



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

In the Matter of

Docket No. 07-41-SP

EDNET CAREER INSTITUTE,

Federal Student Aid
Proceeding

Respondent.

PRCN: 200310920754

Appearances: Glenn Bogart, of Birmingham, Alabama, for EdNet Career Institute.

Russell B. Wolff, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Office of Federal Student Aid.

Before: Richard F. O'Hair, Administrative Judge

DECISION

EdNet Career Institute (EdNet), the respondent in these proceedings, is an institute of higher education that participated 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.* The Office of Federal Student Aid (FSA), U.S. Department of Education (ED), administers these programs. On June 11, 2007, FSA issued a Final Program Review Determination (FPRD) containing nine findings, and assessing a liability of \$454,549.00 payable to ED for Pell Grant disbursements and \$47,979.56 payable to student lender accounts for FFEL loans. Following a very lengthy briefing schedule, FSA reported that it was only proceeding with contested FPRD Findings 2, 3, 4, and 10, except where Respondent has conceded individual student liabilities.¹ Accordingly, FSA is seeking a reimbursement of \$385,201 which includes \$321,751 for Pell Grants and \$63,450 for the estimated actual loss owed to ED for the interest on ineligible subsidized Federal Family Education Loans (FFELs). Additionally, FSA asserts that EdNet owes \$26,812.73 to FFEL accounts.

¹ FSA's February 22, 2008, Motion for Leave to Exceed Page Limit is granted.

Procedurally, this case began with a program review of the institution from December 2-6, 2002. EdNet was selected for review because one of its former financial aid administrators contacted ED and reported that EdNet's owner was committing fraud by falsifying attendance and grades, placing students on leaves of absence when they had actually withdrawn, failing to apply satisfactory academic progress standards, and disbursing Title IV aid to ghost students. In addition, during the review the current financial aid administrator told the program reviewer that the owner had hidden files from its auditor for its 2001-02 Title IV compliance audit.

On February 10, 2003, FSA issued a program review report which covered the 2001-2002 and 2002-2003 award years.² Included in this report was the requirement that EdNet perform full file reviews for a number of the findings, plus provide other documentation which the program reviewer found to be either missing or inadequate. Additionally, EdNet was required to submit an auditor's attestation as to the accuracy and completeness of the file review submissions. EdNet provided its initial response to the program review report on September 18, 2003 and its final response was received by FSA on May 20, 2005. After its review of this response, FSA concluded that EdNet failed to address adequately many of the findings listed in the program review report and made its assessments accordingly in the January 11, 2007, FPRD.

All of the FPRD findings addressed here are premised on the understanding that any participant in the Title IV programs acts in the nature of a fiduciary. As such, a participant must exercise the highest standard of care and diligence when administering these programs and accounting for the funds received under these programs. The failure to administer the programs in a fiscally responsibly fashion can constitute grounds for emergency action, imposition of fines, or termination from further participation in the programs, as well as be required to reimburse ED for all funds disbursed during the period in question. *See* 34 C.F.R. § 668.82.

Although EdNet appealed most of the adverse findings set out in the FPRD, FSA is pursuing recovery for only four of them: Finding 2 – EdNet failed to properly verify files selected for verification; Finding 3 – EdNet exercised professional judgment with inadequate or inconsistent documentation; Finding 4 – student files had inadequate documentation to resolve inconsistent and discrepant information; and, Finding 10 – satisfactory academic progress standards were not adequately monitored or applied, and there was evidence of an impaired administrative capability.

PRELIMINARY ISSUES

Respondent raised three general motions or objections which must be resolved before addressing the contested findings in the FPRD. First, EdNet asserts that FSA's failure to acknowledge the auditor's attestation makes its conclusions in the FPRD invalid. It says that this

² On February 11, 2003, ED initiated action to terminate EdNet's eligibility to participate in the federal student aid programs. EdNet requested reconsideration of this action and submitted student statements to ED in support of its appeal. When EdNet's owner was confronted with the fact that two students denied signing statements attributable to them, EdNet withdrew from the procedure and acknowledged that its Title IV eligibility had ended.

attestation was timely sent to FSA, despite the fact that FSA denies receiving it in a timely fashion. EdNet insists that it sent the auditor's attestation to FSA in February 2004 and that FSA must have misplaced it. EdNet maintains that the attestation supports the institution's position that, for the most part, its federal student aid funds were properly disbursed, and FSA's refusal to give the attestation credibility puts an undue burden on the tribunal.

