THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the Matter of

QUALITY COLLEGE OF CULINARY CAREERS,

Docket No. 08-36-SA
Federal Student Aid Proceeding

Respondent.

ORDER OF REMAND

This matter comes before the Secretary on appeal by Respondent of the Initial Decision issued by Chief Administrative Judge Ernest C. Canellos on June 10, 2009. The Initial Decision concluded that the office of Federal Student Aid (FSA) may recover $76,853.17 from Respondent. Respondent requests that I vacate and set aside that decision.

The amount of funds FSA sought in recovery was based on all of the Federal student financial assistance funds received by Respondent between January 1, 2007 and October 31, 2007.[1] The amount upheld by Judge Canellos was based on his determination that because a close-out audit was not filed by Respondent, the institution was required to return all Federal funds disbursed during the respective period that would have been covered by the audit.[2] This determination stems from the judge's conclusion that Respondent had not accounted for Federal funds received between January 1, 2007 and October 31, 2007.

Respondent does not challenge the conclusion that it failed to file a close-out audit in 2007. Instead, Respondent contends that the proper calculation of recovery is the amount of funds that remains unaccounted for after deductions are made for funds disbursed pursuant to a

[1] FSA acknowledges that the Department performed a program review of Respondent's programs during March of 2007, which, as a result, limits the length of the "unaudited" period to less than an entire award year; namely, the unaudited period is from March 2007 through October 31, 2007. According to FSA, in light of this shortened period, FSA advised Judge Canellos that the proper amount recoverable should be reduced from the amount identified in the Final Audit Determination from $76,853.17 to $75,906.47. Although Judge Canellos upheld the original amount of recovery, this was likely the result of an error, and I take official notice that the proper amount at issue in this case is $75,906.47.

[2] A postsecondary institution that receives Federal student aid funds must file an audit with FSA when it ceases to operate. 34 C.F.R. § 668.26(b). Respondent ceased operations on October 31, 2007.

process known as Heightened Cash Monitoring 2 (or HCM2). The record reveals that Respondent was required to participate in HCM2. Under the HCM2 method of payment, an institution must submit specific documentation to FSA *before* Federal funds will be made available to the institution; under the usual payment process, institutions receive student aid funds in advance and subsequently are required to account for the proper use of Federal funds through compliance audits and on-site reviews conducted by the Department.

The use of HCM2 renders this case analogous to *In the Matter of Harrison Career Institute (Harrison)*, Dkt. Nos. 07-55-SA & 07-63-SA, wherein, on a remand of the Initial Decision, I held that when an institution under HCM2 must repay funds because of a failure to file a close-out audit, the HCM2 process must be considered to determine whether that process accounts for any of the funds disbursed by the institution and, if so, the Department's recovery should reflect that result. Similarly, in this case, to determine the proper amount of funds unaccounted for by Respondent, the judge must inquire to what extent, if any, funds disbursed to Respondent under HCM2 account for the proper expenditure of Federal funds. As I noted in *Harrison*, this inquiry is narrowly focused and does not include a consideration of the merits of the HCM2 process or any matters under the purview of the HCM2 process, itself; only the question whether, as a result of the HCM2 process, the institution has accounted for the expenditure of Federal funds is at issue.

To avoid excessive recovery and in recognition that the HCM2 process may account for the lawful disbursement of funds during the period at issue, this case must be remanded for further proceedings. On remand, the parties shall submit a joint stipulation to Judge Canellos for his review to determine whether, and, if so, to what extent, the recovery sought by the Department should be reduced as a result of the HCM2 process.

ORDER

Accordingly, the Initial Decision, issued by Chief Administrative Judge Ernest C. Canellos on June 10, 2009, is HEREBY REMANDED to the tribunal for further proceedings.

So ordered this 25th day of November 2009.

Arne Duncan

Washington, D.C.

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