



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS
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In the Matter of

Court Reporting Institute of St. Louis,

Docket No. 18-11-SA

Federal Student Aid Proceeding
OPE ID: 02119200
ACN: 07-2017-71733 (Close Out)

Respondent.

Appearances: Aaron D. Lacey, Thompson Colburn, LLP, for the Respondent
Karen S. Karas, Office of General Counsel for Federal Student Aid¹

Before: Angela J. Miranda, Administrative Law Judge

DECISION

I. Jurisdiction and Procedural History

A request for review, in the above captioned proceeding, dated February 1, 2018, was timely filed with the Administrative Actions and Appeals Service Group, U.S. Department of Education (Department) on October 30, 2017. The Request challenges a portion of a Final Audit Determination (FAD) dated December 18, 2017, issued by the Department, Federal Student Aid (FSA). More specifically, the Respondent, Court Reporting Institute of St. Louis (CRISTL) appeals the portion of the FAD identified as “Added Loan Discharge Due to Closure” wherein student loans that were discharged resulted in a liability of \$350,950.00 assessed to CRISTL.

On March 8, 2018, I issued an Order Governing Proceeding (OGP). The OGP established specific procedures for this proceeding, which included, among other things, a briefing schedule for this hearing. Following a motion for an extension of time, which was granted, the Respondent timely filed its initial brief, FSA timely filed its responding brief, and the Respondent timely filed its reply brief. This record is closed and ready for decision.

II. Federal Student Aid’s Final Audit Determination (OES Document 7)

FSA issued this FAD following CRISTL’s final audit report for the period January 1, 2016 through

¹ The Department’s brief in this matter was prepared and filed by an attorney who has since left the Office of General Counsel. Upon her departure from the Department, a substitution of counsel was filed.

March 26, 2017, when CRISTL closed. While the FAD addressed six findings, the only finding appealed in this matter is the finding titled “Added Loan Discharge Due to Closure.”

The FAD indicates that following CRISTL’s closing, students filed applications and received approval for loan discharges totaling \$350,950.00. The FAD indicates the loans discharged were made under the William D. Ford Federal Direct (Direct) Loan Program. Appendix A, included with the FAD, identifies 106 loans to 22 students were discharged. Despite the FAD indicting all discharged loans were Direct Loans, Appendix A shows that 19 of the discharged loans were made under the Federal Family Education Loan (FFEL) Program.

The finding indicates the students were unable to complete their program of study due to CRISTL’s closure. The final audit determination explained that students who were enrolled at an institution at the time of its closure, or who withdrew from the school within 120 days preceding the institution’s closure, may apply for a closed school discharge of their federal student loans if those students were unable to complete their program because of the closure. The FAD relied only on Department regulation at 34 C.F.R. §§ 685.214(c) and (e), addressing the discharge of closed school loans under the Direct Loan Program, in support of its finding. The FAD concluded that CRISTL is liable for the discharge amount of \$350,950.00.

III. Issue

Whether the liability of \$350,950.00 assessed against CRISTL in the Final Audit Determination, dated December 18, 2017, is supported, in whole or in part, following the granting of applications to discharge student loans received by the FSA.

IV. Legal Framework

A. Applicable Statutes

The primary federal statute that controls discharge of student loans when a school closes is found at 20 U.S.C. § 1087(c). The HEA was amended by Public Law 102-325, Title IV, 428, 106 Stat. 448 (July 23, 1992), under which a borrower is eligible for discharge of a loan made under the FFEL Program if the borrower received the loan on or after January 1, 1986, and the student was unable to complete the program in which the student was enrolled due to the closure of the institution (20 U.S.C. § 1087(c)(1)). Upon an application by a borrower when a school closes, the Secretary discharges the borrower’s liability on the loan (including interest and collection fees) by repaying the amount owed on the loan (*Id.*). The Secretary pursues any claim available to the borrower against the institution (*Id.*). A borrower whose loan has been discharged must agree to assign to the United States the right to a loan refund up to the amount discharged against the institution (20 U.S.C. § 1087(c)(2)).²

While 20 U.S.C. § 1087(c) addresses discharge of loans under the FFEL Program,³ these

² There have been multiple versions of this statute since its inception. The language in 20 U.S.C. § 1087(c) referenced in this decision is the version that was in effect from July 1, 2014 to March 18, 2019, the period relevant to CRISTL’s closing.

³ Origination of FFEL Program student loans ended after June 30, 2010, under SAFRA, the Student Aid and Fiscal

provisions are also applicable to the discharge of loans made under the Direct Loan Program (20 U.S.C. § 1087e(a)).

B. Applicable Regulations

Department regulations on discharge of student loans when a school closes are found at 34 C.F.R. § 682.402, 34 C.F.R. § 685.214, and 34 C.F.R. § 674.33(g), for loans made under the FFEL, Direct, and Perkins Loan Programs, respectively. These regulations are similar in intent and process.

Discharges of loans made under the Federal Family Education Loan Program

The Department regulation for discharge of closed school loans made under the FFEL Program, applies to loans received on or after January 1, 1986 (34 C.F.R. § 682.402(d)(1)(i)).⁴ Under this regulation, the Secretary reimburses the holder of a loan and discharges the borrower's obligation if the student could not complete the program of study for which the loan was intended because the school at which the student was enrolled closed or that student withdrew within 120 days prior to the school closure (*Id.*).⁵ The regulation allows the Secretary to extend the 120-day period if the Secretary determines that exceptional circumstances related to the school's closing justified an extension (*Id.*). A discharge under this section relieves the borrower of an existing or past obligation to pay the loan along with any charges imposed or costs incurred by the holder and qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on a loan obligation that is discharged (34 C.F.R. §§ 682.402(d)(2)(i) and (ii)).

Prior to March 19, 2019, a borrower qualified for a discharge under the FFEL Program if that borrower submitted a written request and a sworn statement, which was made under penalty of perjury but did not require that the statement be notarized (34 C.F.R. § 682.402(d)). The sworn statement required that the borrower indicate: (1) whether the borrower made a claim with respect to the school's closing with any third party; (2) that on or after January 1, 1986, the borrower (or student) received a disbursement, in whole or in part, of the loan to attend a school on or after that date; (3) that the student did not complete the educational program because the school closed while the student was enrolled, on an approved leave of absence, or withdrew from the school not more than 120 days before the school closed; (4) that the student did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the school to another school; (5) that the borrower agrees to provide documentation that is reasonably available to establish the borrower qualifies for a discharge; (6) that the borrower agrees to cooperate with the Secretary in enforcement actions; and (7) that the borrower agrees to transfer any right to recovery to the Secretary (34 C.F.R. §§ 682.402(d)(3)(i)-(iv)). As of March 19, 2019, a borrower was required to complete a closed school discharge application on a form approved by

Responsibility Act, included in the Health Care and Education Reconciliation Act of 2010 (*See*, 78 Fed. Reg. 45618 (July 29, 2013) and 75 Fed. Reg. 65768 (November 1, 2013)). No new FFEL Program loans were made after June 30, 2010, however, school loan discharges remain available for all FFEL loans made prior to June 30, 2010.

⁴ There have been multiple versions of this regulation since its inception. The language in 34 C.F.R. § 682.402(c) referenced in this decision is the version that was in effect from July 1, 2014 until June 30, 2018, the period relevant to CRISTL's closing on March 26, 2017.

⁵ Earlier versions of this regulation, set the withdrawal period at 90-days prior to the school closing (59 Fed. Reg. 22462, 22477 (April 29, 1994)). The withdrawal period was subsequently extended to 120 days (78 Fed. Reg. 65768, 65815 and 65834 (November 1, 2013)).

the Secretary (34 C.F.R. § 682.402(d)(3) (2019)).⁶

Discharges of loans made under the William D. Ford Federal Direct Loan Program

The regulation at 34 C.F.R. 685.214 addresses closed school loan discharges under the Direct Loan Program.⁷ This regulation was initially modeled on the provisions of 34 C.F.R. § 682.402 (59 Fed. Reg. 42646, 42651 (August 18, 1994)).

The Secretary discharges the borrower's obligation to repay a Direct Loan if the student did not complete the program of study for which the loan was made because the school closed (34 C.F.R. § 685.214(a)(1)). A discharge of a Direct Loan relieves the borrower of any past or present obligation to repay the loan and any accrued charges or collection costs (34 C.F.R. § 685.214(b)(1)). A discharge qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection (34 C.F.R. § 685.214(b)(2)). During the period at issue in this case, the borrower was qualified for a discharge if the borrower submitted a written sworn statement under penalty of perjury: (1) that the borrower received the proceeds of a loan in whole or in part, on or after January 1986 to attend school; (2) that the student did not complete the program because the school closed while the student was enrolled or withdrew from the school not more than 120 days prior to the school's closure; (3) that the student did not complete the program of study through a teach-out at another school or by transferring academic credit earned at the closed school to another school; and (4) whether the borrower made a claim with respect to the school's closing with any third party (34 C.F.R. §§ 685.214(c)(i) and (ii)). The borrower is required to agree, upon request, to provide documentation that is reasonably available to the borrower showing that the qualifications for discharge are met, to cooperate with the Secretary in enforcement actions, and to transfer any right to recovery against a third party to the Secretary (34 C.F.R. § 685.214(c)(iii)).

A student who is granted a discharge is required to cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover amounts discharged or to take any other enforcement action related to the discharge (34 C.F.R. § 685.214(d)). This regulation requires that the Department identify any Direct Loan borrower who appears to have been enrolled at the school on the date of closure or who withdrew not more than 120 days prior to the closure (34 C.F.R. § 685.214(f)).

⁶ The amended regulation, effective March 19, 2019, indicates the change from the requirement of a written statement to completion of a closed school discharge application on a form approved by the Secretary. The amended regulation indicates that by signing the application, the borrower makes certifications, but the regulation fails to complete the sentence and identify what is certified with the signed application. Additional amendments became effective on July 1, 2023. One of those changes corrects the error related to certifications on the approved application form. Another change extends the period of an eligible withdrawal from 120 days to 180 days. Another change expands the enumerated circumstances the Secretary will consider when determining if the 180-day withdrawal period should be extended. Other changes were made with that amendment, but those additional changes are not relevant to this appeal. *See*, 59 Fed. Reg. 22462 (April 29, 1994) and 87 Fed. Reg. 65904 (November 1, 2022).

⁷ There have been multiple versions of this regulation since its inception. The language in 34 C.F.R. § 685.214 referenced in this decision is the version that was in effect from July 1, 2014 until March 18, 2019, the period relevant to CRISTL's closing on March 26, 2017.

C. Rulemaking Following 1992 Amendments to the Higher Education Act (Pub. L.102-325, 106 Stat. 448 (July 23, 1992))

On December 20, 1993, the Department commenced rulemaking to address cancellation of loans for student borrowers who were unable to complete their programs due to the closure of a school. The Secretary first addressed discharge of loans under the FFEL Program. In its Notice of Proposed Rulemaking on January 14, 1994, the Secretary specifically requested public comment as to the appropriate treatment of a borrower's loan obligations if the educational program for which the loan was obtained was a multi-year program and the student was able to complete one or more years of that program (59 Fed. Reg. 2486, 2488 (January 14, 1994)).

In that same notice, the Secretary stated his agreement with the sentiment expressed at the regional meetings that conditions at the school immediately preceding its closing may cause a deterioration in the educational program that would cause a student to withdraw (*Id.*). Recognizing the potential for deterioration at a school prior to its closure, the Secretary proposed a regulation that included eligibility for a discharge if the student withdrew from the school not more than 90 days prior to the school closure (*Id.*).

