

IN THE MATTER OF
SOJOURNER-DOUGLASS COLLEGE,

Respondent.

Docket No. 90-61-ST

Student Financial
Assistance Proceeding

DECISION

Appearances:

Michael B. Goldstein, Esq., Leslie H. Wiesenfelder, Esq. and Kelli J. Crummer, Esq., Dow, Lohnes & Albertson, for Sojourner-Douglass College.

Stephen M. Kraut, Esq., Office of the General Counsel, for the Office of Student Financial Assistance, U.S. Department of Education.

Before:

Judge John F. Cook

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I. PROCEDURAL BACKGROUND.

A notice of intent to terminate the eligibility of Sojourner- Douglas College (Sojourner) to participate in programs authorized by Title IV of the Higher Education Act (HEA) of 1965, as amended, 20 U.S.C. § 1070 et seq. (Title IV programs) as well as a notice of intent to fine Sojourner based on certain alleged violations of law was issued by the Director, Division of Audit and Program Review, Office of Student Financial Assistance (OSFA). Thereafter, Sojourner filed a request for hearing.

A hearing was held February 20-22, 1991, in Washington, D.C.

On March 29, 1991, a motion to extend the date by which OSFA had to file its brief was filed. On April 4, 1991, an order granting OSFA the motion for extension of time to file its brief was issued. On April 18, 1991, OSFA filed its brief and findings of fact.

On April 24, 1991, a letter to the Administrative Law Judge was received, regarding the agreement to date the brief.

On May 2, 1991, a joint motion to amend the briefing schedule was filed. On May 6, 1991, OSFA resubmitted the findings of fact re- numbered.

On May 10, 1991, an order granting the joint motion to amend the briefing schedule was issued. On May 24, 1991, a letter from the judge to OSFA's counsel was sent regarding the return of erroneously prepared submissions.

On June 6, 1991, a joint motion to amend the briefing schedule was filed. On June 10, 1991, an order granting the joint motion to amend the briefing schedule was issued.

On June 21, 1991, Sojourner submitted its post-hearing brief and official documents. On June 24, 1991, sojourner submitted an amended version of its post-hearing brief. On July 19, 1991, OSFA submitted its reply brief.

As stated above, on May 24, 1991, a letter was sent from the administrative law judge to OSFA's counsel regarding the submission of copies of regulations. When no response was received from OSFA's counsel, as to the May 24, 1991, letter, another letter was sent by the administrative law judge on August 7, 1991, to OSFA's counsel regarding the additional submission of copies of regulations. It was pointed out that OSFA'S submission of post-hearing filings would not be complete until the copies of regulations were received. On August 12, 1991, a letter from counsel for OSFA was filed enclosing copies of the requested regulations. Neither the earlier submission or the August 21, 1991, submission complied with the requirements set forth by the tribunal at the time the briefing order was issued at the hearing. As stated in the letter of August 7, 1991, counsel for OSFA was to submit one copy of only the specific regulations involved as they

existed at the time of each alleged violation. This became necessary because violations of law in the case spanned a period of approximately seven years and numerous changes of these regulations took place through those years. The first submitted by counsel for OSFA included over 1,500 pages. The second in August 1991 was reduced to hundreds of pages, but counsel in neither case carried out the requirements of the briefing order. A listing of the 84 regulations involved herein occupies three and quarter pages. In view of the fact that counsel for OSFA may not have understood what submittal was required, the tribunal has now relieved him of that duty and as of now it is considered that OSFA's responsibility for post-hearing submittals is completed.

II. ISSUES.

A. Alleged Violations of Title IV, HEA Program Regulations.

1. Non-Federal Audits.

In view of the fact that Sojourner failed to submit financial and compliance audits to OSFA of its administration of the NDSL, CWS, SEOG, GSL, and Pell Grant Programs for the 1982-84 and 1984-86 award years, (which were due by March 31, 1985, and March 31, 1987, respectively), until January 14, 1991, and also failed to submit such an audit of its administration of the Perkins, CWS, SEOG, GSL, and the Pell Grant Programs for the 1986-88 award years, (which was due by March 31, 1989), did such failures constitute violations of § § 668.12, 668.23, 674.19, 675.19, 676.19, 682.612, 683.91, 690.84, or 690.85 and did this also constitute a breach of its fiduciary duty in violation of § 668.82. [1](#)

2. 1987 Program Review Findings.

a. Did Sojourner fail to apply its satisfactory progress policy in violation of § 668.16 (finding #4)?

b. Did Sojourner fail to obtain financial aid transcripts, in violation of § 668.14 (finding #5)?

c. Did Sojourner fail to correctly award and disburse Pell Grant funds, in violation of 690.4 (finding #6)?

e. Did Sojourner fail to retain NDSL promissory notes, in violation of §§ 674.19, 674.32 or 674.42. (finding #11)?

f. Did Sojourner fail to expend funds correctly and fail to report expenditures correctly under the Pell Grant and SEOG Programs, in violation of § § 690.82, 690.83, 690.84 or 676.19 (finding #13)?

g. Did Sojourner fail to resolve the open findings from the audits of award years 1980-81 and 1981- 82., in violation of § 668.13 (finding #14)?

