THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the matter of

NATIONAL CAREER INSTITUTE (NJ)

Docket No. 16-53-SP

Federal Student Aid Proceeding

PRCN: 2013-202-2816

Respondent.

DECISION OF THE SECRETARY

National Career Institute (NCI) has appealed the August 30, 2017, decision (Decision) issued by Administrative Judge Robert G. Layton (Judge Layton). The Decision upheld a Federal Student Aid (FSA) assessment of a liability of NCI of $84,485.28, plus accrued interest.

Based on the following analysis, I affirm Judge Layton's Decision.

Background

NCI is an institution of higher education located in East Orange, New Jersey, participating in federal student aid programs under Title IV of the Higher Education Act of 1965 (HEA), as amended, 20 U.S.C. § 1070, *et seq*. (Title IV). On September 30, 2016, FSA issued a Final Program Review Determination (FPRD) imposing a liability of $84,485.28 plus interest. This liability stemmed from Finding 1 of the FPRD, which determined that NCI:

> . . . under-reported the money required to be returned to the Department. The under-reporting was due to NCI scheduling semester coursework in a module/course format, while it performed the Return of Title IV student refund calculations erroneously using a traditional concurrent credit term formula.[1]

NCI appealed the FPRD. In his Decision, Judge Layton found that "NCI does not dispute FSA's application of the regulation," but rather made a policy argument against enforcement of the rules.[2] Judge Layton rejected NCI's arguments, finding that "NCI is subject to the highest standard of care and diligence in administering the Title IV program and ensuring that the funds

[1] Decision at 2. The FPRD included additional findings, but NCI resolved them prior to the appeal. Therefore, only Finding 1 and the associated liability were at issue before Judge Layton and are at issue in this appeal.
[2] *Id*. at 3.

received are properly spent."[3] Accordingly, given NCI's admission that it made erroneous calculations, Judge Layton held NCI liable for the full amount.[4] NCI appealed the Decision to me.[5] I now turn to my analysis of that appeal.

Analysis

An institution has a fiduciary duty to the Department to administer the Title IV funds that it receives with competence.[6] An institution "is subject to the highest standard of care and diligence" in administering Title IV programs and accounting for funds it receives.[7] In this case, NCI conducted a full file review, after which FSA recalculated the correct return of Title IV amounts required by the regulations—$84,485.28 plus interest.

On appeal, NCI reiterates its policy arguments. NCI argues that the applicable regulations operate in a discriminatory manner, denying it constitutional due process, because NCI's program is "predicated on a sequential semester structure" rather than a concurrent, traditional semester style.[8] NCI asserts that the applicable regulations should be rescinded.[9]

The basic rule applicable to NCI's case is that the Department is bound by its own regulations.[10] This appeal is not a forum in which NCI can find relief based on NCI's policy views. I am bound by the regulation, 34 C.F.R. § 690.80(b)(2)(ii), which NCI admits was correctly applied by FSA in Finding 1 of the FPRD.[11] Under that regulation, FSA recalculated

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[3] *Id*. at 4 (citing 34 C.F.R. § 668.82(a) ("A participating institution or a third-party servicer that contracts with that institution acts in the nature of a fiduciary in the administration of the Title IV, HEA programs. To participate in any Title IV, HEA program, the institution or servicer must at all times act with the competency and integrity necessary to qualify as a fiduciary."); 34 C.F.R. § 668.82(b) ("In the capacity of a fiduciary—
(1) A participating institution is subject to the highest standard of care and diligence in administering the programs and in accounting to the Secretary for the funds received under those programs; and
(2) A third-party servicer is subject to the highest standard of care and diligence in administering any aspect of the programs on behalf of the institutions with which the servicer contracts and in accounting to the Secretary and those institutions for any funds administered by the servicer under those programs.")).

[4] Decision at 4–5.

[5] In its brief on appeal, counsel for FSA argues that NCI failed to comply with the requirement at 34 C.F.R. § 668.119 that it submit its brief in support of its argument concurrently with its notice of appeal. NCI submitted a document providing notice of its appeal on Sept. 18, 2017, but did not submit its brief until Oct. 30, 2017. Therefore, FSA argues that NCI's brief is untimely. Nevertheless, FSA has had an opportunity to respond to NCI's brief. For the purposes of this appeal, and finding no prejudice to any party, I accept all submitted briefs and I have fully considered them.

[6] 34 C.F.R. § 668.82(a); *In re Hope Career Inst.*, Dkt. No. 06-45-SP, U.S. Dep't of Educ. (Jan. 15, 2008) at 3.

[7] 34 C.F.R. § 668.82(b)(1).

[8] NCI Brief at 1–3. Any course which does not span the length of a standard term (e.g. semester, trimester, or quarter) is considered a "module." These courses may also be referred to as "compressed coursework" or "miniterms." Federal Student Aid Handbook 2013-2014 at 5-62 ("A program is offered in modules if, for a payment period or period of enrollment, a course or courses in the program do not span the entire length of the payment period or period of enrollment."); *see* Campbell, Kevin & Greg Martin, U.S. Dep't of Educ., "How Different Types of Academic Terms, Including Those with Modules, Affect Title IV," located at https://fsaconferences.ed.gov/conferences/library/2014/nasfaa/2014NASFAAHowDifferentTypesofAcademicTermsIncludingModulesAffectTitleIV.pdf.

[9] NCI Brief at 4.

[10] *Transactive Corp. v. United States*, 91 F.3d 232, 238 (D.C. Cir. 1996); *Panhandle E. Pipe Line Co. v. FERC*, 613 F.2d 1120, 1135 (D.C. Cir. 1979).

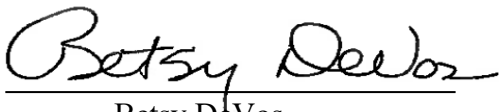
[11] Decision at 4.

the Title IV awards based on students' enrollment statuses, resulting in a liability of NCI of $84,485.28 plus interest.[12] Therefore, I affirm Judge Layton's Decision upholding the finding of liability.

ORDER

ACCORDINGLY, the Decision of Administrative Judge Layton is hereby AFFIRMED. NCI's financial liability of $84,485.28 plus interest is upheld.

So ordered this 16th day of October 2020.



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[12] 34 C.F.R. § 690.80(b)(2)(ii) ("If a student's projected enrollment status changes during a payment period before the student begins attendance in all of his or her classes for that payment period, the institution shall recalculate the student's enrollment status to reflect only those classes for which the student actually began attendance.").

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