

Here, RSA was underwriter for approximately \$26,500,000 in bonds, of which approximately \$23,305,000 are currently outstanding, that were issued by the City of Springfield, Kentucky (the “City”) for, among other things, expanding and upgrading SCC. SCC’s revenue stream is the sole source of financing for this debt. While risks are associated with any transaction, participants in the bond market rely upon DoE to act legally, and do not anticipate arbitrary and illegal conduct of the kind exhibited by DoE over the last year. As a result of DoE’s arbitrary and illegal conduct, approximately \$1,150,000 in bonds held by RSA are effectively unmarketable, a default on \$23,305,000 in bonds is threatened, and the health of the non-rated municipal bond market in which RSA heavily participates is jeopardized. In the absence of relief requiring DoE to act legally, the ability of RSA to secure needed funding for numerous other institutions in Kentucky is severely threatened. Not only does this harm RSA, it harms the citizens of Kentucky, Kentucky’s economy and the quality of higher learning throughout Kentucky.

II. STATEMENT OF FACTS

As set forth above, RSA has been underwriter on a number of non-rated municipal debt issuances for several issuers in Kentucky, including small colleges, school districts, public and private hospitals, municipalities and special taxing districts. Through the issuance of non-rated municipal debt, small colleges, municipalities and school districts are able to satisfy critical needs for their students and citizens, including infrastructure needs and economic growth.

Pursuant to a Bond Trust Indenture dated December 1, 2014 (the “Indenture”) and a Master Trust Indenture dated November 1, 2004 (the “Master Trust Indenture”), the City issued non-rated revenue bonds in an aggregate principal amount of \$9,640,000 to refinance existing and outstanding debt of SCC. In 2004, 2008, and 2011, the City and SCC conducted similar

bond issues to finance, among other things, the Health Sciences Building, the Residence Hall, and the Hundley Library on behalf of SCC. In total, since 2004, the City has issued approximately \$26,500,000 in revenue bonds for the growth and development of SCC, benefitting not only SCC's students, but also the surrounding community. For example, because of its facilities, SCC hosts the Kentucky Association for Academic Competition's Governor's Cup summer camps for Kentucky middle school and high school students.

Pursuant to the applicable agreements, SCC is solely responsible for debt service on the bonds. In other words, the sole source of revenue for repayment of the bonds is revenue derived from SCC. RSA, as the underwriter, provided services necessary for the sale and placement of the bonds, including purchasing bonds from the December 2014 issue for reoffering. RSA sold a portion of the bonds to a network of retail investors and individuals, and maintained ownership of the unsold portion of approximately \$1,150,000 of the bonds.

In early 2015, a DoE program reviewer informed SCC that students enrolled in SCC's bachelor programs for Radiologic Technology, Radiation Therapy, Farming and Ecological Agrarianism (both a bachelor of arts and bachelor of science) and Athletic Training (the "Bachelor Programs") were not eligible for Title IV HEA funds. DoE claimed that SCC was required to obtain prior approval from DoE to disburse Title IV HEA funds for the Bachelor Programs. This decision was arbitrary and contrary to law.

Beginning in April 2015, DoE arbitrarily and illegally withheld Title IV HEA funds from SCC for students enrolled in the Bachelor Programs. After more than a year of arbitrarily and illegally withholding Title IV HEA funds from SCC by claiming that the Bachelor Programs required prior DoE approval, by letter dated February 24, 2016, DoE finally admitted that students in the Bachelor Programs were, in fact, eligible to received Title IV HEA funds.

Although it is now undisputed that DoE wrongfully withheld Title IV HEA funds from SCC for over a year, DoE continues to arbitrarily and illegally withhold the Title IV HEA funds from SCC.

As a result of DoE's arbitrary and illegal conduct, the \$1,150,000 in bonds owned by RSA are effectively unmarketable. Obviously, potential investors are not willing to purchase such bonds in light of DoE's illegal conduct. In addition, DoE's continuing illegal conduct in refusing to disburse Title IV HEA funds to SCC raises a substantial threat that a default will occur on the outstanding \$23,305,000 in bonds issued by the City for SCC. Accordingly, should SCC default, SCC may be damaged in an amount of \$23,305,000 solely due to DoE's arbitrary and illegal conduct in withholding Title IV HEA funds, which SCC is indisputably entitled to receive.

