UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS
OFFICE OF ADMINISTRATIVE LAW JUDGES
400 MARYLAND AVENUE, S.W.
WASHINGTON, D.C. 20202-4615

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In the Matter of

College of Visual Arts,

Respondent

Docket No.: 15-05-SP

Federal Student Aid Proceeding

PRCN: 2014-4-05-28803

Appearances: Mark W. Vyvyan, Esq., Fredrikson & Byron, Minnesota, for the College of Visual Arts

Jennifer L. Woodward, Esq. Office of the General Counsel, U.S. Department of Education, Washington, D.C., for Federal Student Aid

Before: Angela J. Miranda, Administrative Law Judge

DECISION

I. Jurisdiction and Procedural History

The College of Visual Arts (CVA) was a private, four year institution of higher education located in St. Paul, Minnesota. The college offered programs culminating in Bachelors of Fine Arts Degrees. These programs were accredited by the Higher Learning Commission 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 and oversight of these programs is the office of Federal Student Aid (FSA).

CVA closed on June 30, 2013, informing its students of closure before classes began for the Spring 2013 semester. Consequently, a number of the college's students could not complete

their respective degree programs. CVA, however, arranged for a "Teach-Out and Transfer" program to facilitate students' completion of their degree programs at the Minneapolis College of Art and Design (MCAD). Nevertheless, several students chose not to take advantage of the opportunity to complete their education at MCAD. Those students filed requests under the provisions of 20 U.S.C. § 1087(c) to the Secretary of Education (Secretary) for the discharge of their Title IV loan obligations on the basis of inability to complete their program of study because of the school closure. In such a situation, after a student applies to ED for a discharge and certifies that he or she was unable to complete his or her education because of the closure of the school, the Secretary will pay off the loans in question and subsequently discharge the obligations of that student. Once a student is discharged, the Secretary is subrogated to the student's rights to pursue recovery against the closed school for the amounts forgiven. 34 C.F.R. § 682.214(e).

In a prior action, on March 11, 2014, FSA issued a Final Audit Determination (FAD) after reviewing the close-out audit for CVA. The FAD found that CVA was responsible for $14,500 for one student's loans that were discharged under the above provisions. The FAD also asserted a claim for an additional $127 in imputed interest. By letter dated April 25, 2014, Respondent's Chairman of the Board filed a Request for Review challenging the findings of the FAD. CVA argued that it took all actions required by statute and regulation when it closed and so should not have been liable for the student's debt in question.[1] By decision dated, August 14, 2014, the Office of Hearings and Appeals (OHA) affirmed the demand in the FAD, concluding that the statutes in question give to a student of a closed school the right to have their Title IV loan obligations paid off by the Secretary and then have the Secretary reimbursed by the closed school.[2] CVA did not appeal that prior decision and it remains a final decision of the Department.

Subsequently, ED's School Participation Team – Chicago/Denver issued a Program Review Report (PRR) on October 3, 2014 with regard to CVA's administration of programs authorized pursuant to Title IV. The focus of this review was to assess whether CVA had any additional liabilities as a result of successful applications for closed school loan discharges that were not reflected in the prior close-out audit. The resulting PRR identified three student borrowers with six loans totaling $27,000 that were successfully discharged through the closed school loan discharge process between July 1, 2013 and June 30, 2014. Following review of CVA's response to the PRR, ED acknowledged one of the identified loan discharges in the amount of $9,000, belonging to "Student #3," was included in the FAD dated March 11, 2014 and was adjudicated in the previously referenced appeal. Therefore the Final Program Review Determination (FPRD) found that CVA is liable for the outstanding $18,000 paid to discharge loans of the remaining two students who were unable to complete their programs of study due to the school's closure as well as $307 in imputed interest.

