THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the matter of

360 DEGREES BEAUTY ACADEMY (TX)

Docket No. 18-28-SP

Federal Student Aid Proceeding

PRCN: 201820629835

Respondent.

DECISION OF THE SECRETARY

360 Degrees Beauty Academy (360) has appealed the April 16, 2019, decision (Decision) issued by Administrative Judge Robert G. Layton (Judge Layton). The Decision upheld a total liability of $32,525.62 against 360 as assessed by the office of Federal Student Aid (FSA) in its Final Program Review Determination dated April 20, 2018 (2018 FPRD).[1]

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

Background

360 was a proprietary institution offering postsecondary non-degree programs in Houston, Texas. 360 participated 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 March 10, 2011, 360 closed in the midst of a program review by FSA. That review concluded when FSA issued a Final Program Review Determination on December 21, 2011 (2011 FPRD).[2] Among other findings, the 2011 FPRD included Finding 18, which assessed $9,500 of liability for loans discharged due to 360's closure.[3] 360 appealed the 2011 FPRD; liability for Finding 18 was upheld in a 2012 Office of Hearings and Appeals (OHA) decision.[4]

[1] Decision at 5.
[2] According to the Department's Database of Postsecondary Institutions and Programs, 360 voluntarily relinquished its accreditation from the National Accrediting Commission of Career Arts and Sciences. *See* https://ope.ed.gov/dapip/#/institution-profile/203827.
[3] 2018 FPRD at 6; 34 C.F.R. § 685.214(a)(1) ("The Secretary discharges the borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if the borrower (or the student on whose behalf a parent borrowed) did not complete the program of study for which the loan was made because the school at which the borrower (or student) was enrolled closed" as provided in subsequent regulatory sections.).
[4] *In the Matter of 360 Degrees Beauty Academy*, Dkt. No. 12-09-SP, U.S. Dep't of Educ. (Aug. 23, 2012).

From February 28 to March 9, 2018, FSA undertook a new program review of 360.[5] In this new review, FSA intended to "determine 360's liability for the discharge of Federal Direct loans due to 360's closure on March 10, 2011, and to assess liabilities for unreconciled balances in both the Federal Direct Loan and Federal Pell Grant programs."[6] In the 2018 FPRD, FSA made two findings discussed below.

In Finding 1 – Liability for Loans Discharged Due to Institution's Closure, FSA found 360 liable for $19,000 paid to discharge loans for students #1 through #3 "who were unable to complete their programs of study due to 360's closure" plus $1,299 in imputed interest.[7] FSA indicated the basis of this finding was the same as Finding 18 in the 2011 FPRD, but covered the circumstances of students #1 through #3 who received loan discharges after 360 paid the liability previously calculated in the 2011 FPRD.

In Finding 2 – Unreconciled Balances, FSA held 360 liable for $22,375.62. FSA indicated that 360 drew down $53,803 from the 2010–2011 Direct Loan program, but only had $37,592 in Total Net Booked Disbursements, resulting in a $16,211 unsubstantiated cash balance.[8] FSA also indicated that 360's net drawdowns in the 2010–2011 Federal Pell Grant program resulted in a $11,150.92 unsubstantiated cash balance.[9] FSA stated that "[t]his outstanding issue was not addressed in the 2011 FPRD or in the Final Audit Determination . . . the Department issued on August 3, 2012."[10] FSA applied $4,986.30 in escrow funds to mitigate 360's liability under Finding 2, resulting in a net liability of $22,375.62.

360 appealed, and during the course of that appeal, 360 provided evidence that Student #1 identified in Finding 1 had transferred credits from 360 to another institution and should not have been eligible for a closed school loan discharge.[11] Based on this evidence, FSA reduced the liability under Finding 1 to $9,500 plus interest. After this adjustment, FSA's total liability demand during the OHA appeal was $32,525.62.[12]

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[5] 2018 FPRD at 4.
[6] *Id*.; 34 C.F.R. § 668.163(d) ("Accounting and fiscal records. An institution must—
(1) Maintain accounting and internal control systems that identify the cash balance of the funds of each title IV, HEA program that are included in the institution's depository account or accounts as readily as if those funds were maintained in a separate depository account;
(2) Identify the earnings on title IV, HEA program funds maintained in the institution's depository account or accounts; and
(3) Maintain its fiscal records in accordance with the provisions in § 668.24.").
[7] 2018 FPRD at 4. Under 437(c) of the Higher Education Act (20 U.S.C. § 1087(c)), the Secretary is required to discharge a borrower's liability on a loan if the student was unable to complete the program in which he or she was enrolled due to the closure of the school. Further, the Secretary "shall subsequently pursue any claim available to such borrower against the institution and its affiliates and principals."
[8] 2018 FPRD at 7.
[9] *Id*.
[10] *Id*.
[11] Decision at 2.
[12] *Id*.