On April 29, 1994, the Secretary published the Department's final regulations along with responses to comments. In response to one comment, the Secretary acknowledged a need to modify the proposed language making a student who withdrew not more than 90 days prior to the school closure by including a provision that allows the Secretary to extend the 90-day period when appropriate, without identifying any circumstances when an extension would be appropriate (59 Fed. Reg. 22462, 22465 (April 29, 1994)). In response to another comment, the Secretary expressed his belief that a borrower is entitled to a loan discharge under the HEA **in any case** (emphasis added) in which the student's program of education is disrupted by the closing of the school to the extent that the student does not, **for any reason** (emphasis added), complete the program and the presumption is that the school's closing directly hindered the student's achievement of the student's educational goals (*Id.* at 22466). In response to a comment related to teach-out plans, the Secretary noted that a student may decline to complete the program through a teach-out plan **for any reason** (emphasis added) (*Id.* at 22467).

With the passage of the Student Loan Reform Act of 1993,⁸ the Direct Loan Program was established under the HEA of 1965, as amended. On August 18, 1994, the Secretary issued a Notice of Proposed Rulemaking to streamline the loan application and disbursement process, provide ease in school administration of the loans, ensure program integrity and to protect the Federal Fiscal interest (59 Fed. Reg. 42646 (August 18, 1994)). The proposed regulation discharged the borrower's obligation to repay a Direct Loan if the student did not complete the program of study for which the loan was made because the school at which the student was enrolled closed (*Id.* at 42668).⁹ The proposed regulations became final with publication in the Federal Register (59 Fed. Reg. 61664 (December 1, 1994)).

⁸ H.R. 2264 was included in the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66, 107 Stat. 312 (August 10, 1993)).

⁹ Initially this regulation was at 34 C.F.R. § 685.213. It was redesignated to § 685.214 (65 Fed. Reg. 65624, 65629 (November 1, 2000)).

V. Findings of Fact

1. CRISTL was a proprietary institution of higher education offering educational programs at the associate degree and undergraduate non-degree (600-899 hours) levels. One associate degree program offered by CRISTL was an associate of occupational science, court reporting (AOS-CR) available in day and evening sessions (OES Document 26, p. 8).¹⁰
2. CRISTL described the evaluation system to monitor whether a student maintained satisfactory academic progress toward the completion of program requirements. The system of evaluation requires progress to ensure completion of the program requirements within the designated maximum time frame (OES Document 44, pp. 4-5).
3. CRISTL offered Maximum Time Frame Status (MTF Status or MTF Active Status, indicating active enrollment as a MTF Status student) to students who reached the 200 speed-building class but surpassed the maximum time frame for completion of the AOS-CR program. Although ineligible to graduate from the AOS-CR program, the students were able to attend speed-building classes to improve their proficiency (OES Document 44, pp. 5-6).
4. Initially, CRISTL was approved to participate in Title IV programs in September 2012, as a branch (CRID-CRYSTL) of Court Reporting Institute of Dallas (CRID)¹¹ (OES Document 26, p. 7).
5. CRID operated other branches prior to opening CRID-CRISTL. Court Reporting Institute of Houston (CRIH) was a branch campus of CRID that was approved to participate in Title IV programs on August 28, 2002, under OPE ID 02119202. Court Reporting Institute of Arlington (CRIA), in Virginia, was another branch campus of CRID, approved to participate in Title IV programs on March 22, 2012, under OPE ID 0211203 (*Id.*).
6. On September 15, 2014, CRISTL filed an application for redesignation and name change, wherein CRISTL indicated that CRID-CRISTL, as a branch campus of CRID, was operating under the OPE ID 02119204 and the OPE ID 02119200 was managed by the Dallas Case Team for the Court Reporting Institute of Dallas (CRID). The application requested that CRISTL be redesignated as the main campus for OPE ID 02119200 and CRID will operate as a branch campus of CRISTL until CRID's anticipated upcoming closure (OES Document 27, p. 13).
7. On March 8, 2017, CRISTL issued a letter advising the students of an anticipated closure. Students were advised that, effective immediately, CRISTL would stop approving requests for leaves of absence and students who were not able to graduate prior to CRISTL's closure would have the opportunity to complete their program by transferring to Vatterott College – Sunset Hills (VC). VC was able to provide the remaining portions of the student's program through an established teach-out agreement. The students were advised that

¹⁰ The page numbers referenced to OES Documents are the page designations in the PDF document as filed in OES.

¹¹ CRID was initially approved to participate in Title IV programs on June 13, 1983, under OPE ID 02119205. CRID-CRISTL, as a branch campus of CRID, operated under OPE ID 02119204.

transfer to VC or any other institution to participate in a teach-out was not required. Students who accepted federal financial aid were advised they may be eligible for a closed school loan discharge and were provided a link to the Department's website for information on closed school loan discharges (OES Document 8).

8. On that same date, CRISTL notified the Department of its anticipated closure and acknowledged its responsibilities as a closing institution under its program participation agreement and applicable Department regulations. Included with the notice was a copy of the signed teach-out agreement with VC, a list of teach-out students as of January 26, 2017, correspondence from the Missouri Department of Higher Education dated February 7, 2017, correspondence from the Accrediting Commission of Career Schools and Colleges dated March 3, 2017, and a copy of the letter to CRISTL's students dated March 8, 2017 (OES Document 9).
9. CRISTL closed on March 26, 2017 (OES Document 7, p. 12).
10. On December 18, 2017, Federal Student Aid issued a Final Audit Determination (FAD), (Close-Out Audit) to CRISTL, notifying CRISTL that the Department had granted closed school loan discharges totaling \$350,950.00 to students who applied for discharge of their Federal Direct Loans. (OES Document 7, pp. 2-13 and 18-22).

VI. Arguments and Analysis

A. General Arguments and Analysis

CRISTL's Initial Brief (OES Document 19)

Generally, CRISTL argued that FSA erroneously granted the applications for closed school loan discharges. CRISTL asserted the finding related to closed school loan discharges was added after CRISTL's filed its close-out audit for the period January 2016 through March 26, 2017, and after CRISTL submitted its corrective action plan in response to four findings made by the Department designated auditor. CRISTL asserted it was never advised that any students applied for closed school loan discharges and CRISTL did not receive a copy of the applications that were granted by FSA until April 12, 2018, after the FAD was issued. CRISTL challenged the accuracy of the FAD because FSA stated the applications were filed subsequent to CRISTL's closure when the applications for Students 7, 8, 14, and 17 were filed in 2015 or 2016, long before CRISTL closed in 2017.

CRISTL presents three primary arguments as to why the Department erred in granting the closed school loan discharges to these 22 students. The first argument addresses the discharge of loans to Students 1, 2, 3, 4, 5, 6, 9, 10, 11, 16, 18, 20, 21, and 22 (Group 1 or Group 1 Students). The second argument addresses the discharge of loans to f Students 7, 8, 14, and 17 (Group 2 or Group 2 Students). The third argument addresses the discharge of loans to Students 12, 13, 15, and 19 (Group 3 or Group 3 Students). CRISTL relied on Section 1087(c) of Title 20 of the Unites States Code and the Department's regulation at 34 C.F.R. § 685.214 in support of its arguments.

FSA's Responsive Brief (OES Documents 25 and 33(correction))

FSA relies on 20 U.S.C. § 1087(c) and the Department's regulations at 34 C.F.R. §§ 682.402(d) and 685.214. Citing specific provisions of those regulations, FSA argued that the "closed school discharge provisions consider a campus closure to constitute a 'closed school' for the purposes of the availability of the discharge to the students who attended the closed campus, *regardless of whether or not other campuses of the enterprise that owned or operated the closed campus remain open and operating.*"¹² In support of this argument, FSA points to the Secretary's final regulations published on April 29, 1994 (59 Fed. Reg. 22462), which relate to the FFEL Program. Specifically, FSA relied on the Secretary's response to comments to the proposed regulation at Section 682.402(d)(3)(ii)(C). The comment suggested a borrower who transferred academic credits or hours earned at the closed school should not qualify for a discharge if the borrower enrolled in a different program of study at the new school or enrolled in a similar program but quickly withdrew. The Secretary rejected that comment and instead indicated a borrower is entitled to a loan discharge in any case in which a student's program of education is disrupted by the closing of the school to the extent that the student does not, for any reason, complete the program (59 Fed. Reg. 22462, 22466).¹³

Overall, FSA argues that the 22 students whose loans were discharged submitted sworn statements wherein they attested to being unable to complete their programs due to the closures of the campuses. Having found that these students met all other pre-requisites to discharge, FSA asserted it properly granted the student loan discharges and the liability to CRISTL is properly imposed.

Analysis Related to General Arguments

The narrative of the finding at issue in this FAD indicates that the loans discharged were made under the Direct Loan Program. However, Appendix A to the FAD identifies 19 loans made under the FFEL Program. Loans designated by code SF (Stafford Subsidized) and SU (Stafford Unsubsidized) are loans made under the FFEL Program.¹⁴ Neither CRISTL nor counsel for FSA directly addressed this inconsistency in their briefs.

Appendix A to the FAD establishes that three students applied for, and FSA granted, discharges for loans under the FFEL Program. Student 12 received discharges of eight (8) loans, two (2) of which were Direct Loans (Stafford Subsidized and Stafford Unsubsidized), three (3) of which were FFEL Stafford Subsidized and three (3) of which were FFEL Stafford Unsubsidized, for a total discharge of \$22,931.00. Student 13 received discharges of ten (10) loans, six (6) of which were FFEL Stafford Subsidized and four (4) of which were FFEL Stafford Unsubsidized, for a total discharge of \$28,887.00. Student 15 received discharges of five (5) loans, two (2) of which were Direct Loans (Subsidized and Unsubsidized), one (1) of which was FFEL Stafford Subsidized and two (2) of which were FFEL Stafford Unsubsidized, for a total discharge of \$14,329.00.

Counsel for FSA offered no explanation for this error in identification of types of loans identified

¹² FSA cites 34 C.F.R. §§ 682.402(d)(3)(ii)(C) and 685.214(c)(1)(i)(C).

¹³ The cite in FSA's brief to page 22467 of the published final regulations, appears to indicate the incorrect page of the Federal Register.

¹⁴ See, [Appendix B: Guaranty Agency Coding Tables \(ed.gov\)](#), last visited June 8, 2023.

in the FAD. Nonetheless, in its brief, counsel for FSA cites to the regulations for discharge of FFEL and Direct loans. The cause of the error in the FAD remains unexplained.

While the regulations for discharge of loans made under the FFEL and Direct Loan Programs are not mirror images, the intent of the regulations are the same and the analysis for discharge is similar. Under both set of regulations, a closed school loan discharge is only available after a school closes, disrupting a student's completion of the educational program for which the student was enrolled, and having received a loan for that educational program. Both set of regulations allow a discharge if the student withdrew not more than 120 days prior to the school's closing. Both set of regulations indicate a student who participates in a closed school teach-out plan or transfers credits earned from the closed school to another institution of higher education to complete the educational program is not eligible for a discharge of those school loans. Therefore, the failure of FSA, its counsel, and CRISTL to correctly identify the statutes and regulations applicable in this matter is not critical to the notice received by CRISTL or the sufficiency of the arguments made by each party.

