



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of

LIVINGSTONE COLLEGE,

Respondent.

Docket No. 02-80-SA

Federal Student
Aid Proceeding

ACN: 06-2000-20011

Appearances: Algeania W. Freeman, Ph.D., President, Livingstone College, Salisbury, NC, for Respondent.

Stephen M. Kraut, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Federal Student Aid Programs.

Before: Richard I. Slippen, Administrative Judge

DECISION

Livingstone College (Livingstone) participates in the federal student aid programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV), 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2752 *et seq.* Livingstone appealed the U.S. Department of Education (Department), office of Federal Student Aid's (FSA) Final Audit Determination (FAD) dated July 25, 2002. The Department's Office of Inspector General (OIG) performed the audit, which covered the 1999-2000 award year. The stated objectives of the OIG audit were limited to determining whether Livingstone completed verification of financial aid applicants' data, and whether Livingstone accurately reported these results to the Department.

The FAD charged that Livingstone failed to complete and/or inaccurately completed the required verification of student aid eligibility information for the requisite percentage of Title IV applicants. The Department's auditors reviewed 63 files of Pell Grant recipients who were selected for verification. Based on its review, the auditors alleged that Livingstone had not completed verification for 40 of the 63 recipients selected for verification. The auditors also identified two recipients who were never enrolled at Livingstone even though the institution

disbursed Title IV funds to them. In the FAD, FSA projected the sample results (*i.e.* error rate) to a universe of 333 recipients, or 30 percent of Title IV applicants for the award year at issue. Liability for this finding totaled \$578,879.¹ FSA also assessed \$10,402 in liability for the two students who did not attend Livingstone.²

FSA argues that Livingstone was required to verify each of the 333 students selected for verification by the Department. FSA states that 333 students comprised 30 percent or less of the number of students who applied for Title IV aid for the award year. According to FSA, Livingstone reported that 1,130 eligible Title IV applicants enrolled at the institution for the 1999-2000 award year. Given that 30 percent of the pool of 1,130 students equals 339, FSA contends that Livingstone was not required to verify more students than allowed by the regulations. FSA states that OIG selected a statistically valid sample of 63 of the 333 students to evaluate the institution's compliance with the verification requirements. FSA alleges that Livingstone failed to properly verify application information for 32 of the 63 students selected for review by the OIG auditors.

FSA argues that an institution is liable for Title IV funds it disburses to a student who is selected for verification if the institution does not verify the student's financial aid application information, or if it cannot document that it properly verified the student's information. FSA asserts that Livingstone has not challenged the manner in which the sample was taken, the size of the sample, or the legitimacy of the liability projection. FSA contradicts Livingstone's argument that it only needed to verify the applications of 30 percent of the students who received Pell Grants.

According to FSA, its 1999-2000 Financial Aid Handbook allows a school to define its applicant pool in two ways. A school may broadly define its applicant pool by including all applicants who list the school in their applications, regardless of whether they ever enroll or are eligible for Title IV assistance. Alternatively, a school may narrowly define its applicant pool by including only applicants who enroll at the school and are eligible to receive Title IV funds. Further, FSA states that regardless of which way a school chooses to define its applicant pool, it must consistently adhere to and apply this standard to ensure that selected applicants are properly verified. According to FSA, an institution is not permitted to choose its applicant pool from those applicants who receive funds under only one of the Title IV programs.

¹ FSA later reduced the extrapolated liability sought to \$479,420.39 after Livingstone cured its failure to verify eight of the 40 students that were not verified. The extrapolated liability represents \$314,359.70 in Pell funds, \$39,111.96 in SEOG funds, and \$356,484.34 in Direct Loans. FSA then applied the estimated loss formula to the \$356,484.34 in Direct Loans to reach an assessed liability of \$125,948.73.

² This liability comprised \$3,126 in Pell funds and \$7,276 in Direct Loan funds.

FSA also contends that Livingstone submitted no evidence that it properly verified the application information for the 260 of the 765 students who received Pell Grants during the 1999-2000 award year, and that Livingstone claimed it verified. FSA also points out that 28 of the 260 students listed by Livingstone did not receive Pell Grants during the 1999-2000 award year, and that 59 of these students were not selected for verification by the Department.

Livingstone contends that because the Financial Aid Handbook does not define the terms, “applicant” and “applicant pool,” the school had to develop its own policy for determining the number of applicants that constitute 30 percent of the school’s applicants, and apply that policy consistently. Accordingly, Livingstone chose eligible Pell recipients since most of its students receive this form of Title IV aid. Livingstone argues that its policy was developed and implemented in a manner consistent with and based on federal regulations and the Department’s financial aid guides. The school calculated the number of applicants that it was required to verify by using the number of Pell recipients cited in the March 29, 2002, Final Audit Report for the period of July 1, 1999, through June 30, 2000. Therefore, Livingstone concludes it only had to verify 30 percent of the 765 recipients, or 230 student files. Livingstone states that it completed verification for 260 files, 30 files more than it was required to verify. Livingstone argues that the Department cannot assess liability on more than the required number of files to be verified.