The Decision indicates that, during the course of OHA's proceedings, 360 submitted additional evidence that either supported FSA's assessment of liability, "[r]elied on handwritten and uncorroborated assertions," or called "all the students 'liars.'"[13] Based on his analysis of the evidence, Judge Layton upheld the liability assessment in its entirety.[14]

360 has since filed an appeal of the Decision with me. I will now turn to my analysis of that appeal.

Analysis

In an appeal under 34 C.F.R. Subpart H (Appeal Procedures for Audit Determinations and Program Review Determinations), the institution bears the burden of showing that all expenditures were proper and that the institution complied with program requirements.[15] In a subsequent appeal before the Secretary, the appealing party bears the burden of demonstrating, with a preponderance of the evidence, that the hearing official erred in his or her findings.[16] Using that standard of review, I will consider each of the 2018 FPRD's findings in turn.

I. Finding 1 - Liability for Loans Discharged Due to 360's Closure

Under 34 C.F.R. § 685.214, the Department grants a "closed school" discharge for students who receive proceeds of a loan to attend a school, do not complete the program at another school through a teach-out or by transferring credits, and are in attendance at the school at the time the campus closes or within a certain timeframe prior to closure—in this case, 90 days.[17] Upon discharge, the student's right to recovery from the school transfers to the Department, which may then hold the school liable for the funds.[18] Where a teach-out plan is

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[13] *Id*. at 4.
[14] *Id.* at 5.
[15] 34 C.F.R. § 668.116(d) ("An institution or third-party servicer requesting review of the final audit determination or final program review determination issued by the designated department official shall have the burden of proving the following matters, as applicable:
(1) That expenditures questioned or disallowed were proper.
(2) That the institution or servicer complied with program requirements.").
[16] *Central State University*, Dkt. No. 12-32-SA, U.S. Dep't of Educ. (Sept. 2, 2014) (Decision of the Secretary) at 1 (citing 34 C.F.R. § 668.116(d)); *see* 34 C.F.R. § 668.119(a) ("Within 30 days of its receipt of the initial decision of the hearing official, a party wishing to appeal the decision shall submit a brief or other written material to the Secretary explaining why the decision of the hearing official should be overturned or modified.").
[17] 34 C.F.R. § 685.214 (closed school discharge). In 2011, the year 360 closed, a student had to be in attendance within 90 days of closure to qualify for a closed school discharge. 34 C.F.R. § 685.214(c)(1)(ii) (2010). The Department increased this period to 120 days via rulemaking in November 2013. 78 Fed. Reg. 65,768, 65,805 (Nov. 1, 2013); *see* 34 C.F.R. § 685.214(c)(1)(i)(B) (stating that where a borrower "[d]id not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 120 days before the school closed" the borrower may make a representation to that effect in a written request for a loan discharge.). Unless otherwise stated, regulations take effect prospectively, not retroactively. *Greene v. U.S.*, 376 U.S. 149, 160 (1964) (citing *Union Pac. R. Co. v. Laramie Stock Yards Co.*, 231 U.S. 190, 197 (1913)). Therefore, the regulation in effect at the time of 360's closure governs in this case.
[18] 34 C.F.R. § 685.214(e)(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

used, the plan must comply with the requirements set by the school's accreditor, which in turn must satisfy the requirements of 34 C.F.R. § 602.24(c).[19] Among other things, the school must submit the teach-out plan to the accreditor, and the accreditor must approve it.[20]

Regarding Student #2, 360 argues that the student withdrew from the program before 360 closed. Because "this student did receive an education," 360 argues the student should not be granted a loan discharge.[21] 360 also argues that question 15 on the loan discharge application "would alone make the student ineligible for an approved loan discharge."[22]

The evidence in the record established by Judge Layton indicates that Student #2 withdrew from 360 on March 9, 2011, one day before 360 closed on March 10, 2011.[23] There is no evidence that the student continued the same or a similar program at another school, either through a teach-out agreement or by transferring credits from 360.