3. 1989 Program Review Findings.

- a. Did Sojourner 1.) fail to establish and maintain a system of internal fiscal controls, 2.) fail to maintain on a current basis financial records that reflect all Title IV, HEA program transactions, and 3.) fail to maintain documentation to support Title IV expenditures as claimed on required quarterly reports to ED and on its Pell Grant payment summary for 1987-88 in violation of § § 668.2.3, 674.19, 675.19, 676.19, 690.81, 690.82. or 690.83 (finding #3)?
- b. Did Sojourner draw cash from ED in excess of its immediate needs, thereby having the use of funds to which the College was not entitled at the time in violation of 34 C.F.R. § 690.74 or 31 C.F.R. 205.4 (U.S. Department of Treasury Regulations); (finding #4)?
- c. Has Sojourner failed to perform billing, collections, litigation or fiscal recordkeeping for its Perkins Loan portfolio since April, 1987, and also failed to maintain its Perkins Loan fund in an interest-bearing account in violation of § § 674.18, 674.19, or 674.41 thru .50 (finding #5)?
- d. Did Sojourner fail to perform verification for thirteen of the seventeen students selected for verification in the sample of twenty-three students in violation of § § 668.51 thru .61 (finding #6)?
- e. Did Sojourner fail to apply acceptable satisfactory academic progress standards, resulting in awards to ineligible students in violation of § 668.14 (finding #7)?
- f. Did Sojourner improperly certify student Stafford loan applications, resulting in ineligible students receiving loans in violation of § § 682.401 or 682.603 (finding #8)?
- g. Did Sojourner fail to apply proper need analysis criteria to determine the amount of awards for recipients of Stafford Loans and campus-based funding (Perkins Loan, CWS and SEOG) in violation of ?? 668.7, 674.9, 674.10, 674.13, 674.19, 675.9 675.10, 675.19, 676.9, 676.10, or 676.19 (finding #9)?
- h. Did Sojourner make improper Pell Grant disbursements, by failing to obtain correctly completed Student Aid Reports and by disbursing incorrect amounts to students in violation of ?? 668.23, 668.55, 690.75, 690.76, 690.78, 690.80 or 690.83 (finding #10)?
- i. Did Sojourner fail to calculate or make timely refunds to Stafford Loan Program (formerly known as Guaranteed Student Loan Program) lenders for students who withdrew from the College during award years 1987-88 and 1988-89? Did the College fail to maintain the documentation required to show whether refunds were due for ten students who withdrew during that period in violation of §§ 668.2.1, 668.22. or 682.607 (finding #11)?
- j. Did Sojourner underpay CWS wages to students until April 1989, by improperly counting the students' hours worked, in violation of § 675.19 (finding #12)?
- k. Did Sojourner fail to obtain financial aid transcripts for nine students in the sample who attended other postsecondary schools in violation of § 668.14, 668.19 or 690.65 (finding #13)?

1. Did Sojourner fail to meet the regulatory requirements for administrative capability because of its 1987 Cohort Stafford Loan default rate of 42.80 percent and a Perkins Loan Program default rate of 75.23 percent in violation of § 668.15 (finding #14)?

4. Fiduciary Duties.

Did Sojourner breach its fiduciary duties in violation of § 668.82 as relates to any of the alleged violations of regulations set forth above?

B. Termination or Limitation of Eligibility.

If Sojourner violated any of the regulations as set forth above do such violations warrant the termination or limitation of its eligibility to participate in Title IV, HEA Programs?

C. Fines.

If Sojourner violated any of the regulations set forth above do such violations warrant a fine or fines and, if so, in what amount?

III. APPLICABLE LAW.

Sojourner has participated in several programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. § 1070 et seq. Those programs include the Stafford Loan Program, authorized under 20 U.S.C. § 1071, the Pell Grant Program, authorized under 20 U.S.C. 1070a, the Perkins Loan Program, authorized under 20 U.S.C. § 1087-aa, the Supplemental Educational Opportunity Grant (SEOG) Program, authorized under 20 U.S.C. § 1070b, and the College Work Study (CWS) Program, authorized under 42 U.S.C. § 2751. (The CWS Program was originally enacted as part of the Economic Opportunity Act of 1964, 78 Stat. 513, and was subsequently transferred and inserted as Part C of Title IV of the HEA in 1968, and is separately codified at 42 U.S.C. § 2751 et seq.).

This proceeding by which OSFA proposes to terminate the eligibility of Sojourner and to impose a fine against it was initiated under the authority of 20 U.S.C. § 1094(C)(2)(B) 2 and the implementing regulations published at 34 C.F.R. Part 668, Subpart G, which are authorized under 20 U.S.C. § 1094(c)(1)(D) 3 and which permit a fine of up to \$25,000 per violation. Sojourner was charged with many violations of regulations applicable to the Title IV programs. The proceeding began by OSFA's issuance of a notice of intent to terminate under § 668.86 and a notice of intent to fine under § 668.84. The scope and consequences of both provisions appear at subsection (a) and are described more fully as follows:

§ 668.86(a):

Scope and consequences. The Secretary may terminate or limit the eligibility of an institution to participate in any or all Title IV, HEA programs if the institution violates any provision of Title IV of the HEA or any regulation or agreement implementing that Title. The consequences of the

Secretary limiting or terminating the eligibility of an institution to participate in any Title IV, HEA program are set forth in § § 668.93 and 668.94, respectively.