FSA disputes this allegation by explaining that, despite repeated phone calls and faxes to EdNet's owner beginning in early 2004 asking for both the attestation and missing spreadsheets and supporting documentation, FSA did not receive the attestation until July 30, 2007. FSA counters EdNet's allegations that it sent the attestation to FSA in February 2004 by referring to the auditor's statement that he would not have sent his client the attestation until after the bill was paid and that did not occur until June 21, 2004. Furthermore, the auditor has no proof of when he mailed the attestation and cannot find a copy of the transmittal letter. As a result of having no attestation, FSA relates that the program reviewer was required to examine all available student records. Not only did this take a lot of time, but also this procedure disclosed numerous errors, inconsistencies, and omissions in EdNet's spreadsheets and program review report response. After making many requests to EdNet's owner, FSA states that the program reviewer did not receive the auditor's workpapers and auditor engagement letter until July 30, 2007, 50 days after the issuance of the June 11, 2007 FPRD. When the program reviewer finally compared her findings with those of the auditor, she noted that the auditor found far fewer inconsistencies and omissions than she did. FSA explains this inconsistency on the fact that the scope of the auditor's review was limited to reviewing only EdNet's file review and related spreadsheets, and not the more comprehensive category of the completeness of EdNet's work. Accordingly, FSA believes the attestation has no credibility and therefore, carries no weight in this proceeding. FSA points out that a more telling critique of the attestation is that it did not find the many errors and omissions that the program reviewer discovered when she went through the same student records. By the time FSA received the auditor's attestation it was too late to contact the auditor and discuss the many deficiencies because the FPRD had been issued.

After reviewing the auditor's submissions, I find that EdNet's failure to provide a timely, comprehensive auditor's attestation significantly delayed the publishing of the FPRD, enhanced the validity of the FPRD, and diminished the probative value of the auditor's attestation. Considering everything, EdNet's request that the attestation serve as the dominant source of authority in this proceeding is denied.

EdNet next asserts a laches claim because FSA did not respond to its September 18, 2003, submission of the results of its various file reviews until April 2005 and then did not issue an FPRD for another two years. EdNet complains that since it did not find out that FSA had rejected its file reviews until June 2007, it was hampered in its ability to demonstrate that all questioned federal funds were expended properly. This occurred because of the difficulty it encountered contacting many of the students who were enrolled between 2001 and 2003 in order to obtain additional information or clarify any discrepancies. For this reason, EdNet argues that FSA's failure to act promptly on this matter should operate to bar recovery by ED.

FSA responds that laches, as an affirmative defense, is rarely available against the United States because of the long-standing rule that the United States “is exempt from the consequences of its laches.” *Herman v. South Carolina Nat. Bank*, 140 F.3d 1413, 1427 (11th Cir. 1998), *cert denied*, *Finking v. Herman*, 119 U.S. 1140(1999); *United States v. Alavardo*, 5 F.3d 1425, 1427 (11th Cir. 1998). FSA points out that the legal principle derived from *Herman* and *Alavardo* is that the government is protected from the inadvertent acts of its agents. Additionally, not only does FSA deny that its conduct would justify a deviation from this well-established position, it also maintains that EdNet was the party primarily responsible for the delay that occurred between the program review in December 2002 and the June 2007 issuance of the FPRD. FSA says it was EdNet’s untimely responses to FSA’s requests for file reviews, work papers, auditor’s attestation, and related materials that dictated the extended review period leading up to the publication of the FPRD.

I find nothing in EdNet’s argument on this point which supports any position other than to deny this objection. It is quite apparent that EdNet was less than expedient and forthcoming in supplying FSA with all of the documents and workpapers the program reviewer requested and needed to perform her analysis of EdNet’s disbursement of federal aid. It appears to me that if there were a delay in these proceedings, it was the direct result of EdNet’s protracted response to the program review report and FSA’s instructions regarding additional submissions to ED. Given the complexity of these proceedings and the number of findings to be examined and resolved, I find that FSA was diligent in performing its review and completed its responsibilities in a reasonable amount of time, thus giving no support to EdNet’s claim of laches. *See, In the Matter of OIC Vocational Institute*, Dkt. No. 98-12-SP, U.S. Dep’t of Educ. (Sept. 23, 1998); *In the Matter of Platt Junior College*, Dkt. No. 90-2-SA, U.S. Dep’t of Educ. (Oct. 31, 1991).