II. Issue

Respondent argues that it should not be liable for the students' discharged loans, claiming

[1] In its Brief, Respondent cited 20 U.S.C. §§ 1099b(c)(3); 1094(f)(2) as the relevant statutes mandating that a closing institution submit a teach-out plan to the accrediting agency as well as the definition of a teach-out.
[2] *In re College of Visual Arts*, Dkt. No. 14-23-SA, U.S. Dep't of Educ. (Aug. 14, 2014) at 2.

that CVA's closure was not the cause-in-fact of the students' failure to complete their respective programs. Instead, Respondent argues that the "Teach-Out and Transfer" program CVA coordinated with MCAD, which was approved by the accrediting agency, gave students the opportunity to complete their programs of study despite the school's closing. This Tribunal must therefore determine whether the Secretary properly discharged the student loans in question under 20 U.S.C. § 1087(c) given CVA's approved "Teach-Out and Transfer" program.

Respondent also contends that ED cannot lawfully recover the value of the discharged loans from CVA because Title IV provides for the Secretary to pursue any claim the student borrower has against the institution,[3] and the students here have no cause of action against CVA under Minnesota state law. This Tribunal will consider and weigh Respondent's argument that the Secretary improperly sought recovery of the discharged loans from the Respondent because the students did not have a right of action against the Respondent under Minnesota state law.

Finally, Respondent argues that over the period in question, CVA disbursed cash refunds to the students, which they did not use toward their BFA programs or allocate toward repaying the lender. Respondent claims that even if it is liable for the discharged loans, it should only be liable for the portions of the loans credited to CVA for tuition and fees and specifically exclude any amount that was refunded to the students. Consequently, this Tribunal must conclude whether, if the institution is liable for the discharged loans, CVA should be required to repay the entire value of the discharged loans or whether the value should be reduced to reflect the cash refunds that CVA disbursed/refunded directly to the students.

III. Legal Framework/Applicable Laws and Regulations

Title IV of the Higher Education Act provides financial assistance for students and mandates that the Secretary carry out programs to achieve the Act's goals.[4] When a student is unable to complete the educational program in which he or she is enrolled due to an institution's closure, Title IV requires the Secretary to discharge the student borrower's liability on his or her loans by repaying the amount owed to the lender and then recovering the value from the closed school.[5] This section of the Act explicitly states that a "borrower whose loan has been discharged pursuant to [Section 437(c)(1)] shall be deemed to have assigned to the United States the right to a loan refund up to the amount discharged against the institution."[6] Additionally, Title IV prescribes that when an institution decides to cease operations, that school must submit a teach-out plan to the accrediting agency.[7] The statute defines a "teach-out plan" to be a "written plan that provides for the equitable treatment of students if an institution of higher education ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency or association, an agreement between institutions for such a teach-out plan."[8]

[3] 20 U.S.C § 1087(c)(1) (2010) ("[T]he Secretary shall discharge the borrower's liability on the loan…by repaying the amount owed on the loan and shall subsequently pursue any claim available to such borrower against the institution and its affiliates and principals.").
[4] *Id*. § 1070(b).
[5] *Id*. § 1087(c)(1).
[6] *Id*. § 1087(c)(2).
[7] *Id*. § 1099(b)(3)(C).
[8] *Id*. § 1094(f)(2).

To promulgate the directives of Title IV, ED implemented regulations governing closed school loan discharges and teach-out plans. The regulations provide for specific criteria a student borrower must meet in order to qualify for a discharge, specifying that such a student must submit a written request and sworn statement to the Secretary indicating that he or she received loans to attend school, did not complete the program of study at that school because the institution closed while the student was enrolled (or the student withdrew no more than 120 days before the school closed), and the student did not complete the program through a teach-out or by transferring academic credits earned at the closed school.[9] ED's regulations bar students from receiving a discharge if they "complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school."[10]