Question 15 on the loan discharge application, submitted by 360 as evidence, is paired with questions 12, 13, and 14 to determine whether a student withdrew from a school, subsequently completed a similar program at another school under a teach-out agreement, or transferred credits to complete the program.[24] The evidence indicates that Student #2 never attempted to complete a similar program at another school, rendering question 15 inapplicable. Because the student was still enrolled at 360 within the 90-day window prior to 360's closure and otherwise qualified, Judge Layton correctly held 360 liable for the funds discharged in Student #2's "closed school" discharge.

360 argues that Student #3 "did successfully complete [a] program of study through a teach-out at another school" despite not transferring credit hours.[25] In support of this argument, 360 includes a letter from Vogue International Academy indicating that the owner of 360 "help[ed] with a teach out plan" between 360 and Vogue.[26] Vogue states in its letter that Student #3 accepted help from 360 to continue the program at Vogue.[27] Therefore, 360 asserts that FSA erred by granting a discharge to Student #3 and holding 360 liable for the discharged funds.

I first note that parties to a Subpart H appeal to the Secretary are barred from introducing new evidence.[28] There is no indication that this letter from Vogue was included in the original appeal before Judge Layton. Thus, I am barred from considering Vogue's letter in this decision.

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sureties, and any private fund, including the portion of a public fund that represents funds received from a private party."); *College of Visual Arts*, Dkt. No. 15-05-SP, U.S. Dep't of Educ. (Jul. 20, 2015) at 9 (finding that the Secretary has "the authority to assign liability to an institution for closed school loan discharges.").

[19] At the time of 360's closure in 2011, 34 C.F.R. § 602.24(c) stated, among other things, "[an accrediting] agency must require an institution it accredits or preaccredits to submit a teach-out plan to the agency for approval" at the time the institution notifies its accrediting agency that it intends to cease operations.

[20] *Id*.; 2010–2011 FSA Handbook, 2–89 ("The teach-out must be approved by the school's accrediting agency.").

[21] 360 Supplemental Brief (Jul. 1, 2019) at unpaginated (unp.) 18.

[22] *Id*.

[23] Brief of the Office of Federal Student Aid, Ex. ED-2 at 3.

[24] 360 Supplemental Brief at unp. 17.

[25] *Id*. at 9.

[26] *Id*. at 11.

[27] *Id*.

[28] 34 C.F.R. § 668.119(f) ("Neither party may introduce new evidence on appeal.").

However, even if I were to consider the letter from Vogue, it does not demonstrate that 360 implemented a teach-out plan that satisfied its accreditor's requirements and which its accreditor approved.[29] Absent such evidence, I am not persuaded that Student #3 benefitted from a compliant teach-out plan. Because Student #3 neither benefited from a teach-out plan nor transferred any of the 389.10 hours the student earned at 360 to Vogue, FSA properly granted a "closed school" loan discharge to Student #3, and Judge Layton correctly found 360 liable for the related funds.

Having affirmed Judge Layton's holding related to Finding 1, I now turn to Finding 2.

II. Finding 2 – 360's Unreconciled Balances

An institution "is subject to the highest standard of care and diligence" in administering Title IV programs and accounting for funds it receives.[30] To that end, an institution must maintain financial accounts that comply with program requirements, including maintaining "accounting and internal control systems that identify the cash balance of the funds of each title IV, HEA program that are included in the institution's depository account or accounts as readily as if those funds were maintained in a separate depository account."[31]

In the 2018 FPRD, FSA found that 360 had unreconciled balances in the Common Origination and Disbursement (COD) system[32] and G5 Payment System[33] totaling $27,361.92 across both the 2010–2011 and 2011–2012 award years.[34] Appendix C to the 2018 FPRD shows unreconciled balances of $16,211 for Direct Loans and $11,150.92 for Pell Grants, "As of 10/16/2017." Although FSA did not address these balances in the 2011 FPRD or Final Audit Determination issued August 3, 2012, FSA states that it notified 360 of the balances via email on April 7, 2011, and via letter on December 27, 2012. FSA also states that it discussed the balances with 360 in a conference call on February 27, 2018.[35] FSA held 360 liable for these balances, and Judge Layton upheld Finding 2 because 360 "provided no proof to contradict the affidavit and evidence submitted by ED."[36]

