

IN THE MATTER OF Southeastern University,
Respondent.

Docket No. 92-102-SA
Student Financial Assistance Proceeding

Appearances: Stanley A. Freeman, Esq., Powers, Pyles, Sutter, & Verville, of Washington,
D.C., for Southeastern University.

Russell B. Wolff, Esq., Office of the General Counsel, for the Office of Student Financial
Assistance Programs, United States Department of Education.

Before: Judge Ernest C. Canellos.

DECISION

This decision is the result of a remand order by the Secretary issued November 29, 1994, in the above-captioned proceeding. [See footnote 1 1](#) The Secretary ordered the administrative law judge [See footnote 2 2](#) (ALJ) to clarify "his opinion relative to the Department's implementation of the 'actual loss' formula," and to clarify "his opinion relative to the imposition of monetary liability against certain Southeastern [University] students." In the ALJ's initial decision, he determined that Southeastern University (Southeastern) had violated various regulatory provisions of Title IV of the Higher Education Act of 1965, as amended, (Title IV), and ordered Southeastern to repay to the United States Department of Education (ED) \$159,862 in improperly disbursed Title IV funds. In addition, the ALJ ordered certain Southeastern students to repay ED a total of \$13,514 in improperly disbursed Title IV funds. The initial issue before me is whether the liability imposed against Southeastern is based, in part, upon

the Office of Student Financial Assistance Programs' (SFAP) "actual loss" formula. [See footnote 3 3](#) For the reasons stated below, I find that the ALJ did not apply SFAP's actual loss formula to determine Southeastern's liability for improperly spent Title IV loan funds.

Although the ALJ's decision does not explicitly reject SFAP's use of its actual loss formula, it is clear from the ALJ's calculation of liability that he did not apply that formula to the findings upheld in his decision. SFAP's actual loss formula measures the estimated loss to ED that has or will result from ineligible loans certified by the institution. Under the formula, an institution's cohort default rate, is multiplied by the total amount of ineligible loans disbursed during a given award year to yield an estimated expenditure of defaulted loans. [See footnote 4 4](#) This estimate is added to estimated loan subsidies and special allowance payments made by ED during the award year to yield the actual loss formula liability. In this case, the final audit determination (FAD) issued by SFAP determined that the actual loss to ED totaled \$151,009 based on allegations that Southeastern disbursed \$317,071 in ineligible Title IV loans.

The FAD also noted that SFAP elected to calculate its proposed liability using the actual loss formula instead of requiring Southeastern to reimburse the total amount of ineligible Title IV loans to the appropriate lenders. However, in his initial decision, the ALJ determined that the FAD had incorporated, by reference, the findings of the underlying auditor's report, which specified each ineligible Title IV loan disbursed by Southeastern during the years at issue. Consequently, the ALJ relied upon the amounts specified in the auditor's report to calculate the liability upheld in his initial decision. For example, the first finding upheld by the initial decision is finding 3, wherein the auditor's report identified 20 instances where Title IV funds were disbursed to Southeastern students for whom statements of educational purpose were missing from students' files. The ALJ upheld finding 3 with regard to 7 instances [See footnote 5 5](#) and, in doing so, imposed a Title IV *loan* liability of \$16,953. This amount is not based on an actual loss calculation, but, instead, is the total amount of ineligible Title IV loans disbursed to six students. [See footnote 6 6](#) This method was repeated throughout the ALJ's initial decision for each finding

upheld. Accordingly, the monetary liability imposed against Southeastern by the initial decision for ineligible Title IV loan disbursements is not based on an application of SFAP's actual loss formula.

The final issue before me is the Secretary's order to clarify the ALJ's initial decision regarding his imposition of a monetary liability against certain Southeastern students. In the Secretary's remand order, the Secretary set aside the monetary liability imposed against individual Southeastern students by the initial decision. Clearly, in setting aside the liability imposed against students, the Secretary recognized the impropriety of imposing a liability against a party not made a part of the administrative proceeding. However, the findings upheld by the initial decision are findings for which the FAD sought to impose a liability against Southeastern. Consequently, unless the initial decision explicitly determines that the institution should not be held culpable for underlying regulatory violation, the findings upheld against the students should be modified as findings against Southeastern. In that regard, I find that the liabilities imposed against the students should be upheld as liabilities against Southeastern in the amounts determined by the initial decision.

Nothing in the initial decision expresses the ALJ's intent that Southeastern should not be found liable for the regulatory violations initially held against the students. To the contrary, the initial decision upholds liabilities that SFAP had clearly sought against the institution. For example, the initial decision upheld finding 3 of the FAD, wherein SFAP determined that Southeastern's student files did not contain lender applications for Title IV loans disbursed to two students. According to the ALJ, these findings were upheld because Southeastern offered no explanation concerning the missing documents. Although the ALJ required the two students to repay the disbursed Title IV loans, he did not find that the institution should not be held liable. Indeed, institutions are routinely held liable for regulatory violations involving deficient recordkeeping. [See footnote 7 7](#) Accordingly, I find that the monetary liabilities imposed against certain Southeastern students by the initial decision should be modified as liabilities owed by Southeastern University.

ORDER

On the basis of the foregoing findings, it is HEREBY ORDERED, that the monetary liability imposed against Southeastern by the initial decision for ineligible Title IV loan disbursements

is not based on an application of SFAP's actual loss formula, and the monetary liabilities imposed against certain Southeastern students by the ALJ's initial decision should be modified as liabilities owed by Southeastern University. Accordingly, in addition to the liability established by the Secretary's Clarification of Order, Southeastern University should repay \$13,514 to the United States Department of Education.

SO ORDERED:

Ernest C. Canellos
Chief Judge

Issued: March 22, 1995
Washington, D.C.

[Footnote: 1](#) 1 Subsequent to the issuance of the Secretary's decision, the Secretary issued a Clarification of Order, dated March 16, 1995, wherein, in addition to ordering Southeastern University to remit \$159,862 to the Department, he noted that his original decision requires the administrative law judge to "expressly state whether the . . . monetary liability imposed upon the Respondent for proven departmental violations is based upon the 'actual loss' formula."

[Footnote: 2](#) 2 The initial decision in this case was issued by Administrative Law Judge, Paul J. Clerman. Due to the [retirement] of Judge Clerman, this case was assigned to me.

[Footnote: 3](#) 3 Undoubtedly, the ALJ did not apply the actual loss formula to Southeastern's liability for improperly disbursed Title IV grants since SFAP's actual loss formula only applies to improperly spent Title IV loans.

[Footnote: 4](#) 4 In the ALJ's decision, he noted that for purposes of SFAP's use of its actual loss formula, SFAP applied Southeastern's 1989 cohort default rate, which was 21.5%.

[Footnote: 5](#) 5 One instance included a finding that a Title IV grant was improperly disbursed. Consequently, there are only six findings relevant to the issue before me.

[Footnote: 6](#) 6 Under finding 3, the ALJ upheld the following Title IV loans as improper:

*Student #1 \$3510
Student #2 \$3562
Student #3 \$3562
Student #4 \$2430
Student #5 \$1455*

Student #6 \$2434
Total Ineligible Loans \$16,953

[Footnote: 7](#) *7 The remaining student liabilities are not inapposite with this example.*