EdNet’s final general motion or objection is that the student file documentation it submitted is sufficient to carry its burden of persuasion. Additionally, it suggests that it is a generally accepted practice among financial aid administrators that they may resolve conflicting information in student loan applications by interviewing the students without the need to obtain documents to support the final conclusions regarding eligibility. For this reason, EdNet asks that I give deference to the undocumented conclusions or decisions reached by its financial aid administrators. I disagree with EdNet’s argument. Its submission of the results of its file reviews and other requested workpapers to FSA over a protracted period of time evidenced a complete disregard of its fiduciary responsibility; and it relied upon undocumented conversations between its financial aid officer and its students to its peril. As a result, I find it has not met its burden of persuasion, as set out in 34 C.F.R. § 668.116(d), that the questioned or disallowed expenditures were proper.

FINAL PROGRAM REVIEW DETERMINATION FINDINGS

Finding 2: Failure to Properly Verify Files Marked for Verification.

The Higher Education Amendments of 1992, P.L. No.102-325, provide the foundation for the use of a needs analysis formula to determine eligibility for student financial aid. In that

process, a family's financial resources are assessed to compute a reasonable amount that they should contribute towards the student's post secondary education costs. This amount is called the expected family contribution (EFC) and is the main component for the determination of need for student financial assistance. See 34 C.F.R. § 690.2. There are three formulas for calculating the EFC: one for dependent students, 20 U.S.C. § 1087oo; one for independent students without dependents other than a spouse, 20 U.S.C. § 1087pp; and one for independent students with dependents other than a spouse, 20 U.S.C. § 1087qq. Depending upon the category, the formulas generally examine the available income of the student, and the student's spouse or parents, number of dependents in the family, number of dependents enrolled in a degree or certificate program, net assets of the family, student's marital status, and ages of family members. 20 U.S.C. § 1087nn.

In the implementing regulations found at 34 C.F.R. § 668.54(a)(3), an institution is required to verify the information that is used by an academic institution's financial aid administrator to calculate an applicant's EFC when a student is selected by the Secretary for verification. All of this data is then transferred to an Institutional Student Information Record (ISIR). Among the items specified to be verified are: a student's gross income, income tax paid, marital status, the number of persons in his/her household, and untaxed income and benefits. See 34 C.F.R. § 668.56. Regardless of whether a file is chosen for verification, an institution must employ a system to identify and resolve discrepancies in the information that it receives from different sources regarding all Title IV applications. See 34 C.F.R. § 668.16(f). If an institution fails to perform verification of student files within the time limits set by the ED, all Title IV funds disbursed to those students must be returned to ED. See, e.g., *In the Matter of Avanti Hair Tech*, Dkt. No. 02-22-SP, U.S. Dep't. of Educ. (Oct. 9, 2002).

The FPRD found that Respondent failed to verify the ISIR data in 86% of the sample of 2001-2002 students whose ISIRs ED had been selected for verification, and had not properly verified 67% of the sample of the 2002-2003 files chosen for verification. As a result, the FPRD required EdNet to review the files for the 71 students from both award years that were marked for verification, and to identify all recipients for whom verification was not completed and/or discrepant information was discovered. The FPRD further ordered that after EdNet completed the verification and resolved all discrepant information, it was to submit an auditor's attestation as to the accuracy of its response, plus copies of the auditor's working papers. The FPRD reports that EdNet submitted some documentation for only 24 files with its response. It did not submit the auditor's attestation and back-up documentation for the remaining 47 students by the time of the preparation of the FPRD, despite many telephone calls by the program reviewer to EdNet's owner with renewed requests for this data and offers of assistance. When the program reviewer finally had access to the student documentation, she found many files contained documents within the student files which contradicted each other with respect to household size, student income, parental income and assets, and number of dependents. Additionally she found many files contained documents with "white-outs" and other changes which were not initialed by the student, files with multiple ISIRs, in some cases as many as 10, and tax returns which were missing pages. In most instances there was no documentation in the file to indicate EdNet was aware of the inconsistencies or that it did anything to help resolve them. The FPRD related that

the program reviewer attempted to contact some of the former students for whom EdNet had submitted additional documentation. Two of the students contacted #29 and #53, denied signing these statements and asserted that the information in the statements was not correct.