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[29] 34 C.F.R. § 602.24(c) ("Teach-out plans and agreements.").
[30] 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.").
[31] 34 C.F.R. § 668.163(d) ("Accounting and fiscal records. An institution must—
(1) Maintain accounting and internal control systems that identify the cash balance of the funds of each title IV, HEA program that are included in the institution's depository account or accounts as readily as if those funds were maintained in a separate depository account.").
[32] The COD system is the system through which a variety of financial aid awards are processed, including Direct Loans and Pell Grants. COD System, Federal Student Aid, https://ifap.ed.gov/cod-system.
[33] G5 is a system through which institutions "request payments, adjust drawdowns and report expenditures . . . [and] also provides continuous access to current grant and payment information, such as authorized amounts, cumulative drawdowns, current award balances and payment histories." 2010–2011 FSA Handbook, 4-29.
[34] 2018 FPRD at 7–9.
[35] *Id*. at 8.
[36] Decision at 5.

On appeal, 360 argues that because FSA did not find 360 liable for Federal Pell Grants in its August 3, 2012, Final Audit Determination, Finding 2 constitutes "new discoveries," and 360 did not have proper notice of it, making it unfair to assess this liability.[37] Alternatively, 360 argues that this liability should be eliminated because 360 recently obtained a statement from the Department indicating it has a $0 balance "in COD and G5" which was accurate as of 2016 for both Pell Grants and loan balances.[38] Counsel for FSA responds that the balances shown in COD and G5 are not dispositive, because the issue was that 360 had failed to provide disbursement records corresponding to drawdowns in G5.[39]

First, I consider 360's argument about notice, which is effectively an argument that it was denied due process. Due process is flexible and calls for such procedural protections as a particular situation demands.[40] The key provision is some form of hearing that allows the individual a meaningful opportunity to be heard.[41] FSA states that it notified 360 of the unreconciled balances by email in 2011 and by letter in 2012. Further, the $16,211 balance appears in the materials prepared by 360's auditor, and the parties discussed the unreconciled balances again in a conference call in 2018.[42] Subsequently, FSA assessed liability for these balances in the 2018 FPRD. 360 has had the benefit of the Department's regular appeals process under 34 C.F.R. Part 668, Subpart H. Therefore, I find that 360 had sufficient notice of the liability assessed in Finding 2 and the benefit of due process.

Second, I consider 360's argument that it has a $0 balance in COD and G5. As pointed out by FSA, the issue is not whether those systems currently show a balance. The issue is that 360 had unreconciled balances following the program review and never reconciled them.[43] Despite 360's assertion that the Department reported a $0 balance as of 2016, the evidence included in the 2018 FPRD shows unreconciled balances "[a]s of 10/16/2017."[44] 360 has not submitted any evidence that it reconciled these balances. Therefore, I find that 360 has not carried its burden to demonstrate that FSA erred in its assessment of liability or that Judge Layton erred in affirming that liability.

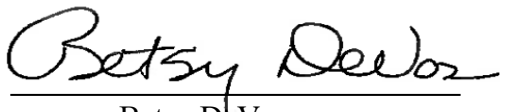
Based on this analysis, I affirm Judge Layton's holding related to Finding 2.

[37] 360 Brief (Apr. 24, 2019) at 3–5.
[38] 360 Second Supplemental Brief (Aug. 26, 2019) at unp. 1–2.
[39] FSA Response to 360 Second Supplemental Brief at 2.
[40] *Ching v. Mayorkas*, 725 F.3d 1149, 1157 (9th Cir. 2013); *State of South Carolina*, Dkt. No. 13-43-O, U.S. Dep't of Educ. (Decision of the Secretary) (Feb. 26, 2016) at 5–6 ("Due process is flexible and calls for such procedural protections as a particular situation demands. Due process in an administrative hearing is not the same as in a judicial proceeding, because administrative and judicial proceedings are inherently different.").
[41] *Mathews v. Elridge*, 424 U.S. 319, 333 (1975).
[42] 2018 FPRD at 7–8.
[43] 34 C.F.R. § 668.24(b).
[44] 2018 FPRD, App'x. C.

ORDER

ACCORDINGLY, the Decision of Administrative Judge Layton is hereby AFFIRMED. 360's financial liability is $32,525.62.

So ordered this 13th day of November 2020.



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