

Assuming that one determines that the state Legislature intends to authorize a state agency to take appropriate action in response to changes in a federal program providing funds to the state, we are persuaded that there is no improper delegation of legislative authority by the state Legislature when it authorizes implementation by a state agency of subsequent amendments by Congress of the federal act where such amendments do not require the appropriation of additional state funds or the amendments do not constitute the enactment of a new and different federal program. See, e.g., *Pacific Legal Foundation v. Brown* (1981) 29 Cal. 3d 168, 201, where it is stated:

> "Petitioners' 'unlawful delegation' argument rests on the claim that the Legislature acted improperly in providing in section 3517.6 that a memorandum of understanding, agreed to by the Governor and a properly selected exclusive representative of the employees, could supersede certain specifically designated Government Code sections. The statutes in question, however, do not involve fundamental policy determinations, but rather relate to the working details of the wages, hours and working conditions of the employees covered by the act. Past cases of this court demonstrate that the delegation of these kinds of decisions to a public official or agency does not contravene any constitutional precept. (See, e.g., *Meyer v. Riley* (1934) 2 Cal. 2d 39, 41; *Meyer v. Riley* (1930) 211 Cal. 29, 35; *cf. Fire Fighters Union v. City of Vallejo* (1974) 12 Cal. 3d 608, 622, fn. 13.)"

In light of these conclusions, we turn to the specific congressional amendments of the federal Higher Education Act of 1965, as amended by the Education Amendments of 1980. (Pub. L. 96–374.) Our attention is invited to five specific changes in the federal program although we are advised that the Commission intends at this time to implement only three of these changes, if it is authorized to do so. We examine all five changes since the extent of such federal changes may be decisive on the question presented.

Several of the changes in the Higher Education Act of 1965, reflected in the Education Amendments of 1980, are summarized in House Report No. 96–520, reported in 9A U.S. Code Congressional and Administrative News 6065 *et seq*. (See also House Conf. Rep. 96–1337, op. cit., at p. 6149 *et seq*.) The reasons for the congressional changes are stated to be as follows:

> "The Committee held seven days of hearings on the student loan programs devoting particular attention to the Guaranteed Student Loan program. The central conclusion of the Committee is that this program is working well and has demonstrated dramatic improvements in recent years. Therefore, the bill extends through fiscal year 1986 Part B of Title IV which authorizes the Guaranteed Student Loan Program. In taking this course, HR. 5192 builds on the Education Amendments of 1976, the Middle Income Student Assistance Act (1978) and the Higher Education Technical Amendments of 1979 which were designed to increase loan availability by making the program more attractive to commercial lenders and to encourage the establishment of state guarantee agencies, which have a better record of promoting lender participation and controlling defaults than the Federally Insured Student Loan program. The success of the 1976, 1978 and 1979 legislation is demonstrated by the increase in annual loan volume from approximately $1 billion in fiscal year 1976 to an anticipated $3 billion in

fiscal year 1979. This increase is dramatized by the fact that loan volume for each of the fiscal years 1970 through 1975 averaged about $1 billion, and program growth had slowed considerably and even declined in some of those years. In 1976, there were 25 state guarantee agencies in operation. Now all but 11 states have guarantee agencies and seven of these expect to have agencies established within the next twelve months. As a result of the increase in the number of state guarantee agencies and the more effective management of the program by the Department of Health, Education and Welfare, the default rate has declined from 13% in 1977 to 8% currently. The 1978 Annual Report of the Office of Inspector General of the Department of Health, Education, and Welfare notes that 'A major management breakthrough has been achieved with the containment of defaults (number and rate) in the . . . (Guaranteed Student Loan) program.'

"The Subcommittee hearings identified five problems in this program: the need to provide parents with the ability to obtain the liquidity to pay their reasonable share of the costs of educating their children, the lack of student loan capital availability in some areas of the nation, the need to provide a mechanism for the consolidation of multiple student loans, the need to provide for extended and income sensitive repayment terms for borrowers with a large student loan debt and the problem of further curbing loan defaults. While these problems are matters of serious concern, the Committee believes that their solution lies in refining and improving the existing program. The Committee does not believe that either the magnitude or the severity of these problems justifies the abandonment or radical . . . alteration of the existing program. The bill includes provisions relating to flexibility of repayment, loan consolidation, lender referral services, and liquidity for parents."

