S DISTRICT COURT FOR
ICT OF WEST VIRGINIA

ON DIVISION

DONNA S. MCCOMAS,

Plaintiff,

vs. CIVIL ACTION NO. 3:96-0275

RICHARD W. RILEY, Secretary of Education of the United States, THE UNITED STATES DEPARTMENT OF EDUCATION and UNITED STUDENT AID FUNDS, INC., a corporation,

Defendants.

MEMORANDUM OPINION AND ORDER

In this action, plaintiff Donna McComas challenges a regulation which the Department of Education ("DOE") promulgated to implement a provision of the Higher Education Act. In the provision at issue, Congress directs the Secretary of Education to discharge the student loan obligations of any student who "is unable to complete the program in which such student is enrolled due to the closure of the institution . . . ." 20 U.S.C. § 1087(c)(1). DOE's regulation, however, bars students from receiving a discharge if they "complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school." 34 C.F.R. § 682.402. The plaintiff argues that this regulation contravenes the plain meaning and purpose of its governing statute by adding a "teach-out/transfer of credits" limitation which is not included in the statute nor consistent with its language and legislative history. DOE maintains that the "teach-out/transfer of credits"

64

schools to escape dead-end jobs found themselves in worse shape than when they started, having never received the education they paid for, but saddled with student loan debt. Earning barely enough money to afford the basic necessities of life, these former students typically defaulted on their loans.

To remedy this situation, Congress authorized loan discharges for two classes of students: those who were unable to complete the program in which they were enrolled due to the closure of the institution, and those whose eligibility to receive a FFELP loan was falsely certified by the school. These discharge provisions paralleled similar provisions which discharged loans of students who had died or become disabled. The statute provides:

> If a borrower who received, on or after January 1, 1986, a loan made, insured, or guaranteed under this part and the student borrower, or the student on whose behalf a parent borrowed, is unable to complete the program in which such student is enrolled due to the closure of the institution or if such student's eligibility to borrow under this part was falsely certified by the eligible institution, then the Secretary shall discharge the borrower's liability on the loan (including interest and collection fees) by repaying the amount owed on the loan and shall subsequently pursue any claim available to such borrower against the institution and its affiliates and principals or settle the loan obligation pursuant to the financial responsibility authority under subpart 3 of part G.

20 U.S.C. § 1087(c)(1).

Although Congress enacted this legislation in 1992, DOE did not publish the regulations necessary to implement the closed school discharge provision until the Spring of 1994. The regulations limit the scope of § 1087(c)(1) by disqualifying students who "complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school." 34 C.F.R. § 682.402 (d)(3)(ii). To receive a discharge, students must submit an application in which they swear, under penalty of perjury,

that they did not participate in a teach-out or transfer credits. In addition, students must agree to provide additional information and documentation at DOE's request, to provide testimony regarding their request for discharge, and to transfer to DOE their right of recovery against third parties.

B. Factual Summary

Plaintiff Donna McComas obtained a $2514 student loan to attend Phillips Junior College, a trade school in the Huntington, West Virginia area. In the Fall of 1990, plaintiff enrolled in a year-long word processing program at Phillips which promised 48 credit hours of instruction and employment assistance. However, Phillips closed shortly after plaintiff entered the program. At its closure, she had only completed 24 of the 48 credit hours needed to graduate from the word processing program, and had not received any job placement assistance. Phillips did pay a pro rata refund in the amount of $1,653.38 to plaintiff's lender, Manufacturers Hanover Bank, which the bank credited towards plaintiff's outstanding loan balance.

Two months later, McComas enrolled in the Professional Office Assistant program at Huntington Junior College of Business. This program was similar to the word processing program at Phillips. In fact, Huntington accepted all 24 credit hours that plaintiff completed in the Phillips' word processing program. To continue her education, she secured a second student loan in the amount of $1,750. Plaintiff did complete 28 credit hours at Huntington which, when combined with the 24 hours from Phillips, qualified her to receive a diploma for completion of Huntington's Professional Office Assistant program. However, plaintiff failed Huntington's required proficiency test, and thus never received a diploma.

In 1995, plaintiff received a letter from her loan guarantor, United Student Aid Funds ("USAF"), which informed her of her potential eligibility for a loan discharge. The letter explained that recent changes in federal law authorized loan discharges for students who are prevented from completing their "course of study" because of school closure. According to the letter, plaintiff had been identified as a candidate for a loan discharge. The letter instructed her to complete the enclosed application form, and to return it within 60 days. USAF would then notify her of her eligibility for a discharge. If eligible, USAF would refund all payments that plaintiff had made on the loan. The letter advised plaintiff that by signing the enclosed application form, she would be "attesting (under penalty of perjury), to the accuracy of the information provided and the applicability of the statements to [her] situation." Amended Complaint, Ex. J. Applications would not be accepted without signatures. Finally, the letter included a toll-free number to call if she had any questions regarding the application form.