EdNet argues, with minor exception, that it submitted sufficient documentation to support its position that verification was completed where necessary, although it admits the verification process was not always performed at the time the student submitted the application. EdNet asserts that ED is unreasonable in its determination of what constitutes discrepant or conflicting data that would require verification by the institution. It points out that it is not uncommon for a student's income, dependent status, number of dependents, and number of family members in school to be different on different documents because tax returns may be prepared at different times of the year than the student's application for federal student aid. It argues, therefore, that it has captured the correct economic state of its students in its ISIRs and there is no need for further verification. In support of this, EdNet insists that it submitted to ED the required auditor's attestation which found only minimal errors in the student files selected for verification. Specifically, of the 15 files the auditor selected for review, the auditor's attestation highlights that it found only one file that did not have documentation to verify the changes made to the original ISIR. EdNet disagrees with FSA's claim that it did not receive the auditor's attestation before issuing the FPRD; EdNet relates that the auditor "claims that he would have sent his attestation, dated February 5, 2004, to the ED's regional office in San Francisco", and it must have been overlooked or lost by the program reviewer. Additionally, EdNet argues that since the body of the FPRD specifically addressed only 24 student files, there should be no liability assessed on the remaining 47 cases which were marked for verification and are found in Appendix G to the FPRD. Further, EdNet insists these have been examined by its auditor and found to be free of conflict.

EdNet also alleges that the program reviewer was overzealous in reviewing its files and utilized an ultra-liberal definition of the term discrepancy in the conduct of the review: anything that looks odd. EdNet points out that the term "discrepancy" is not defined by the regulation that requires an institution to develop and apply an adequate system to identify and resolve discrepancies in the student's application. 34 C.F.R. § 668.16(f). In this vein, EdNet asserts that FSA has implemented "fantastical theories of accounting" when examining and analyzing student financial data.

As noted previously, FSA maintains that despite numerous phone calls and e-mails to EdNet's owner requesting the complete auditor's attestation and other documentation required by the program review report, and assurances by EdNet's owner that either she had already sent the items or that she would do so shortly, FSA finally received the attestation in a letter dated July 30, 2007. According to FSA this delay in receiving the auditor's workpapers, engagement letter, and other requested documentation required the program reviewer to examine all available records on each student. This review disclosed numerous errors, inconsistencies and omissions in EdNet's spreadsheets and response to the program review report. After reviewing the auditor's attestation, FSA found it surprising that the auditor found only one error in the sample of 15 files out of 71 provided to the auditor; and this error is not addressed in this finding, but in

Finding 4 of the FPRD. As a consequence, FSA determined that the auditor's attestation was not a useful, trustworthy review tool and, therefore, gave it no credibility. One possible explanation FSA could postulate for the auditor's lone finding of error was that the auditor was given a very limited role; he was engaged only to review and comment on Respondent's file review and related spreadsheets. It did not require the auditor to attest to the completeness of Respondent's work, and therefore, does not address the liabilities established by the program review report.

After a review of EdNet's Initial Brief and Second Brief, FSA reports that there are actually only 11 students under consideration for Finding 2. The remaining students in the group of 71 have either been specifically addressed in other findings of the FPRD, FSA has withdrawn the liability claim, or EdNet has accepted liability. Those students in contention in this finding are #s 6, 9, 10, 14, 21, 22, 34, 37, 39, 49, and 52. Of those 11 students, FSA accepts Respondent's verification submissions for #s 10 and 22; it accepts Respondent's concession of liability for #s 9 and 39; and it finds no verification for #s 6, 14, 21, 34, 37, 39, and 52.

I have reviewed the files of the seven remaining students for whom FSA finds no verification and find that the institution has failed to meet its burden of persuasion. The record shows that: (1) multiple ISIR's were prepared by the school, not the student, (2) uncorroborated changes were made to financial aid documents after the students submitted them, and (3) the presence of conflicting data within the students' files. These conditions all amply demonstrate EdNet's failure to properly implement the verification procedures resolving these discrepancies. These practices have caused EdNet to lose all credibility with regard to its administration of the Title IV Program funds and, by necessity, required the program reviewer to engage in, to use Respondent's word, nit-picking. This unfortunate situation was compounded by the late submission of an auditor's attestation which did not assure FSA or me that the verification procedures were properly applied to the students cited in the body of the FPRD and in Appendix G. As a result, I find that EdNet is liable for the unduplicated liabilities for the nine unverified students discussed in the FPRD and the students in Appendix G because EdNet's submissions on appeal and the auditor's attestation failed to substantiate that the funds were properly disbursed.

Finding 3: Professional Judgment Exercised with Inadequate or Inconsistent Documentation.