Moreover, DoE's illegal conduct is having a negative impact on the issuance of municipal bonds in Kentucky for other projects. Because federal DoE funding is a central component of the revenue stream for numerous Kentucky institutions, DoE's demonstrated willingness to arbitrarily and illegally withhold money from institutions has negatively impacted the ability to structure bond financing for other institutions.

RSA is seeking intervention in this action to protect its interests not only in \$1,150,000 in bonds held by it, but also to protect its interest in continuing to participate in a reliable municipal bond market in Kentucky that is not adversely affected by illegal conduct by DoE. RSA's proposed complaint against DoE is attached as Exhibit 1.

III. ARGUMENT

RSA is entitled to intervene in this lawsuit both as a matter of right under Fed. R. Civ. P. 24(a)(2) and permissively pursuant to Fed. R. Civ. P. 24(b)(1).

RSA Is Entitled To Intervene As A Matter Of Right.

Fed. R. Civ. P. 24(a)(2) states the grounds on which an applicant may intervene in an action as a matter of right:

When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. P. 24(a)(2). According to the Sixth Circuit Court of Appeals, four criteria must be met for intervention as a matter of right: (1) the application is timely; (2) the party must have a substantial legal interest in the case; (3) the party must demonstrate that its ability to protect that interest will be impaired in the absence of intervention; and (4) there must be inadequate representation of that interest by the current party. *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997); *Triax Co. v. TRW, Inc.*, 724 F.2d 1224, 1227 (6th Cir. 1984).

Case law interpreting Fed. R. Civ. P. 24(a)(2) holds that the rule must be liberally construed in favor of potential intervenors. *Stupak-Thrall v. Glickman*, 226 F.3d 467 (6th Cir. 2000). RSA squarely meets the applicable standard. First, RSA's motion to intervene is timely. SCC's litigation against the DoE is in its earliest stages and there has been little activity in the action. In addition, RSA's motion to intervene has been filed before the Court has ruled on SCC's pending motion for a preliminary injunction or Defendant Kathy Feith's pending motion to dismiss.

With respect to the second and third elements, RSA has a substantial legal interest in the case that will be impaired if it is not allowed to intervene. The Sixth Circuit has adopted a "rather expansive notion of the interest sufficient to invoke intervention." *Miller*, 103 F.3d at 1245; *see also Bradley v. Milliken*, 828 F.2d 1186, 1192 (6th Cir. 1987) (the court

“acknowledged that ‘interest’ is to be construed liberally”). For example, in *Miller*, the court held that an intervenor need not have the same standing necessary to initiate a lawsuit. 103 F.3d at 1245. “To satisfy this element of the intervention test, a would-be intervenor must show only that impairment of its substantial legal interest is possible if intervention is denied. [Citation omitted]. This burden is minimal.” *Miller*, 103 F.3d at 1247. In this case, RSA has much more than a minimal interest. It owns approximately \$1,150,000 in bonds issued for SCC, which are effectively unmarketable due to DoE’s illegal conduct, and RSA is a substantial participant in the municipal bond market in Kentucky that is being adversely affected by DoE’s continuing illegal conduct. In addition, DoE’s illegal conduct is threatening a default in more than \$23,305,000 in bonds issued by the City, which were underwritten by RSA.

Turning to the fourth element, an intervenor has only a “minimal” burden of showing that its interests are not adequately represented by existing parties and does not need to have a position actually adverse to those parties. *Daios v. Lifetime Capital, Inc.*, 560 Fed. Appx. 477, 495 (6th Cir. 2014). “[I]t may be enough to show only that the existing party who purports to seek the same outcome will not make all of the prospective intervenor’s arguments.” *Id.* at 495-96 (quoting *Grutter v. Bollinger*, 188 F.3d 394, 400 (6th Cir. 1999)). In this case, no existing party to the action adequately represents RSA’s interest. RSA maintains a strong presence in the Kentucky municipal market, consistently underwriting non-rated municipal debt issuances throughout Kentucky, including on behalf of small colleges, public and private hospitals, special taxing districts, and various other municipalities. The illegal and arbitrary actions by DoE threaten RSA’s interests in the bond market in Kentucky. When, as here, the DoE fails to act legally, RSA cannot structure bond financing for necessary projects. As a result, Kentucky

citizens are deprived of reasonable certainty in conducting business, and local communities are deprived of the ability to obtain financing for critical projects or needed costs savings.