The enclosed application form included four sections. The first three requested general information about the loan borrower, the student for whom the loan was obtained, and the loan itself. The fourth section required plaintiff to certify, under penalty of perjury, that she did not complete her course of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school.

Plaintiff chose not to submit the application form. Instead, on March 28, 1996, Donna McComas filed suit against DOE, alleging that DOE's regulations contravene the governing statute by adding a "teach-out/transfer of credits" limitation which disqualifies otherwise eligible students from receiving a loan discharge. In addition, plaintiff alleges that the application form

itself violates the Due Process Clause of the Fifth Amendment. She seeks declaratory and injunctive relief.

II. ANALYSIS

A. Justiciability

First, DOE argues that this case is nonjusticiable because plaintiff lacks standing. DOE predicates this argument on the fact that plaintiff never applied for a loan discharge, and consequently, DOE never determined her eligibility. In the absence of an adverse determination, DOE asserts that plaintiff has not suffered an injury that would satisfy the standing requirement. The Court disagrees.

To establish standing, plaintiffs must allege an actual or imminent injury that is concrete and particularized, as opposed to hypothetical or conjectural. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). In addition, plaintiffs must show that the injury is fairly traceable to the defendant's conduct, and is likely to be redressed by a favorable court decision. *Id.* Here, DOE's regulation prevents plaintiff from receiving the loan discharge that she claims she is entitled to under the statute. Although plaintiff never applied for a discharge, DOE's pleadings before the Court make it abundantly clear that their regulations disqualify her from receiving a discharge of her loan obligation. In the meantime, she suffers all the financial difficulties associated with an outstanding loan obligation. This is a concrete and particularized injury that is traceable to DOE's conduct, namely the creation of the "teach-out/transfer of credits" limitation. Because she is directly affected by DOE's regulations, plaintiff is an appropriate party to challenge them, and she properly seeks redress in this Court.

Next, DOE argues that plaintiff's claim is not ripe for judicial review because "[u]ntil DOE makes a determination that she is ineligible for a discharge, the challenged regulation has no adverse impact on the plaintiff." Def. Reply in Supp. of Mot. for Summ. J. at 7. Again, the Court disagrees.

Ripeness is a justiciability doctrine that seeks "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148 (1967). Challenges to administrative regulations become ripe when the "administrative decision . . . has been formalized and its effects felt in a concrete way by the challenging" party. *Charter Federal Savings Bank v. Office of Thrift Supervision*, 976 F.2d 203, 208 (4th Cir. 1992) (internal quotations omitted). Ripeness issues require the Court to evaluate both "the hardship to the parties of withholding court consideration" and "the fitness of the issues for judicial decision." *Abbott Laboratories*, 387 U.S. at 149.

Here, DOE has published its final regulations, which are now codified in 34 C.F.R. § 682.402(d). Plaintiff has chosen not to apply for a discharge, primarily because the regulation's "teach-out/transfer of credits" limitation appears to disqualify her on its face. Indeed, DOE has all but stipulated to the fact that she is not eligible for a discharge under the regulations. As a result, plaintiff continues to carry an outstanding loan balance, although she may be entitled to a discharge under the language of the governing statute. Thus, plaintiff has felt the effects of DOE's regulations in a concrete way.

Moreover, plaintiff will suffer hardship if the Court withholds judicial review. Every day that she maintains an outstanding loan balance, plaintiff sinks deeper and deeper into debt.

DOE's regulations leave her with no satisfactory options. She could simply forego a discharge by never submitting an application. Alternatively, plaintiff could apply for a discharge and indicate that she did not complete her program through a teach-out or transfer of credits, thereby exposing herself to criminal penalties if DOE found otherwise. As a final option, she could apply for a discharge and either indicate that she did complete her program through a teach-out or transfer of credits, or simply describe the relevant events and let DOE determine whether she qualifies. Withholding judicial review would burden the plaintiff by forcing her to choose between abandoning her quest for a discharge or risking prosecution to obtain it.