Appropriate application of Title IV and ED's corresponding regulations, requires consideration of Congress's intended definition of the term "program." As the court indicated in *McComas v. Riley*,[11] Title IV does not conclusively define this word, thereby creating ambiguity with respect to the issues of teach-outs and transfer programs as well as closed school loan discharges. The *McComas* court reasoned that "program" could be interpreted to mean either a "specific course at the closed school" or a "general course of study that students may pursue at different institutions."[12] Because it is impossible to determine Congress's intent with respect to this word from the plain language of the statute, the *McComas* court concluded that it was required to defer to ED's reasonable interpretation of the relevant Title IV provisions.[13] The court established that such an approach "is mandated by the presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows."[14] Consequently, that court decided that the term "program" is not necessarily associated with a specific school and ruled that ED has the authority to limit closed school loan discharges to those students who did not participate in a teach-out program or transfer their academic credits earned at the closed school to another educational institution.[15] Thus, students who takes advantage of a teach-out or transfer program are afforded the opportunity to complete the program of study and are not eligible for loan discharge.

While "program" is not necessarily associated with a specific school and a student who participates in a teach-out or transfer program is able to complete his or her program of study under ED's regulations, both Title IV and the pertinent regulations are silent on the question of whether a student enrolled at a closing school *must* take advantage of any available teach-out or transfer arrangement. A look at the regulatory history reveals that the Secretary intended students to have the ability to choose whether to participate in any established teach-out plan.

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[9] 34 C.F.R. § 685.214(c).
[10] *Id*. § 682.402(d)(3)(ii).
[11] 1998 U.S. Dist. LEXIS 23235, at *15.
[12] *Id*. at *16.
[13] *Id*. at *17.
[14] *Id*. (quoting *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 842 (1984)) (internal quotations omitted).
[15] *Id*.

With regard to ED's 1994 discussion about whether the regulations should define "teach-out at another school," the published notice reveals:

> The Secretary notes that because a student may decline to complete the program through a teach-out at another school for any reason, it is therefore reasonable to conclude that a student who chooses to participate in a teach-out and completes the program, has demonstrated an acceptance of those teach-out conditions. In short, a student can be protected from being forced to accept what he or she believes to be an onerous teach-out condition by simply declining the teach-out. A student who, even though inconvenienced, chooses to complete his or her program through a teach-out has received value from the loan and needs no loan discharge.[16]

Since the Secretary is charged with implementing Title IV,[17] it follows that his intent with regard to relevant regulations should be sustained when following the procedures outlined in such regulations. A student enrolled at an institution that ceases operations may therefore choose not to participate in a teach-out and transfer arrangement for any reason. The Secretary's interpretation suggests that such a student has not received the bargained-for value from his or her loan and is therefore eligible for a loan discharge. *Sandler v. United States Department of Education*[18] supports the notion that when a student enrolled at a closing school chooses not to participate in a teach-out arrangement or transfer credits to another academic institution, that student is deemed to be unable to complete his or her program due to the school closure and the Secretary must therefore discharge the student borrower's liability on his or her student loans.

ED's regulations also provide for the transfer to the Secretary of the student borrower's right of recovery against third parties after the Secretary discharges that student's loans. The provision shows:

> (e) Transfer to the Secretary of borrower's right of recovery against third parties.
>
> (1) Upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.
>
> (2) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution

[16] 59 Fed. Reg. 22,462, 22,467 (Apr. 29, 1994).
[17] 20 U.S.C. § 1070(b).
[18] 2001 WL 884552 (E.D. Pa. July 19, 2001), at *2.

that would prejudice the Secretary's ability to recover on those rights.[19]

These provisions create a cause of action for the Secretary against a closed school upon discharge of student loans and make clear that the regulation preempts any conflicting state law. Review of additional regulatory history reveals that the purpose of the regulations applying to Title IV federally-backed student loans, among other considerations, is to "protect the Federal fiscal interest,"[20] suggesting that the procedures governing closed school discharges exist in part to protect the Federal government and subsequently the taxpayer. Consideration of the taxpayer is further exhibited in the Secretary's discussion pertaining to the sworn statement required to discharge a student's loans, where the Secretary opines that such a statement "is necessary to protect the interests of the taxpayer."[21]

Finally, ED's regulations specify procedures to which educational institutions must adhere when disbursing Title IV funds to students.[22] The regulations provide:

