NOT FOR PUBLICATION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

IN RE:	)	
	)	
ANNE MARIE LOISELL WALKER and,	)	Bankruptcy No. 11-37959-DOT
LLOYD WALKER, III,	)	CHAPTER 7
	)	
Debtors.	)	
	)	
LLOYD WALKER, III,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Pro. No. 12-03076-DOT
	)	
NCO FINANCIAL SYSTEMS, INC., ET AL.,	)	
Defendants.	)	

ORDER GRANTING MOTION TO DISMISS

Debtor brought this adversary proceeding against the United States Department of Education and NCO Financial Systems, Inc. to determine the dischargeability of his student loan. The action was dismissed as to NCO on May 31, 2012. The Department of Education (DOE) has moved to dismiss the action for failure to state a cause of action. For reasons set forth below, the court will grant the motion.

Section 523(a)(8) of the Bankruptcy Code makes nondischargeable:

> (A) (i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
>
> (ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

> (B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual . . .

11 USC § 523(a)(8) . The statute further provides that a loan covered by § 523(a)(8) may be discharged if "excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents. . . ."'

In this case, the parties do not dispute that the loan was made to the plaintiff under the William D. Ford Federal Direct Loan program, authorized by title IV, part D of the Higher Education Act of 1965, as amended.[1] Debtor does not argue that loans made under that loan program do not fall under §523(a)(8)'s prohibition of discharge. Rather, debtor argues that because the educational institution he chose to attend was subsequently

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[1] DOE asserts that the loan in question was a nondischargeable educational loan as that term is defined in 26 U.S.C. §221(d)(1), which provides:

> (d) Definitions.--For purposes of this section--
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> (1) Qualified education loan.--The term "qualified education loan" means any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses--
>
> (A) which are incurred on behalf of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred,
>
> (B) which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and
>
> (C) which are attributable to education furnished during a period during which the recipient was an eligible student.
>
> Such term includes indebtedness used to refinance indebtedness which qualifies as a qualified education loan. The term "qualified education loan" shall not include any indebtedness owed to a person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer or to any person by reason of a loan under any qualified employer plan (as defined in section 72(p)(4)) or under any contract referred to in section 72(p)(5).
>
> (2) Qualified higher education expenses.--The term "qualified higher education expenses" means the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll, as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) at an eligible educational institution, reduced by the sum of--
>
> (A) the amount excluded from gross income under section 127, 135, 529, or 530 by reason of such expenses, and
>
> (B) the amount of any scholarship, allowance, or payment described in section 25A(g)(2).
>
> For purposes of the preceding sentence, the term "eligible educational institution" has the same meaning given such term by section 25A(f)(2), except that such term shall also include an institution conducting an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility which offers postgraduate training.

closed for fraudulent practices, he received no education and the loan made to him was therefore not a nondischargeable "educational loan" as contemplated by § 523(a)(8). Rather, he argues, he received a loan as "part of a fraudulent scheme to defraud the government and [debtor] out of money." (Complaint, ¶ 11)

This case, in the final analysis, raises the issue of who should bear the burden of paying for the education contracted for by debtor. DOE has aptly argued that this situation is analogous to the situation in which a guarantor of a student loan for another seeks to have that guaranty discharged because he received no benefit. The court views this situation as more analogous to the situation in which an individual purchases a vehicle that subsequently turns out to be defective, a lemon. The debtor's remedy in that situation is against the seller or manufacturer of the vehicle and not against the lender. Here, in the most simple terms, the debtor has purchased an educational lemon. His remedy is against the institution that promised him an education and failed to deliver.

There is nothing in the § 523(a)(8) that supports the argument made by debtor. There is nothing in 26 U.S.C. § 221(d)'s definition of "qualified educational loan" that supports the argument made by debtor. While the court views the alleged actions of the educational institution with disfavor, it must act within the binding statutory constraints. Therefore, the court cannot accept debtor's argument that the educational institution's failure to provide adequate education exempts debtor from repaying the loan made by DOE. The court finds that the loan is included in § 523(a)(8)'s grant of nondischargeability.

Having found that the loan itself is covered by § 523(a)(8), the court now turns to the exception contained therein. If repayment would impose an undue hardship, the

educational loan may still be discharged. However, debtor has not argued that payment would be an undue hardship or that the educational institution's fraud placed him in a situation in which repayment would be an undue hardship. Neither did he advance those theories at the hearing. Thus, the loan remains nondischargeable.

In analyzing this issue, the court is also persuaded by the excellent in-depth analysis contained in *Kidd v. Student Loan Xpress, Inc. (In re Kidd)*, 458 B.R. 612 (Bankr. N.D. Ga. 2011). In that case, debtor also raised the argument that failure of a provider to provide a meaningful education caused the educational debt to become dischargeable. The court did not accept that argument and granted summary judgment to the lender. After reviewing the relevant case law and the legislative history of § 523(a)(8), the court found that the debtor's lack of educational benefit did not make the loan dischargeable, remarking that:

> The language of section 523(a)(8) is unambiguous. *See, e.g., Hamblin v. Educ. Credit Mgmt. Corp. (In re Hamblin),* 277 B.R. 676, 679 (Bankr.S.D.Miss.2002). Plaintiff's debt falls within the statutory provisions of § 523(a)(8)(A)(i). The stringent nondischargeability standard for student loans evidences Congress' intent to keep our student loan programs intact. *In re Hixson,* 450 B.R. 9, 2011 WL 1135160 (Bankr.S.D.N.Y. Mar. 24, 2011). Regardless of [the educational institution's] acts of omissions, the expansive nature of the statutory language demonstrates Congress' intent to protect the student loan system and maintain the ability of future students to obtain funding to advance their education.

458 B.R. at 621.

Therefore, in accordance with the above analysis,

IT IS ORDERED that the motion to dismiss is **GRANTED**, and the adversary proceeding is **DISMISSED**.

SIGNED: June 14, 2012

/s/ Douglas O. Tice
UNITED STATES BANKRUPTCY JUDGE

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