

Student Financial Assistance Proceeding

Respondent.

DECISION

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

None at present for the Balin Institute of Technology.[See footnote 1¹](#)

Before: Judge John F. Cook

I. PROCEDURAL BACKGROUND

A final program review determination (determination) was issued by the Chief of the Institutional Review Branch, Region IV, Division of Audit and Program Review, Office of Student Financial Assistance (OSFA) of the U.S. Department of Education (ED) to Balin Institute of Technology (Balin) on August 29, 1990. The determination identified \$174,707 in liabilities allegedly due to holders of Guaranteed Student Loans (GSL) and \$73,929.05 in liabilities allegedly due to ED.

Prior to the issuance of the determination, Balin, on July 12, 1990, filed in the Bankruptcy Court, Central District of California, a Chapter 11 petition to reorganize.

A program review report had been issued on March 22, 1989, which set forth thirteen findings. The determination stated that Balin had taken the required corrective action to resolve 5 of the findings which were then closed. Therefore, findings 1, 2, 3, 4, 5, 6, 9, and 11 were subjects of the determination.

A request for review of the determination was filed by Balin. Balin requested a review only as to findings 1 and 3 of the determination.

Stipulations of facts as well as statements of the issues of fact and law were filed jointly by the parties. Thereafter, the parties filed initial briefs and reply briefs. A revised stipulation of facts was also filed by the parties with their initial briefs. The stipulations had Exhibits A, B, D, E, and F attached. [No Exhibit C was filed.] OSFA filed exhibits [ED Ex. 1 and ED Ex. 2] with its initial brief. Balin filed exhibits [Exh. 1 thru Exh. 6][See footnote 2²](#)later. OSFA filed 7 proposed findings of fact with its initial brief and Balin filed 2 proposed findings of fact with its brief.

In its initial brief Balin stated that it intended to introduce affidavits from Carl Pease, President of Balin and Doris McClanahan, a CPA, and would not request a hearing separate from or in addition to a hearing that was "scheduled in the termination case entitled: In the Matter of the Balin Institute of Technology, Docket No. 90-67-ST, unless OSFA objected to the filing of the affidavits. OSFA did not object to the filing of affidavits and did not request a hearing. No hearing was held, but Balin did not thereafter file any affidavits.

As mentioned in footnote 1, Balin was originally represented in the proceeding by its attorneys, but on June 18, 1991, the attorneys filed a notice of withdrawal of counsel. In the notice of withdrawal the attorneys stated that the Bankruptcy Court, Central District of California, had granted an interim fee application with modifications on May 30, 1991, but that, notwithstanding, Balin had not paid the fees and costs approved by the Court. The attorneys stated that it was necessary to advise the tribunal that they were withdrawing as counsel to Balin, effective immediately. They stated that the president of Balin had been advised that this would occur if the approved amounts were not paid by June 14, 1991.

Based upon the findings of fact and conclusions of law, *infra*, the final program review determination is sustained and Balin is ordered to reimburse ED in the amount of \$172,469.05 and to reimburse \$76,167.00 to the lenders involved.

II. ISSUES.

A. ISSUES OF FACT.

1. Does Balin owe the U.S. Department of Education and lenders the sum of \$174,707 in unmade refunds and other erroneous GSL disbursements for the award years 1986-87, 1987-88, and 1988-89?

a. Does Balin owe lenders \$76,167 in unmade refunds and other erroneous GSL disbursements?

b. Does Balin owe the U.S. Department of Education \$98,540 for erroneous GSL disbursements?

2. Does Balin owe the U.S. Department of Education \$38,705.05 for interest and special allowance payments made to lenders as the result of unmade or untimely refunds by Balin?

3. Did the Program Reviewer provide the independent auditor with explicit instructions that precluded Balin from accurately reconstructing its records in order to properly determine refunds due lenders and applicable interest and special allowance owed the government?