The five "problems in this program" referred to in the House Report excerpt just quoted produced "provisions relating to flexibility of repayment, loan consolidation, lender referral services, and liquidity for parents." We shall address several of those changes specifically. In addition, two additional changes that must be discussed were effected by amendments proposed by the Senate and concurred in by the House, so that there is no discussion of those changes in the House Report. (See discussion post and House Conf. Rep. 96–1337, op. cit., at p. 6170.)

We turn first to the provision adding a "parent" loan feature. Section 419 of the Educational Amendments of 1980 added to part B of title IV by inserting immediately after section 428A a new section 428B reading in part as follows:

"SEC. 428B. (a) Parents of a dependent undergraduate student (as defined by regulations by the Secretary) shall be eligible to borrow funds under this part in amounts specified in subsection (b), and unless otherwise specified in subsections (c) and (d), such loans shall have the same terms, conditions, and benefits as all other loans made under this part. Whenever necessary to carry out the provisions of this section the terms 'student' and student borrower' used in this part shall include a parent borrower under this section.

"(b)(1) Subject to paragraphs (2) and (3), the maximum amount parents may borrow for one student in any academic year or its equivalent (as defined by regulation by the Secretary) is $3,000.

"(2) The aggregate insured principal amount for insured loans made to parents on account of an undergraduate dependent student shall not exceed $15,000.

"(3) No loan may be made to any parent or student under this part which would cause their combined loans for any academic year to exceed the student's estimated cost of attendance minus such student's estimated financial assistance as certified by the eligible institution under section 428(a)(2)(A) of this part. The annual insurable limit on account of any student shall not be deemed to be exceeded by a line of credit under which actual payments to the borrower will not be made in any year in excess of the annual limit.

. . . . (20 U.S.C.A. 1078–2; 94 Stat. 1424.)

This amendment was described in the House Report No. 96–520, op. cit. (at pp. 6093–6094) as follows:

"*Parent Loan Program*—The concern to provide liquidity to parents is addressed by the establishment of a parent loan program. Under this program, parents will be able to borrow up to $3,000 per year and $15,000 total for any one student. The interest rate will be 7% but there will be no in-school interest subsidy in contrast with loans to students. Parents would begin repaying a loan at the earliest of the following dates: Four years after disbursement of the loan on behalf of a student; the student completes his or her studies; the student ceases to be enrolled at least half time; or a date set by the parent and the lender.

"Parents who begin repaying on an installment basis within 60 days or less would pay 7% interest. Parents who begin repaying after 60 days would receive a discounted note in which the interest that would accrue between the disbursement of the loan and the beginning of repayment would be deducted from the face amount of the loan and paid immediately to the lender as interest due.

"For example, a parent wanting to borrow the annual maximum, but also wanting to defer repayment for the maximum four years, would receive $2,160. The $840 subtraction from the $3,000 maximum eligibility is computed by multiplying 7% times $3,000 times 4 years. It was the intention of the Committee that this provision encourage parents to choose prompt repayment wherever possible, thus reducing principal balances and the taxpayers cost of special allowance payments associated with the program.

"The provision which makes collecting non-subsidized interest feasible is the fixed maturity of the promissory note which a parent would execute to defer the repayment. Of course, repayment may begin earlier than the agreed upon maturity date, in which case any unearned interest which has been deducted will be used to reduce the principal balance owing on the loan. However, unlike loans to students, the maturity date of any parent loan is not extended because of the educational status of the student, except in those cases where the lender grants forebearance. A fixed maturity is essential if lenders are not going to be required to collect accruing interest from individual borrowers, a situation which would strongly discourage lenders from making loans to parents as they were strongly discouraged from making loans to students in 1972 in a similar situation.

"A loan to a parent on behalf of a student and a loan to that student may not in combination exceed the cost of education minus other aid provided to the student. Current law includes this limitation on the amount of student borrowing. The parent loan would be disbursed through a check sent to the postsecondary education institution on behalf of the student. Current law disburses loans to students in this manner.