Appendix A to the FAD includes a listing of loans discharged that appears to have been prepared in an excel spreadsheet (OES Document 7, p.18-22).¹⁵ The loans identified as discharged are not sorted by student and instead seem to be in a random listing of no particular significance. For ease of reference in relation to this decision, Table A, based upon Appendix A, is attached to this decision.¹⁶ Appendix A identifies the loan type (LOAN TYPE), amount of loan (AMT), total loan distributed to the student (TOT DIS), total loan cancelled (TOT CAN), current loan status (CURR LOAN STAT), and current loan status date (CURR LOAN STAT DT). Review of Appendix A establishes that three itemized loans should reflect that a portion of those loans were not distributed and, therefore, cancelled but Appendix A, as prepared by FSA, only identifies two loans with a portion of the loan cancelled. Appendix A shows a portion of a Direct Stafford Unsubsidized loan to Student 12 in the amount of \$755.00 was cancelled (OES Document 7, p. 19) and a portion of a Direct Stafford Unsubsidized loan to Student 15 in the amount of \$667.00 was cancelled (OES Document 7, p. 21). Appendix A does not, but should, show that a portion of a FFEL Stafford Subsidized loan to Student 15 in the amount of \$1,701.00 was cancelled (*Id.*).¹⁷ The information of loans cancelled is essential to correctly establish the amount of loan distributed to the student and to correctly identify the amount discharged by FSA.

Appendix A does not include a sum of the total loan amounts, a sum of the total for loans distributed, or a sum of total loans cancelled. The FAD does not explain how FSA determined the amount of discharged loans totals \$350,950.00 and FSA's brief only repeats that amount without further explanation. Appendix A provides sufficient information necessary to determine the amount of loans taken out by each student, the amount of loans that were distributed to the students, and the amount of any portion of loans that were cancelled. As shown in Table A, the amount of loans distributed to the students minus the amount of loans cancelled equals the amount discharged by the Department, which was \$350,950.00.

¹⁵ Consistent with the regulations, CRISTL filed a copy of the FAD and Appendix A, with its request for review. The filing is identified as Exhibit R-1.

¹⁶ Table A is sorted by student number (1-22) assigned by FSA and identified the total loan amount discharged to each student. Table A provides a key for the Loan Type Code as well as to a color key for the students as grouped related to the arguments presented and referenced in this decision.

¹⁷ The loan amount was \$5101.00 but only \$3400.00 was distributed.

B. Arguments Related to Students in Group 1 (Students 1, 2, 3, 4, 5, 6, 9, 10, 11, 16, 18, 20, 21, and 22)

CRISTL's Initial Brief (OES Document 19)

CRISTL argued that the granting of closed school loan discharge applications to the students in Group 1 was contrary to the 20 USC § 1087(c) because its closure was not the reason these students were unable to complete their programs, which were online. In announcing its closure, CRISTL offered a teach-out plan consistent with the regulatory requirements, which it asserted incorporated the same online platform, curriculum, instructors, program design and content, and tuition. CRISTL argued that the terms of the teach-out plan allowed these students to complete their program in a manner that was nearly identical to, or more favorable than the programs in which the students were enrolled at CRISTL. Therefore, CRISTL argued these students could have continued the same educational program despite CRISTL's closure.

Relying on *Sandler v. United States Department of Education*, WL 884552 (E.D. Pa., July 19, 2001), CRISTL argued a student is not eligible for a loan discharge if the student could have completed his or her program even though the school closed. *Sandler* held that the plain language of the statute requires that when a student is unable to complete his or her program due to the closure of the school, the Secretary shall discharge the borrower's liability on the loan. Based on *Sandler*, CRISTL argued the converse must be true. Accepting the converse as true, CRISTL argued the language "due to the closure of the school" in the statute includes a causation requirement. CRISTL goes on to argue that considering the causation requirement, a student with the opportunity to complete his or her education with a teach-out plan is barred from loan discharge. CRISTL argued that the Department's regulation is a misinterpretation of Section 1087(c) as Congress intended.

CRISTL asserted an additional argument why Students 2, 3, 9, 11, and 22, (Group 1 Subgroup) were not eligible for discharge. CRISTL argued these students were ineligible for a loan discharge because they withdrew prior to CRISTL's announced closure and, therefore, the closure could not be the reason for their withdrawal. CRISTL acknowledged these student's withdrawals were within the 120-day period provided by 34 C.F.R. § 685.214(c)(1)(i)(B), but argued the regulation is invalid as it is inconsistent with the authorizing statute. CRISTL argued in the alternative the 120-day period should be changed to apply to only students who have withdrawn after the announced school closure.

FSA's Responsive Brief (OES Documents 25 and 33(correction))

FSA argued the Department does not, and never has, interpreted the statute as requiring that a student establish the closing of the institution was the sole reason the student was unable to complete the program in which the student was enrolled. Furthermore, the Department has never disqualified a borrower from discharge of student loans if a student declined the teach-out plan. FSA relied upon the Secretary's notice of proposed rulemaking to amend the regulations governing the FFEL Program, encompassing Federal Stafford, Federal Supplemental Loans, Federal PLUS, and the Federal Consolidation Loan Programs, dated January 14, 1994 (59 Red. Reg. 2486). In the

notice, the Secretary announced his policy interpretation that a student who withdraws in a period preceding the school's closure should be deemed to have been unable to complete his or her educational program because of the school's closing, but in balancing the interests of the borrower and the federal taxpayer, the Secretary proposed to limit the withdrawal period to not more than 90 days prior to the date the school closed (*Id.*).¹⁸

FSA challenged CRISTL's reliance on *Sandler*, in part, because the order directed by the district court was subsequently vacated. FSA also challenged CRISTL's interpretation of *Sandler*, arguing the Court's findings undermine CRISTL's interpretation of *Sandler* that a student loan should not be discharged if a school provided a means to complete the program through a teach-out plan. Furthermore, FSA argued nothing in the statute requires that an enrolled student be forced to accept the offered teach-out plan, as evidenced in the Secretary's notices of proposed rulemaking and final regulations. Therefore, FSA argued, in relation to the Group 1 students, including the subset of Group 1 (Students 2, 3, 9, 11, and 22), the loans discharged to these students were properly discharged and the liability to CRISTL was properly assessed.

CRISTL's Reply Brief (OES Document 34)

In its reply brief, CRISTL relied less on *Sandler* and instead emphasized that the online CRISTL programs were "transferred" to VC, where the students could have completed their educational programs, despite CRISTL's closure. CRISTL again argued that in granting these closed school loan discharges, FSA acted beyond or contrary to the authority of the statute.

With respect to the Group 1 Subgroup (Students 2, 3, 9, 11, and 22) CRISTL provided additional information about these students and the progress, or lack thereof in their studies at CRISTL. CRISTL provided evidence that Student 2 withdrew in early January 2017 due to medical reasons, which will not allow the student to perform the job of a court reporter, causing the student to change direction. CRISTL provided evidence that Student 22 withdrew because the student decided to "go in a different direction" and asserted there is no evidence this student left the program because she anticipated CRISTL's closure or that this student had any concerns about the quality of the education received prior to withdrawal. CRISTL revised its argument in relation to the remaining students in this subgroup (Students 3, 9, and 11) by providing evidence these students were involuntarily dismissed by CRISTL in December 2016 for failure to maintain satisfactory academic process. CRISTL reported these students "chose not to appeal their dismissals" and, therefore, were ineligible for discharges of their loans. For each of these students, CRISTL argued it showed these students did not complete their educational program due to CRISTL's closure but failed to complete their program for other reasons, and therefore, the Department erred in discharging these loans.

CRISTL uses these examples in furtherance of its argument the application of the regulation when a student withdraws within 120 days from the date a school closes is arbitrary and unlawful. CRISTL directly challenged the Department's contention in FSA's responsive brief (OES Document 25, p. 21) that in allowing such a timeframe, it "selected a measure consistent with ordinary experience rather than taking on inquiries into the thought process and observations of individual students," which FSA contended was an "indeterminate task not susceptible to

¹⁸ This limit was later expanded to 120 days in 2013 (78 Fed. Reg. 45618, 45628 (July 29, 2013)).

development of workable standards and consistent decision-making.” CRISTL asserted that the Department already makes that inquiry but requires the student to file a standard application form that leads the students to declare the school closing was the reason the student failed to complete the educational program. CRISTL argued the approved form for filing an application for a closed school discharge never requires the students to produce a statement in their own words under penalty of perjury, explaining why they did not complete the educational program, and thus causing harm to CRISTL.

CRISTL also argued it was further harmed by the Department’s failure to notify CRISTL before granting the loan discharges or before issuing its final audit determination. CRISTL asserted if it had been given proper notice the Department was going to discharge these loans, it could have provided important information that these students withdrew from their educational programs for personal reasons and not because CRISTL was closing or was experiencing “deteriorating performance.” In sum, CRISTL argued it was harmed by the Department’s action in granting these discharges without notice to CRISTL.

Analysis Related to Discharge Applications of Students in Group 1 (Students 1, 2, 3, 4, 5, 6, 9, 10, 11, 16, 18, 20, 21, and 22)

It is undisputed that the students in Group 1, including the students in the subgroup, were enrolled in CRISTL’s court reporting program at the time it closed or withdrew from program within 120 days prior to CRISTL’s closure on March 26, 2017 (OES Documents 19¹⁹ and 32). It is undisputed that CRISTL offered a teach-out plan at the time of its closure (OES Documents 8 and 9). It is undisputed that none of these students continued their education by participation in the offered teach-out plan at VC or the alternate program that was offered at Arlington Career Institute (OES Document 19). No evidence has been submitted that any of these students transferred credits completed at CRISTL to another school to continue their educational programs. It is undisputed that each of these students applied for and received a discharge of their loans (OES Document 32).

In support of its amended argument for the subgroup of students in Group 1, CRISTL provided copies of an email, dated January 9, 2017, and Official Withdrawal Notification Form of the same date, that Student 2 withdrew for medical reasons (OES Documents 60 and 61).²⁰ CRISTL provided evidence that Student 22 completed an Official Withdrawal Notification on December 5, 2016, indicating withdrawal effective December 19, 2016, advising CRISTL that Student 22 decided to go in a different direction (OES Document 62).²¹ CRISTL argued its closure had no effect on the decision of Students 2 and 22 to terminate studies in the educational program in which they were enrolled and neither of these student’s withdrew because they identified the educational program in which they were enrolled was deteriorating. In support of this statement, CRISTL cites to Student 2’s acknowledgment that CRISTL was a “wonderful school” at the time of the student’s withdrawal and Student 22’s decision to go in another direction (OES Document 62, p. 2). This argument presented a rebuttal to the Secretary’s presumption that the school closure caused

¹⁹ CRISTL acknowledges these fourteen (14) students were enrolled at CRISTL’s closure or withdrew within the 120 days prior to its closure, Respondent’s Brief, OES Document 10, p. 11.

²⁰ The withdrawal date for Student 2 listed on the NSLDS is January 2, 2017 (OES Document 14 p. 6, Exhibit R-8).

²¹ The withdrawal date for Student 22 is listed on the NSLDS as December 15, 2016 (OES Document 15 p. 5, Exhibit R-9).

Students 2 and 22 to withdraw. Having rebutted the Secretary's presumption, CRISTL argued the discharge of Students 2 and 22's loan violated 20 U.S.C. § 1087(c)(1).