4. Does Balin owe the U.S. Department of Education \$35,224 for allegedly improper Pell Grant disbursements during award years 1986-87, 1987-88, and 1988-89?

5. Can Balin offset \$10,716 in allegedly undrawn Pell Grant funds from the total Pell liabilities owed the U.S. Department of Education?

B. ISSUES OF LAW

Is the program review determination issued by the designated ED official supportable, in whole or in part?

III. FINDINGS OF FACT. [See footnote 3](#)³

1. The United States Department of Education (ED) and Balin Institute of Technology, Inc. (Balin) have entered into Program Participation Agreements (PPAs), which collectively cover the time period from Balin's initial participation in Title IV, HEA programs in 1981 to the present.

2. Exhibit A is a true and accurate copy of the latest PPA signed by Balin and ED.

3. Prior to its termination of eligibility which occurred in the proceeding referred to in footnote 2, Balin was qualified to participate in Title IV, HEA programs as a vocational school under 20 U.S.C. 1085(c) and as a proprietary institution of higher education under 20 U.S.C. 1088(b).

4. Balin was authorized to participate in the following Title IV, HEA programs: Pell Grant, Supplemental Educational Opportunity Grant (SEOG), College Work-Study (CWS), Stafford Loan, PLUS, and Supplemental Loans for Students (SLS).

5. Exhibit B is a true and accurate copy of ED's records of the total Title IV, HEA program funds received by Balin from 1981 to 1990, and authorized for Balin's receipt in 1990 to 1991, as recorded in ED's Institutional Data System (IDS). Figures with an asterisk represent authorized amounts.

6. Balin replaced its financial aid director in 1989 with Maxine Quarterman.

7. On January 17-20, 1989, program specialist Ernest Bunch from ED's Regional Office of Student Financial Assistance in Atlanta (ROSFA) conducted a program review of Balin's administration of Title IV, HEA programs at Balin's main campus in Atlanta, Georgia.

8. ROSFA's program review consisted of a review of twenty student files: one student file from award year 1986-87; nine student files from award year 1987-88; and ten student files from award year 1988-89.

9. ROSFA's program review also consisted of a review of some fiscal and accounting records as well as student files.

10. ROSFA's program specialist conducted interviews with some school personnel.

11. ROSFA's initial program review report, dated March 22, 1989, was sent to Balin, and Balin was given thirty days to respond.

12. Exhibit D is a true and accurate copy of ROSFA's program review.
13. As a result of the review of student files, ROSFA's program specialist concluded that some of Balin's GSL refunds to students and lenders were either not paid or were not timely paid to students and lenders (finding #1 in program review report).
14. As a result of ROSFA's finding regarding Balin's late and unpaid GSL refunds, the school was required to examine all records for students who withdrew from the institution beginning with the 1986-87 award year to the time of the on-site review (January 1989).
15. ROSFA required Balin to determine any liability resulting from refunds due and to have the determination and payment of said refunds confirmed by the school's independent auditor for accuracy and completeness.
16. In response to ED's request for reconstruction of records by ROSFA, Balin hired an independent certified public accountant (CPA), Doris McClanahan, to perform the special audit services necessary to determine the amount of unmade refunds at the Atlanta campus.
17. Balin agreed to file monthly reports with ROSFA regarding the CPA's progress toward compliance with ROSFA's program review.
18. Balin reconstructed its records per ROSFA's request and submitted same by July 26, 1990.
19. Requiring an institution to reconstruct records is not unusual. One of the purposes is to determine the extent of dollar liabilities.
20. In Doris McClanahan's report dated July 23, 1990, she concluded that Balin owed \$174,707 in loan refunds for award years 1986-87 through 1988-89.
21. Exhibit E is a true and accurate copy of the report from the independent auditor of her review and reconstruction of student files.
22. As a result of the \$174,707 in unmade GSL refunds at the Atlanta campus, Balin owed ED \$38,705.05 for excess interest and special allowance payments.
23. Balin was notified of the liability for excess interest and special allowance by ED's final program review determination, dated August 29, 1990.
24. Exhibit F is a true and accurate copy of ED's final program review determination.
25. Under the Guarantee Student Loan (GSL) Programs, Balin failed to pay or timely pay some required refunds to lenders and students.
26. ROSFA's program review, dated March 22, 1989, at page 6, concluded that Balin's maintenance of fiscal records for the 1986-87 and 1987-88 award years could not be properly

reconciled so that an audit trail could be determined.