"In all other respects, the parent loan would be identical to the current Guaranteed Student Loan program. Parent loans would be made by the same lenders and guaranteed by the same guarantors who participate in the student loan program. Guarantee agencies would receive the same administrative cost allowances and other benefits on parent loans as on student loans. Parent loans would be counted in the same manner as student loans with respect to all formulas specified in the law.

> "In adopting the parent loan program, the Committee has opted for a simple and streamlined extension of the existing Guaranteed Student Loan program. It is the Committee's belief that a more complex and comprehensive program, while theoretically serving all eligible borrowers in a more equitable way, would not elicit the same positive response from lenders that is anticipated for this straight-forward extension of the existing program.
>
> "In addition to meeting the liquidity needs of parents, the Committee believes that the parent loan program also serves an important policy objective. Under current law, students may borrow under the Guaranteed Student Loan program to replace the expected family contribution. With the parent loan, parents will be able to borrow the expected family contribution. The Committee hopes that this will encourage parents to bear more directly their expected share of a student's educational costs rather than transferring that burden to the student through student borrowing."

Education Code section 69761, *supra*, provides in part that a purpose of the state Student Guaranteed Loan Program is " . . . to provide a source of credit to students," . . "..The federal act now provides for "a loan to a parent on behalf of a student," which is intended " . . . to encourage parents to bear more directly their expected share of a student's educational costs rather than transferring that burden to the student through student borrowing." (House Rep., op. cit., at p. 6094.) Thus, the sole function of this provision is to provide additional credit to students by the mechanism of making financially possible that "expected family contribution" to meet the educational needs of the student. The liability for repayment of that loan is that of the parent, rather than the student. Otherwise, " . . . the parent loan would be identical to the current Guaranteed Student Loan Program. Parent loans would be made by the same lenders and guaranteed by the same guarantors who participate in the student loan program." (House Rep., op. cit., at p. 6094.) This change was characterized by the House Report as merely a straight-forward extension of the existing program." (House Rep., op. cit., at p. 6094.) No additional state funding is required. The change is not a major or substantial change in the existing program. Its purpose is still to make credit available for the benefit of the student to meet his educational costs. We conclude that the Commission is authorized by existing state law to implement this change in the federal program.

Section 417 of the Education Amendments of 1980 made certain changes, denominated by Congress as "administrative improvements." (See § 417 (Pub. L. 96–374), 94 Stat. 1422.) In particular section 417, subdivision (d) amended section 428 of the Higher

Education Act of 1965 by adding the following new subsection:

> "(i)(I) Any State agency or any nonprofit private institution or organization which has an agreement under subsection (b) of this section may enter into an agreement with any eligible lender (other than an eligible institution or an agency or instrumentality of the State) for the purpose of authorizing multiple disbursements of the proceeds of a loan under which the lender will pay the proceeds of such loans into an escrow account to be administered by the State agency or any nonprofit private institution or organization in accordance with the provisions of paragraph (2) of this subsection.
>
> "(2) Each State agency or each nonprofit private institution or organization entering into an agreement under paragraph (I) of this subsection is authorized to—
>
> "(A) make the disbursements in accordance with the note evidencing the loan;
>
> "(B) commingle the proceeds of all loans paid to it pursuant to the escrow agreement entered into under such paragraph (1);
>
> "(C) invest the proceeds of such loans in obligations of the Federal Government or obligations which are insured or guaranteed by the Federal Government;
>
> "(D) retain interest or other earnings on such investment; and
>
> "(E) return to the eligible lender undisbursed funds when the student ceases to carry at an eligible institution at least one-half of the normal fulltime academic workload as determined by the institution."

This provision resulted from a proposed amendment by the Senate, thus was not discussed in the House Report. (See House Conf. Rep. 96–1337, pp. 617 1–6172.) This provision makes no substantial change in the program. It simply operates to permit a loan of a given amount to be disbursed to a student over a continuum in accordance with his need and upon his continued enrollment in an institution providing postsecondary education. By escrowing the amount borrowed, the Student Guaranteed Loan Program is protected against misuse of the funds by students for noneducational activities subsequent to their leaving school. The payments of the loan proceeds pursuant to such a schedule are to be made in accordance with the "note evidencing the loan." Thus, it is a provision agreed to by the student when he or she executes the note, which provision facilitates the providing of "credit" to him or her as contemplated by the State Guaranteed Loan Program. We conclude that the Commission is authorized by existing state law to implement this feature of the federal program.