§ 668.84(a):

Scope and consequences. The Secretary may impose a fine of up to \$25,000 per violation on an institution that-

(1) Violates any provision of Title IV of the HEA or any regulation or agreement implementing that title; or

(2) Substantially misrepresents the nature of its educational program, its financial charges or the employability of its graduates.

Upon receipt of the intent to terminate and fine notices, the institution may then request a hearing under the provision at § 668.88. The term hearing on the record is explained in § 668.88(a) as follows:

(a) A hearing on the record is an orderly presentation of arguments and evidence conducted by an administrative law judge.

34 C.F.R. § 668.88 (c)(2.) sets forth the rules as to the burden of persuasion. In proceedings of this nature that burden is placed on the designated department official (here OSFA) . The language of that section reads as follows:

....(2) The designated department official has the burden of persuasion in any fine, suspension, limitation or termination proceeding under this subpart.

In the event a finding is made as to a violation of any laws, consideration is given to the regulations concerning a penalty. Under 34 C.F.R. § 668.92., the decision maker is required to consider two factors in determining the amount of a fine: the gravity of the institution's violation of, or failure to carry out, the particular requirement imposed by statute, regulation or agreement; or the gravity of any misrepresentation, and the size of the institution.

a. In any assessment of a fine the severity of the institution's conduct must be considered including the volume, repetition and continuing nature of violations.

b. As relates to the second factor the indicators of size can be the amount of corporate earnings, the number of students, the number of branch schools, and amount of student loan funds and Federal Funds which the institution handles.

Regulations Alleged to Have Been Violated

<u>Allegation</u>	<u>Section</u>	<u>Regulation Description</u>
1. <u>Non-Federal Audits.</u>		
Untimely Audit Submittal	668.12	Audits, records and Examination (General

1985 and 1987 Audits.		Provisions).
	674.19 (g) (h)	Audits-Non-Federal (NDSL).
	675.19 (e) (f)	Audits-Non-Federal (CWS).
	676.19 (e) (f)	Audits-Non-Federal (SEOG).
	682.612 (e)	Non-Federal Audits (GSL)
	683.91 (f)	Non-Federal Audits (PLUS)
	690.84	Audit and Examination (PELL)
Failure to Submit Audit 1989	668.23	Audits, Records and Examination (General)
Audit.		(Perkins) (CWS) (SEOG) (GSL) (PLUS)
	690.84	(PELL).
		Audits, Records and Examination (PELL).
<u>2. 1987 Program Review.</u>		
Failure to Apply Satisfactory	668.16	Standards of Administrative Capability
Progress Policy (finding #4).		(General Provisions).
Failure to Obtain Financial	668.14	Financial Aid Transcript (General
Aid Transcripts (finding #5).		Provisions).
Failure to Correctly Award	690.4	Eligible Student (PELL).
and disburse Pell Funds		
(finding #6)		
Failure of Due Diligence	668.17	Additional Factors for Evaluating
Administering NDSL		Administrative Capability and Financial
(finding #10).		Responsibility (General Provisions).
Failure to Retain NDSL	674.19	Fiscal Procedures and Records.
Promissory Notes (finding	674.32	Promissory Note-Loan Repayment.
#11).	674.42	Due Diligence (NSDL).
Failure to Properly Make and	690.82	Maintenance and Retention of Records.
Report PELL and SEOG	690.83	Submission of Reports.
Expenditures (finding #13).	690.84	Audit and Examination (PELL).
	676.19	Fiscal Procedures and Reports (SEOG).
Failure to Resolve Open	668.13	Audit Exceptions and Repayments (General
Findings-Audit of 1980-82		Provisions).
(finding #14).		
<u>3. 1989 Program Review.</u>		
Inadequate Accounting	668.23	Audits, Records, and Examination (General
Records (finding #3).		Provisions).
	674.19	
	675.19	Fiscal Procedures and Reocrds
	676.19	(Perkins) (CWS) (PELL).
	690.81	Fiscal control and Fund Accounting.
	690.82	Maintenance and Retention of Records.
	690.83	Submission of Reports (PELL).