27. Balin has contracted with Lynn Taylor of Atlanta Student Aid, a financial aid consultant approved by ED, to prepare and submit Balin's cash reimbursement requests.

28. ED has not identified a single error in Balin's case reimbursement requests.

29. Balin has taken a number of steps to tighten up its operations and become more economical and efficient to include the elimination of the general business offerings, the elimination of ability to benefit students in Atlanta, and smaller enrollment.

30. Balin filed a Chapter 11 petition to reorganize on July 12, 1990.

31. Balin only appealed findings 1 and 3 of the final program review determination of August 29, 1990 and did not appeal findings 2, 4, 5, 6, 9, and 11.

32. The total asserted liability for Balin in the final program review determination for improper Pell Grant disbursements equals \$35,224.

33. Balin alleges that the total Pell Grant liability should be reduced by \$10,716 which Doris McClanahan's report identifies as a possible offset to liability as a result of funds she identifies as due Balin but not drawn.

IV. OPINION AND ADDITIONAL FINDINGS OF FACT.

A. Balin Owes ED and Lenders \$174,707.00 for Unmade Refunds And Erroneous GSL Disbursements.

Balin owes ED and lenders the sum of \$174,707.00 for unmade refunds and other erroneous GSL disbursements for the award years 1986-87, 1987-88, and 1988-89.

The liability of \$174,707.00 is broken down into the sum of \$76,167 owed by Balin to the lenders involved for unmade refunds and erroneous GSL disbursements and \$98,540.00 owed to the U.S. Department of Education for erroneous GSL disbursements.

1. Balin Owes Lenders \$76,167 For Unmade Refunds And Erroneous GSL Disbursements

The amount owed to lenders is composed of the following:

(a) finding #1, \$70,289.00 relating to unmade refunds; (b) finding #2, \$5,594.00 relating to leaves of absence in excess of allowable time; and (c) finding #9, \$284.00 relating to errors as to the date of last attendance of certain students.

Of these three findings, Balin contested only finding #1. In this regard Balin proposed the following finding of fact: "Balin's liability for unpaid refunds for award years 1986/87 through 1988/89 as referenced in Finding 1 of the Final Program Review Determination is

inaccurate." Balin's Initial Brief at 3.

In response to that proposed finding of fact OSFA stated that it accepted that finding: in its entirety to the extent that Balin's appeal of Finding #1 is now explained in its initial brief in this proceeding. In its original appeal of the final program review determination, (ED Ex. 2) Balin stated that Finding #1 was being appealed because "the explicit instructions provided by the Program Review Officer to the independent auditor precluded the institution from accurately reconstructing the records in order to determine refunds due." (Id. at 1.) OSFA was under the mistaken impression that Balin intended to show in its appeal that the calculation of refunds would have been less than the amount sought in Finding #1 if proper reconstruction instructions had been given to its auditors. For the reasons explained in its initial brief, OSFA disputed this contention because the refund figure came directly from Balin's own auditor who provided the amount without equivocation or disclaimer and any refund calculation was ultimately governed by the regulation that establishes the formula to be used for such calculations. (OSFA's Brief at 67; OSFA's Proposed Finding of Fact #5.)

