

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Brenda Kay Pfeiffer,)	
)	
On behalf of herself and all others similarly situated,)	Civil No. 1:07-cv-00522 (EGS)
)	
<i>Plaintiff,</i>)	CLASS ACTION
v.)	
)	
Margaret Spellings, in her official capacity as United States Secretary of Education, the United States Department of Education, and the United States of America,)	
)	
<i>Defendants.</i>)	
)	

PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff Brenda Pfeiffer (“Dr. Pfeiffer”), on behalf of herself and all others similarly situated, and pursuant to Fed. R. Civ. P. 56, hereby moves the Court for partial summary judgment with respect the claim for breach of contract against defendants Margaret Spellings, in her official capacity as United States Secretary of Education, the United States Department of Education, and the United States of America (collectively, “DOE”). In support of her motion, Dr. Pfeiffer states as follows:

1. The construction of a contract such as a form promissory note is a question of law which is appropriately decided by this Court on a motion for summary judgment.
2. The form promissory notes executed by Dr. Pfeiffer and the proposed class state that DOE may capitalize interest if the borrower does not pay the interest when it is due:

Interest. Except for interest [DOE] does not charge me during an in-school, grace or deferment period, I agree to pay interest on the principal amount of my Direct Consolidation Loan from the date of disbursement until the loan is paid in full or

discharged. [DOE] may add interest that accrues but is not paid when due to the unpaid principal balance of this loan, as provided under the [Higher Education Act of 1965, as amended, 20 U.S.C. 1070 *et seq.*, and applicable Department of Education regulations]. This is called capitalization.

(emphasis added). The above-quoted provision is the only language in the form promissory note which addresses interest capitalization.

3. Notwithstanding the above language, DOE routinely capitalized interest before it was due. It did so for borrowers it considered negatively amortized who were repaying their loans under the Income Contingent Repayment Plan. For these borrowers, DOE capitalized accrued interest on June 30 each year, including interest accruing after the borrowers' June payment due date. The interest accruing after the borrowers' June payment due date, however, was not due until the borrowers' July payment due date. The capitalization of interest accruing after the borrowers' June payment date on June 30 each year constitutes a breach of the plain terms of the form promissory note.

4. In further support of her motion, Dr. Pfeiffer respectfully refers the Court to her accompanying statement of undisputed material facts, including exhibits attached thereto, and her memorandum in support of motion for partial summary judgment.

5. Pursuant to LCcR 7(f), Dr. Pfeiffer and the proposed plaintiff class respectfully request oral argument on this motion.

WHEREFORE, plaintiff Brenda Pfeiffer prays that the Court enter the following orders:

- (1) An order declaring that defendants' practice of capitalizing interest that accrues after each class member's June payment due date on June 30 each year constitutes a breach of the form promissory note;
- (2) An order enjoining defendants from continuing to capitalize interest before it is due;
- (3) An order directing the parties to meet to determine if the proper measure of damages may be agreed to by stipulation.

Dated: January 31, 2008

Respectfully submitted,

/s/ Steven M. Sprenger

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as United States Secretary of Education, the)	
United States Department of Education, and)	
the United States of America,)	
)	
<i>Defendants.</i>)	

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

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INTRODUCTION

Plaintiff Brenda Pfeiffer (“Dr. Pfeiffer”), a student loan borrower, brings this action against the United States Department of Education and other federal government defendants (collectively, “DOE”) for breach of contract. She contends that DOE’s interest capitalization practice with respect to borrowers who, like her and members of the proposed class,¹ have selected the Income Contingent Repayment Plan breaches the terms of the form promissory note governing their student loans. The plain terms of the note state that DOE may only capitalize interest that is “not paid when due.” In direct violation of these plain terms, it is DOE’s regular practice to capitalize accrued interest before that interest is due.² Accordingly, Dr. Pfeiffer and the plaintiff class are entitled to partial summary judgment with respect to DOE’s liability for breach of contract.

