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

In the Matter of	**Docket Nos. 07-55-SA** **07-63-SA**
HARRISON CAREER INSTITUTE,	Federal Student Aid Proceeding
Respondent.	ACN: 03-2007-71802 ACN: 02-2007-71806

Appearances: Fred Fitchett, of Cherry Hill, New Jersey, for Harrison Career Institute.

Denise Morelli, 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 UPON REMAND

On March 18, 2009, the Secretary of Education remanded the above-captioned proceedings to determine whether Harrison Career Institute may use the Heightened Cash Monitoring (HCM2) process in lieu of the regulatory requirement that it satisfactorily account for federal student aid funds it disbursed by submitting a required close-out audit. 34 C.F.R. § 668.26(b)(2)(ii). Should I find that the HCM2 process is a substitute for a close-out audit, the Secretary additionally ordered that I determine the extent to which funds administered pursuant to Harrison's implemented HCM2 process may be deducted from the recovery sought by Federal Student Aid (FSA).

To effectuate his remand, the Secretary ordered both parties to submit to me for my review a joint stipulation regarding the above-described issues. I transmitted this order to the parties on April 10, 2009, and was informed on May 4, 2009, that the parties were unable to reach an agreement as contemplated by the Secretary. This necessitated that I establish a briefing schedule; those briefs have been submitted and serve as the background for this decision.

This proceeding involves four of Respondent's locations. It ceased operation at three locations in January 2007 and ceased operation at the fourth in April 2007. Pursuant to the regulations, Respondent had an obligation to submit close-out audits for each of these locations covering the period January 1, 2006, until closing. The combined liability for the failure to submit the audits is $6,098,135.28.

The underlying premise here is that post-secondary institutions that participate in Title IV programs serve as fiduciaries in administering federal student aid funds. As the provider of those funds, the U.S. Department of Education (Department) must be assured that they are properly disbursed by eligible institutions and received by eligible students. 20 U.S.C. § 1094; 34 C.F.R. § 668.14. In furtherance of this obligation, the statute and regulations require a participating institution to submit a financial audit at the onset of its participation with regard to the financial condition of the institution. Afterward it must submit an annual compliance audit with regard to any federal student aid funds it obtained. 20 U.S.C. § 1094(c)(1); 34 C.F.R. § 668.23(b). Those provisions prescribe that this compliance audit shall be conducted on an annual basis, must cover the period since the most recent audit, and must be conducted in accordance within the general standards for compliance audits contained in the U.S. General Accounting Office's Government Auditing Standards and the audit guides published by the Department's Office of Inspector General.

Those audit guidelines establish the type of sampling to be used, type of documentation which must be examined, factors which must be considered and other elements to be reviewed in order for the audit to be properly conducted. As such the audits are intended to yield a comprehensive review of an institution's administration of all aspects of the Title IV programs. The regulations further provide that when an institution ceases its participation in the federal student aid programs, it must submit a close-out audit that covers the time period from the date of the institution's last compliance audit to the date its participation ends. 34 C.F.R. § 668.26(b)(2)(ii).

Respondent argues that it need not submit a close-out audit for the period subsequent to its last compliance audits because it can otherwise account for the federal funds it received. In support of this position, Respondent cites three cases: *In the Matter of Stenotopia Business School*, Dkt. No. 01-26-SP, U.S. Dep't. of Educ. (July 31, 2002); *In the Matter of Excelsis Beauty College*, Dkt. No. 98-108-SA, U.S. Dep't. of Educ. (Oct. 4, 1999); and *In the Matter of Magic Touch Beauty Institute*, Dkt. No. 97-161-SP, U.S. Dep't. of Educ. (July 2, 1998). Respondent explains that these decisions support its position that it can more than adequately demonstrate by means other than a close-out audit that its federal student aid funds were properly disbursed. To wit, Respondent asserts that during the audit period in question, it was subjected to the stringent requirements of the HCM2 review process conducted by FSA. Respondent explains that this HCM2 process, which had been in effect since May 25, 2005, required it to submit over 34 documented items for each student in order to verify that student's eligibility before FSA would disburse funds for the student. Respondent further supposes that its submissions were given extraordinary scrutiny by FSA because it took seven months for the initial request to be approved. Respondent adds that, following an Emergency Action initiated

against it by the Department in late 2005, it implemented a program whereby it had no personal involvement in the computation of student aid because its financial aid approval process was delegated to an independent, outside third party servicer. Respondent relates that during this period its student records also were subjected to another level of review which was conducted by an independent, certified public accounting firm that audited student attendance, status, and dropouts. It says all of these efforts were expended in an effort to assure FSA that the reimbursements requested for students in each HCM2 submission were properly documented. Respondent maintains that the HCM2 process and these supplementary efforts exceed by a substantial degree the breadth and scope of the traditional close-out audit, thereby serving as a satisfactory substitute for the submission of a close-out audit. It asserts that the Secretary's remand decision shows that he is in agreement with the proposition that being subjected to the HCM2 process can properly account for the lawful disbursement of funds during the period in issue, in lieu of the close-out audit.

FSA's argument, now and consistently in the past, is that the HCM2 process cannot be, and was never meant to be, a substitute for the yearly compliance audit requirement. In support of this it refers to case law[*] and points out that 20 U.S.C. § 1094(c) and 34 C.F.R. § 668.23(b) provide explicit direction that the audits must be prepared by a qualified, independent auditor and must comply with the guidelines for audits set forth in the U.S. General Accounting Office's Government Auditing Standards and by the Department's Office of Inspector General.