Drawing Cash From ED in Excess of Immediate Needs (finding #4).	690.74	Provision of Funds to Institutions (PELL),
	31 C.F.R.	General regulations-Money and Finance (U.S. Treasury Regulations).
	§ 205.4	Use of Funds
Lack of due Diligence in Servicing the Perkins Loan Portfolio (finding #5).	674.18 674.19 674.41 thur. .51	Fiscal Procedures and Records. Due Diligence. (Perkins).
Incomplete Verification of Student Aid Applications (Finding #6)	Subpart E of 34 C.F.R. 668	Verification of Student Aid Application Information (General Provisions).
Inadequate Satisfactory Progress Policy (finding #7).	668.14	Standards of Administrative Capability (General Provisions).
Improper Certifications Stafford Loans (finding #8).	682.603 682.401	Certification by a Participating School in connection with a Loan Application. Basic Program Agreement (Stafford).
Award Determinations Not Documented as to Need Analysis (finding #9).	668.7	Eligible Student (General Provision).
	6741.9	
	675.9	Student Eligibility
	676.9	(Perkins) (CWS) (SEOG).
	674.10	
	675.10	Selection of Students for Loan
	674.13	(Perkins) (CWS) (SEOG).
Improper PELL Grant Disbursements (finding #10).	668.23	Audits, Records, and Examination.
	668.55	Updating Information (General Provision).
	690.75	Determination of Eligibility for Payment.
	690.76	Frequency of Payment
	690.78	Method of disbursement by Check or Credit to a Student's Account.
	690.80	Recalculation of a Pell Grant Award.
	690.83	Submission of Reports (PELL).
Lack of Withdrawal Documentation as to Refunds (finding #11).	668.21	Treatment of Title IV Program Funds if Recipient Withdraws, Drops Out, or is Expelled Before His or Her First Day of class.
	668.22	Distribution Formula for Institutional Refund and for Repayments of

	682.607	Disbursements Made to the Student For Non-institutional Cost (General Provisions). Repayment of Refund to a Lender (Stafford).
CWS Students Underpaid (finding #12).	675.19	Fiscal Procedures and Records (CWS).
Failure to Obtain Financial Aid Transcripts (finding #13).	668.19	Financial Aid Transcript.
	668.14	Standards of Administrative Capability (General Provisions).
	690.65	Transfer Student: Attendance at More Than One Institution During an Award Year (PELL),.
High Perkins and Stafford Default Rates (finding #14).	668.15	Additional Factors for Evaluating Administrative Capability (General Provisions).
4. <u>Fiduciary Duties.</u>		
Breach of Fiduciary Duties.	668.82	Standard of Conduct (General Provisions).

IV. Witnesses and Exhibits

A. Witnesses

OSFA called the following witness during the hearing:

John Kolotos, Program Review Specialist, U.S. Department of Education, Office of Student Financial Assistance. Conducts compliance reviews of participating institutions . Sojourner called a total of 10 witnesses. The witnesses are as follows:

1. Dr. Charles Simmons, President of Sojourner.
2. Laverne Lawal, Business Office Director of Sojourner since 1980, and an alumnus of Sojourner-Douglass College.
3. Linda Trusty, Director of Financial Aid at Sojourner, started in March of 1989. Prior to that she was a financial aid counselor at the Delaware Valley School of Trade.
4. Douglas Bucher, Director of Financial Aid at the New Community College of Baltimore and the Financial Aid Consultant to Sojourner-Douglass College.

5. Raymond Bantum, Sojourner's financial aid software designer. Is a systems management consultant, with an accounting degree, a CPA, a CMC, a Certified Management Consultant and is a CDP, a Certified Data Processor.

6. The Honorable Parren Mitchell, former U.S. Congressman, Chairman of the Board of the Minority Business Enterprise Legal Defense and Education Fund and member of the Sojourner Board.

7. Bahati Ansari, Executive Director of National Racism Free Zone Project and manager of Sojourner's book store.

8. William Paul Coates, Howard University Librarian, publisher of Black Classic Press.

9. Hilton Bostic, is a Baltimore community leader, President of the Oliver Community Association and the Oliver Economic Development Corporation.

10. Jo Ann Simmons, vice-president of the Alumni Association .

B. Exhibits

OSFA's Exhibits

Exhibit G-1: OSFA's August 16, 1990, termination and fine notice to Sojourner.

Exhibit G-2: ED's March 20, 1987, program review report.

Exhibit G-3: ED's December 20, 1989, program review report .

Exhibit G-4: Letter from Donald L. Hutchins to Harry Sweeney dated August 5, 1987.

Exhibit G-5: College records and program review work papers relating to Darnice Claude.

Exhibit G-6: College records and program review work papers relating to [student name].

Exhibit G-7: College records and program review work papers relating to [student name].

Exhibit G-8: College records and program review work papers relating to [student name].

Exhibit G-9: College records and program review work papers relating to [student name].

Exhibit G-10: College records and program review work papers relating to [student name].

Exhibit G-11: College records and program review work papers relating to [student name].

Exhibit G-12: College records and program review work papers relating to [student name].

Exhibit G-13: College records and program review work papers relating to [student name].

Exhibit G-14: College records and program review work papers relating to [student name].

Exhibit G-15: College records and program review work papers relating to [student name].

Exhibit G-16: College records and program review work papers relating to [student name].

Exhibit G-17: College records and program review work papers relating to [student name].

Exhibit G-18: College records and program review work papers relating to [student name].

Exhibit G-19: College records and program review work papers relating to [student name].

Exhibit G-20: College records and program review work papers relating to [student name].

Exhibit G-21: College records and program review work papers relating to [student name].

Exhibit G-22: College records and program review work papers relating to [student name].

Exhibit G-23: College records and program review work papers relating to [student name].