> (d) Crediting a student's account at the institution. An institution may use title IV, HEA program funds to credit a student's account at the institution to satisfy–
>
> (1) Current year charges for—
>
> (i) Tuition and fees;
>
> (ii) Board, if the student contracts with the institution for board;
>
> (iii) Room, if the student contracts with the institution for room[.][23]

The regulations also establish that when a student's total Title IV funds exceed the costs of the expenses mentioned above, "the institution must pay the resulting credit balance directly to the student or parent as soon as possible[.]"[24] These provisions indicate that student loans are meant not only for tuition but also for other academic expenses and living expenses. All Title IV funds, regardless of their purpose or use, are subject to the same statutes and regulations.

IV. Analysis

First, Respondent argues that the Secretary improperly discharged the students' loans. Respondent contends that because CVA arranged a teach-out and transfer program with MCAD, the students in question were not prevented from completing their BFA degree programs, as required by ED's regulations.[25] Instead, the students were encouraged to continue their degree

[19] 34 C.F.R. § 685.214(e).
[20] 59 Fed. Reg. 61,664, 61,688 (Dec. 1, 1994) (emphasis added).
[21] *Id*.
[22] 34 C.F.R. § 668.164.
[23] *Id*. § 668.164(d).
[24] *Id*. § 668.164(e).
[25] 34 C.F.R. § 685.214(c).

programs. Respondent distinguishes this case to the scenario in *Sandler*,[26] in which the plaintiff was unable to participate in the teach-out because she had a full time job and would have had to relocate in order to take advantage of the arrangement. Conversely, MCAD was less than 10 miles from the closing CVA. Respondent argues that because of the availability of the teach-out and transfer arrangement, the school's closure was not the direct cause-in-fact of the students' failure to complete their degree programs. Consequently, the Secretary should not have discharged the students' loans under the applicable regulations.[27] This Tribunal disagrees.

To qualify for a loan discharge under Title IV, a student must be unable to complete his or her degree program due to the closure of their school.[28] Furthermore, ED's regulations mandate that a student must not have completed his or her degree program through a teach-out arrangement or by transferring academic credits earned at the closed school to another school.[29] A student may choose not to participate in a teach-out and transfer program for any reason.[30] The Secretary's conviction that a student can choose not to take part in a teach-out and transfer arrangement supports the notion that a student is in a unique position to determine whether a new program at another school is acceptable. If a student decides not to participate in an available teach-out and transfer arrangement, Title IV allows that student to alternatively request that the Secretary relieve his or her loan liabilities.[31]

Respondent suggests that the statutory requirement that all institutions must submit a teach-out plan to the accrediting agency upon planning to cease operations[32] supports its argument that the students here were not eligible for a loan discharge. While teach-out and transfer arrangements can be equitable solutions to the problems students enrolled at closing institutions[33] face and can minimize costs to ED, the Federal government, and ultimately the tax payer,[34] the fact that Congress contemplated the benefits of teach-outs and required closing institutions to create teach-out plans does not establish that students enrolled at these institutions must take advantage of such teach-out and transfer arrangements.

Here, the students elected not to participate in CVA's teach-out and transfer arrangement with MCAD. The students certified they had not transferred their academic credits to any other educational institution and the record includes no evidence contrary to these certifications. Title IV and the applicable regulations provide the students with the right to have their Title IV loan obligations paid by the Secretary.[35] Respondent improperly compares this case to *McComas*,[36] where the court determined that discharge was improper because the student in question transferred her academic credits from the closed school to another institution. While the

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[26] 2001 WL 884552, at *2.
[27] 34 C.F.R. § 685.214(c).
[28] 20 U.S.C. § 1087(c)(1).
[29] 34 C.F.R. § 685.214(c).
[30] 59 Fed. Reg. 22,462 (Apr. 29, 1994).
[31] 20 U.S.C. § 1087(c)(1).
[32] *Id*. § 1099b(c)(3).
[33] *Id*. § 1094(f)(2).
[34] 59 Fed. Reg. 61,664 (Dec. 1, 1994)
[35] *In re College of Visual Arts*, Dkt. No. 14-23-SA, U.S. Dep't of Educ. (Aug. 14, 2014), at 2 ("[T]here is no exception built into the law for a school to avoid repaying [discharged] loans when it closes through a good faith setting-up of a teach-out program if the student chooses not to continue.").
[36] 1998 U.S. Dist. LEXIS 23235, at *20.