CRISTL's amended argument for Students 3, 9, and 11 is that these students were involuntarily dismissed for failure to maintain satisfactory academic performance and did not appeal their dismissals prior to CRISTL's closure (OES Document 34 p. 12).²² The National Student Loan Data System (NSLDS) shows a withdrawal date for Student 3 as December 16, 2016, for Student 9 as December 17, 2016, and for Student 11 as December 14, 2016 (OES Document 15 pp. 2-4, Exhibit R-9). The only evidence that CRISTL provided regarding the involuntary academic dismissal of Students 3, 9, and 11 is a Declaration of Marcy Ceranek, identified as Vice President of Academics and Accreditation for Vatterott Educational Centers, Inc.,²³ dated July 6, 2018 (hereinafter, Ceranek Declaration, dated July 6, 2018) (OES Document 63 p. 4). CRISTL failed to provide transcripts for these students that would confirm the failure to maintain satisfactory academic performance and CRISTL failed to provide evidence that these students received notice of their involuntary dismissal by CRISTL or their appeal rights. In their applications for discharge, Student 3 and 9 reported they were not enrolled in the school when CRISTL closed, but they withdrew within 120 days prior to CRISTL's closure. Student 11 reported attendance at CRISTL on December 20, 2016, but also asserted continued enrollment until CRISTL closed and did not withdraw prior to CRISTL's closure. While the information in Student 11's discharge application is contradictory, CRISTL reported that Student 11 withdrew on December 14, 2016, which establishes Student 11 withdrew within 120 days of CRISTL's closing. (OES Document 15 pp. 2-4). CRISTL argued because Students 3, 9, and 11 were involuntarily academically dismissed and had not filed an appeal, their withdrawal from their programs were not related to CRISTL's closure and, therefore, their applications for loan discharges should not have been approved.

CRISTL's amended argument also challenged FSA's use of a standard application. CRISTL argued use of the standard application led the applicant to select only yes/no responses that support granting the application and FSA's failure to make any inquiry of an applicant for a closed school discharge as to the reason the student did not complete the school program disadvantages the closed school. CRISTL contends it was further disadvantaged when FSA failed to give CRISTL any opportunity before granting the discharge to provide documentation that supported withdrawal or involuntary dismissal for reasons other than the school's closing.

CRISTL's argument that these students were ineligible for a discharge of their loans because CRISTL offered a teach-out program is not persuasive. CRISTL's initial argument that Students

²² CRISTL provided a copy of its Campus Catalog for the academic year prior to its closure as an exhibit to its reply brief (OES Document 44). The catalog includes standards for satisfactory academic progress (SAP) to remain enrolled and eligible for Federal Student Aid and Veterans Education Benefits. The catalog defines academic warning and academic probation. Academic warning is a status conferred automatically at the end of the first term after which a student has not met SAP and will be limited to one term. At the end of that term, if the student has not returned to SAP, the student may submit a SAP appeal. Academic probation is a status designated for a student who has appealed and been granted an approved SAP appeal. Academic probation may continue for one or more terms and the student on probation is not eligible for Federal Student Aid or Veterans Education Benefits unless the student meets SAP at the conclusion of the probationary period or if the institution determines that the student met the requirements of an institution developed academic plan. The catalog explains written notice will be provided and a student will be dismissed when it is mathematically impossible for the student to meet the minimum SAP requirements.

²³ Vatterott Educational Centers, Inc. was a level two owner of CRISTL, as indicated in the Eligibility and Certification Approval Report (ECAR) for CRISTL as of March 4, 2015 (OES Document 26, p. 9).

2, 3, 9, 11, and 22 (the subgroup in Group 1) were ineligible for a discharge of their loans because their withdrawals occurred before CRISTL announced its closing is similarly unpersuasive. CRISTL's amended arguments for the subgroup of students in Group 1 is not persuasive. CRISTL's challenge to the Secretary's use of a standard application form for discharges of school loans and notice/due process claims are not persuasive.

The general authority of administrative law judges is limited to determining the applicability of statutes and regulations and applying the facts of the case to the applicable statutes and regulations. Consistent with the general principles of administrative law, an administrative agency is required to follow the dictates of the statute. An agency's regulations which implement, and may supplement, a statute, are expected to be consistent with and no more restrictive than the statute. Although an administrative law judge's authority does not generally include the authority to waive, disregard, or invalidate an agency regulation, once a rule or regulation has been successfully challenged in the appropriate forum (court), an administrative tribunal is bound to follow that forum's decision.²⁴ With this recognition, I consider CRISTL's reliance on *Sandler* and its argument that the applicable regulations exceed the authority of the applicable statutes.

The facts of *Sandler* are distinguishable from the facts in this matter. The plaintiff in *Sandler* was a student whose request for a closed school loan discharge was denied by the Department because the student had withdrawn outside the period designated in the Department's regulation. Once the district court found the plaintiff withdrew because of the school's closure, did not transfer credits, nor enroll in the offered teach-out plan, the court found the plaintiff was entitled to a discharge even though the student withdrew outside the period specified in the Department's regulation. The district court conducted a *Chevron*²⁵ analysis and found the language of 20 U.S.C. § 1087(c) that authorizes the discharge of a student loan when the student is unable to complete the program in which the student was enrolled following the closure of a school was clear on its face and sided with the plaintiff whose application for discharge was denied by the Department.²⁶ Furthermore, because the court found no need to complete the second step in the *Chevron* analysis, the court did not consider any of the Secretary's rationale for the implementation of the regulations at 34 C.F.R. §§ 682.402(d) and 385.214. Subsequently, on the motion of the parties, the Department discharged the plaintiff's loans, and the prior decision and order was vacated. For these reasons, I find CRISTL's reading of and reliance on *Sandler* does not support CRISTL's converse argument in this matter. CRISTL's reading of and reliance on *Sandler* does not establish FSA's discharge of the loans for the students in Group 1 was contrary to the authorizing statute.

CRISTL provided no authoritative court decision to address its rebuttal argument related to Students 2 and 22. CRISTL's cite to *Sandler*, if considered a decision and order that addresses the discretion of the Department to determine what school loans are dischargeable, seems to give the Secretary wide discretion to discharge any loan to a borrower when the school closed, the student is unable to complete the educational program, and the student did not pursue the completion of a

²⁴ See, e.g. *Jones and Laughlin Steel Corp. v. Marshall*, 636 F.2d 32, 33 (3rd Cir. 1980) (directing that when a [Court of Appeals announces a standard in a case that is controlling in a subsequent controversy] that standard is binding on all tribunals and litigants within the jurisdiction of that Court and an agency is not free to apply its own view of the statute in contravention of the precedent of [the] Court).

²⁵ *Chevron v. Natural Resources Defense Council*, 104 S. Ct. 2778 (June 25, 1984), wherein the Supreme Court established the standard test used when a court reviews an agency's construction of the statute it administers.

²⁶ The Plaintiff's Cross-Motion for Summary Judgement was granted (2001 WL 884552 at 2).

program through participation in a teach-out plan or transfer to another school.

The Secretary's rulemaking related to closed school loan provides his rationale for the implantation of the Department's closed school loan discharge regulations. CRISTL argues the applicable regulation is arbitrary, capricious, and violates the intent of Congress but fails to acknowledge the history of the rulemaking on closed school loan discharges. Prior to publishing notices of proposed rulemaking related to the FFEL Program, Direct Loan Program, and Perkins Loan Program, the Secretary convened regional meetings to consider topics of discussion, to prepare reports for the Department to consider during the preparation of the proposed regulations, and to engage in negotiated rulemaking.²⁷ In each of the published notices of proposed rulemaking, the Secretary shared views that lead to the proposed regulations, solicited comments prior to publishing final rules, and identified criteria for eligibility of discharge. One eligibility criterion was whether the student was able to continue the educational program by accepting a teach-out plan offered by the closing school or transferring credits to another school for completion of the educational program. Another eligibility criterion was whether the student was enrolled on the date the school closed or had withdrawn from the school within 90 days, later changed to 120 days, prior to the school's closing. In response to comments, the Secretary explained that his proposed regulations were consistent with closed school loan discharge provisions of the HEA "in any case in which the student's program of education was disrupted by the closing of the school," but only to the extent that the student did not "for any reason complete the program."²⁸ Also in response to a comments, the Secretary explained a student may decline to complete the program through a teach-out plan at another school "for any reason."²⁹ In response to comments about the 90-day period for withdrawals, the Secretary acknowledged that some commentors believed that time limit for withdrawals prior to the school's closing was too short, resulting in a revised final rule that allowed the Secretary to extend that 90-day period if an extension is appropriate.³⁰

Based on the comments received, there was no challenge to or suggestion that the Secretary should consider rebuttal evidence before granting a closed school loan discharge pursuant to the Secretary's declared presumption. The adoption of regulations following the 1992 Amendments to the HEA pre-date the wide use of online courses and do not specifically address eligibility of discharge of a closed school loan when the student was enrolled in an online program at a school that closes but is able to continue that same, or nearly identical, online program with an affiliated school. Unless or until the Secretary's interpretation is found arbitrary and capricious by a court of competent jurisdiction, or the Secretary deems it is appropriate to consider rebuttal evidence prior to granting a discharge on a closed school loan application or the applicability of his regulations for online programs, the Secretary's current interpretation shall be followed.

The withdrawals of Students 2 and 22 occurred within 120 days of CRISTL's closure, and I find that the loans to Students 2 and 22 were properly discharged by FSA because that outcome is consistent with the Secretary's published rules and interpretation of the statute.³¹ I find FSA's discharge of the loans to Students 3, 9, and 11 was correct under the statute and the applicable

²⁷ See, 59 Fed. Reg. 2486 (January 14, 1994) and 59 Fed. Reg. 42646 (August 18 1994).

²⁸ 59 Fed. Reg. 22462, 22466 (April 29, 1994).

²⁹ *Id.* at 22467.

³⁰ *Id.* at 22465.

³¹ See, 59 Fed. Reg. 2486, 2488 (January 14, 1994).

regulations because these students withdrew from CRISTL within 120 days of its closure and, other than asserting these students were academically dismissed without having appealed, CRISTL has not provided any evidence to support that assertion.

I find CRISTL's challenge to the use of a standard application and its due process/notice arguments do not support modification to FSA's determination that the Students in Group 1 were eligible for closed school loan discharges. In terms of due process, while the use of a standard application with yes/no questions may guide the applicant, it should not necessarily result in a discharge to a student that is ineligible for discharge, provided FSA has confirmed inability to complete the educational program or withdrawal consistent with the regulatory requirements. An open-ended statement by an applicant as to the reason for withdrawal would not necessarily change a decision on eligibility for a closed school loan discharge under the Secretary's current interpretation of the statute. The use of a standard discharge application, the granting of closed school discharge applications when a student was unable to complete the educational program, did not accept the teach-out plan offered, and did not transfer earned credits to another school upon closure of a school, and imposing a liability upon that closed school equal to the amount of discharged loans are consistent with the regulations' requirements and with the stated goal to restore public confidence in student aid programs and eliminate fraud and abuse, upon passage of the 1992 Amendments to the HEA (S. Report 102-204, p. 1 (November 12, 1991)). Ultimately, the aim of the 1992 Amendments to the HEA was to assure that federal aid will only be used at schools that provide quality educational programs (*Id.*, p. 4). Given the intent behind the statutory changes that allowed discharges of closed school loans, notice to the closed school prior to discharge of a loan was not indicated and the due process rights in place upon issuance of the determination of liability provides sufficient process to a closed school. For these reasons, CRISTL's argument that the availability of a teach-out plan disqualifies all Students in Group 1 from discharge of their loans and CRISTL's amended arguments related to students in the subgroup to Group 1 are not persuasive.

C. Arguments Related to Students in Group 2 (Students 7, 8, 14, and 17)

CRISTL's Initial Brief (OES Document 19)

Relying on 34 C.F.R. § 685.214, rather than challenging its validity, CRISTL argued the Department's granting of the applications for closed school loan discharges for the Group 2 Students was an error because those students withdrew from the school more than 120 days before the school closed. In its brief, CRISTL argued that Student 7 withdrew on December 16, 2014 (two years and three months before CRISTL closed); Student 8 withdrew on December 15, 2014 (two years and three months before CRISTL closed); Student 14 withdrew on March 26, 2015 (two years before CRISTL closed); and Student 17 withdrew on November 29, 2014 (two years and four months before CRISTL closed). CRISTL challenges FSA's determination that Students 7, 8, 14, and 17 were eligible for discharges because FSA asserts these students withdrew within 120 days of the closure of CRID on March 26, 2015.