In its Brief, Balin now identifies its concern with Finding #1 as follows:

The (refund) amount is inaccurate because it does not include any refund liabilities that may exist arising out of the institutional operations in California. Balin is fully aware of the fact that it is liable for some refunds from the California locations. It is presently completing its analysis of these records in conjunction with its reorganization plans under Chapter 11 and, accordingly, has concluded that Finding 1 is inaccurate and should be withdrawn until an accurate figure is available. (Balin's Brief at 3.) OSFA fully concurs that Balin owes an as-of-yet undetermined amount of refunds at its California campuses that may equal more than \$500,000. To the extent that Balin's proposed finding of fact is a recognition that Finding #1 is inaccurate because the actual amount of refunds it owes is so much greater, OSFA agrees that Finding #1 is inaccurate and accepts Balin's proposed finding of fact #1. Such a finding, however, is no reason not to affirm finding #1 as an accurate representation of refund liabilities for the Atlanta campus.

OSFA's Reply Brief at 1-2.

This analysis as to applicability of finding #1 as an accurate representation of refund liabilities for the Atlanta campus is correct.

In this regard OSFA proposed the following finding of fact: "Balin owes lenders \$70,289 in unmade refunds for award years 1986-87, 1987-88, and 1988-89." OSFA's Proposed Findings of Fact at 1.

In response Balin stated: "Respondent admits liability as to the amount stated but denies the accuracy of the finding to the extent it is represented as being complete unless ED waives any future claims for liabilities arising out of the same period of time." Balin's Reply Brief at 1.

Finding #1 actually relates only to the Atlanta campus. Therefore, any attempts by Balin to bring in to this proceeding any references to other campuses or to thereby affect any possible

future claims as to other campuses is immaterial and no finding as to other campuses will be made here. Accordingly, it is found that Balin owes lenders \$70,289 in unmade refunds for award years 1986-87, 1987-88, and 1988-89.

As to findings #2 and #9, since Balin has not contested either, it is then found that Balin owes lenders an additional \$5,594.00 (finding #2) and \$284.00 (finding #9). Therefore, as to these three findings it is found that Balin owes lenders \$76,167 in unmade refunds and other erroneous GSL disbursements for the award years 1986-87, 1987-88, and 1988-89.

2. Balin Owes ED \$98,540 For Erroneous GSL Disbursements.

The amount owed to ED for erroneous GSL disbursements is composed of the following:

(a) finding #4, \$25,837.00 relating to disbursements of GSL funds to students in the absence of verification; (b) finding #5, \$22,894.00 relating to GSL disbursements to students in the absence of financial aid transcripts; (c) finding #6, \$2925.00 relating to GSL credit balances to student accounts for extended periods of time or that were unresolved; (d) finding #11, \$41,787 relating to GSL disbursements to students who failed to maintain satisfactory progress; and (e) an additional GSL disbursement, revealed by the auditor engaged by the institution, in the amount of \$5,097.00 to an ineligible student due to default status.

Balin has not contested any of the above listed findings. OSFA requested a general finding which encompasses not only the findings listed above but also findings #2 and #9 and generally concludes that Balin owes the lenders and ED \$104,000 in GSL disbursements in addition to the \$70,289 involved in finding #1. This proposed finding by OSFA is also based upon the premise that Balin has contested only findings #1 and #3. [See footnote 4⁴](#)

Technically, OSFA is in error since the total of the GSL disbursements relating to the uncontested finding owed to ED and the lenders is \$104,418.00 rather than \$104,000.00.

However, the findings herein have been further separated into the amounts owed to ED and the amount owed to the lenders involved. [See footnote 5⁵](#)

In view of the fact that Balin has not contested any of the above listed findings as to liabilities owed ED, it is found that Balin owes ED \$98,540.00 for erroneous GSL disbursements.

B. Balin Owes ED \$38,705.05 For Interest And Special Allowance Payments.

ED pays interest and special allowance payments when an institution fails to make required refunds or has access to GSL funds to which it is not entitled. An institution that has GSL liabilities must repay ED for such unnecessary interest and special allowance payments.