McComas court did conclude that Title IV does not restrict "program" to a particular institution and that an individual who transfers academic credits from a closed institution to a similar program at another school is afforded the opportunity to complete his or her program of study and is not eligible for a loan discharge, it does not follow that a student is required to transfer his or her credits to a similar academic program. Therefore, the Secretary properly discharged the students' loans upon receiving written requests and sworn statements certifying that they were unable to complete their programs of study due to CVA's closure and they did not complete the program through a teach-out and transfer program.[37]

Respondent next argues that ED has no legal basis for recovering the value of the discharged loans from CVA because Title IV only allows the Secretary to pursue a claim against a closed school if the student borrower has an independent cause of action against the institution. Respondent argues that Title IV does not create a right of recovery for ED against a closed school for discharged loans and there is no state law basis that would allow ED to recover in this case. Respondent points to the language in Title IV prescribing that the Secretary "shall…pursue any claim available to such borrower against the institution" after repaying the lender the amount the student owed on the loan.[38] Respondent argues that its position is further supported by ED's applicable regulation, which indicates that upon discharge, the borrower transfers any right to a loan refund "that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school."[39] This Tribunal disagrees.

Respondent analogizes the current case to *Zinter v. University of Minnesota*,[40] where the court dismissed the appellant's breach of contract and promissory estoppel claims against the University of Minnesota for failure to state a claim on which relief could be granted. In *Zinter*, the appellant was enrolled in a Master of Library Science (MLS) degree program at the University and had completed all of her requirements except the final project seminar.[41] The MLS office told the appellant that before she could register for the seminar, she had to complete two additional courses that would aid her with her final project.[42] The appellant, however, only completed one of the additional courses, never registered for the final project seminar, and never completed the final project.[43] She therefore did not receive her degree and sought tuition refunds for three semesters, which the associate dean denied.[44] In response to her breach of contract and promissory estoppel claims that asked the court to evaluate the University's method of teaching, the court determined that the appellant was making educational malpractice claims, which are not recognized under Minnesota state law.[45]

Respondent likens FSA's claims against CVA to Zinter's breach of contract and promissory estoppel claims against the University, arguing that the *Zinter* court's dismissal of appellant's

[37] 34 C.F.R. § 685.214(c).
[38] 20 U.S.C. § 1087(c).
[39] 34 C.F.R. § 685.214(e).
[40] 799 N.W.2d 243, 248 (Minn. Ct. App. 2011).
[41] *Id*. at 245.
[42] *Id*.
[43] *Id*.
[44] *Id*.
[45] *Id*. at 246

claims for failure to state a claim recognized by Minnesota state law is controlling. However, *Zinter* is distinguishable from the present case because while the educational malpractice claims in *Zinter* were based on common law, ED's right of recovery here is centered on specific federal statutes that prescribe proper procedures in the case of school closures. Respondent argues that the relevant regulations only allow the Secretary to recover the value of discharged student loans from the closed institution if the student would have had an independent cause of action against the school.

