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OPINION	:	No. 82-406
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of	:	<u>OCTOBER 22, 1982</u>
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THE CALIFORNIA STUDENT LOAN AUTHORITY has requested an opinion on the following question:

Does the term "insured student loan," defined by Education Code section 69908, include loans made under the Parent Loans for Undergraduate Students Program of 20 United States Code section 1078-2?

CONCLUSION

The term "insured student loan," defined by Education Code section 69908, includes loans made under the Parent Loans for Undergraduate Students Program of 20 United States Code section 1078-2.

## ANALYSIS

Loans to parents of dependent undergraduate students (Parent Loans for Undergraduate Students Program, hereinafter "PLUS Program") were created by Public Law 96-374, an amendment to the Higher Education Act of 1965 (20 U.S.C. § 1071 et seq.).<sup>1</sup> The congressional intent in expanding the Graduate Student Loan Program was discussed in detail in 64 Ops.Cal.Atty.Gen. 503, 516-520 (1981), in which we concluded that the California Student Aid Commission could act as a guarantor and administrator of loans to parents. The provisions of the federal amendment included the following language at 20 United States Code section 1078-2:

" . . . 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.*" (Emphasis added.)

In light of Congress' decision that the terms "student" and "student borrower" are to include "parent borrower" within the context of the Higher Education Act of 1965, the California Student Loan Authority has requested a determination whether "student" includes "parent" for the purposes of Education Code section 69908.

The California Student Loan Authority (hereinafter, "Authority") operates pursuant to the provisions of the California Student Loan Authority Act (hereinafter, "Act"), Education Code, division 5, part 42, article 17, section 69905 et seq.<sup>2</sup> The necessity for the Act is set forth in section 69906:<sup>3</sup>

"In the face of the rising cost of attending postsecondary schools, colleges, and universities, many California students do not have access to

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<sup>1</sup> The PLUS Program has been extended to provide borrower eligibility to independent undergraduate students and graduate or professional students (Pub.L. 97-35, amending 20 U.S.C. § 1078-2, effective Oct. 1, 1981).

<sup>2</sup> Enacted by Statutes of 1980, chapter 1357, section 1, page 4902, which refers to the addition of article 17 to part 42, chapter 2, of the Education Code. However, in the aftermath of restructuring and renumbering the Reorganized Education Code (Stats. 1976, ch. 1010, operative April 30, 1977), chapter 2 was repealed June 1, 1980.

<sup>3</sup> All unidentified section references are to the Reorganized Education Code.

low-cost guaranteed student loans. At the same time, lack of adequate funds is a major cause of student dropouts at every collegiate level.

"It is the intent of the Legislature, in the enactment of this article, to provide adequate funding to enable eligible students, including, but not limited to, first year, community college, and proprietary school students access to educational loans, by providing a mechanism for the issuance of self-financing revenue bonds to fund the purchase of federally insured student loans from lending institutions."

The powers of the Authority are enumerated in sections 69919, 69920, 69922, 69929, 69934, 69935, and 69942. They include the ability to issue tax-exempt revenue bonds, to borrow and receive money, and, in section 69920(f),

"To participate in any federal government program for insured or guaranteed loans or subsidies *to students* . . . ." (Emphasis added.)

The Authority is also empowered to purchase and to administer insured student loans, defined in section 69908 as:

" . . . a loan, including a line of credit, *to a student* by an eligible lender, as to which the payment of principal and interest is fully insured either by (a) the Secretary of Education under the Higher Education Act of 1965 or (b) the Student Aid Commission and reinsured by the Secretary of Education to the extent permitted under the Higher Education Act of 1965." (Emphasis added.)

The controlling rule of statutory construction to be applied is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. (*California Teachers Association v. San Diego Community College District* (1981) 28 Cal.3d 692, 698.) Section 69906 expresses the Legislature's recognition of the importance of providing access to educational loans. A loan to a parent on behalf of a student would be the functional equivalent of a direct loan to a student: each implements the purpose of the Act by providing access to funds.

Unfortunately, although the parent loan program was being considered during the same period as the Act, the California Legislature made no attempt to define or specifically include the terms "parent loan" or "parent borrower." It did define "insured student loan" (*supra*) and "student." The latter is found in section 69908:

"... 'Student' means and includes any student eligible for a California Guaranteed Student Loan under regulations of the Student Aid Commission."

The Authority has no express power to define terms. Section 69908 transfers the responsibility for defining "student" to the Student Aid Commission (hereinafter, "Commission"). Therefore, whether an "insured student loan" includes a loan made under the PLUS Program is dependent upon an act by the Commission.

The Commission's regulations concerning student eligibility for California Guaranteed Student Loans are found at 5 California Administrative Code section 30100. The Commission has chosen to adopt, with slight modification, the federal regulations dealing with the Guaranteed Student Loan Program (34 C.F.R. pt. 682). In addition, the Commission recently incorporated, at 5 California Administrative Code section 30200 et seq., the regulations governing eligibility for loans under the PLUS Program (tit. 34, Code of Federal Regulations, pt. 683; see 47 Fed. Reg. 17200-17238 (April 21, 1982).) These regulations, at 34 Code of Federal Regulations section 683.10, define "dependent student," "full-time student," "graduate or professional student," "independent student," "parent," and, at section 683.11, "eligible student" and "eligible parent borrower."

The purpose for adopting these regulations was to implement a new program, California Loans to Assist Students:

"The amendments, entitled 'The Postsecondary Student Assistance Amendments of 1981,' to Title IV of the act of Congress entitled the 'Higher Education Act of 1965' established an auxiliary loan program to assist students as part of the Guaranteed Student Loan Program. These amendments authorized state agencies to act as guarantee agencies for the auxiliary loan program in the same manner as for the Guaranteed Student Loan Program. In a formal opinion dated July 2, 1981 by the Office of the Attorney General of the State of California it was determined that Sections 69760 through 69779 of the Education Code gave the California Student Aid Commission authority to act as the guarantee agency in California for the auxiliary loan program." (Cal. Admin. Register 82, No. 14-Z.)

Title 5, California Administrative Code, section 30200, provides:

"All sections of the federal regulations for the Auxiliary Loans to Assist Students (ALAS) Program as of October 1, 1981 and as amended after that date are applicable to the California Loans to Assist Students (CLAS) Program except as modified in the following sections. All changes in federal regulations for the ALAS Program shall be reviewed by the Loan Study

Council with recommendations made to the California Student Aid Commission (SAC) for possible changes to State regulations as appropriate and approved by the U.S. Department of Education."

(Although the federal regulations refer to the PLUS program, the statement of purpose for the regulations, *supra*, describes ALAS in terms indicating these acronyms refer to the same program.)

The Commission has defined "student" by adopting the congressional criteria which include "parent" within the scope of "student" for the purposes of educational loans made under the PLUS Program. Pursuant to the direction of section 69908, this definition applies to the Act; therefore, a loan to a student—an "insured student loan," defined by Education Code section 69908—includes a loan to a parent to assist a student pursuant to 20 United States Code section 1078-2.

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