We turn to the provisions regarding loan consolidation, in which a state agency is permitted to act as an agent for the Student Loan Marketing Association

There are several provisions of title IV of the Higher Education Act of 1965 that refer to an "Association." The "Association," is the Student Loan Marketing Association, commonly referred to as "Sallie Mae"), which is a private corporation established by Congress "which will be financed by private capital and which will serve as a secondary market and warehousing facility for insured student loans . . ." (20 U.S.C.A. § 1087–2.) The "Association" (hereinafter "Sallie Mae") is an important financial aspect of the national student guaranteed loan program. Section 42 l(e)(1) of the 1980 Education Amendments provides in part as follows:

> "(e)(1) Section 439 of the Act is amended by adding at the end thereof the following new subsections:
>
> "(o)(d(A) The Association or its designated agent may, upon request of a borrower who has received loans under this title from two or more programs or lenders, or has received any other federally insured or guaranteed student loans, and where the borrower's aggregate outstanding indebtedness is in excess of $5,000, or where the borrower's aggregate outstanding indebtedness is in excess of $7,500 from a single lender under this part, make, notwithstanding any other provision of this part limiting the maximum insured principal amount for all insured loans made to a borrower, a new loan to the borrower in an amount equal to the unpaid principal and accrued unpaid interest on the old loans. The proceeds of the new loan shall be used to discharge the liability on such old loans.
>
> "(B) The association in making loans pursuant to this subsection in any State served by a State agency or nonprofit private institution or organization with which the Secretary has an agreement under section 428(b) or an eligible lender in a State described in section 43 5(g)(I)(d) or (F) may designate as its agent such agency, institution, organization, or lender to perform such functions as the Association determines appropriate. Any agreements made pursuant to this subparagraph shall be on such terms and conditions as agreed upon by the Association and such agency, institution, organization, or lender.

"(2) Loans made pursuant to this subsection shall be insurable either by the Secretary under section 429 with a certificate of comprehensive insurance coverage provided for under section 429(b)(I) or by a State or nonprofit private institution or organization with which the Secretary has an agreement under section 428(b), except that such State or nonprofit private institution or organization shall provide the Association with a certificate of comprehensive insurance coverage. The terms of loans made under this subsection shall be such as may be agreed upon by the borrower and the Association and meet the requirements of section 427, except that (A) the ten-year maximum period referred to in section 427(a)(2)(B) may be extended to no more than twenty years, and (B) clause (ii) of section 427(a)(2)(B) shall not be applicable.

"(3)(A) Notwithstanding any other provision of this part, the Association, with the agreement of the borrower, may establish such repayment terms as it determines will promote the objectives of this subsection including, but not limited to, the establishment of graduated, income sensitive repayment schedules." (See 20 U.S.C.A. § 1087–2; 94 Stat. 1430.)

House Report No. 96–520 (op. cit., at pp. 6095–6096) characterizes this change as follows:

"Loan consolidation and extended repayment—The existence of several Federal student loan programs (including the Guaranteed Student Loan program and the National Direct Student Loan program under the Higher Education Act), the expansion in the eligibility for subsidized Guaranteed Student Loans provided by the Education Amendments of 1976 and the Middle Income Student Assistance Act, and the increased reliance on loans by many students, particularly graduate and professional students, results in many student borrowers having loans from several lenders or programs and having relatively large total loan obligations. Individual cases have come to the attention of the committee in which borrowers have as many as eight different student loans aggregating more than $20,000. To address the need to provide opportunities for loan consolidation and for extended and flexible repayment in the case of large debts, H.R. 5192 permits Sallie Mae to also act as a direct lender to make consolidated or extended repayment loans. If a student or parent borrower has loans from more than one lender or under both the Guaranteed Student Loan and National Direct Student Loan programs the aggregate amount of which exceeds $5,000, Sallie Mae will be able to make a single consolidation loan to the borrower

at the request of the borrower under the terms and conditions of the Guaranteed Student Loan program.