The financial aid administrator at an institution is the person responsible for ensuring that accurate data is included in the ISIR as part of the process of determining a student's financial needs. Recognizing that there may be a need for the human element to be integrated in this mathematical process, Congress accorded the financial aid administrators with some discretion to make allowances for a student's special circumstances. In 20 U.S.C. § 1087tt, Congress gives the financial aid administrator this additional authority:

“(n)othing in this part shall be interpreted as limiting the authority of the financial aid administrator, on the basis of adequate documentation, to make adjustments on a case-by-case basis to the cost of attendance or the

values of the data items required to calculate the expected student or parent contribution (or both) to allow for treatment of an individual eligible applicant with special circumstances.”

In 1992, as part of the Higher Education Amendments of 1992, P.L. 102-325, Congress further refined this discretionary authority by re-emphasizing that it could be exercised only on a “case-by-case basis” and that the “special circumstances shall be conditions that differentiate an individual student from a class of students rather than conditions that exist across a class of students.” The legislation also required that the special circumstances of a student must be supported by adequate documentation.

The FPRD reported that EdNet’s financial aid administrator frequently exercised professional judgment by making adjustments to income, household size, and other items affecting the EFC of the students with either no documentation in the file to substantiate this action, or if the documentation were present, it often did not support the action. Additionally, the FPRD alleged that most of the files did not identify the special circumstances relied upon by the financial aid administrator, or even identify the specific adjustments which were made. In many of these cases, the FPRD further notes that it was not uncommon for the financial aid administrator to have generated anywhere from five to ten ISIRs for each of these students presumably for the purpose of finding the right set of data which would provide the lowest EFC for the student. As a result of these findings, FSA required EdNet to perform a full file review of all student files for which it exercised professional judgment for the 2001-2002 and 2002-2003 award years. From this review, FSA determined EdNet exercised professional judgment in 61 instances. Of those 61, the files for 55 students indicated EdNet failed to provide any documentation to support this special treatment, or the documentation provided was inconsistent with the exercise of professional judgment. The FPRD noted that after EdNet received the program review report, it submitted documentation for 37 of those 61 students, but that the documentation was incomplete and insufficient to substantiate the exceptional circumstances for the exercise of professional judgment. Accordingly, FSA determined EdNet was liable for \$141,900 in Pell Grant funds and the estimated actual loss of \$127,633 in FFEL funds.

EdNet asserts that initially it provided FSA with documentation for the 14 files listed in the FPRD and that this documentation proves that special circumstances existed for each student and that it supplied the appropriate documentation to support that conclusion. Additionally, it says it provided FSA with two spreadsheets which addressed all student files for which it exercised professional judgment. Upon receipt of this documentation, EdNet says it and the program reviewer exchanged a series of phone calls and mailings regarding any missing supporting documentation for the remaining students listed on the spread sheets. EdNet maintains that it sent this documentation to the program reviewer in May 2005.

EdNet also points out that all 61 student files were presented to their auditor for an examination and attestation and he found no irregularities. For this reason, Respondent argues that there is no reason to believe that there is anything wrong with the cases it identified as having received professional judgment treatment. EdNet admits, however, that if FSA found any

deficiencies in its files, they were most certainly caused by its financial aid administrators who, history has shown, were less than competent. According to the institution, the individual who was employed during the 2001-2002 award year proved to be inadequate, and during the second award year, EdNet replaced that person with another financial aid administrator who received certification training but was relatively inexperienced. That person was replaced by a third financial aid administrator who was equally inexperienced. Despite these upheavals in staffing, in general, EdNet denies that its financial aid administrators improperly exercised professional judgment. Once it became aware of FSA's concerns, EdNet reports that it contacted the students, and other family members as appropriate, and secured the necessary documentation to substantiate the financial aid administrators' actions. EdNet says that it provided its auditor with all additional documentation it secured from the students and their families. It complains, though, that it was at a distinct disadvantage in contacting former students because of the significant amount of delay on FSA's part (five years) in bringing these alleged deficiencies to its attention. There were several instances, however, in which EdNet agrees that a portion of the aid disbursed to the student has been, or must be, refunded to FSA.

EdNet concedes that generating 15 to 20 ISIRs for some of its students was a bit excessive, but suggests that the number it normally completed for its students is closer to four or five. It denies that its preparation of so many ISIRs was an exercise in manipulating the data for its own benefit to produce the best results. It maintains that these high numbers of ISIRs were solely the result of having inexperienced financial aid administrators, and there was no harm to FSA because, of the many ISIRs generated, only the valid ISIR was utilized. Furthermore, it asserts that even if the documentation for the exercise of professional judgment is considered to be inadequate in some of the student files, it may have affected the amount of the Pell Grant awarded, but it certainly did not have an impact on the amount of the unsubsidized Stafford Loans and PLUS loans awarded because they are not based on a calculated Title IV financial need.