FSA's Responsive Brief (OES Documents 25 and 33(correction))

FSA contends that the discharges to the Group 2 Students, (Students 7, 8, 14, and 17) were consistent with the statute and regulations because each of these students withdrew from the court

reporting school in which they were enrolled within 120 days of the closing of that school. Students 7 and 8 withdrew in December 2014, Student 14 withdrew in March 2015, and Student 17 withdrew in November 2014. FSA contends each student was enrolled at CRID when that school closed on March 26, 2015.

FSA argued it is appropriate to assert the liability for these student's discharged loans against CRISTL in the FAD, dated December 18, 2017, based on CRISTL's September 15, 2014, Application for Address Change and Redesignation. Prior to that application CRID was the main campus and CRID-CRISTL was a branch. FSA shows that CRISTL requested the change in address and redesignation when it was anticipated that CRID would close, and St. Louis was redesignated as the main campus. In support of its argument, FSA points to the discharge applications of Students 12 and 15, students addressed in Group 3 (OES Document 28).

CRISTL's Reply Brief (OES Document 34)

CRISTL points out, that in its brief, FSA conceded that Students 7, 8, 14, and 17 withdrew more than 120 days before CRISTL closed on March 26, 2017. CRISTL, however, challenges FSA's argument that these students were eligible for loan discharge because they withdrew within 120 days of the closure of CRID, operating as a branch of CRISTL at the time of its closure. CRISTL points out that FSA incorrectly asserted in its brief, that these students were enrolled in the Dallas campus when they withdrew. In reply to FSA's assertions and arguments regarding the discharge of these students' loans, CRISTL filed additional evidence to show these students were enrolled at CRISTL and withdrew from CRISTAL more than 120 days before its closure.

Analysis Related to Discharge Applications of Students in Group 2 (Students 7, 8, 14, and 17)

FSA's evidence shows that the students in Group 2 submitted applications for closed school loan discharges in 2015 and 2016, roughly eight (8) to 23-months prior to CRISTL's closure (OES Document 30). FSA provided no explanation for this gap.³² Evaluation of the parties' arguments requires a close analysis of the evidence in this record related to each of these students.

Student 7's loan discharge application shows it was received by Great Lakes Servicing on April 10, 2015, and Student 7 sought a discharge of loans for attendance at CRID, having last attended in "2014" (OES Document 30, p. 2). In its application for discharge, Student 7 asserted being on a leave of absence from September 20th to December 30th of 2014 (*Id.*). The application fails to provide a program of study or date of withdrawal, but indicates the student was enrolled in a program of study when the school closed (*Id.*). Student 7 asserts the teach-out plan was not accepted nor were credits transferred to another school (*Id.*). In support of granting the loan discharge, FSA filed a NSLDS report that Student 7 withdrew from CRID-CRISTL (OPE ID 02119204) on December 16, 2014 (OES Document 31, p.2). CRISTL filed a NSLDS report that Student 7 withdrew from CRISTL (OPE ID 02119200) on December 16, 2014 (OES Document 14, p. 2). CRISTL filed additional documents to establish that Student 7 was a student enrolled

³² It appears these applications may have been submitted following CRID's closure in March 2015. Students 7, 14, and 17's application were submitted within four months after CRID's closure, while Student 8's application was filed more than a year after CRID's closure. None of these applications were granted until after CRISTL closed.

only at CRID-CRISTL/CRISTL, initially a branch campus and after September 15, 2014, a main campus. Student 7 was enrolled in CRID-CRISTL as a part-time student on July 1, 2013, in the online educational program for an AOS-CR (OES Documents 45 and 50). Student 7's transcript shows enrollment in courses from July 1, 2013 through December 17, 2014 (OES Document 21). Student 7's transcript shows Student 7 was placed on academic warning in the term that began June 20, 2014, and was placed on suspension in the term beginning September 24, 2014 (*Id.*). Consistent with this information CRID-CRISTL/CRISTL filed confirmation of Student 7's enrollment and exit with the Missouri Department of Higher Education (MDHE) showing that Student 7 enrolled in CRISTL on July 1, 2013, exited CRISTL on December 16, 2014, having been enrolled in CRISTL's AOS Court Reporting Online program, and Student 7's status at the time of exit was indicated as "Withdrawn/Terminated Enrollment" (OES Document 56). Additionally, CRISTL submitted a Declaration of Mary Cerenak, dated April 19, 2018 (hereinafter, Cerenak Declaration, dated April 19, 2018) wherein it was attested, consistent with other documentation, that Student 7 enrolled in and withdrew from CRISTL (OES Document 20, paragraph 27). All this documentation establishes Student 7 was a student enrolled at CRID-CRISTL, a branch campus of CRID and remained a student after CRISTL was redesignated the main campus. FSA has not provided any evidence that Student 7 was ever enrolled at CRID when it was the main campus or after it was redesignated as a branch campus of CRISTL.

Student 8's loan discharge application was received by Great Lakes Servicing on July 25, 2016 (OES Document 30, p. 4). Student 8 indicated first enrolled at CRID on September 25, 2012 and requested a discharge of loans for attendance at CRID, having withdrawn on December 31, 2014 (*Id.*). Student 8 reported enrollment in the Court Reporting program and did not complete the program because the school closed (*Id.*). In support of granting the loan discharge, FSA filed a NSLDS report that Student 8 withdrew from CRID-CRISTL (OPE ID 02119204) on December 15, 2014 (OES Document 31, p. 3). CRISTL filed a NSLDS report that Student 8 withdrew from CRISTL (OPE ID 02119200) on December 15, 2014 (OES Document 14, p. 3). CRISTL filed additional documents to establish that Student 8 was a student initially enrolled at CRID but then transferred to CRID-CRISTL, initially a branch campus and after September 15, 2014, a main campus. Student 8 signed an enrollment agreement to commence the court reporting program as a day student at CRID beginning September 24, 2012 (OES Document 46, pp. 7-9). Student 8 signed an enrollment agreement with CRID-CRISTL, pursuing an associate degree in court reporting program beginning April 1, 2014, suggesting a transfer from CRID to CRID-CRISTL about a year prior to CRID's closure (OES Document 46, pp. 2-6). CRISTL filed Student 8's transcript that shows this student was enrolled in courses over nine (9) terms, beginning September 24, 2012, through December 17, 2015 (OES Document 22). The transcript shows courses taken at CRID prior to Student 8's transfer to CRID-CRISTL, and then courses being taken at CRISTL when it was a branch campus of CRID and continuing there when it was redesignated as the main campus in March 2015. CRISTL also filed a copy of Student 8's enrollment confirmation and exit submitted to MDHE that showed Student 8 enrolled with CRISTL on April 1, 2014, exited CRISTL on December 15, 2014, having been enrolled in CRISTL's Court Reporting Online program AOS, and Student 8's status at the time of exit was indicated as "Withdrawn/Terminated Enrollment" (OES Document 57). On January 2, 2015, an Official Withdrawal Notification Form was processed for Student 8 that indicates the student was switching to El Paso Community College to finish certification for court reporting (OES Document 49). All this documentation establishes Student 8 was initially enrolled at CRID beginning in September 2012, transferred to

CRID-CRISTL in March 2014 (nearly a year before CRID closed), withdrew from CRISTL in December 2014 (more than two years prior to CRISTL's closure). Student 8's discharge application was filed in June 2016, nearly a year and a half after Student 8 withdrew from CRISTL with the stated intent to continue at El Paso Community College for certification as a court reporter and nearly nine (9) months before CRISTL closed.

Student 14's loan discharge application was received on July 6, 2015 (entity of receipt is not identified) and Student 14's application sought a discharge of loans for attendance at CRID during the period January 2, 2014 to March 28, 2015 (OES Document 30, pp. 6-7). In support of granting the loan discharge, FSA filed a NSLDS report showing that Student 14 withdrew from CRID-CRISTL (OPE ID 02119204) on January 2, 2014 (OES Document 31, p. 5). CRISTL filed a NSLDS report that Student 14 withdrew from CRISTL (OPE ID 02119200) on March 26, 2015 (OES Document 14, p. 3). CRISTL filed additional documents to establish that Student 14 was a student enrolled at CRID-CRISTL/CRISTL, initially a branch campus, and then a main campus after September 15, 2014. Student 14 signed an enrollment agreement with CRID-CRISTL on December 5, 2013, that indicated Student 14 enrolled part time with CRID-CRISTL in the AOS-CR program (OES Document 47). CRISTL also filed a copy of Student 14's transcript, which shows Student 14 completed five terms of studies in the online AOS-CR program, beginning January 2, 2014 (OAS Document 23). Student 14's transcript indicates a drop date of April 10, 2015 (*Id.*). CRISTL also filed a copy of Student 14's enrollment confirmation and exit submitted to MDHE that shows Student 14 enrolled with CRISTL on January 2, 2014, exited CRISTL on March 26, 2015, having been enrolled in CRISTL's Court Reporting Online program AOS and Student 14's status at the time of exit was indicated as "Withdrawn/Terminated Enrollment" (OES Document 59). All this documentation establishes Student 14 was a student enrolled at CRID-CRISTL, a branch campus of CRID and remained a student after CRISTL was redesignated the main campus. FSA has not provided any evidence that Student 14 was ever enrolled at CRID.

Student 17's loan discharge application shows it was received by Great Lakes Servicing on May 15, 2015, and Student 17's application sought a discharge of loans for attendance at the Clayton, MO branch of the Court Reporting Institute, having withdrawn on November 1, 2014. In support of granting the loan discharge, FSA filed a copy of the NSLDS report showing Student 17 withdrew from CRID-CRISTL (OPE ID 02119204) on November 29, 2014 (OES Document 31, p. 6). CRISTL filed a NSLDS report that Student 17 withdrew from CRISTL (OPE ID 02119200) on November 29, 2014 (OES Document 14, p. 5). CRISTL filed additional documents to establish that Student 17 was a student enrolled at CRID-CRISTL/CRISTL, initially a branch campus and after September 15, 2014, a main campus. On June 4, 2013, Student 17 signed an enrollment agreement with CRID-CRISTL indicating enrollment as a part time student starting July 1, 2013, in the AOS-CR program (OES Document 48). CRISTL filed a copy of Student 17's transcript that indicates a drop date of December 3, 2015, that at the end of Student 17's fourth term, the student's cumulative GPA was 4.00, and that shows Student 17 failed Advance Theory 80 in the fourth term and withdrew (failing) from that same course prior to the end of the fifth term for which Student 17 was registered (OES Document 24). The information filed by CRISTL with MDHE illustrate Student 17 enrolled with CRISTL on July 1, 2013, exited CRISTL on November 29, 2014, having been enrolled in CRISTL's Court Reporting Online program AOS and Student 17's status at the time of exit was indicated as "Withdrawn/Terminated Enrollment" (OES Document 59). All this documentation establishes Student 17 was a student enrolled at CRID-CRISTL, a branch campus

of CRID and remained a student after CRISTL was redesignated the main campus. FSA has not provided any evidence that Student 17 was ever enrolled at CRID.

The evidence filed by CRISTL supports its argument that the closed school loan discharges to the Group 2 Students should not have been granted by FSA. CRISTL filed evidence that these students were enrolled in or transferred to CRISTL's court reporting program, each of these students were enrolled in the AOS-CR program either part time or full time, and all these students withdrew from that program at CRISTL more than 120 days prior to CRISTL's closure on March 26, 2017. FSA's granting of these school loan discharges is inconsistent with the Department's regulations 34 C.F.R. §§ 682.402 and 685.214, as well as the Secretary's published notices related to closed school loan discharges as discussed in this decision.