However, a closer look at Section 437(c) of Title IV provides context in terms of Congress's intent with respect to closed school loan discharges.[46] The provision provides that upon authorizing a closed school loan discharge, the Secretary will pursue any claim that was available to the borrower against the closing institution *under subpart 3 of part G* of that subchapter.[47] The subpart explicitly establishes, "[T]he Secretary may, to the extent necessary to protect the financial interest of the United States, require…the assumption of personal liability, by one or more individuals who exercise substantial control over such institution, as determined by the Secretary…for financial losses to the Federal Government, student assistance recipients, and other program participants for funds under this subchapter."[48] This subpart highlights the importance of protecting the Federal fiscal interest and the taxpayer by extension. It gives the Secretary the authority to assign liability to an institution for closed school loan discharges, among other financial losses, to the closing institution in order to minimize ED's debt. Even if Minnesota state law only recognizes breach of contract and promissory estoppel claims against educational institutions in specific situations, Title IV provides a means for the Secretary to recover discharged student loans when an institution ceases operations. In the case of conflicting state and federal law, state law is preempted and federal law prevails.[49] Respondent's Minnesota state law argument therefore fails because this claim arises from a federally administered program. The applicable federal statutes, regulations, and case law specify that upon closure of a school, the Secretary has the authority to discharge students' loans if they are unable to complete their academic program due to the school's closure and then recover the value of the discharged loans from the institution.[50] Specifically, in *In re Hawaii Business College*, this Tribunal established,

> Under the provisions of 20 U.S.C. § 1087(c), the Secretary of Education is directed to pay off the Title IV loans of any such student and then discharge the obligations of those students who apply to ED for such discharge and certify that they were unable to complete their education because of the closure of their school. Once the student is discharged, the statute directs the Secretary, as the subrogee to the students' rights, to pursue recovery against the closed school for the amounts forgiven.[51]

[46] 20 U.S.C. § 1087(c).
[47] *Id*.
[48] *Id*. § 1099c(e)(1)(B).
[49] *See Arizona v. United States*, 132 S. Ct. 2492, 2534 (2012).
[50] *See In re College of Visual Arts*, Dkt. No. 14-23-SA; *In re Denver Academy of Court Reporting*, Dkt. No. 05-26-SP, Dep't of Educ. (Sept. 27, 2005).
[51] Dkt. No. 10-09-SP, Dep't of Educ. (Aug. 16, 2010).

Respondent improperly interpreted Title IV and ED's applicable regulations when it argued that Title IV does not create a right of recovery for the Secretary against a closed school and that a student borrower must have a legitimate state law claim against the institution in order for the Secretary to successfully recover the value of the discharged loan.

Finally, Respondent contends that CVA disbursed cash refunds to the students, which they did not use toward their BFA programs or allocate towards repaying the lender. Respondent therefore claims that even if it is liable for the discharged loans, it should only be liable for the portion of the loan that the students paid directly to CVA. This Tribunal disagrees.

ED's regulations prove that Title IV funds are not only meant for tuition.[52] In addition to the funds used for tuition, student loans can be used for books, room and board, and other costs of attendance.[53] After a school credits a student's account at the institution using Title IV funds for tuition and other services for which the student contracts with the school (possibly including room and board), the institution is required to pay the remaining loan balance to the student or parent for use toward other costs of attendance.[54]

The purpose of the closed school loan discharge provisions of Title IV is to make the student borrower whole again; eliminating the possibility a student borrower is financially burdened because that student borrowed money to finance an education that prematurely ended due to the school's closing. This solution is one rooted in equity for the student who is unable to earn his or her academic degree due to a school's closing as well as for the protection of the Federal government and taxpayer,[55] both of which will bear the burden of defaulted loans. In the prior decision pertaining to CVA's Final Audit Determination (FAD), the Administrative Judge (AJ) explained the reasoning behind closed school loan discharges:

> [I]t became apparent that students were being required to pay off Title IV loans they incurred at a school that eventually closed. Those students took on substantial debt that was repayable and yet, such students were unable to complete their education and as a consequence, were less likely to afford their repayments.[56]

Individuals take out student loans to cover tuition, fees, room and board as well as other costs of attendance at educational institutions. With the expectation of increased earning capacity upon completion of such educational programs, eligible students often earn a degree, as was the case with CVA prior to its closing. If students are not afforded the opportunity to finish their academic programs because a school closes, it becomes likely that the students will not achieve the expected increased earning capacity sought by the educational pursuits and it will be more probable that they will be unable to repay student loans secured in pursuit of that educational program. Congress established closed school loan discharges as one solution to this issue. ED's relevant regulations specifically prescribe that "discharge of a loan under [the closed school

[52] 34 C.F.R. §§ 668.164(d)–(e) and 20 U.S.C §1087*ll*(1)-(3).
[53] *Id*.
[54] *Id*. § 668.164(e) and 20 U.S.C. §1087*ll*(1)-(3).
[55] 59 Fed. Reg. 61,664 (Dec. 1, 1994).
[56] *In re College of Visual Arts*, Dkt. No. 14-23-SA, at 3.

discharge] section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the loan."[57] This provision suggests that even if the students in question did allocate their cash refunds toward repaying the lender, they would still be eligible for a discharge of the entire value of the loan.