Of the 14 cases alleging an improper exercise of professional judgment specifically cited in the FPRD, FSA says it is not assessing liability for Student #s 10, 15, 34, 35, and 58 because, through inadvertence, the FPRD did not seek reimbursement for them. EdNet addressed the remaining nine cases in its brief. It argues that there should be no liability for # 36 because no professional judgment was exercised, and there should be no liability for # 46 because the EFC was documented to be \$0, so there was no need to exercise professional judgment. For the remaining students: #s 7, 38, 42, 45, 47, 51, and 53, EdNet asserts that its exercise of professional judgment was properly and sufficiently justified by the documentary evidence it submitted to the reviewer.

FSA challenges the exercise of professional judgment in the remaining nine cases cited in the FPRD and 46 cases later identified by EdNet and FSA. FSA bases its claim on the theory that professional judgment cannot be exercised without a showing that the financial aid administrator determined, based on adequate documentation, on a case-by-case basis, that special circumstances existed to justify an adjustment to the student's cost of attendance. It says that without the existence of this documentation contemporaneous with the actual decision to modify

the cost of attendance, the exercise of professional judgment is invalid; and, FSA argues, it cannot be retroactively corrected by the later acquisition of documents that might have supported this decision.

FSA further contends that EdNet's reliance on its auditor's attestation for support that it properly exercised professional judgment is without merit. To support this position, FSA points out that the auditor was missing more than 50% of the student files that were covered by this finding; and the auditor examined only 13 of the 36 files it was given. Of these 13 files, four were not even included in this particular finding. Next FSA asserts that the auditor relied on documents EdNet placed in the students' files after the program review and were done so to substantiate the use of professional judgment. FSA is critical of this subsequently added documentation, describing it as unsigned, self-serving narratives signed by EdNet personnel, rather than statements signed by the student or other third party. As a result of these deficiencies, FSA says the auditor's attestation regarding the accuracy and completeness of EdNet's response to the program review should be rejected. FSA summarizes by asserting that EdNet has failed to meet its burden of persuasion for nine students in the original 14 cases cited in the FPRD and for 46 cases listed in the appendix to the FPRD.

I conclude that EdNet's financial aid administrators abused their professional judgment discretion by generating multiple ISIRs for each student and carelessly relied, at best, upon uncorroborated information purportedly provided by each student. It would appear that EdNet's financial aid administrators completely disregarded any guidance from FSA, the regulations, or the statutes in performing this role. Additionally, none of the files contain adequate, credible documentation which shows that EdNet satisfied the requirement that the students were examined on a case-by-case basis and that there existed any special circumstances that differentiate them from other students being considered for student aid. Moreover, because the auditor's attestation is based on an examination of a limited number of files, and the fact that EdNet added documents to those files well after the time of the initial exercise of professional judgment, I find the auditor's conclusions not credible. Consequently, I find that EdNet has failed to satisfy its burden that it properly exercised professional judgment in the cases of 9 of the 14 cases cited in the FPRD and in the 46 cases cited in the appendix to the FPRD.

Finding 4: Inadequate Documentation to Resolve Inconsistent and Discrepant Information.

An institution has a distinct obligation to coordinate the information it collects for the purposes of determining a student's EFC, and resolve any discrepancies it perceives within that information. To satisfy that obligation, the regulations require an institution to develop an adequate system to ensure the consistency of the information related to a student's application for federal student financial aid. *See* 34 C.F.R. § 668.16(f). This is followed by the requirement that an institution must require a student to verify any information on an application which the institution has reason to believe is inaccurate. *See* 34 C.F.R. § 668.54(a)(3).

The FPRD identified 19 student files which contained inconsistent and discrepant

information that was not internally resolved. In fact, the program reviewer was unable to locate any file or documentation for two of those 19 students. FSA tasked EdNet with the responsibility not only to obtain the necessary documents to resolve the described inconsistent information, but also to review the files of all Title IV recipients for the review period to identify all additional student files containing inconsistent information which could not be resolved. Following this review, it was required to recalculate the Title IV awards and identify any overawards. The FPRD explains that EdNet, during its file review, identified 60 student files (including the original 19 identified in the FPRD) containing inconsistent information, and that it supplied documentation for 14 of those; and EdNet said that it resolved the inconsistent information in the remaining files.