Exhibit G-24: College records and program review work papers relating to [student name].

Exhibit G-25: College records and program review work papers relating to [student name].

Exhibit G-26: College records and program review work papers relating to [student name].

Exhibit G-27: The College's (FISAP) Application for 1989- 90 and Fiscal Operations Report for 1988-89.

Exhibit G-28: The College's Pell Grant Program Student Payment Summary for 1987-88.

Exhibit G-29: The College's EDPMS 272 for the period covering July 1, 1988, through March 31, 1989.

Exhibit G-30: The College's application to participate in the ACH payment System.

Exhibit G-31: ED records reflecting the College's cash draws of ED funds for the period of June 4, 1987, through November 16, 1990.

Exhibit G-32: The College's monthly bank Statements with Signet Bank for the months of July 1987 through October 1989.

Exhibit G-33: Letter from John Kolotos to Charles Simmons dated July 24, 1989.

Exhibit SJ-8: Letters to the 1989 program reviewer from the College dated March 27 and July 17, 1990.

Exhibit SJ-9: Letter to the College from Harry Sweeny dated July 18, 1989.

Exhibit SJ-10: Letter to the College from Roberta Dunn, dated March 29, 1990.

Exhibit SJ-11: Audit of Sojourner's Financial Assistance Program by OSFA for the period July 1, 1982 - June 30, 1984.

Exhibit SJ-12: Audit of Sojourner's Financial Assistance Program by OSFA for the period July 1, 1984 - June 30, 1986.

Exhibit SJ-13: Sojourner's response to OSFA's biennial financial aid audits for the years 1985-86.

Exhibit SJ-14: College records demonstrating that [student name] did not receive VA benefits or a GSL loan.

Exhibit SJ-15: Records demonstrating that Sojourner made the necessary adjustments to [student name]' records.

Exhibit SJ-16: Excerpt from ED's FISAP instructions for 1987-88.

Exhibit SJ-17: "Dear Financial Aid Administrator" letter from ED dated October - November 1988.

Exhibit SJ-18: College records of [student name].

Exhibit SJ-19: copy of check for \$1,575 from Sojourner to OSFA.

Exhibit SJ-20: check lists for financial aid created by Sojourner.

Exhibit SJ-21: Sojourner's database manual for new financial aid database.

Exhibit SJ-22: Letter from J. Elizabeth Garraway to Sojourner dated January 16, 1991.

Exhibit SJ-23: Letter from Nancy Hoglund of ED to Sojourner.

V. FINDINGS OF FACT

A - Joint Stipulations of Facts.

1. An award year is a period of time between July 1 of one calendar year and June 30 of the next calendar year, e.g., the 1982-83 award year is the period between July 1, 1982, and June 30, 1983.

2. The College participated in the loan guarantee program of the Higher Education Assistance Foundation ("HEAF").
3. The College's 1987 cohort default rate under the GSL Program was 42.8% and its default rate under the Perkins Loan Program is 75.2.3%.
4. The College reduced its 1988 cohort default rate under the Guaranteed Student Loan Programs to 34.2%, and was commended by the Secretary of Education for this reduction in the default rate. Ex. SJ-10.
5. ED has not yet made any determination that the College is indebted to the United States government for any amount of money arising out of either the 1987 program review or the 1989 program review.
6. Effective on July 14, 1989, the College was transferred to a system of payment by reimbursement. Ex. SJ-9.
7. There are other public postsecondary institutions serving the Baltimore area including Bowie State College, Coppin State College, Morgan State College, University of Baltimore, University of Maryland Baltimore County, and the University of Maryland at Baltimore. Ex. G-35.
8. Under governing regulations, the College's financial and compliance audit of its administration of the Pell Grant, GSL, SEOG, CWS, and Perkins Loan Programs for the 1982-83 and 1983-84 award years was required to be submitted to ED by March 31, 1985.
9. The College failed to submit a financial and compliance audit to ED of its administration of the Pell Grant, GSL, SEOG, CWS, and Perkins Loan Programs for the 1982-83 and 1983-84 award years until January 14, 1991. Ex. SJ-11 and 13.
10. As a result of the financial and compliance audit of the College's administration of the Pell Grant, GSL, SEOG, CWS, and Perkins Loan Programs for the 1982-83 and 1983-84 award years being submitted to ED on January 14, 1991, ED has not yet determined whether the audit was performed in accordance with the general standards and the standards for financial and compliance audits of the General Accounting Office.
11. Under governing regulations, the College's financial and compliance audit of its administration of the Pell Grant, GSL, SEOG, CWS, and the Perkins Loan Programs for the 1984-85 and 1985-86 award years was required to be submitted to ED by March 31, 1987.
12. The College failed to submit a financial and compliance audit to ED of its administration of the Pell Grant, GSL, SEOG, CWS, and Perkins Loan Programs for the 1984-85 and 1985-86 award years until January 14, 1991. Ex. SJ-12 and 13.
13. As a result of the financial and compliance audit of the College's administration of the Pell Grant, GSL, SEOG, CWS, and Perkins Loan Programs for the 1984-85 and 1985-86 award years being submitted to ED on January 14, 1991, ED had not yet determined whether the audit was

performed in accordance with the general standards and the standards for financial and compliance audits of the General Accounting Office.