FSA's argument that the discharges to these students were appropriate because each of these students withdrew from CRID within 120 days of CRID's closure is not supported by the evidence and, therefore, it is not persuasive. Although the applications for discharge from Students 7, 8, and 14 indicate they were enrolled at CRID, the evidence of their enrollment agreements and transcripts establish they were enrolled in the online program at CRISTL, when CRISTL was a branch campus of CRID and in some instances continued enrollment after CRISTL was redesignated as the main campus. Since the discharge of the loans to Students 7, 8, 14, and 17 are not consistent with the applicable statute and regulation, enforcement of the liability against CRISTL in the amount of loans discharged to these students is not supported.

D. Argument Related to Students in Group 3 (Students 12, 13, 15, and 19)

CRISTL's Initial Brief (OES Document 19)

CRISTL argued the Department's granting of the applications for closed school loan discharges for the Group 3 Students was an error because these Students withdrew from their program more than 120 days before the school closed and these students were "withdrawn" from their programs because they had reached the maximum timeframe allowed for completing the programs and therefore failed to maintain satisfactory academic progress (SAP). CRISTL relied on 34 C.F.R. §§ 668.32(f) and 668.34 regarding maintaining SAP. CRISTL noted that these students were ineligible for financial aid as MTF students since they exceeded the maximum timeframe allowed for completing their program.

After these students were withdrawn from the AOS-CR program for failure to maintain SAP, CRISTL asserted it provided an accommodation to these students by allowing them to continue using CRISTL's platform to practice their court reporting skills on an independent basis. The accommodation provided these students an opportunity to "develop sufficient proficiency" to pass the speed dictation test needed to become certified as court reporters by state authorities. CRISTL argued FSA's assessment of liabilities to CRISTL because these students withdrew within 120 days of the closure of CRIH (on September 6, 2012) or the closure of the CRID (on March 26, 2015) contradicts the representation in its FAD that these students were eligible for discharge based on the closure of CRISTL on March 26, 2017. Furthermore, CRISTL points out that Students 12 and 13 were enrolled at CRID and were "withdrawn four (4) to five (5) years before CRID closed and Student 15 was enrolled at CRIH but was "withdrawn" 17 months before CRIH closed.

In relation to Student 19, who was initially enrolled at CRID but continued at CRISTL after CRID closed, CRISTL asserted she did not complete her program at CRISTL because she reached the maximum timeframe (MTF) for completing the AOS-CR program, not because of the closure of the CRID or CRISTL. CRISTL argues the students in Group 3 were not enrolled in classes for credit and the withdrawal dates reported in late March 2017, when CRISTL closed, was only related to their “MTF Active” status and “not as program-pursuing students” in the AOS-CR program.

FSA’s Responsive Brief (OES Documents 25 and 33(correction))

FSA challenged CRISTL’s argument that Students 12, 13, 15, and 19 were not eligible for student loan discharges because those students failed CRISTL’s SAP standards and were withdrawn from the programs for which these students were enrolled at dates long before the 120th day preceding CRISTL’s closure on March 26, 2017. FSA dismissed CRISTL’s assertion that these student’s continued enrollment was merely an accommodation to the students so they could continue to develop sufficient proficiencies to try and pass the state required certifications and then accused CRISTL of being manipulative and deceitful in administration of the Title IV funds. In support of that accusation, FSA noted that CRISTL reported in the NSLDS that each of these students were withdrawn from their programs in “late March 2017 when CRISTL closed.” FSA provided documentation of CRISTL’s reporting that Student 12 withdrew on March 26, 2017, Student 13 withdrew on March 19, 2017, Student 15 withdrew on March 23, 2017, and Student 19 withdrew on March 26, 2017 (OES Document 29). FSA argued that that CRISTL’s reporting these withdrawal dates is an admission by CRISTL that these students were enrolled in an educational program within the 120 days prior to CRISTL’s closure and, therefore, eligible for discharge of their loans.

FSA supported this challenge by explaining that a student’s failure to maintain SAP is only evidence that that student is no longer eligible for Title IV assistance, not that the student is no longer enrolled in a program at a school that subsequently closed. Furthermore, FSA argues that neither the statute nor the regulations premise entitlement to a closed school discharge on the student qualifying as Title IV eligible, and CRISTL’s continued reporting of these students as enrolled ensured that these students’ Title IV loans did not enter repayment. FSA asserted this continued enrollment benefited CRISTL by enabling these students to continue paying tuition to CRISTL instead of paying their loans that would have otherwise come due if the student was no longer enrolled in the educational program for which the loan was received.

Lastly, FSA discounts CRISTL’s assertion that these students could not be considered enrolled because they have no ability to graduate from their enrolled programs since they reached CRISTL’s maximum timeframe for completion. FSA pointed out that CRISTL’s argument was not supported by any contemporaneous documentation that shows the students were aware they could not complete the program and graduate. FSA asserted if these students were unable to complete the program and graduate, then CRISTL had an obligation to end their continued enrollment, stop contracting with the students for further instruction, and to stop collecting tuition from these students. FSA asserted CRISTL provided no evidence that the students abandoned the credits they did earn or that they stopped making effort to complete the existing CRISTL program, until CRISTL closed in March 2017.

CRISTL's Reply Brief (OES Document 34)

CRISTL reiterated the arguments in its initial brief that challenged FSA's assertions related to FSA's determination that these students were eligible for closed school loan discharges and provided additional evidence that these students were enrolled in MTF Status, in a program different from the AOS-CR program. CRISTL explained the distinction between a student enrolled the AOS-CR program and enrollment under CRISTL's MTF Status. CRISTL explained while these students could never complete their AOS-CR program, they could potentially obtain a "Statement of Proficiency" from CRISTL if they successfully completed a self-study "speed building" class by developing sufficient proficiency and passing certain speed tests. In response to FSA's assertions that CRISTL lied about and manipulated the continued enrollment of these students to the benefit of CRISTL and the detriment of the Department CRISTL argued FSA's accusations are based only on FSA's premise that these students' enrollment to achieve a Statement of Proficiency was somehow a mere extension or continuation of the AOS-CR program and that premise is false.

CRISTL relied on the Department's regulations at 34 C.F.R. §§ 668.34 and 668.32(f). Section 668.34 requires an institution to establish a policy of satisfactory academic progress that includes a requirement that students complete their program within "the maximum timeframe," which is no longer than 150% of the published length of the educational program. Section 668.32(f) instructs that if a student has not maintained SAP in the student's designated course of study, that student is no longer eligible for financial aid. CRISTL maintained it established the MTF Active Status to allow the student to continue using CRISTL's platform to practice their court reporting skills on an independent basis and provided access only to "speed building" classes. When proficiency was achieved through this independent study program, then the student was eligible to receive a Statement of Proficiency, as published in the school catalog.

CRISTL contended that FSA's arguments failed to understand the distinctions between the AOS-CR program and CRISTL's MTF Status and FSA's cursory review of the NSLDS reports failed to recognize the MTF Status curriculum was starkly different than the AOS-CR program. Moreover, CRISTL pointed out that FSA failed to recognize this important distinction relevant to following the Department's regulations. CRISTL pointed out that 34 C.F.R. § 685.214(a) allows the secretary to discharge the borrower's obligation to repay a Direct Loan when the borrower (or 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*" (emphasis in original). Therefore, CRISTL argued, the loans that were discharged by FSA were not eligible for discharge because the loans were made for the student's enrollment in the AOS-CR program, from which each of these students were withdrawn from more than 120 days prior to CRISTL's closure. Furthermore, CRISTL acknowledged that while these students had an obligation to pay tuition for enrollment in courses that could have resulted in awarding a Statement of Proficiency, none of the loans discharged were used toward payment of the MTF Status curriculum.

CRISTL refuted two other arguments proffered by FSA in support of the discharges granted to these students. In response to FSA's pronouncement that CRISTL should have stopped contracting with these students when it was determined these students could never complete the court reporting

program, CRISTL provided evidence these students were withdrawn from the AOS-CR program upon failing to meet SAP. CRISTL provided proof these students were withdrawn from the AOS-CR program between 15 months and seven (7) years before CRISTL closed. These students subsequently enrolled in a different, significantly lower cost program of independent study, where the goal was only to gain sufficient speed and accuracy to enable the students to pass required state certifications and licenses and be granted a Statement of Proficiency. Therefore, CRISTL argued, that after the students were withdrawn based on their failure to maintain SAP in the AOS-CR program, FSA, acting on behalf of the Secretary, had no authority to discharge the loans these students received in their failed pursuit of the AOS-CR program.

In response to FSA's reliance on the Department's web guidance related to closed schools issuing a diploma or certificate upon the closing of a school, CRISTL argued that FSA misapplied the web guidance to CRISTL. CRISTL argued the web guidance addressed a different circumstance than what occurred with the closing of CRISTL and the withdrawal of these students from the MTF Status. The web guidance is targeted at a closing school that issues a certificate or a degree at the time of the school closing to avoid the consequence of liability for discharged school loans even though the student never completed the qualifications for that certificate or degree. Under those circumstances the closing schools' issuance of a certificate or degree which was not earned prior to the closing, will not disqualify the discharge of a closed school loan. CRISTL did not issue any Statement of Proficiency to the students enrolled as MTF Status. Instead, upon closing, CRISTL argued it appropriately withdrew these students from their pursuit of the independent study program in which they were enrolled at CRISTL and for which financial aid funds were not used for the continuing pursuit of that independent study program. In essence, CRISTL argued FSA's advocacy of these two positions simply does not apply to the circumstance of CRISTL's closure.

Analysis Related to the Discharge Applications to Students in Group 3 (Students 12, 13, 15, and 19)

There is a unique issue specific to this group of students that depends upon the date identified as the student's withdrawal from CRISTL and whether that date is the student's withdrawal from the course of study for which the student received a federal loan, made under the Direct Loan or the FFEL Program. Each of these students initially enrolled in the AOS-CR program at CRISTL or one of its affiliated schools, securing federal loans while pursuing that educational program. When they failed to maintain SAP while enrolled in the AOS-CR program, each of these students were withdrawn from that program and enrolled in an educational program of independent study where they were classified in MTF Status. The MTF students paid tuition to CRISTL without the benefit of access to federal student loans.

CRISTL filed a copy of its 2015-2016 Court Reporting Institute of St. Louis Campus Catalog (OES Document 44). Therein MTF was defined as no more than 1.5 times, or 150%, of the number of credits hours in the program of study and that MTF progress would be evaluated at the end of every quarter. The catalog indicates the requirements for rates of progress are to ensure that students are progressing at a rate at which they will complete their program within the MTF. The MTF for the AOS-CR program was 162 quarter credit hours. The catalog specifically advised students that when a student surpassed the MTF and reached the 200 speed-building class, the student would be eligible for MTF Status (*Id.*, p. 6). The catalog further explained that students in

MTF Status are not eligible to graduate or to receive federal financial aid but may continue to attend speed-building classes to improve their proficiency (*Id.*).

In the Ceranek Declaration, dated April 19, 2018, CRISTL asserted the applicable date of withdrawal to determine eligibility for a closed school loan discharge should be the date these students were placed on MTF Active status (OES Document 20, p. 4, paragraphs 16-23). Ms. Ceranek first described the MTF Status as an accommodation to students who were withdrawn from the court reporting program because the student was unable to maintain SAP (*Id.*, paragraph 16). In the Ceranek Declaration, dated July 6, 2018, Ms. Ceranek no longer described student placement on MTF Active Status as an accommodation but instead described it as CRISTL's allowance given to certain students who were withdrawn from its AOS-CR program for failure to maintain SAP but granted access to CRISTL's platform to practice their court reporting skills on an independent basis (OES Document 63, paragraphs 6-21). Therefore, CRISTL maintained that these students were not eligible for school loan discharges because the failure to maintain SAP resulted in the end of their enrollment in the AOS-CR program and not CRISTL's closure. CRISTL further argued the failure of these students to maintain SAP and their withdrawal from the AOS-CR program occurred long before the 120-day period indicated in the Department's regulations.