Finally, this case presents legal issues which are fit for judicial decision at this time. A case is generally considered fit for judicial decision "where the issues to be considered are purely legal ones and where the agency rule or action giving rise to the controversy is final and not dependent upon future uncertainties or intervening agency rulings." *Charter Federal Savings Bank*, 976 F.2d at 208. This case presents a classic example of a purely legal question: whether DOE's regulation contravenes the language of its governing statute. Such a question fits squarely within the function of a reviewing court and cannot be refined or illuminated by further agency proceedings. Because this action presents issues that are fit for judicial review and because plaintiff will suffer hardship if the Court withholds consideration, plaintiff's challenge to 34 C.F.R. § 682.402(d) is ripe for review.

Defendants also argue that this case is nonjusticiable because plaintiff has failed to exhaust her administrative remedies. Generally, an individual must exhaust all administrative remedies before seeking redress in federal court for injuries allegedly caused by agency action. *Volvo GM Heavy Truck Corp. v. United States Dept. of Labor*, 118 F.3d 205, 208-09 (4th Cir.

1997). But exhaustion of administrative remedies is not required if the dispute is based primarily on a matter of statutory construction. *McDonald v. Centra, Inc.*, 946 F.2d 1059, 1063 (4th Cir. 1991). Here, statutory construction lies at the heart of plaintiff's suit. The central issue is whether defendants' regulation represents a reasonable interpretation of its governing statute. Therefore, plaintiff's failure to exhaust her administrative remedies does not preclude her from seeking relief in this Court.

B. Summary Judgment Standard

Under Rule 56(c) of the Federal Rules of Civil Procedure, parties moving for summary judgment must demonstrate that there are no genuine issues of material fact and that they are entitled to judgment as a matter of law. Courts may not grant summary judgment as a matter of law unless "the pleadings, depositions, affidavits, and other documents in the record leave no issue of any material fact which needs to be passed on by a jury." *HealthSouth Rehabilitation Hospital v. American Nat'l Red Cross*, 101 F.3d 1005, 1996 WL 689626 *2 (4th Cir. (S.C.)). Here, the material facts are not disputed. Therefore, the Court may properly dispose of the remaining legal issues as a matter of law.

C. The "Teach-out/Transfer of Credits" Provision

In reviewing an agency's construction of its governing statute, courts must first determine whether the statute directly addresses the precise issue before the court. *Snowa v. Commissioner of Internal Revenue*, 123 F.3d 190, 195 (4th Cir. 1997). "As in all cases involving statutory construction, the Court's starting point must be the language used by Congress. The Court's

duty is to give effect to the intent of Congress, which the Court must first seek in the plain language of the statute, giving the words their ordinary meaning." *United States Army Engineer Center v. Federal Labor Relations Authority*, 762 F.2d 409, 412-13 (4th Cir. 1985) (citations omitted). "'If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.'" *Snowa*, 123 F.3d at 195 (quoting *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984)). However, if the statute is "silent or ambiguous in expressing congressional intent, [courts] must determine whether the agency's interpretation is based on a 'permissible construction of the statute.'" *Snowa*, 123 F.3d at 195-96 (quoting *Chevron*, 467 U.S. at 843).

Here, Congress has not directly spoken to the "teach-out/transfer of credits" issue in clear and unambiguous terms. The statutory text provides, in pertinent part, that "[i]f a . . . student borrower . . . is unable to complete the program in which such student is enrolled due to the closure of the institution . . . then the Secretary shall discharge the borrower's liability on the loan . . . ." 20 U.S.C. § 1087(c)(1). A plain reading of the statute shows that student borrowers must fulfill two requirements to qualify for a loan discharge. First, the student borrower must be "unable to complete the program in which such student is enrolled." Second, this inability to complete the program must be caused by school closure. However, the statutory text does not conclusively define "program." According to the plaintiff, the phrase "in which such student is enrolled" limits the definition of "program" to a specific course at the closed school. Defendants argue that "program" means a general course of study that students may pursue at different institutions.

The Court agrees that the statutory text does not necessarily link "program" to one specific institution. Although the phrase "in which such student is enrolled" could limit "program" to a specific course at the closed institution, the phrase could also serve to define the subject matter of the program. For example, at the moment of school closure, the student may be enrolled in a word processing program; it is thus a word processing program that the student must be unable to complete in order to secure a discharge. It is impossible to determine from the statutory text whether Congress intended discharges for students who are unable to complete a specific program at the closed school, or for students who are unable to complete a program consisting of the same subject matter through a teach-out or transfer of credits. Because the text of § 1087(c)(1) is susceptible to two different meanings, it does not evince clear and unambiguous congressional intent to prohibit DOE's use of the "teach-out/transfer of credits" limitation.