SCC, on the other hand, represents the specific, narrow group with which it is associated and is focused on the role the college plays in the regulatory scheme, which does not include the specific interests of RSA. SCC does not hold RSA's bonds, nor does it participate in Kentucky's bond market in the same manner as RSA. Accordingly, RSA satisfies all four prongs of the Sixth Circuit's test for mandatory intervention, and the Court should grant RSA's motion to intervene in this case as a matter of right.

RSA Satisfies The Standard For Permissive Intervention

Alternatively, the Court should grant RSA leave to intervene pursuant to Fed. R. Civ. P. 24(b)(1), which provides for permissive intervention. Permissive intervention may be granted if: (1) the motion is timely; (2) it alleges at least one common question of law or fact with the main action; and (3) it will not prejudice the rights of the original parties or cause undue delay. *See United States v. Michigan*, 424 F.3d 438, 445 (6th Cir. 2005). As noted earlier, RSA's motion to intervene is timely. Additionally, as set forth in RSA's attached Intervening Complaint, RSA has a claim for injunctive relief involving common questions of law or fact with SCC's lawsuit. RSA seeks to ensure that DoE does not arbitrarily and illegally withhold money from SCC. Finally, especially because the lawsuit is in the beginning stages, allowing RSA to intervene will not cause prejudice or undue delay.

IV. CONCLUSION

For the reasons set forth above, RSA respectfully requests the Court permit RSA's intervention in this lawsuit. A proposed order is tendered.

Respectfully submitted,

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regulations. *See* 20 U.S.C. §§ 1001-02; 34 C.F.R. § 600.4(a).

3. The Department of Education (“DoE”) is an agency of the United States, 5 U.S.C. §§ 551(1) and 701(b)(1), headquartered at 400 Maryland Avenue SW, Washington, DC, 20202.

4. Pursuant to 28 U.S.C. §§ 1331, this Court has original subject matter jurisdiction over RSA’s claims because the civil action arises under the Constitution, laws, or treaties of the United States, specifically 5 U.S.C. §§ 702-03 and 28 U.S.C. § 1361.

5. Pursuant to 28 U.S.C. § 1391(e), this Court is the proper venue for this action because Plaintiff resides here and a substantial part of the events or omissions giving rise to the claim occurred here.

FACTUAL ALLEGATIONS

6. RSA is a full-service regional investment banking, securities brokerage and asset management firm with a significant presence in the Kentucky municipal bond market.

7. RSA has been underwriter on a number of non-rated municipal debt issuances for several issuers in Kentucky, including small colleges, school districts, public and private hospitals, municipalities and special taxing districts.

8. Through the issuance of non-rated municipal debt, small colleges, municipalities and school districts are able to satisfy critical needs for their students and citizens, including infrastructure needs and economic growth.

9. Pursuant to a Bond Trust Indenture dated December 1, 2014 (the “Indenture”) and a Master Trust Indenture (the “Master Trust Indenture”) dated November 1, 2004, the City of Springfield, Kentucky (the “City”) issued non-rated revenue bonds in an aggregate principal amount of \$9,640,000 to refinance existing and outstanding debt of SCC, all of which was issued for the betterment of SCC and the surrounding community.

10. In 2004, 2008, and 2011, the City and SCC conducted similar bond issues to

finance, among other things, the Health Sciences Building, the Residence Hall, and the Hundley Library on behalf of SCC.

11. In total, since 2004, the City has issued revenue bonds through the Master Trust Indenture totaling approximately \$26,500,000, of which approximately \$23,305,000 remain outstanding, for the growth and development of SCC, and which benefitted not only SCC's students, but also the surrounding community.

12. In addition to the revenue bonds issued through the Master Trust Indenture, SCC has incurred various other unsecured subordinate debt, including various loans, lines of credit, and other obligations for the growth and development of SCC, and which benefitted not only SCC's students, but also the surrounding community.

13. Pursuant to the applicable agreements, SCC is solely responsible for debt service on the bonds. In other words, the sole source of revenue for repayment of the bonds is revenue derived from SCC.