FSA outright rejected CRISTL's arguments and instead argued that neither the academic status of these students, nor their program of study, or receipt of federal loans for enrollment at CRISTL (or any of the other of the affiliated schools that were in operation and closed) was relevant to the eligibility of these students to receive the loan discharges granted by FSA. Evaluation of CRISTL's and FSA's arguments requires close analysis of the evidence in this record related to each of these students.

Evidence of record relating to Student 12 shows this student signed an enrollment agreement on August 23, 2006, to start in the night program at CRID on October 2, 2006, enrolled in the AOS-CR program (OES Document 35). Student 12's transcript shows Student 12 was placed in the MTF Active Status following the term ending December 20, 2010 (OES Document 13, p. 8). On April 26, 2011, Student 12 signed an application for MTF Status at CRID (OES Document 36). The transcript shows Student 12, while in the MTF Status, enrolled in the CRISTL Online program in the term beginning January 5, 2015 (OES Document 13, p. 12). Student 12 remained in the MTF Active Status continually through the last term in which CRISTL was in operation (January 2, 2017 through March 26, 2017) (OES Document 13, pp. 6-14). In the Ceranek Declaration, dated April 19, 2018, CRISTL asserted Student 12 was withdrawn from the AOS-CR program at CRID on December 16, 2010, more than four years prior to CRID's reported closure on March 26, 2015 (OES Document 20, paragraph 15). In challenge to the withdrawal date of December 16, 2010, FSA filed an NSLDS report that shows enrollment details for Student 12 at CRISTL under OPE ID 02119200 and does not include enrollment data for dates after October 1, 2007 or before January 3, 2011, which would show Student 12's withdrawal from the AOS-CR program (OES Document 29, pp. 2-5). On April 5, 2017, Student 12 completed a loan discharge application (OES Document 28, pp. 2-3). The application included email communications, dated December 26, 2014 and December 27, 2014, between Student 12 and Mr. Larry Paiz, an official at Court Reporting Institute (*Id.* pp. 5-6). These communications along with a ledger showing tuition payments, are additional evidence that Student 12 was in MTF Status at CRID before it closed and continued in that status when she transferred to the online program at CRISTL (*Id.* pp.5-8).

Evidence of record relating to Student 13 shows this student signed an enrollment agreement to start in the day program at CRID on January 3, 2006, enrolled in the AOS-CR program (OES Document 37). Student 13's transcript shows that Student 13 was placed in the status of MTF Active following the term ending September 20, 2009 (OES Document 13, p. 19). On October 7, 2010, Student 13 signed an application for MTF Status enrollment at CRID (OES Document 37). The transcript shows Student 13 enrolled in the CRISTL Online program in the term beginning April 2, 2012 (OES Document 13, p. 23). Student 13 remained in the status MTF Active continually through the last term in which CRISTL was in operation (OES Document 13, pp. 28). In the Ceranek declaration, dated April 19, 2018, CRISTL asserted Student 13 was withdrawn from the AOS-CR program on September 18, 2009, more than five (5) years prior to CRID's reported closure (OES Document 20, paragraph 15). FSA filed an NSLDS report in which the query parameters fail to show all active and inactive records, as was done by FSA for other students (OES Document 29). Consequently, the evidence from this NSLDS report is incomplete because it fails to show critical dates consistent with the information in Student 13's transcript (OES Document 29, pp. 6). Student 13's discharge application (OES Document 28, pp. 10-14) asserts enrollment only at CRISTL and therefore makes certifications that are inconsistent with Student 13's transcript as filed by CRISTL that show Student 13 was enrolled in CRISTL only in MTF Status (OES Document 28, pp. 10-14).

Evidence of record relating to Student 15 shows this student signed an enrollment agreement to start on September 29, 2003 in the night program at CRIH, enrolled in the AOS-CR program (OES Document 39). Student 15's transcript shows that Student 15 was placed in the status of MTF Active following the term beginning April 4, 2011, while enrolled at CRIH (OES Document 13, p. 37). Student 15 signed multiples applications for MTF Status at CRIH (OES Document 40). The transcript shows Student 15 continued in MTF Status at CRIH through the term ending December 20, 2012 (OES Document 13, p. 40). The transcript shows Student 15 enrolled in the MTF Active Status in the CRISTL Online program in the term beginning April 1, 2013 and continued in that status until CRISTL closed (OES Document 13, pp. 41 and 44). In the Ceranek Declaration, dated April 19, 2018, CRISTL asserts Student 15 was withdrawn from the AOS-CR program on March 28, 2011 (OES Document 20, paragraph 15). In challenge to that withdrawal date, FSA filed an NSLDS report that included enrollment details for Student 15 at CRISTL under OPE ID 02119200 (OES Document 29, pp. 7-8). FSA failed to provide any NSLDS report for Student 15's enrollment at CRIH. The loan discharge application for Student 15 reports enrollment at CRID with attendance dates of April 2011 to 2017, which is consistent with the time Student 15 was enrolled in the MTF Active Status at CRID-CRISTL/CRISTL (OES Document 28, p. 17). Student 15 included an undated letter with the discharge application (*Id.*, p. 19). The letter acknowledges Student 15 was an MTF student with no access to continuing student loans but maintained enrollment as an MTF student by paying tuition of \$100 per month (*Id.*). This correspondence indicated Student 15 received a letter from Nelnet, dated June 1, 2017, and Nelnet required additional documentation for the loan discharge application because Student 15's loans were with CRIH not CRISTL (*Id.*).³³ Despite that information, FSA discharged Student 15's loans.

³³ Notably, Student 15's additional correspondence reveals the belief that enrollment as a MTF student will lead to graduation from an accredited school which Student 15 asserted was required for sitting for the Texas state certification test.

Student 19's transcript shows Student 19 was enrolled online at CRID-CRISTL beginning September 26, 2011, continuing through December 20, 2012 (OES Document 13, pp. 46-48). Student 19 transferred to CRID in the term beginning January 1, 2013, remaining enrolled at CRID until December 17, 2014 (*Id.*, pp. 49-50). The transcript shows Student 19 was then enrolled in the Online program in the term beginning January 5, 2015 (*Id.*, p. 51). Student 19 was placed in the status of MTF Active following the term ending December 18, 2015 (OES Document 12, p. 52). Consistent with this information, CRISTL filed a confirmation of Student 19's enrollment and exit with the MDHE that shows Student 19 enrolled in CRISTL on January 1, 2015, exited CRISTL on December 18, 2015, having been enrolled in CRISTL's associate of occupational sciences Court Reporting Online program, and Student 19's status at the time of exit was indicated as "Withdrawn/Terminated Enrollment" (OES Document 43). On January 7, 2016, Student 19 signed an application for MTF Status with CRISTL (OES Document 42). Student 19 remained in the status MTF Active continually through the last term in which CRISTL was in operation (OES Document 13, pp. 53). In the Ceranek Declaration, dated April 19, 2018, CRISTL asserted Student 19 was withdrawn from the AOS-CR program on December 10, 2015 (OES Document 20, paragraph 15). This date of withdrawal is consistent with the transcript showing Student 19 was placed on suspension from the AOS-CR program following the term ending in December 2015. In challenge to that withdrawal date, FSA filed an NSLDS report under OPE ID 02119200 assigned to CRISTL that only shows enrollment data for period from January 2013 to September 2012 and for March 23, 2017. The NSLDS report does not include the dates relevant to Student 19's enrollment at CRISTL from January 2015 through December 2015, as evidenced in Student 19's transcript showing enrollment and withdrawal from the AOS-CR program at CRISTL. Student 19's discharge application indicates attendance at CRISTL during the period January 5, 2015 through March 26, 2017, a period consistent with Student 19's enrollment at CRISTL in the AOS-CR program through December 12, 2015, then starting in the MTF Status from January 2016 until CRISTL closed.

Having considered CRISTL's and the Department's arguments, along with the evidence of record for each student in this group, I find that the discharges granted to these students are inconsistent with the requirements of the statute and the Department's regulations. The applicable statutes indicate a student is eligible for discharge of their student loan if the borrower received the loan on or after January 1, 1986, and the student was unable to complete the program in which the student was enrolled because the school closed. Each of these students enrolled in an educational program to obtain an associate degree in occupational studies for court reporting. Each of these students commenced their degree at CRISTL or in one of the affiliated schools (either a main campus or a branch campus) and each of these students failed to maintain SAP, resulting in their withdrawal from the AOS-CR program. Upon the withdrawal from the AOS-CR, these students were ineligible for additional Title IV funds in pursuit of the AOS-CR program and pursuant to policy at CRISTL. As indicated in the 2015-2016 catalog, these students were ineligible to complete the educational program for which they were enrolled and receive federal funds. Thereafter, each of these student's then enrolled under the MTF Status and continued in that status at CRISTL until it closed on March 26, 2017.

CRISTL asserted an individual can be certified by a state as a court reporter without a degree or certificate from an institution of higher education, so long as that individual passes the required state testing for certification. FSA did not contest that assertion and then concluded the continued

enrollment of these students, even if ineligible to complete the AOS-CR program at a time prior to 120 days of CRISTL's closure, justified FSA's discharge of these student's loans. Each of these students, when enrolled under the MTF Status, privately paid tuition to CRISTL or the other affiliated schools in which they were enrolled in an independent study program under MTF Status.

While Students 12, 13, 15, and 19 were enrolled at CRISTL when it closed, the FAD failed to properly establish the students were enrolled in the program for which the loans were received and discharged. Consistent with the SAP regulations, these students were withdrawn from the program to obtain an AOS-CR program at CRISTL or one of the other affiliated schools more than 120 days prior to CRISTL's closure. This requirement in both the statutes and regulations cannot be ignored.

The FAD dated December 18, 2017, did not make any distinction between the AOS-CR program and the MTF Status that was offered by CRISTL. The FAD did not include any finding related to CRISTL's offering the MTF Status following a student's withdrawal from the AOS-CR program due to the student's failure to maintain satisfactory progress.³⁴ The claims by some of the students that they were unaware they were no longer eligible to complete the AOS-CR program cannot be attributed to lack of disclosure by CRISTL. The MTF Status was described in the CRISTL's catalog as well as the contracts signed by students upon entering MTF Status (*See*, OES Documents 36, 40 and 42). The FAD was based only on the statutes and regulations for closed school loan discharges, under which statutes and regulations these students in Group 3 did not meet the eligibility requirements for discharge.

VII. Conclusion of Law and Order

My authority in this appeal is to determine if the FAD is supportable in whole or in part. FSA concluded CRISTL was liable for \$350,950.00. In arriving at the conclusion, the final audit determination is flawed, in part, as it is inconsistent with the applicable statutes and regulations for closed school loan discharges. For the reasons stated throughout this decision, the Final Audit Determination, dated December 18, 2017, assessing a liability to CRISTL for closed school loan discharges is supported only in part.

Consistent with the applicable statutes and regulations, only Students 1, 2, 3, 4, 5, 6, 9, 10, 11, 16, 18, 20, 21, and 22 were eligible for closed school loan discharges. Therefore, based on Appendix A to the FAD dated December 18, 2017, CRISTL's liability to the Department is \$165,572.00.

For the reasons stated herein, the discharges granted to Students 7, 8, 14, and 17 were not appropriately granted and, therefore, not a liability to CRISTL. Consequently, based on Appendix A to the FAD, CRISTL's liability assessed in the FAD, dated December 18, 2017, shall be reduced by the amount of \$56,610.00.