Given the text's ambiguity, the Court must defer to DOE's interpretation of § 1087(c)(1) if such interpretation is reasonable. This approach is mandated by the "presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows." *Chevron*, 467 U.S. at 843-44. Here, neither the text nor the legislative history forecloses DOE's interpretation. As discussed above, the text of § 1087(c)(1) does not restrict "program" to a particular institution. Moreover, the legislative history shows that Congress specifically contemplated teach-outs, seeking to remedy the problems students encounter when their school closes and "fails to provide for a teach-out at another institution." S. Rep. No. 58, 102d Cong.,

1st Sess. 11 (1991). DOE's regulations interpret § 1087(c)(1) as being primarily concerned with students who are unable to complete their education at all, and not with students who are forced to complete their education at another school.

Of course, the statutory text also allows for plaintiff's interpretation of § 1087(c)(1) as mandating discharges following school closure regardless of whether students choose to complete their education elsewhere. But the fact that plaintiff's interpretation is also reasonable makes no difference. The Court "need not find that [DOE's] construction is the only reasonable one, or even that it is the result [the Court] would have reached had the question arisen in the first instance in judicial proceedings." *Udall v. Tallman*, 380 U.S. 1, 16 (1965) (citations omitted). The Court need only find that DOE's regulations are reasonable. Because "Congress did not unambiguously manifest its intent to adopt [plaintiff's] view and . . . [DOE's] interpretation is reasonable, " the Court must uphold DOE's regulations. *Babbitt v. Sweet Home Chapter of Communities*, 515 U.S. 687, 703 (1995).

D. The Application Form

Plaintiff also challenges the application process itself, arguing that the mandatory language of 20 U.S.C. § 1087(c)(1) prohibits DOE from requiring student borrowers to complete an application in order to obtain a discharge. Plaintiff argues that this application process is unnecessary because defendants could easily obtain all information necessary to identify the students entitled to discharge. The Court finds little difficulty in resolving this issue in favor of the defendants. For one, plaintiff's argument depends upon the Court invalidating the "teach-out/transfer of credits" provision, which, as explained above, will not occur. Furthermore,

agencies utilize broad discretion in implementing Congress's directives. Plaintiff has not offered any real basis on which to dispute DOE's ability either to promulgate regulations pursuant to its statutory mandate or to require some sort of application process before granting discharges. The Court finds that it lies well within DOE's authority to require McComas, and all other discharge candidates, to complete some written request in order to obtain a discharge.

Finally, plaintiff challenges the application form on due process grounds. Plaintiff argues that the regulation's requirement that she swear, under penalty of perjury, that she did not complete her program through a teach-out or transfer of credits violates the Fifth Amendment because the "teach-out/transfer of credits" provision is vague and undefined. The Court rejects this argument on three grounds. First, even though "teach-out" is not defined in the regulations, "transfer of credits" has a fairly obvious meaning. Here, plaintiff did in fact transfer all of her credits to Huntington. Thus, under the facts of this case, plaintiff could easily attest to the fact that she transferred credits, without being troubled by any ambiguity in the term "teach-out." Second, the application form came with an 800 number to call if the student borrower had any questions. Thus, if plaintiff were unsure as to whether, for example, she actually "completed" the program given the fact that she failed the proficiency test, she could simply call the 800 number for answers. Finally, DOE's regulations do not require any specific application form. They merely require "a written request and sworn statement." 34 C.F.R. § 682.402(d)(3). Therefore, plaintiff can file any written request that she likes, describing the facts that she knows to be true, as long as she swears to its accuracy.

III. Conclusion

For the reasons stated herein, the Court **FINDS** that DOE's regulations do not contravene the governing statute, 20 U.S.C. § 1087(c)(1). The Court further **FINDS** that DOE has authority to require borrowers to file a written request and sworn statement before they may receive a discharge, and that such requirement does not violate the Due Process Clause of the Fifth Amendment. Accordingly, the Court **DENIES** plaintiff's Renewed Motion for Partial Summary Judgment, and **GRANTS** defendants' Renewed Motion for Summary Judgment. The Court **ORDERS** that judgment be entered in favor of the defendants and that plaintiff's action be **DISMISSED** and **STRICKEN** from the docket of this Court.

The Court **DIRECTS** the Clerk to send a certified copy of this Memorandum Opinion and Order to counsel of record and any unrepresented parties.

ENTER: February 27, 1998

JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

A TRUE COPY CERTIFIED
FEB 27 1998
SAMUEL L. KAY, CLERK
District & Bankruptcy Courts
Southern District of West Virginia
By _____ Deputy