14. A majority of SCC's students require financial aid. Therefore, the availability of federal student aid to SCC is material to SCC's ability to service bond debt. While there are risks associated with any transaction, issuers, underwriters and purchasers of debt assume that the DoE will administer federal student loan programs legally, and that the DOE will not arbitrarily and illegally deny funds to an entity that is legally entitled to receive funds.

15. RSA, as the underwriter, provided services necessary for the sale and placement of the bonds, including purchasing bonds from the December 2014 issue for reoffering.

16. RSA sold a portion of the bonds to a network of retail investors and individuals. RSA maintained ownership of the unsold portion of approximately \$1,150,000 of the bonds.

17. In early 2015, a DoE program reviewer informed SCC that students enrolled in

SCC's bachelor programs for Radiologic Technology, Radiation Therapy, Farming and Ecological Agrarianism (both a bachelor of arts and bachelor of science) and Athletic Training (the "Bachelor Programs") were not eligible for Title IV HEA funds. DoE claimed that SCC was required to obtain prior approval from DoE to disburse Title IV HEA funds for the Bachelor Programs.

18. DoE's decision set forth in Paragraph 17 was arbitrary and contrary to law.

19. Beginning in April 2015, DoE arbitrarily and illegally withheld Title IV HEA funds from SCC for students enrolled in the Bachelor Programs.

20. After more than a year of arbitrarily and illegally withholding Title IV HEA funds from SCC by claiming that the Bachelor Programs required prior DoE approval, by letter dated February 24, 2016, DoE finally admitted that students in the Bachelor Programs were, in fact, eligible to received Title IV HEA funds. *See* February 24, 2016 letter, a copy of which is attached as Exhibit A.

21. Although it is now undisputed that DoE wrongfully withheld Title IV HEA funds from SCC for over a year, DoE continues to arbitrarily and illegally withhold the Title IV HEA funds from SCC.

22. As a result of DoE's arbitrary and illegal conduct, the \$1,150,000 in bonds owned by RSA are effectively unmarketable. Potential investors are not willing to purchase such bonds in light of DoE's illegal conduct.

23. In addition, DoE's continuing illegal conduct in refusing to disburse Title IV HEA funds to SCC raises a substantial threat that a default will occur on the outstanding \$23,305,000 in bonds issued by the City for SCC.

24. Accordingly, should SCC default, SCC may be damaged in an amount of

\$23,305,000 in outstanding revenue bonds solely due to DoE's arbitrary and illegal conduct in withholding Title IV HEA funds to which SCC is indisputably entitled to receive.

25. DoE's illegal conduct is also having a negative impact on the issuance of municipal bonds in Kentucky for other projects, which also adversely impacts RSA. Because federal DoE funding is a central component of the revenue stream for numerous Kentucky institutions, DoE's demonstrated willingness to arbitrarily and illegally withhold money from institutions has negatively impacted the ability to structure bond financing for other institutions.

26. There is a limited pool of investors for non-rated municipal debt, and default or uncertainty created by DoE's illegal conduct inhibits the ability to place additional debt, which negatively impacts Kentucky's citizens and overall economy.

COUNT I – INJUNCTIVE RELIEF

27. Pursuant to FRCP 10(c), RSA incorporates paragraphs 1-26 of the Intervening Complaint by reference as if set forth in full.

28. Based on the foregoing, RSA is entitled to injunctive relief against DoE to enjoin DoE's arbitrary and illegal conduct in withholding Title IV HEA funds from SCC to which SCC is indisputably entitled.

29. DoE's arbitrary and illegal conduct is not only threatening to shut down a well-established and respected institution of higher learning in Kentucky, it is also damaging RSA and the municipal bond market in which RSA participates. Without injunctive relief preventing DoE's illegal conduct, RSA and the municipal bond market in which RSA participates will be irreparably harmed.

30. On the other hand, DoE will not be harmed by injunctive relief designed to prevent DoE's continuing arbitrary and illegal conduct. Thousands of institutions throughout the

United States receive Title IV HEA funds from DoE in a timely manner under the law. Injunctive relief that simply requires DoE to comply with the law, and to do so in a timely manner as it does for thousands of other institutions, is hardly asking too much.