³⁴ Notably, FSA's brief did not address the legitimacy of such a program and instead simply accused CRISTL of manipulating the status of these students to avoid the liability that was assessed following FSA's granting of the discharge applications (OES Document 25, pg. 12). FSA did not indicate the discharges of these loans were consistent with the Secretary's authority to extend the 120-day period, instead relying only a discharge date close in time to March 26, 2017.

For the reasons stated herein, the discharges granted to Students 12, 13, 15, and 19 were not appropriately granted and, therefore, not a liability to CRISTL. Consequently, based on Appendix A to the FAD, CRISTL's liability assessed in the FAD dated December 18, 2017, shall be further reduced by the amount of \$128,768.00.

So Ordered.

Date: August 22, 2023

Angela J. Miranda
Administrative Law Judge

Table A

FSA Student Number Code	App A. page & line	Last Four SSN	Loan Type	Amount	Total Distributed	Current Loan Status Date	Amount Discharged Per Student	
1	p1-01	1616	D0	1167	1167	5/17/2017	2,234.00	Loan Type Code Appendix B: Guaranty Agency Coding Tables (ed.gov)
	p2-12	1616	D2	1067	1067	5/17/2017		D0 Direct Stafford Subsidized (SULA Eligible)
2	p1-10	9689	D1	3500	3500	8/16/2017	5,381.00	D1 Direct Stafford Subsidized
	p1-11	9687	D1	1000	1000	8/16/2017		D2 Direct Stafford Unsubsidized
	p1-12	9687	D1	859	859	8/16/2017		D3 Direct Graduate PLUS Graduate/Professional
	p2-09	9687	D2	22	22	8/16/2017		D4 Direct PLUS
3	p1-07	1075	D0	3500	3500	7/7/2017	9,934.00	SF FFEL Stafford Subsidied
	p1-08	1075	D0	1167	1167	7/7/2017		SU FFEL Stafford Unsubsidized
	p3-01	1075	D2	4000	4000	6/30/2017		
	p3-02	1075	D2	1267	1267	6/30/2017		
4	p2-01	4759	D1	3500	3500	3/26/2017	17,727.00	
	p2-02	4759	D1	1000	1000	3/26/2017		
	p2-03	4759	D1	4500	4500	3/26/2017		
	p2-04	4759	D1	167	167	3/26/2017		
	p3-12	4759	D2	4500	4500	3/26/2017		
	p3-13	4759	D2	2000	2000	3/26/2017		
5	p3-14	4759	D2	2060	2060	3/26/2017	7,334.00	
	p1-06	0116	D0	1167	1167	4/27/2017		
6	p2-22	0116	D2	5500	5500	4/27/2017	13,602.00	
	p2-23	0116	D2	667	667	4/27/2017		
	p1-15	0373	D1	3500	3500	6/21/2017		
	p1-16	0373	D1	3000	3000	6/21/2017		
7	p2-14	0373	D2	4902	4902	6/21/2017	19,000.00	
	p2-15	0373	D2	2200	2200	6/21/2017		
	p4-19	2803	D0	3500	3500	4/15/2015		
8	p4-20	2803	D0	3500	3500	4/15/2015	11,458.00	
	p5-04	2803	D2	6000	6000	4/15/2015		
9	p5-05	2803	D2	6000	6000	4/15/2015	26,200.00	
	p3-19	9025	D4	6250	6250	7/27/2016		
	p3-20	9025	D4	5208	5208	7/27/2016		
	p2-05	9852	D2	4867	4867	5/24/2017		
	p2-06	9852	D2	3167	3167	5/24/2017		
	p2-07	9852	D2	6333	6333	5/24/2017		
10	p2-08	9852	D2	7000	7000	5/24/2017	9,500.00	
	p4-18	9852	D0	2334	2334	5/24/2017		
	p5-02	9852	D2	66	66	5/24/2017		
	p5-03	9852	D2	2433	2433	5/24/2017		
	p1-19	8874	D1	3500	3500	6/7/2017		
11	p2-24	8874	D2	6000	6000	6/7/2017	15,834.00	
	p1-13	9490	D1	3500	3500	6/20/2017		
	p2-10	9490	D2	6000	6000	6/20/2017		
12	p2-11	9490	D2	6334	6334	6/20/2017	22,931.00	
	p1-14	2362	D1	4278	4278	5/18/2017		
	p2-13	2362	D2	2013	1258	5/18/2017		
	p3-21	2362	SF	4500	4500	5/18/2017		
	p3-22	2362	SF	1000	1000	5/18/2017		
	p3-23	2362	SF	5500	5500	5/18/2017		
	p4-06	2362	SU	2712	2712	5/18/2017		
	p4-07	2362	SU	500	500	5/18/2017		
13	p4-08	2362	SU	3183	3183	5/18/2017	28,887.00	
	p3-24	7058	SF	2625	2625	7/11/2017		
	p4-01	7058	SF	2280	2280	7/11/2017		
	p4-02	7058	SF	4500	4500	7/11/2017		
	p4-03	7058	SF	5500	5500	7/11/2017		
	p4-04	7058	SF	3361	3361	7/11/2017		
	p4-05	7058	SF	2392	2392	7/11/2017		
	p4-09	7058	SU	2180	2180	7/11/2017		
	p4-10	7058	SU	1640	1640	7/11/2017		
	p4-11	7058	SU	3360	3360	7/11/2017		
14	p4-12	7058	SU	1049	1049	7/11/2017	11,899.00	
	p4-21	5546	D0	3500	3500	10/1/2015		
	p4-22	5546	D0	2334	2334	9/2/2015		
	p5-06	5546	D2	4638	4638	10/1/2015		
15	p5-07	5546	D2	1427	1427	9/2/2015	15,359.00	
	p4-13	4977	D1	3218	3218	9/12/2017		
	p4-14	4977	D2	4282	3615	9/12/2017		
	p4-15	4977	SF	857	857	9/12/2017		
	p4-16	4977	SU	4269	4269	9/12/2017		
6	p4-17	4977	SU	5101	3400	9/12/2017	9,500.00	
	p1-05	1092	D0	3500	3500	6/16/2017		
17	p2-19	1092	D2	6000	6000	6/16/2017	14,253.00	
	p4-23	1764	D1	3500	3500	5/20/2015		
	p4-24	1764	D1	3500	3500	5/20/2015		
	p5-08	1764	D2	5200	5200	5/20/2015		
	p5-09	1764	D2	2053	2053	5/20/2015		

FFEL Loans	
Group 1	
Group 1 Subgroup (Students 2,3, 9, 11, and 22)	
Group 2 (Students 7, 8, 14, and 17)	
Group 3 (Students 12, 13, 15, and 19)	
Group 1 without Subgrp	92,389.00
Group1 Subgrp	73,183.00
Grp1 + Grp 1 subgrp	165,572.00
Group 2	56,610.00
Group 3	128,768.00
Total Assessed Liability	350,950.00

SA Student Number Code	App A. page & line	Last Four SSN	Loan Type	Amount	Total Distributed	Current Loan Status Date	Amount Discharged Per Student
18	p1-04	0198	D0	3500	3500	5/3/2017	
	p2-18	0198	D2	6000	6000	5/3/2017	9,500.00
19	p1-20	5739	D1	2444	2444	5/22/2018	61,591.00
	p1-21	5739	D1	3056	3056	5/22/2017	
	p1-22	5739	D1	1833	1833	5/22/2017	
	p1-23	5739	D1	1833	1833	5/22/2017	
	p1-24	5739	D1	1833	1833	5/22/2017	
	p3-03	5739	D2	5500	5500	5/22/2017	
	p3-04	5739	D2	3666	3666	5/22/2017	
	p3-05	5739	D2	2834	2834	5/22/2017	
	p3-06	5739	D2	7500	7500	5/22/2017	
	p3-07	5739	D2	3064	3064	5/22/2017	
	p3-08	5739	D2	3881	3881	5/22/2017	
	p3-09	5739	D2	2333	2333	5/22/2017	
	p3-10	5739	D2	2333	2333	5/22/2017	
	p3-11	5739	D2	1000	1000	5/22/2017	
	p3-16	5739	D4	8600	8600	5/16/2017	
	p3-17	5739	D4	2746	2746	5/16/2017	
	p3-18	5739	D4	2967	2967	5/16/2017	
p5-01	5739	D1	1834	1834	5/22/2017		
p5-10	5739	D2	2334	2334	5/22/2017		
20	p1-17	2136	D1	3500	3500	7/27/2017	19,825.00
	p1-18	2136	D1	4500	4500	7/27/2017	
	p2-20	2136	D2	6000	6000	7/27/2017	
	p2-21	2136	D2	5825	5825	7/27/2017	
21	p1-09	6261	D0	1167	1167	6/7/2017	3,167.00
	p3-15	6261	D2	2000	2000	6/7/2017	
22	p1-02	7325	D0	3500	3500	3/26/2017	15,834.00
	p1-03	7325	D0	2334	2334	3/26/2017	
	p2-16	7325	D2	6000	6000	3/26/2017	
	p2-17	7325	D2	4000	4000	3/26/2017	
				354,073.00	350,950.00		350,950.00
	p2-13	cancelled loan		755.00			
	p4-14	cancelled loan		667.00			
	p 4-17	no loan cancelled indicated		1,701.00			
				350,950.00			

NOTICE OF DECISION AND APPEAL RIGHTS-SUBPART H

This is the initial decision of the hearing official pursuant to 34 C.F.R. § 668.118. The regulation does not authorize motions for reconsideration. The following language summarizes a party's right to appeal this decision as set forth in 34 C.F.R. §§ 668.119 and 668.121(b).

An appeal to the Secretary, shall be in writing and explain why this decision should be overturned or modified. An appeal must be filed within 30 days from receipt of this notice and decision. If an appeal is not timely filed, by operation of regulation, the decision will automatically become the final decision of the Department.

An appeal to the Secretary shall be filed in the Office of Hearings and Appeals (OHA). The appealing party shall provide a copy of the appeal to the opposing party. The appeal shall clearly indicate the case name and docket number.

A registered e-filer may file the appeal via OES, the OHA's electronic filing system. Otherwise, appeals must be timely filed in OHA by U.S. Mail, hand delivery, or other delivery service. Appeals filed by mail, hand delivery, or other delivery service shall be in writing and include the original submission and one unbound copy addressed to:

Hand Delivery or Overnight Mail*	U.S. Postal Service*
Secretary of Education c/o Docket Clerk Office of Hearings and Appeals U.S. Department of Education 550 12 th Street, S.W., 10 th Floor Washington, DC 20024	Secretary of Education c/o Docket Clerk Office of Hearings and Appeals U.S. Department of Education 400 Maryland Avenue, S.W. Washington DC 20202

These instructions are not intended to alter or interpret the applicable regulations or provide legal advice. The parties shall follow the regulatory requirements for appealing to the Secretary at 34 C.F.R. § 668.119. Questions about the information in this notice may be directed to the OHA Docket Clerk at 202-245-8300.

* Due to the consequences from the COVID-19 Pandemic and consistent with the current operating directives of the Department, OHA's on-site support staffing does not provide coverage during all OHA's general office hours (Monday thru Friday, 8:00 am to 4:30 pm, Eastern Time). Hand delivery or courier-delivered mail or parcels at the OHA's physical location may be accepted by Education's mail delivery personnel. Alternatively, a party filing by hand delivery or courier-delivered mail or parcels, may contact the OHA main phone at 202-245-8300 to verify OHA staff is available to accept a filing. Hand delivery and delivery by U.S. Mail to OHA will likely be delayed. Extensions to the time to file will not be granted by OHA.