EdNet acknowledges that the regulations require a school to adopt a system to identify and resolve discrepancies, but complains that it is frustrated that the regulation does not offer a definition of the term, “discrepancies.” For this reason, it criticizes the program reviewer for labeling information in the student files as being inconsistent simply because the facts in the file may only “look odd” to her. It argues that the standard to be applied for whether facts are inconsistent cannot vary because of personal feelings and beliefs of a program reviewer, suggesting that such is what happened in this proceeding. EdNet reiterates the defense it provided in Finding 2, above, that in its analysis of the various documents submitted by the students, it has appropriately reconciled all information discovered in the files both it and the program reviewer identified, and that all of its corrections were substantiated by the auditor’s attestation. EdNet, however, does concede that it owes the liabilities identified for student #: 2, 41, 55, 61, and 110, but says these students have been addressed already in Findings 2 and 3.

FSA confirms that of the 60 files which were identified in EdNet’s file review as containing inconsistent information, EdNet provided FSA with the requested documentation on only 19 of those files and further, that EdNet claimed that the files had been reviewed by its independent auditor and found to contain no discrepancies. FSA challenges this defense saying that EdNet provided its auditor with only 42 of the 60 student files and the auditor reviewed only 10 or 12 of these files, thus reducing the weight of authority which should be given to the auditor’s opinion as to the files’ completeness. Additionally, FSA says that neither EdNet’s spreadsheet nor the auditor’s attestation identify what facts were found to be inconsistent or how the inconsistencies were resolved. Regardless of the many serious deficiencies it found in the auditor’s attestation, FSA explains that, as a result of a duplication of students in this and other findings discussed herein, it seeks a recovery of funds for only seven students in this finding: Student #s 1, 54, 113, 149, 150, 153, and 154.

I have examined the alleged discrepancies described in the FPRD and have independently determined that there were sufficient questions raised by the student submissions which contained inconsistent information that should have been pursued further by the financial aid administrator before financial aid was calculated. Even after these discrepancies were brought to EdNet’s attention, its response was inadequate to resolve these discrepancies. Consequently, I find the recovery by ED of Pell Grant funds and the estimated actual loss to ED in FFEL liabilities for the seven students cited above is appropriate.

Finding 10: Satisfactory Academic Progress Standards Not Adequately Monitored or Applied/Impaired Administrative Capability.

The last finding addresses EdNet's failure to maintain specific standards to measure the academic progress of its students to ensure that Title IV payments were being made on behalf of students who were maintaining satisfactory progress in the enrolled educational program. FSA considers those standards reasonable if they are no stricter than the standards for those students who are not receiving Title IV aid, and include a qualitative component, such as a grading system, and a quantitative component, which identifies a maximum timeframe within which a student must complete his or her educational program. *See* 34 C.F.R. § 668.16(e). Additionally, the institution must establish procedures for communicating these standards to those individuals who have been given the responsibility for administering the Title IV programs. *See* 34 C.F.R. § 668.16(b)(3).

The FPRD reported that EdNet had no written policies, procedures or forms for monitoring student attendance and transmitting student attendance data to its financial aid administrator, or for determining when the student had withdrawn. Without current student status, it said that EdNet rarely processed withdrawals in a timely manner, and as a consequence, it was late in paying refunds. The FPRD also alleged that what documentation EdNet did maintain regarding student attendance was inaccurate, inconsistent, and unreliable because its preparation was unsupervised. In many cases it is charged that the students themselves filled out attendance forms, often a month at a time. For this reason the FPRD stated it was not unusual to find that students marked themselves present for classes held on days when there were no classes, such as weekends and holidays. The FPRD listed 12 student files in which student sign-in sheets contained attendance data which was inconsistent with instructors' records. Based on its conclusions, FSA required EdNet to conduct a full file review for the 2001-02 award year to identify students who were ineligible Title IV recipients because of a failure to meet satisfactory academic progress standards.³ EdNet was to report the ineligible disbursements and submit an auditor's attestation as to the compliance, completeness, and accuracy of its response.

According to the FPRD, EdNet provided the program reviewer with a spreadsheet listing 151 Title IV recipients for the 2001-02 award year and reported that it disbursed excessive awards to 60 students, although it minimized those overawards. FSA states that EdNet did not submit the auditor's attestation prior to the completion of the FPRD, but it did submit documentation for 12 student files. After examination, FSA found that the documentation was sufficient to resolve issues for two of the 12. Following this, the FPRD assessed liability only for the students for which EdNet did not provide evidence of actual enrollment, attendance, or academic progress sufficient to support the eligibility for receipt of Title IV disbursements. In addition to seeking recovery of the Pell Grant funds improperly expended, it also sought to recover the cost of the Pell Grant funds which EdNet was late in returning to FSA as refunds for

³ FSA acknowledged that, through inadvertence on the part of the program reviewer, EdNet was not required to perform a full file review for the 2002-03 award year. Therefore, there is no separate demand for a return of funds for that year under Finding 10.

students who were no longer enrolled because EdNet improperly retained these funds for an average of 55 days beyond their due date.