FSA then differentiates between the scope and breadth of an HCM2 review and a close-out audit. It explains that the focus of the review of files for HCM2 purposes is limited to determining whether the student in question generally appears to be eligible for the funds requested, and that this process involves only a general review of a sample of the student files that are submitted to ensure the student is entitled to receive the Title IV funds. FSA says there is also a time factor that must be taken into consideration. It explains that, because the HCM2 review must be completed as quickly as possible to permit the school to receive the funds promptly, it reviews only a sample of the student files. Additionally, during this process it only reviews student files; it does not conduct an extensive, statistical review of all the elements of the institution's participation in the Title IV programs that is imposed by the authorities cited above for the conduct of a compliance or a close-out audit. For example, the Department's Audit Guide requires the auditor conducting a compliance or close-out audit to examine not only student eligibility, but also institutional eligibility, Pell Grant and loan reporting, disbursements, return of Title IV funds, the grant administration and payment system, cash management, compliance with Perkins Loan operations, required management operations, and close-out requirements.

FSA argues that the reviews afforded Respondent by the third party servicer and through

[*] *See In the Matter of Quality College of Culinary Careers*, Dkt. No. 08-36-SA, U.S. Dep't. of Educ. (June 10, 2009); *In the Matter of Interamerican Business College*, Dkt. No. 96-20-SP, U.S. Dep't of Educ. (May 28, 1997); *In the Matter of Belzer Yeshiva*, Dkt. No. 95-55-SA, U.S. Dep't of Educ. (June 19, 1996); *In the Matter of Long Beach College of Business*, Dkt. No. 74-78-SP, U.S. Dep't of Educ. (Aug. 30, 1995); *In the Matter of National Broadcasting School*, Dkt. No. 94-98-SP, U.S. Dep't. of Educ. (Dec. 12, 1994).

the HCM2 process were significantly less thorough than a close-out audit would have been. First, it reports that the student files reviewed by the third party servicer were for only those new students who were enrolled after the servicing contract was awarded, not for students already attending the school. Therefore, it is likely the reviewer examined very few, if any, of the files for continuing students in the award year in question to whom the majority of the funds addressed here were disbursed. Secondly, FSA says the third party servicer did not complete a comprehensive review, but only conducted a review for general student eligibility requirements. Thirdly, FSA explains that Respondent's use of its auditor to verify that the students were still enrolled, a Department imposed requirement, did not prove that the Title IV funds were disbursed to eligible students. Furthermore, it said that Respondent only submitted a few of these required reports. FSA's next point is that due to the large number of student files in issue here, and the need to have them expeditiously examined pursuant to the HCM2 process, FSA's institutional review specialist was not able to review every student file which was submitted, but only a small percentage of them. FSA concludes by explaining that since the "safeguards" implemented by Respondent applied only to new students they were not in effect at the time when the bulk of the funds addressed here were disbursed.

Following my review of the parties' submissions, it is undisputed that the regulatory obligation to submit a close-out audit does not provide for any substitute or alternative. Despite this, the Secretary has asked that I examine whether, through the HCM2 process, the Respondent has otherwise accounted for the federal funds it disbursed, thus obviating the requirement for a close-out audit. I have done so and find that the HCM2 process does not serve as a substitute for a close-out audit. I reach this conclusion because that process is designed only for the purpose of examining student eligibility, and does not address all of the other significant elements of the institution's participation in the Title IV programs, such as, institutional eligibility, loan reporting and disbursements, return of Title IV funds, grant administration, cash management, required management operations, and close-out requirements. The HCM2 review process is clearly much narrower in scope than a close-out audit. The fiscal and managerial requirements the Department has levied on participating institutions demand a much broader and more complex evaluation than the one provided by the HCM2 process which focuses only on student eligibility.

Respondent's case is a little more unusual in that, in addition to the HCM2 processing, it also implemented reviews provided by its auditor, and the transfer of its student aid function to an outside source. These procedures do not provide Respondent with any relief. As mentioned above, the bulk of the funds FSA seeks to recover were disbursed to students who were not subjected to these supplemental reviews. Even if all student funds had been subjected to these extra measures they would not provide the Department with any additional guarantees that the institution complied with all operating requirements, because, like the HCM2 process, they only addressed student eligibility.

The decisions cited above by Respondent to support its arguments are not helpful. Each of these cases addresses a demand by FSA for a full recovery from the closed school for all Title IV federal funds it disbursed following the most recent compliance audit because of a failure to submit a close-out audit. While these decisions suggest that, in the absence of a close-out audit, a school can attempt to reduce its liability by submitting other documentary evidence, they do not

define or give examples of what efforts might "otherwise account" for the funds. Although FSA and the tribunal clearly have an obligation to thoroughly review all such documentation, there are no decisions which have held that the school has submitted sufficient evidence, short of a close-out audit, to relieve it of this financial liability. *See In the Matter of Stenotopia Business School*, Dkt. No. 01-26-SP, U.S. Dep't of Educ. (Decision of the Secretary) (Jan. 11, 2006).

FINDINGS AND CONCLUSION

The statute and regulations do not make a provision for a substitute for a close-out audit, and Respondent has not convinced me that the HCM2 process, as supplemented by the services of other third parties, has provided me with the exhaustive review of its Title IV operations which was contemplated by Congress and the Department when they established the requirement for a close-out audit. The HCM2 process does not fully account for the lawful disbursement of Title IV funds. Accordingly, I find Respondent must pay the Department $6,098,135.28.

ORDER

On the basis of the foregoing, it is hereby **ORDERED** that Harrison Career Institute must pay $6,098,135.28 to the U.S. Department of Education.

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Judge Richard F. O'Hair

Dated: December 8, 2009

SERVICE

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

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