14. Under governing regulations, the College's financial and compliance audit of its administration of the Pell Grant, GSL, SEOG, CWS, and Perkins Loan Programs for the 1986-87 and 1987-88 award years was required to be submitted to ED by March 31, 1989.

15. The College has failed to submit a financial and compliance audit to ED of its administration of the Pell Grant, GSL, SEOG, CWS, and Perkins Loan Programs for the 1986-87 and 1987-88 award years.

16. In the 1987 program review report, OSFA required the College to review its files for the 1981-82 through 1986-87 award years to determine which of its students attended another institution of higher education.

17. For those instances where a transcript was not on file but the student received Title IV, HEA Program assistance, OSFA permitted the College to retroactively obtain such a transcript. The 1987 report indicated that the College would be liable to repay Title IV, HEA Program funds only for those students for whom a transcript could not be obtained. Ex. G-2 at 4.

18. The College agreed to carry out a three-part plan to lower its Perkins Loan Program default rate. One part of the plan involved the use of two new collection agencies to collect delinquent loans; the second part of the plan involved the assignment of a person in the business office to prepare delinquent loans that had been to a collection agency for assignment to ED; and the third part of the plan involved the provision of seminars for current and former students on the rights and responsibilities of borrowers under the Perkins Loan Program. Ex. G-4 at 3.

19. If an institution incorrectly calculates and certifies a student's cost of attendance, expected family contribution or estimated financial need on the student's GSL loan application, that incorrect calculation and certification could result in the student receiving a smaller or larger loan than the student would otherwise be eligible to receive.

20. The College reported that it expended \$650,283 of Pell Grant Program funds for the 1987-88 award year in Part 2.D of its 1989- 90 FISAP. Ex. G-2.7 at 3.

21. The College reported that it expended \$681,495 of Pell Grant Program funds for the 1987-88 award year on its EDPMS 272. Ex. G-29 at 2.

22. In award years 1982-83 through 1987-88, students received through the College approximately \$4,260,000 of grants under the Pell Grant Program, approximately \$3,800,000 of loans under the GSL Programs, approximately \$450,000 of grants under the SEOG Program, and approximately \$300,000 of CWS Program funds, as follows:

Award Year	Pell Grant	SEOG	CWS	GSL
1982-83	\$565,000	\$66,000	\$39,000	\$5,000
1983-84	\$538,000	\$66,000	\$51,000	\$250,000

1985-86	\$903,000	\$102,800	\$66,000	\$1,277,000
1986-87	\$977,700	\$73,600	\$47,000	\$1,131,000
1987-88	\$681,400	\$72,500	\$55,500	\$1,104,000

23. On January 31, 1991, the ED Office of Inspector General returned three copies of the financial and compliance audit of the College's administration of the Title IV, HEA Programs for the 1982-83 and 1983-84 award years that the College submitted on January 14, 1991, while retaining one copy for its files. Based upon its review of the audit report, the Office of Inspector General stated that the audit report did not fully comport with the requirements for financial and compliance audits. Ex. G-36 and G-37.

24. On January 31, 1991, the ED Office of Inspector General returned three copies of the financial and compliance audit of the College's administration of the Title IV, HEA Programs for the 1984-85 and 1985-86 award years that the College submitted on January 14, 1991, while retaining one copy for its files. Based upon its review of the audit report, the Office of Inspector General stated that the audit report did not fully comport with the requirements for financial and compliance audits. Ex. G-36 and G-37.

25. The Secretary of Education has officially recognized Coppin State College, located in Baltimore, Maryland, as a "Historically Black College."

26. The Secretary of Education has officially recognized Morgan State University, located in Baltimore, Maryland, as a "Historically Black University."

27. The only degree that the College is legally authorized to award in Maryland is the bachelors degree.

28. The College awarded 2.0 bachelor degrees for academic year 1982-83, 28 bachelor degrees for academic year 1983-84, 25 bachelor degrees for academic year 1984-85, 41 bachelor degrees for academic year 1985-86, 41 bachelor degrees for academic year 1986-87, 28 bachelor degrees for academic year 1987-88 and 47 bachelor degrees for academic year 1988-89.

B. CONTINUATION OF FINDINGS OF FACT - GENERAL.

1. The Antioch Homestead Montebello Center, which was a branch campus of Antioch University, was founded to empower the community to assume the responsibility for its own institutional development. The Center was established to fill an identified need; namely, the provision of educational services to adult learners whose educational needs were not being met. Tr. 276-277.

2. In 1980, the Antioch Homestead Montebello Center spun off from Antioch University and became an independent college under Maryland law. In June 1980, it gained accreditation from the Middle States Association of Colleges and Schools, and on July 1, 1980, it formally became Sojourner-Douglass College. Tr. 278.

3. The spin off was neither smooth nor amicable; which adversely affected the College's Title IV Student Financial Aid Program. While Sojourner had been a branch campus of Antioch University, Antioch handled the administration of financial aid, the registration of students, and all other administrative functions. However, the circumstances of the spin off meant that, without a satisfactory transition period, Sojourner's own staff were immediately required to handle those functions. Tr. 278-279.