Livingstone also argues that it should be able to offset any liability for disbursements made to two students during the 1999-2000 award year by the amount FSA already owes the school. According to Livingstone, it has prepared a complete Pell reconciliation showing that although it posted \$1,815,419 in Pell, the school only received \$1,802,220 for the award year, leaving a gap of \$13,199, still owed to it.

In order to receive Title IV funds, a student must submit a “Free Application for Federal Student Aid” (FAFSA). *See* 20 U.S.C. § 1091(b)(1); 34 C.F.R. §§ 685.201 and 690.13. A school is required to verify the FAFSA information of its students who apply for Title IV aid, except that the institution does not have to verify more than 30 percent of its total applicants for Title IV assistance. 34 C.F.R. § 668.54(a)(2). *See In re Fisk University*, Docket No. 94-216-SP (October 5, 1995). If the Department selects a student’s FAFSA for verification, the school may make one disbursement of a Pell Grant or Secondary Educational Opportunity Grant (SEOG) while awaiting submission of the verification documents. 34 C.F.R. § 668.58(a)(2)(ii)(A). The school may not disburse Direct Loan funds unless and until the student submits the required verification documents. 34 C.F.R. § 668.58(a)(2)(iii)(B). The school must return any disbursed Pell and/or SEOG funds if the student does not submit the verification documents. 34 C.F.R. §§ 668.60(b)(1)(iii) and 668.60(c)(2)(ii).

It is well established that a school is liable for the Title IV funds it disburses to a student who is selected for verification if the institution does not verify the student’s FAFSA information or cannot document its verification.³ A school has some leeway in establishing its policies for

³ *See e.g., In re Neosho County Community College*, Docket No. 97-158-SF, U.S. Dep’t of Educ. (January 12, 1999); *In re Anthony’s Barber Styling College*, Docket No. 97-1-SP, U.S. Dep’t of

verifying information in FAFSA applications as long as the school's policies are applied consistently. A school may define its applicant pool for verification broadly or narrowly. *See* 34 C.F.R. §§ 668.53(a), 668.52, and 668.54(a)(2). A broadly defined applicant pool contains all the school's applicants for Title IV aid; a narrowly defined pool contains eligible Title IV applicants who have enrolled at the school. A school may only include those applicants selected for verification by the Secretary in its calculation of 30 percent of its applicants. 34 C.F.R. § 668.54(a)(2)(ii). A school shall require each applicant, whose application is selected for verification on the basis of edits specified by the Secretary, to submit supporting documentation. 34 C.F.R. 668.54(a)(2)(i). The term edits means pre-established factors for identifying student aid applications that may contain incorrect, missing, illogical, or inconsistent information and randomly selected student aid applications. 34 C.F.R. § 668.52.

Livingstone's interpretation of its verification pool is not consistent with the Department's regulations or the guidance contained in the Financial Aid Handbook. The regulations do not provide for the selection of applicants from only one type of Title IV program. A school can either select all Title IV aid applicants or all Title IV aid applicants who have enrolled. Given that no regulatory or other authority exists to support the school's method of selecting applicants for verification, I find that Livingstone failed to meet its obligation to verify 30 percent of its Title IV applicants for the 1999-2000 award year. Livingstone was required to verify the 333 students who were selected for verification by the Department. Based on the OIG review of 63 of these 333 students, Livingstone failed to complete verification for 32 students. FSA then extrapolated the liability for these 32 students to the applicant pool of 333 that Livingstone was required to verify. FSA's extrapolation of liability from a sample is a reasonable and accepted method for calculating a school's liability.⁴

Livingstone also remains liable for Title IV funds disbursed on behalf of two students who did not attend the school. Livingstone's request that its liability be offset by Pell funds that the school claims it should have received is not within the scope of the tribunal's authority.⁵ Consequently, Livingstone's request to offset the liability for these two students is denied.

Educ. (August 1, 1997); and *In re Christian Brothers University*, Docket No. 96-4-SP, U.S. Dep't of Educ. (January 8, 1997).

⁴ *See In re Hamilton Professional Schools*, Docket No. 02-49-SP, U.S. Dep't of Educ. (June 11, 2003).

⁵ *See In re Modern Trend Beauty School*, Docket No. 98-109-SP, U.S. Dep't of Educ. (March 14, 2001).

ORDER

On the basis of the foregoing, it is hereby ORDERED that Livingstone College pay to the U.S. Department of Education the sum of \$489,822.90.

Judge Richard I. Slippen

Dated: April 29, 2004

SERVICE

A copy of the attached document was sent to the following:

Algeania W. Freeman, Ph.D.
President
Livingstone College
701 W. Monroe Street
Salisbury, NC 28144

Stephen M. Kraut, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110