SUMMARY OF MATERIAL FACTS THAT ARE NOT IN DISPUTE

The material facts that are not in dispute are set forth in full in Plaintiff’s Statement of Undisputed Material Facts (“Plaintiff’s Statement of Facts”) which accompanies this memorandum. In summary, individuals who obtain student loans from the United States Department of Education pursuant to the William D. Ford Direct Loan Program execute identical or substantially identical form promissory notes. Plaintiff’s Statement of Facts at ¶¶ 1- 3.

The form promissory notes state that DOE may capitalize interest if the borrower does not pay the interest when it is due:

Interest. Except for interest [DOE] does not charge me during an in-school, grace or deferment period, I agree to pay interest on the principal amount of my Direct

¹ Dr. Pfeiffer has simultaneously filed a motion to certify this action as a class action.

² Such premature interest capitalization has two adverse financial effects on student loan borrowers: first, it results in an immediate increase in the principal balance of the borrower’s student loan; and, second, the borrower is required to pay interest on the additional principal balance over the term of the loan.

Consolidation Loan from the date of disbursement until the loan is paid in full or discharged. [DOE] may add interest that accrues but is not paid when due to the unpaid principal balance of this loan, as provided under the [Higher Education Act of 1965, as amended, 20 U.S.C. 1070 *et seq.*, and applicable Department of Education regulations]. This is called capitalization.

Id. at ¶ 4 (emphasis added). The above-quoted provision is the only language in the form promissory note that addresses interest capitalization. *Id.*

DOE assigns each borrower a monthly “due date” – that is, the day of the month by which the borrower’s monthly loan payment must be received. *Id.* at ¶ 6. When DOE receives a payment on a student loan, it first applies that payment to any outstanding fees, then to accrued interest, and then to principal balance. *Id.* at ¶ 7. On each monthly due date, DOE bills the borrower for the interest that has accrued as of his or her payment due date. *Id.* Interest accruing *after* a borrower’s monthly due date is not billed until the next monthly due date. *Id.*

Approximately half of the 600,000 borrowers who have elected to repay their loans under the Income Contingent Repayment Plan (“ICRP”) are considered by DOE to be “negatively amortized.” This means that the scheduled payment amount (i.e., the amount the borrower is required to pay each month) is less than the amount of interest accruing on the borrower’s loan each month. *Id.* at ¶¶ 8-10. For all such negatively amortized borrowers, DOE capitalizes the borrower’s accrued interest each year on June 30 and has done so since at least March 19, 2001. *Id.* at ¶ 11.

DOE capitalizes interest accrued through June 30 regardless of the borrower’s monthly payment due date. *Id.* Thus, DOE capitalizes interest accruing *after* the borrower’s June payment due date through June 30. *Id.* at ¶¶ 11-12. But the interest accruing after the borrowers’ June payment due date is not billed to the borrower or otherwise expected to be paid,

i.e., is not due, until his or her July payment due date. *Id.* at ¶¶ 7, 12. Accordingly, DOE's undisputed practice is to capitalize interest prematurely.

Dr. Pfeiffer was subjected to the interest capitalization practice described above in 2002, 2004 and 2005. In addition, while Dr. Pfeiffer's scheduled payment amount led DOE to classify her loan as negatively amortized, her actual monthly payments on her loan in these years exceeded the amount of interest accruing on her loan. *Id.* at ¶¶ 16, 18, 20, 23, 24, 26. Nonetheless, on June 30 in each of these years, DOE capitalized the interest accruing on Dr. Pfeiffer's loan between her June payment date and June 30. *Id.* at ¶¶ 17, 22, 25.

These interest capitalizations occurred because DOE does not consider the borrower's *actual* payments when it determines whether to capitalize the borrower's interest. Instead, if the ICRP borrower's scheduled payments are insufficient to cover the interest accruing each month, DOE capitalizes interest on the borrower's loan even if the borrower's *actual* payments *are* sufficient to cover the interest accruing each month. *Id.* at ¶ 28. There are approximately 26,900 borrowers who, like Dr. Pfeiffer, were considered negatively amortized by DOE and whose actual payments exceeded the interest accruing on their loans each month. *Id.*

LEGAL ARGUMENT

In an action against the United States for breach of contract, courts do not look to a specific state's common law of contracts. Rather, courts apply general principles of contract law: "When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals." *Franconia Assocs. v. United States*, 536 U.S. 129, 141 (2002) (quoting *Mobil Oil Exploration & Producing Southeast, Inc. v. United States*, 530 U.S. 604, 607 (2000)). Accordingly, the Court should apply

“principles of general contract law.” *Id.* at 141 (quoting *Priebe & Sons, Inc. v. United States*, 332 U.S. 407, 411 (1947)).