By stipulation (No. 22) Balin has agreed that: "As a result of the \$174,707 in unmade GSL

refunds at the Atlanta campus, Balin owed ED \$38,705.05 for excess interest and special allowance payments."

It has previously been found in this decision that Balin owes \$174,707 .00 [\$76,167 to lenders and \$98,540.00 to ED] in unmade refunds and other erroneous GSL disbursements. Consequently, since Balin agreed that if such amount was owed, it would also owe ED \$38,705.05 for excess interest and special allowance payments, it is now found that such amount is owed to ED for that purpose.[See footnote 6⁶](#)

C. The Program Reviewer's Instructions Did Not Preclude Balin From Accurately Reconstructing Its Records.

OSFA proposed a finding of fact as follows: "The Program Reviewer did not provide the independent auditor with explicit instructions that precluded Balin from accurately reconstructing its records to properly determine refunds due and applicable interest and special allowance owed the Department." OSFA's Proposed Findings of Fact at 3.

Balin in its Reply Brief at page one admitted this particular finding of fact. Therefore, although this was an issue originally raised by Balin, it apparently has reconsidered the matter. Therefore, OSFA's proposed finding of fact on this issue is accepted as stated above.

D. Balin Owes ED \$35,224 For Erroneous Pell Grant Disbursements.

OSFA has proposed a finding of fact as follows: "Balin owes the Department \$35,224 for improper Pell Grant disbursements during award years 1986-87, 1987-88, and 1988-89." OSFA's Proposed Findings of Fact at 4.

In response to this Balin has stated that it: admits liability as to the amount stated but denies the accuracy of the finding to the extent it is represented as being complete unless ED waives any future claims for liabilities arising out of the same period of time. . . . with the further objection to ED's characterization of Respondent's disbursements. Balin's Reply Brief at 1.

As relates to Pell Grant disbursements, Balin in its request for review challenged Finding #3 of the determination of August 29, 1990. That finding called for the refund to ED by Balin of \$21,534.00 of Pell Grant disbursements which the independent auditor engaged by Balin had allegedly found to be owing to ED as a result of a reconstruction of fiscal records.

However, in the Request for Review Balin stated:

The finding #3 calls for \$21,534 in Pell Grant Recoveries Due without regard for the content of page 18 of the independent auditor's report. The independent auditor's report included a \$10,716.00 (page 18) Summary of Possible Offset to Liability which is a result of funds due Balin but not drawn. It was designed to alert the Department of Education to authorized funds which would offset against the Grand Total Pell Recoveries Due.

Balin's Request for Review at 2.

It therefore appears that Balin rather than challenging the finding as to a Pell Grant liability of \$21,534.00 under finding #3, is actually arguing for the offset of \$10,716.00. This will be discussed in the next section of the decision which concerns that separate, final issue of fact. As to the other alleged Pell Grant liabilities of Balin under finding #4, (\$6,815.00), finding #5 (\$4,325.00), finding #11 (\$1,650), and the independent auditor's finding as to \$900.00 disbursed to a student not enrolled with the institution, Balin has not challenged those findings in this proceeding.

Therefore, it is found that Balin owes the U.S. Department of Education \$35,224.00 for erroneous Pell Grant disbursements during award years 1986-87, 1987-88, 1988-89.

E. Balin Has Not Proved Adequate Facts As To Allegedly Undrawn Pell Grant Funds Which Could Be Offset Against Other Pell Grant Liabilities Owed to ED.

In its brief Balin proposed the following finding of fact:

Balin's Pell grant liability should be reduced by \$10,716 per the finding of Balin's CPA, Doris McClanahan. See Stipulation 33 and ED Exhibit E-21.

In addition, Balin will offer further proof in support of this proposed finding of fact in the affidavit of Ms. McClanahan.

Balin's Initial Brief at 4.