PRAYER FOR RELIEF

WHEREFORE, RSA prays for the following relief:

- A. Judgment against the Defendant;
- B. Judgment for injunctive relief preventing Defendant's arbitrary and illegal conduct;
- C. Award attorneys' fees and costs;
- E. Trial by jury on all issues so triable; and
- F. All other relief to which RSA may be entitled.

Respectfully submitted,

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EXHIBIT A



February 24, 2016

Dr. Cindy Gnadinger, President
St. Catharine College
2735 Bardstown Road
St. Catharine, KY 40061-9499

Dear President Gnadinger:

Thank you for your correspondence dated February 10, 2016, in which you raise concerns about the Department of Education's (Department's) program review and Heightened Cash Monitoring process. I am writing to address the concerns you identified with regard to five undergraduate programs for which funds were withheld in the recent payment described in a letter from Federal Student Aid Payment Analyst Kathleen Shelton dated February 11, 2016.

St. Catharine College (SCC) expressed concern with the Department's determination that SCC was required to obtain Department approval for five bachelor degree programs that the institution enacted prior to June, 2014. Based upon further review of the information you have provided, the Kansas City School Participation Division (KCSPD) agrees that these five undergraduate degree programs are currently eligible for Title IV, HEA funds, and payments previously withheld based upon the Department's prior determination will be released promptly to SCC. The Department is continuing to review whether those five programs were eligible for the federal student aid funds that SCC disbursed to its student prior to June, 2014, and that issue will be addressed in the ongoing SCC program review.

With respect to SCC's continuing payment requests, KCSPD agrees that SCC has demonstrated that these five programs are currently accredited and have the necessary state approvals, and that the Department's approval was not required for those programs when SCC first notified the Department about them on June 30, 2014. As noted above, prior payments provided to students enrolled in those programs are being examined in the ongoing program review, and SCC will have an opportunity to review and respond to any findings on this issue in a Program Review Report, to then receive a Final Program Review Determination from the KCSPD, and to request an administrative hearing of any contested liabilities pursuant to 34 C.F.R. 668.111.

Upon review of Heightened Cash Monitoring (HCM) submissions previously provided by SCC on January 19, 2016, by letter dated February 11, 2016, KCSPD identified ten (10) students who had been rejected for payment due to their enrollment in one of these five degree programs. KCSPD will reconsider these students based on the determination above and release the portion of the rejected payments attributed to the five undergraduate programs additional funds totaling \$42,671.

Federal Student Aid
An OFFICE of the U.S. DEPARTMENT of EDUCATION

Kansas City School Participation Division
1010 Walnut, Suite 336, Kansas City, Missouri 64106-2147
www.FederalStudentAid.ed.gov

EXHIBIT A

St. Catharine College

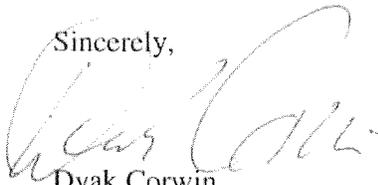
Page 2 of 2

During the January 11, 2016 on-site visit at SCC, KCSPD reviewers noted that SCC had requested payment in prior HCM-2 requests for the gross Federal Direct Student Loan (FDSL) amounts rather than based on net loan amounts which exclude the loan origination fees. The SCC payment requests should have been for the net loan amounts. By requesting and being paid the total amount of the direct student loan funds, SCC was provided excess cash from each submission. SCC officials acknowledged the improper submissions had occurred which resulted in excess cash. KCSPD adjusted the payments made to SCC to resolve this matter by offsetting \$26,015 in Direct Loan funds prior to releasing the funds requested in the January 19, 2016 HCM-2 submission.

As noted above, based upon the determination that the five undergraduate programs are currently eligible, the Department is releasing additional funds from SCC's January 19 payment request totaling \$42,671, for the portion of the rejected payments that were related to those five undergraduate programs. The basis for rejecting the remaining payments is identified on a student-by-student basis in the KCSPD's letter dated February 11, 2016.

We trust that this response addresses the concerns that you raised concerning the current eligibility of the five undergraduate programs, and we look forward to working with SCC to resolve the issues related to the ongoing program review.

Sincerely,



Dvak Corwin
Compliance Manager
Kansas City School Participation Division