"If the total loan indebtedness of a student or a parent exceeds $7,500, Sallie Mae will be able to make a new loan to the borrower with graduated or income sensitive repayment terms of up to twenty years in length. Sallie Mae is also mandated to disseminate information on its consolidation and extended repayment loan options.

It is apparent that this change is remedial in that it is intended to alleviate to some extent the burden on students who have obtained several educational loans, whether from the Student Guaranteed Loan Program or from another public program providing student loans. The consolidated loan is to be obtained from Sallie Mae "at the request of the borrower under the terms and conditions of the Guaranteed Student Loan program. (House Rep. 96–520, p. 6096.)

Thus, Sallie Mae, a federally authorized private corporation is authorized to act as a direct lender to make consolidated or extended repayment loans under the circumstances therein specified. The only relevant provision impacting upon state law is that provision of section 429 of the federal act that provides that Sallie Mae, in making such loans, may designate as its agent a state agency "to perform such functions as the Association [Sallie Mae] determines appropriate." While such functions are not specified, it is apparent that this is not a substantive change in the program. It permits an eligible student to refinance his or her student loans and thus clearly is a provision that makes credit available to a student for purposes of obtaining an education We conclude that the Commission is presently authorized by state law to undertake this function.

We turn to the provision regarding lender referral services, section 423(d) of the 1980 Amendments, which reads as follows:

"(d) Section 428(0 of the Act is amended by adding at the end thereof the following new paragraph:

"(5)(A) The Secretary shall make payments in accordance with this paragraph to an agency, institution, or organization in any State which has an agreement under subsection (b) of this section which provides a lender referral service for students who meet the requirements of subparagraph (B).

"(B) A student is eligible to apply for lender referral services to an agency, institution, or organization in a State if (i) such student is either a resident of such State or is accepted for enrollment in or is attending an

> eligible institution in such State, and (ii) such student has sought and was unable to find a lender willing to make a loan under this part.
>
> "(C) The amount which the Secretary shall pay to an eligible agency, institution, or organization under this paragraph shall be equal to one-half of 1 per centum of the total principal amount of the loans upon which insurance was issued under this part on loans made to a student described in subparagraph (B) who subsequently obtained such loans because of such agency's, institution's, or organization's referral service.
>
> "(D) Nothing in this or any law shall prohibit an agency from using all or a portion of the funds received under this part for the payment of incentive fees to lenders who agree to participate in a loan referral service.
>
> "(E) There is authorized to be appropriated such sums as are necessary to carry out the provisions of this paragraph." (20 U.S.C.A. § 1078; 94 Stat. 1432.)
>
> The House Report No. 96–520 (op. cit., at p. 6095) states that:
>
> "Where the problem of student loan capital availability is not so severe, but isolated students have trouble finding a lender, the bill provides incentives for state guarantee agencies to establish a lender referral service. A student who is unable to find a lender willing to make him a loan may apply to a state guarantee agency for referral to a lender who will make the student a loan. To be eligible for the referral service, a student must either be a resident of the state or enrolled in a school in the state where the guarantee agency is located, and the student must have made a good faith effort to find a lender willing to make a loan. If the student is eligible for a guaranteed loan from a direct lender serving his state, he must have made application to that lender. For each such loan that a state guarantee agency successfully places with a lender, the Commissioner shall pay the agency an amount equal to one-half percent of the principal amount of that loan. The bill permits the agency to pass on that amount to the lender to encourage lender participation in such referral services.

We are advised that the Commission has no present intent to implement this provision. Nevertheless, we examine it in order to ascertain whether it reflects any major change in the federal program. We are persuaded that it does not do so. It is a federally financed provision that is intended to permit students to obtain information as to the availability of private capital available for loan to students. As such, it is a procedural device intended to enhance a student's ability to obtain student loans. It is not a major substantive change in the federal program and the Commission could, if it were so inclined, implement this function under existing state law.

We turn to the provision authorizing a state to be a direct lender of student loans, section 414 of the 1980 Amendment.

Section 414 of the Education Amendments of 1980 amended section 428 of the Higher Education Act of 1965 by adding at the end thereof the following new subsection.