EdNet argues that the allegation that it did not have good procedures for determining withdrawals for students who had discontinued attendance has nothing to do with the requirement that it must establish, publish and apply reasonable standards for measuring whether a student is maintaining satisfactory academic progress. Although the FPRD cites as liabilities numerous first disbursements of Pell Grants to students at the beginning of the payment period, EdNet argues it is impossible for an institution to determine satisfactory academic progress until that progress is evaluated at the end of the first payment period. Accordingly, EdNet says that the timing for such a determination must occur just before it makes a second disbursement to the student. EdNet asserts that there is evidence of satisfactory academic progress for 10 of the 12 students cited in the FPRD and that there was no second disbursement for the remaining two, so there can be no satisfactory progress violation. Consequently, EdNet maintains there is no liability for this finding.

FSA points out that EdNet included the names of 151 Title IV recipients on its spreadsheet for the 2001-02 award year, but it supplied the program reviewer with file documentation for only the 12 students addressed in the FPRD. FSA states that EdNet supplied its auditor with a list containing only 131 recipients, and inexplicably asked the auditor to review academic progress based on the satisfactory academic policy contained in its 2004 Catalog, as opposed to the policy in effect during the 2001-02 award year. FSA also is critical of EdNet's reliance on the auditor's review to show compliance with a satisfactory progress policy. FSA argues that nothing in the auditor's work papers indicates that the auditor saw or reviewed the credit hours achieved or attempted by any student. Furthermore, FSA reports that of the 12 students for whom it supplied student file documentation, EdNet has not submitted any documentation, other than for Students #8 and #34, that any of its students received any credit hours even though such documentation would serve as the basis for showing that it made an attempt to monitor student academic progress in its programs. FSA also challenges EdNet's statement that an institution's failure to determine withdrawals is unrelated to its satisfactory academic progress standards by citing 34 C.F.R. § 668.16(e)(2)(ii)(D)'s requirement that an institution must establish policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

FSA says it does not necessarily disagree with EdNet's argument that the maximum liability should be limited to second disbursements because an institution is not required to actually evaluate a student's satisfactory academic progress until the end of the first payment period. Where the parties disagree, however, is that in this case, the FPRD identified liabilities based on the fact that when EdNet was supposed to make a satisfactory academic progress determination, it failed to determine that any student earned any credit hours sufficient to support even the first disbursement. FSA says the attendance records EdNet provided for some students only establishes that the students enrolled in a program; there were no records to establish whether the students continued in the class and thus earned credit hours. FSA concludes its argument by noting that enrollment is sufficient for an institution's receipt of Title IV funds, but

retention of those funds is dependent upon a timely determination that the student actually earned the funds received. It is EdNet's failure to submit any proof that its students earned any credit hours that serves as the basis for FSA's position that EdNet failed to apply its satisfactory academic policy.

Requiring an institution to provide proof that a federal student aid recipient earned the credit hours for which it was enrolled is not a taxing requirement on the institution, nor is it an unreasonable request. EdNet has, once again, failed the test. EdNet has not persuaded me that it applied specific standards to measure the academic progress of its students. Consequently, I find that it made disbursements to the ineligible students identified in its full file review for the 2001-02 award year.⁴

ORDER

On the basis of the foregoing, it is hereby **ORDERED** that the findings of the FPRD are affirmed and EdNet Career Institute must pay the U.S. Department of Education \$321,751, plus interest, in Pell Grant funds, and \$63,450 for the estimated actual loss owed to ED for the interest on ineligible subsidized Federal Family Education Loans. In addition, it must pay \$26,812.73, plus interest, owed to FFEL accounts of individual student borrowers.⁵

Judge Richard F. O'Hair

Dated: August 31, 2009

⁴ At the request of FSA, this liability excludes funds disbursed on behalf of Students #8, 34, and 68

⁵ I have adopted the computations for these amounts as set out in Footnotes 3 and 4 of FSA's September 24, 2008, brief, and which include liabilities conceded by EdNet.

SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested, to the following:

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