



UNITED STATES DEPARTMENT OF EDUCATION  
WASHINGTON, D.C. 20202

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In the Matter

**TRI-STATE COLLEGE OF  
MASSOTHERAPY,**

Respondent

Docket No. 12-53-SP

Federal Student Aid Proceeding  
PRCN: 201210527707

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Appearances: Stuart A. Strasfeld, Esq., Roth Blair Roberts Strasfeld & Lodge, Youngstown, Ohio, for Tri-State College of Massotherapy.

Denise Morelli, Esq., Office of the General Counsel, U. S. Department of Education, Washington, D. C., for Federal Student Aid.

Before: Judge Ernest C. Canellos

**DECISION**

Tri-State College of Massotherapy (Tri-State) was a proprietary institution of higher education located in Youngstown, Ohio offering educational programs leading to Associate Degrees. These programs were accredited by the Accrediting Commission of Career Schools and Colleges and were eligible to participate in the Federal Pell Grant and the Federal Family Education Loan Programs that are authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. 2751 *et seq.* In the U. S. Department of Education (ED), the office having jurisdiction over and oversight of these programs is the office of Federal Student Aid (FSA).

Tri-State ceased providing education and closed on December 31, 2009. As one consequence of such closure, a number of its students could not complete their respective educational programs and Tri-State did not arrange for such students to complete their programs at another school. Under the provisions of 20 U.S.C. § 1087(c), the Secretary of Education is

directed to pay off the Title IV loan obligation of any such student and then discharge the obligations of any student who applies to ED for such discharge and certifies that they were unable to complete their education because of the closure of the school. Once a student is discharged, the Secretary, the subrogee of the student's rights, is directed to pursue recovery against the closed school for the amounts forgiven. 34 C.F.R. § 682.204(d) (4).

In order to determine the amount of liability resulting from this situation, FSA performed an off-site program review focused on Tri-State's student records and the applications for discharge submitted by its former students. A Final Program Review Determination (FPRD) dated June 14, 2012, was issued finding that \$53,916 was due for the nine students who were discharged under the above provisions. In addition, the FPRD asserted a claim for an additional \$5,886.97 in imputed interest. By letter dated August 21, 2012, Respondent's President filed a Request for Review in the above-captioned proceeding challenging the findings of the FPRD.

Subsequently, Tri-State's counsel asserted that ED failed to demonstrate and establish that the students were legally entitled to a loan discharge. In addition, as to three of the students, Tri-State claimed that they were in default of their contract obligations prior to the school's closing. As such, the school had the right to terminate each of the students and, therefore, no liability for their loan forgiveness should be appropriate. Finally, Tri-State's brief argues that it attempted to comply with all ED directives relative to school closings and, as such, it should not be responsible to pay any imputed interest. As to this issue, however, a long line of federal cases, including some from this tribunal, have held that the imposition of imputed interest is appropriate in that it compensates the federal government for the loss of use of its money. *See generally, In the Matter of Puerto Rico Technology and Beauty College*, Docket No. 92-73-SA, U.S. Department of Education (August 31, 1992), and cases cited therein. Such authorities are not rebutted in any way by Tri-State in any of its presentations.

In any Subpart H -- audit and program review -- proceeding, the Respondent has the burden of proving, by a preponderance of the evidence, that the Title IV funds it received were lawfully disbursed and earned. If it fails to establish the correctness of the expenditure of federal education funds, the Respondent must return the funds to ED. 34 C.F.R § 668.116 (d). Although the Respondent's evidentiary burden is explicitly provided for in regulations, the record in this case is abundantly clear that Tri-State has failed to present any evidentiary matter sufficient to satisfy its burdens of proof and persuasion in this case. It has not offered any evidence that the discharges were, somehow, improper or that there is any other recognized defense to FSA's demand in the FPRD.

As a predicate to the Respondent's burdens of proof, FSA has the burden of providing adequate notice of its demand. Here, FSA has presented sufficient information to establish a *prima facie* case for its demand in the FPRD. It has shown that the students at issue have certified in their applications for relief that they did not complete their programs of study at Tri-State because of its closure and that they did not complete such program at another institution. Further, FSA records confirm such claims. Therefore, consistent with the record before me, and by applying the burdens of proof, as indicated above, I find that Tri-State must pay \$53,916.00

for the federal student loans that were discharged, plus \$5,886.97 in imputed interest for a total Title IV liability of \$59,803.00.

**ORDER**

On the basis of the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED that Tri-State College of Massotherapy pay to the United States Department of Education the sum of \$59,803.00, in a manner as required by law.

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Ernest C. Canellos  
Chief Judge

**Dated: January 9, 2013**

SERVICE

A copy of the attached document was sent by certified U. S. Mail, return receipt requested, to the following:

Stuart A. Strasfeld, Esq.  
Roth Blair Roberts Strasfeld & Lodge  
100 Federal Plaza East, Suite #600  
Youngstown, Ohio 44503

Denise Morelli, Esq.  
Office of the General Counsel  
U.S. Department of Education  
400 Maryland Avenue, S.W.,  
Washington, D.C. 20202-2110