4. Sojourner-Douglass College (Sojourner) is a nonprofit private institution located in Baltimore Maryland. It is a small college with 300-310 students. Tr. 290

5. Sojourner is located in one building that Sojourner leases from the City of Baltimore. That building is approximately 50 years old. Tr.291-293.

6. Sojourner, located in one of the poorest sections of Baltimore City, has launched the careers of a number of elected officials, as well as people who are important within their community and within the State. These people serve as examples and role models to their families and to their community. Tr. 451.

7. The Dunbar Complex, where the College is situated, evolved out of a community development effort. At the grass roots level, people came together along with representatives from city, state and federal agencies as well as architects and fund raisers. This group identified local problems and needs and, using the expertise of the whole, developed programs and raised funds to make improvements. Tr. 287.

8. The Dunbar Complex contains a child care center, elementary, middle, and high school, and a college, within one three-square-block complex. Sojourner provides the collegiate component. The Complex also contains approximately ten social agencies including a mayor's station, social services, a social security office, and a parole and probation office. Tr. 288.

9. Other than Sojourner, there are no private predominantly Black institutions of higher education in the State of Maryland. Tr. 280.

10. There are other public postsecondary institutions serving the Baltimore area including Bowie State College, Coppin State College, Morgan State College, University of Baltimore, University of Maryland Baltimore County, and the University of Maryland at Baltimore. JT Ex. 1 at 2, ¶ 7, Ex. G-35.

11. The Secretary of Education has officially recognized Coppin State College, located in Baltimore, Maryland, as a "Historically Black University." JT Ex. 1 at 7, ¶ 26.

12. The Secretary of Education has officially recognized Morgan State University, located in Baltimore, Maryland, as a "Historically Black University." JT Ex. 1 at 7, ¶ 26.

13. Sojourner is unique from other colleges in the Baltimore area. Sojourner was founded to serve its community, and does so remarkably well. "A number of individuals who felt left out of mainstream America who had fortunately either received a high school education or dropped out

of school, but still had a need or yearning to educate themselves saw Sojourner- Douglass College as a way to improve their education after a period in which they felt that they could no longer afford to attend any institutions of higher learning and we were happy that sojourner- Douglass College would fill that void." Tr. 660-661.

14. Without Sojourner channeling his energies and helping him to understand his strengths, Mr. Y would not have gone to college because he could not have succeeded at a traditional institution. Tr. 459-460.

15. Ms. X wanted to attend college and, although she had previously attended the Community College of Baltimore, decided because of the individual attention, the supportive atmosphere, the unique population and the availability of child care, to attend sojourner. Given her circumstances, in order to attend college Ms. X had no choice but to go with her children. Only the unique services offered by Sojourner allowed Ms. X to take her children to college with her. Tr. 387-388.

16. Quite a large percentage of Sojourner's graduates have gone on to graduate programs. Tr. 451.

17. Ms. X is one of eight children. Her father was an active addict while she was attending college at Sojourner; he has since died. Ms. X's grandmother was an alcoholic while Ms. X was in attendance at Sojourner; she has since died. Ms. X's four brothers were then and are now active addicts. Ms. X prior to attending Sojourner, was a physically and emotionally abused wife, married to an alcoholic. She left her husband, taking her children, but no personal belongings. Therefore, she was forced to go on welfare. Tr. 386-388.

18. Ms. X was off welfare and working in a job in her field within two weeks of graduation from Sojourner. She is now attending graduate school, receiving outstanding performance awards from her job with the postal service, buying her own home, and repaying her one remaining student loan. Tr. 390-391.

19. Sojourner has an excellent reputation among its students. The majority of student who enroll at Sojourner enroll because of the recommendation of a relative or friend. Sometimes entire families attend Sojourner together. Tr. 674-675.

20 Mr. Y. has worked with the College, because he believes it is a unique institution and because he felt he owed a debt to Sojourner. Tr. 448-449.

21. Community support for Sojourner is evidenced by the significant degree of volunteerism at the College. Tr. 405, 285, 662-664.

22. The benefits of Sojourner are generational. Both while attending Sojourner and after they graduate, these students serve as role models to their children. For instance, Mr. Y. has five children, all of whom are enrolled in college now and all of whom have used his college experience as a model. Tr. 468, 675.

23. In fact, Mr. Y's case is just one of many where attending Sojourner has instilled a new value for education which its students have transmitted to their children. Mr. Y, for instance, was unsure whether he would have advised his children to attend college had he not attended Sojourner. Tr. 469. 24. Ms. X now has one daughter in college on a scholarship. Her daughter attends Coppin State College and has attended Morgan State University also. TR. 395-397.

24. Ms. X now has one daughter in college on a scholarship. Her daughter attends Coppin State College and has attended Morgan State University also. TR. 395-397.