Stipulation No. 33 states as follows:

33. Balin alleges that the total Pell Grant liability should be reduced by \$10,716 which Doris McClanahan's report identifies as a possible offset to liability as a result of funds she identifies as due Balin but not drawn.

In response to this OSFA stated:

OSFA denies this proposed finding of fact in its entirety. As explained in its initial brief, OSFA believes that such a requested offset is baseless given the absence of adequate documentation to suggest Balin did not receive any funds to which it was entitled and properly requested. (OSFA's Brief at 8-9; OSFA's Proposed Finding of Fact #7.) Balin offers no new evidence at this time to demonstrate anything else to the contrary.

OSFA's Reply Brief at 2-3.

In its initial brief OSFA argued that: the basis upon which Balin's accountant suggests that certain funds were not drawn is unclear. The fiscal balancing report identifies certain figures as purportedly representing "funds tentatively due Balin", (ED Ex. 1 at 9), and the audit report

identifies those same funds as "Pell awards that appeared authorized, but were not drawn down". (Ex. E at 21. [actually Ex. E-20]) The genesis of these figures is unknown. Moreover, to the contrary, the Department's Pell Grant Program Summary indicates that Balin received proper payment for all Pell awards it made. (ED Ex. 1 at 103, 112.) Finally, there is, of course, a fundamental difference between Balin being potentially authorized to receive a certain amount of Federal funds and being able to properly document expenditures that would justify access to such money. The mere existence of undrawn funds would not create any basis for offset, nor would the existence of potentially proper, but unmade requests, and the evidence presented at this point shows nothing more.

OSFA's Initial Brief at 8-9.

As stated above Balin was to file an affidavit of Ms. McClanahan to support its contention that there actually was \$10,716.00 in Pell Grant funds which were due Balin but not drawn. Balin did not file such an affidavit.

In this kind of proceeding Balin has the burden of persuasion as to this issue. 34 C.F.R. 668.116(d). If it is to be successful in showing an offset the proof by Balin must be clear. Documents showing the foundation for the independent auditor's conclusions in ED Ex. 1 and Ex. E as to a possible offset should have been filed. Even if we were to consider the testimony of that independent auditor in the termination case entitled: In the Matter of the Balin Institute of Technology, Docket No. 90-67-ST, (Transcript pages 579-582, 607-609), that testimony would not be enough. Further documentation would be required.

Therefore Balin has not proved the existence of undrawn Pell Grant funds which it may offset against the Pell Grant liabilities which are owed to ED.

IV. CONCLUSIONS OF LAW.

A. Prior to its termination of eligibility in the proceeding entitled: In the Matter of the Balin Institute of Technology, Docket No. 90-67-ST, Final Decision October 1, 1991, Balin was qualified to participate in Title IV, HEA programs as a vocational school under 20 U.S.C. 1085(c) and as a proprietary institution of higher education under 20 U.S.C. 1088(b).

B. Balin was also authorized to participate in the following Title IV, HEA programs: Pell Grant, Supplemental Educational Opportunity Grant (SEOG), College Work-Study (CWS), Stafford Loan, PLUS, and Supplemental Loans for Students (SLS).

C. Balin has a legal obligation to reimburse \$172, 469.05 to the United States Department of Education which amount is composed of the following increments:

1. \$98,540.00 for erroneous GSL disbursements.
2. \$38,705.05 for interest and special allowance payments, and
3. \$35,224.00 for erroneous Pell Grant disbursements.

D. Balin has a legal obligation to reimburse \$76,167.00 to the lenders involved in the loans

which are the subject of this proceeding for unmade refunds and other erroneous GSL disbursements.

E. The Final Program Review Determination issued by the Chief of the Institutional Review Branch, Region IV, Division of Audit and Program Review of OSFA is therefore supportable as to the total liability due on the part of Balin, however subject to the technical corrections set forth in C. and D. above as to the actual breakdown of the total liability.