In order to restore the students to their original economic positions, ED must discharge the entire value of their loans, including the portion that would have been allocated for living expenses and other costs of attendance. Limiting the value of the discharge to tuition or purely academic costs paid directly to the closed school would undermine the ultimate purpose of closed school loan discharges, leaving the student and taxpayer in vulnerable positions. This Tribunal must therefore reject Respondent's argument that the institution should not be liable for the cash refunds it disbursed to the students in question.

V. Findings of Fact

1. Prior to June 30, 2013, CVA was a private, four year institution of higher education, offering programs culminating in Bachelors of Fine Arts Degrees.

2. CVA was accredited by the Higher Learning Commission and was therefore eligible to participate in the Federal Pell Grant and Federal Family Education Loan Programs authorized under Title IV of the Higher Education Act of 1965, as amended.

3. CVA closed on June 30, 2013.

4. CVA arranged for a "Teach-out and Transfer" program to facilitate completion of degree programs for enrolled students at the Minneapolis College of Art and Design.

5. The Program Review Report, dated, October, 3, 2014, identified loan discharges for three students totaling $27,000.

6. A Final Program Review Determination, dated November 24, 2014, determined loan liabilities for one of the three students was duplicated in the Final Audit Determination, dated March 11, 2014, and liability was adjudicated in the prior appeal.

7. The Final Program Review Determination at issue here found that CVA is liable for the outstanding $18,000 paid to discharge the remaining two students plus $307 in imputed interest.

8. The two students in question here did not participate in CVA's "Teach-out and Transfer" program.

9. The evidence does not establish the two students transferred their academic credits earned at CVA to any other institution.

10. A student enrolled at a closing school is not required to participate in a "Teach-out and

[57] 34 C.F.R. § 685.214(b)(2).

Transfer" program under Title IV or ED's regulations.

11. To qualify for a loan discharge under Title IV, a student must submit to the Secretary a written request and sworn statement certifying that he or she was unable to complete his or her degree program due to a school closure and did not complete his or her degree program through a teach-out arrangement or by transferring academic credits earned at the closed school to another school.

12. The students submitted written requests and sworn statements to the Secretary certifying that they were unable to complete their programs of study due to CVA's closure and they did not complete the program through the "Teach-out and Transfer" arrangement.

13. The Secretary properly discharged the students' loans.

14. Title IV creates a right of recovery for the Secretary against a closed school for the value of discharged student loans.

15. After a school credits a student's account at the institution using Title IV funds for tuition and other services for which the student contracts with the school, the institution is required to refund the remaining loan balance to the borrower.

16. The refunded loan balance may be used by a student for costs of attendance at an eligible school and there is no regulation that mandates the student to use the funds to repay the lender.

17. Title IV and the applicable regulations direct the Secretary to discharge the entire value of student loans upon a school closure, including the portion that would have been allocated for living expenses and other costs of attendance.

18. CVA is liable for the full amount of discharged student loans, including any amounts refunded to the students, under Title IV and the applicable regulations.

VI. Conclusion and Order

On the basis of the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED that the College of Visual Arts pay to the United States Department of Education the sum of $18,000 for discharged loans plus $307 in previously identified imputed interest, in a manner as required by law.

Dated: _July 20, 2015__

_/s/ Angela J. Miranda_____
Angela J. Miranda
Administrative Law Judge

SERVICE

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

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Angela J. Miranda
Administrative Law Judge

Dated: __July 20, 2015___