The starting point for contract interpretation is the plain language of the contract. *See Boeing v. United States*, 75 Fed. Cl. 34, 42 (2007); *Dorocon, Inc. v. Burke*, No. 02-2556, 2004 U.S. Dist LEXIS 29052, *89 (D.D.C. Sept. 27, 2004) (citing *Capital City Mortgage v. Habana Village Art & Folklore, Inc.*, 747 A.2d 564, 567 (D.C. App. 2000)). In reading the plain language of the contract, a court should “give the words of the agreement their ordinary meaning unless the parties mutually intended and agreed to an alternative meaning.” *Harris v. Dep’t of Veterans Affairs*, 142 F.3d 1463, 1467 (Fed. Cir. 1996); *see also Hartford Accident & Indem. Co. v. Pro-Football, Inc.*, 127 F.3d 1111, 1114 (D.C. Cir. 1997); *Nat’l RR Passenger Corp. v. Lexington Ins. Co.*, 445 F. Supp. 2d 37, 41 (D.D.C. 2006). A contract should be interpreted so that it “makes sense.” *McAbee Constr., Inc. v. United States*, 97 F.3d 1431, 1435 (Fed. Cir. 1996).

As set forth below, the plain terms of the form promissory note compel judgment in favor of Dr. Pfeiffer and the plaintiff class with respect to DOE’s liability for breach of contract. To the extent that the Court finds that the note is ambiguous, however, it must construe it against DOE because it is the drafter of the note. *See United States v. Seckinger*, 397 U.S. 203, 216 (1970) (construing contract against government as drafter of contract, and noting “[t]his principle is appropriately accorded considerable emphasis in this case because of the Government’s vast economic resources and stronger bargaining position in contract negotiations”); *Mesa Air Group v. Dep’t of Transp.*, 87 F.3d 498, 506 (D.C. Cir. 1996) (where federal agency drafted contracts, such contracts would be construed against agency if ambiguous)(citing *Restatement of the Law (Second) Contracts*, § 206). No deference is due to DOE’s interpretation of a contract to which

it is a party. *Id.* at 503 (contracts that an agency is a party to are “subject to interpretation under the neutral principles of contract law”).

Contract disputes such as this one are well-suited for resolution by summary judgment motions. *See United States v. Mass. Housing Auth.*, 456 F. Supp. 2d 46, 55 (D.D.C. 2006) (“[w]hen a case turns on the meaning of an unambiguous contract, summary judgment is appropriate, because ‘no citation of authority is necessary to establish the proposition that the construction of written instruments is a question of law for the court.’”; “[c]ontract interpretation is particularly suited to disposition by summary judgment.”) (quotations and citations omitted). This is true whether the moving party is a plaintiff or defendant.

I. THE FORM PROMISSORY NOTE DOES NOT PERMIT THE CAPITALIZATION OF ACCRUED INTEREST THAT IS NOT YET DUE.

A. Only Accrued Interest That Has Not Been Paid When Due May Be Capitalized.

The form promissory note provides for interest capitalization only when a borrower fails to pay the interest on his or her loan as it becomes due. The sole provision in the note that specifically addresses interest capitalization states, in relevant part: DOE “may add interest that accrues but is *not paid when due* to the unpaid principal balance of this loan.” (emphasis added). The note does not identify any other circumstance under which interest may be capitalized. Accordingly, under the plain terms of the note, the only circumstance under which interest may be capitalized is when interest is not paid when due.

Notwithstanding this language in the promissory note, DOE capitalizes interest on June 30 each year for negatively amortized borrowers who have selected the ICRP, including Dr. Pfeiffer, before it is due. This capitalization includes the interest that accrues *after* the borrower’s June payment date. But borrowers are not billed for or expected to pay the interest accruing *after* their