VI. DETERMINATIONS AS TO THE PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

In addition to their briefs both parties have filed proposed findings of fact and conclusions of law. Such proposed findings, conclusions, and briefs, insofar as they can be considered to have contained proposed findings and conclusions, have been considered fully, and except to the extent that such proposed findings and conclusions have been expressly or impliedly affirmed in this decision, they are rejected on the grounds that they are, in whole or in part, contrary to the facts and law or because they are immaterial to the decision in this case.

VII. ORDER.

Based on the foregoing findings of fact and conclusions of law, IT IS ORDERED:

A. That Balin Institute of Technology reimburse the United States Department of Education in the amount of \$172,469.05; and

B. That Balin Institute of Technology reimburse the lenders involved in the loans which are the subject of this proceeding in the amount of \$76,167.00.

John F. Cook
Administrative Law Judge
Issued: March 26, 1992

Washington, D.C.

Footnote: 1 ¹ Originally the Respondent, Balin Institute of Technology, was represented by Peter S. Leyton, Esq. and Richard A. Fulton, Esq. of White, Verville, Fulton & Saner, 1156 Fifteenth Street, N.W., Washington, D.C. 20005. However, on June 18, 1991, these attorneys withdrew as counsel for Respondent for reasons which are set forth in the decision. No one else has appeared for Respondent since that time.

Footnote: 2 ² In its initial brief Balin refers to these as Exhibits 20, 21, 35, and 38-42 filed in a case entitled: *In the Matter of the Balin Institute of Technology*, Docket No. 90-67-ST. However, Balin then copied those exhibits and numbered them as Exhibits 1 thru Exhibit 6 herein. Exhibit 20 was numbered by Balin as Exhibit 1 in this proceeding but Exhibits 21 and 35 were never filed because these numbers had been reserved but never used. OSFA objected to the

consideration of Balin's Exhibit 1 which related to the bankruptcy proceeding mentioned previously. However no reference, indicating any relevancy to this proceeding, has been made as to that exhibit. Therefore it has not been considered.

Footnote:3 ³ Findings of Fact No. 1 thru No. 33 are based upon the stipulations of fact No. 1 thru No. 33 which were filed by the parties with their initial briefs.

Footnote:4 ⁴ Balin's response to OSFA's proposed finding of fact as to the \$104,000 liability is the same as it was as to the first finding of fact proposed by OSFA as to finding #1, with a further objection to ED's characterization of Balin's disbursements as being "improper". Balin's Reply Brief at 1. These disbursements are referred to herein as "erroneous. "

Footnote:5 ⁵ In this regard reference is made to footnotes 5 and 6 on page 5 of OSFA's Initial Brief. In those footnotes OSFA stated:

5/ There is an additional \$5878 owed by Balin to lenders in unmade refunds as the result of program review findings 2 and 6 [actually 2 and 9] which discuss deficiencies in Balin's application of its leave of absence policy and conflicting last date of attendance information. (Ex. E at 6.) As previously mentioned however, Balin did not appeal these findings. (Stip. #31.)

6/ Balin has appealed finding #1 of the program review which is limited to unmade refunds to lenders and the \$70,289 liability. For ease of calculation and collection, the final program review determination took the dollar liabilities from all the other findings and added them to the finding #1 total to reach a composite amount of \$174,707 in GSL liabilities owed by Balin. This \$174,707 figure is loosely referred to throughout the review (and also the stipulations) as the amount Balin owes for "refunds". In fact, however, findings 4, 5, 6, and 11 are liabilities owed to the Department for improper GSL disbursements and not to lenders for unmade GSL refunds.

Footnote:6 ⁶ OSFA has proposed two findings of fact as to interest and special allowance payments, however, these findings of fact are unnecessary in view of the above finding as to the same subject. The stipulation entered into by Balin as to the correct amount of interest and special allowance obviates any need of further analysis of this issue.