> "(h)(1) From sums advanced by the Association pursuant to section 439(p), each State agency and nonprofit private institution or organization with which the Secretary has an agreement under subsection (b) of this section or an eligible lender in a State described in section 435(g)(d(D) or (F) of the Act is authorized to make loans directly to students otherwise unable to obtain loans under this part.
>
> "(2)(A) Each State agency or nonprofit private institution or organization which has an agreement under subsection (b) of this section or an eligible lender in a State described in section 435(g)(d(D) or (F) and which has an application approved under section 439(p)(2) may receive advances under section 439(p) for each fiscal year in an amount necessary to meet the demand for loans under this section. The amount such agency, institution, organization, or lender is eligible to receive may not exceed 25 per centum of the average of the loans guaranteed by that agency, institution, organization, or lender for the three years preceding the fiscal year for which the determination is made. Whenever the determination required by the preceding sentence cannot be made because the agency, institution, organization, or lender does not have three years previous experience, the amount such agency, institution, organization, or lender is eligible to receive may not exceed 25 per centum of the loans guaranteed under a program of a State of comparable size.
>
> "(B) Each State agency or nonprofit private institution or organization which has an agreement under subsection (b) of this section and each eligible lender in a State described in section 435(g)(d(D) or (F) shall repay advances made under section 439(p) in accordance with agreements entered between the Association and such agency, institution, organization, or lender.

> "(3) Loans made pursuant to this subsection shall have the same terms, conditions, and benefits as all other loans made under this part." (See 20 U.S.C.A. § 1085; 94 Stat. 1418–1419.)

This provision was not discussed in the House Report. It was added as a result of a proposed Senate amendment that was accepted by the Committee of Conference. (See House Conf. Rep. 96–1337, p. 6170.)

In essence this provision authorizes Sallie Mae to advance funds to a state agency, which state agency is then authorized to loan such funds directly to students otherwise unable to obtain loans under this part." Each state agency receiving such advances from Sallie Mae is obligated to repay the advances "in accordance with agreements entered between the Association and such agency."

Thus, this federal provision authorizes a state agency to borrow funds from Sallie Mae, a private corporation, to be loaned by the state agency to eligible students who cannot obtain loans from private lenders in the state. The loans made to students with such capital would be insured just as would loans made from private lenders, and such loans "shall have the same terms, conditions, and benefits as all other loans made" pursuant to title IV.

This provision is permissive and thus there is no issue concerning the Supremacy Clause of the United States Constitution. It is clear that the provision serves to make available credit to finance an eligible student's education. However, no provision of the State Guaranteed Loan Program authorizes the Commission to make loans directly to students. No provision of that state program authorizes the Commission to borrow funds from Sallie Mae or any other entity for the purpose of making loans to students.

Education Code section 69772(b) directs the Commission, "[o]n or before July 1, 1978, [to] report on the desirability and feasibility of becoming a direct lender, particularly to serve students not adequately served by private lenders." Thus, the Commission presently lacks the necessary statutory authority to implement a state program of making loans directly to students, whatever the source of the funds. Similarly, it lacks the statutory authority to borrow funds so as to implement such a program even assuming it impliedly had such authority to act as a direct lender.

The sole issue thereby raised is whether the inclusion of such a provision in the Education Amendments of 1980, which provision cannot be implemented by the Commission absent specific enabling legislation, operates to prevent the other provisions from being implemented. There are no cases decided by our courts resolving that issue. We perceive it simply as a question of legislative intent. We find no indication that the

Legislature views the federal provisions as nonseverable. We view the federal changes as clearly severable since they are not interrelated and are addressed to different areas of congressional concern with the operation of the federal program. We conclude that the lack of authority of the Commission to implement one permissive feature of these federal changes in the Higher Education Act of 1965 does not adversely affect its authorization to implement those permissive changes that are consistent with the state program.

In summary, we conclude that the California Student Aid Commission is authorized by the provisions of the state guaranteed loan program to:

a. Be an escrow agent;

b. Act as a guarantor and administrator of loans to parents;

c. Act as an agent for the Student Loan Marketing Association for loan consolidation,

which functions were authorized by Congress as part of Public Law No. 96–374 (1980).

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