25. Morgan State University, Coppin State College and Bowie State University are predominantly Black institutions of higher education in the State of Maryland. They provide a traditional program to a traditional population of students, many of whom live on campus. These schools are not designed to serve students who can attend full time only on evenings and weekends, or to provide a close family atmosphere, small classes or child care. Tr. 283-284, 401-402, 396-397, 456-457.

26. Ms. X is currently aware of the operation of Coppin State College and Morgan State University as a result of her daughter's attendance at those two institutions. She is not aware of any day care services for students offered by those two institutions. Because her daughter has a nine-month-old child, Ms. X had reason to know whether such institutions did provide child care facilities. Tr. 397.

27. Mr. Y investigated Morgan State, Coppin State and the traditional programs and felt that he would not fit in since he was an older student. Tr. 455-457.

28. Sojourner is recognized by Coppin State, Bowie State and Morgan State as being different from them. In addition, Sojourner also differs from other predominately Black colleges in that Sojourner's focus is primarily on the adult student. Sojourner provides a better fit for these adult students who need much more individualized, personal attention than they could get at those other schools. Tr. 401, 671-672, 660-661, 387-388, 453, 456-557.

29. Ms. Z heard about Sojourner while living in Eugene, Oregon. She had done community work in Oregon, but realized that she did not have a degree and needed to go back to school. Ms. Z knew she needed a school that could fit her needs. She heard about Sojourner and decided to explore it as a possibility. When she came for an interview, she immediately liked the College and the atmosphere and realized that Sojourner was what she was looking for. She then made up her mind to attend the College, sold everything she owned and moved to Baltimore specifically to attend Sojourner. Tr. 669-670.

30. Sojourner is different from Bowie State College, Coppin State University, and Morgan State University in that it has an extensive support system. Morgan State, for instance, does not pay transportation fees for its students, and has no day care center, nor does Coppin. These institutions also do not give academic credit for life experience, and they approach education from a perspective most suited for teenagers and young adults. By way of contrast, Sojourner provides small classes with individualized attention, making the educational process less intimidating for students who are older and who have been out of school for many years.

Sojourner also provides personal support and a family atmosphere to its students. Tr. 401-402, 670-671, 660-661, 283-284, 461-462.

31. Sojourner serves a bypassed community of adults whose needs are not being met by conventional programs. These adults consist of people who are involved in the church and the community, people who need flexible programming, and people who need other resources like child care, small classes, and emphasis on learning resources. The College fills a void for a number of individuals who feel left out of mainstream America. These are individuals who have received their high school education or who have dropped out of school and have a yearning to better educate themselves but are unable to attend other institutions of higher learning for reasons of cost and because other institutions are not responsive to their particular needs. Tr. 279, 283-284, 659-660.

32. Sojourner helps build the self-esteem of its students by bringing out the talents that they already have and enhancing those talents in various ways such as by giving them responsibilities. Tr. 672.

33. Sojourner educates students beyond simply granting a degree. It instills them with the confidence and will to achieve. Even students who do not complete the program benefit from attending Sojourner, because the College helps students learn how to extract knowledge from life experiences. Tr. 449-450, 673.

34. Seventy percent of Sojourner's students are female heads of households. Some need to come back to school to finish a degree; others are coming for the first time. Sojourner students are people who want to improve themselves, but would not be able to do so without Sojourner. Tr. 674, 659-660; 289.

35. The average age of a Sojourner student is 38. Students 50, 60 and even older also attend. Two recent graduates from Sojourner were age 65 and 67 years old while in attendance at Sojourner. Sojourner now has a 72 year old student who commutes from the Eastern Shore of Maryland. Tr. 284, 674.

36. Sojourner benefits its students through the provision of child care, which includes tutoring for the children of students while these students are in class. It also provides experiential learning and applied programs, which tie learning experiences to a particular career or profession. Students earn credit towards their degree for these learning experiences. These programs link theory with practice and go beyond conventional education. This approach is particularly effective with adult learners. Tr. 280-283, 457-459, 389-390.

37. All Sojourner students must complete an experiential learning project. Sojourner works with representatives of industry to help develop curriculum for these programs so that students can and do enter into the work force without the need for any additional training. Tr. 280-283, 389-390, 458-459.

38. One example of Sojourner's uniqueness is an experiential learning project that Mr. Y did to demonstrate competency in his discipline. Mr. Y researched and published a book on a Black

woman historian who lives in Arizona and Oklahoma. Through Sojourner, Mr. Y was allowed to travel to Oklahoma and to Phoenix and to include the product of his travels and research in his project; this is a modality not available at other schools. Tr. 458-459.

39. As a part of Ms. X's experiential learning project she was involved in Sojourner's Peer Counseling unit, which involved counseling and assisting students in determining and acting on their educational and social needs. Ms. X '5 first job originated from volunteer counseling of homeless families at a YWCA homeless shelter, which she did along with various other community service projects, while she was a student at Sojourner. Tr. 389-390.

40. Sojourner provides outreach to the community in the form of clothing and food; it provides free lectures, workshops and seminars, and cultural entertainment. Tr. 394-395, 404, 662, 672-673.

41. Sojourner provides unique computer training via satellite communication systems to elementary, middle school and high school students. Sojourner also brings these students into its computer labs and has designed a program to track the extent to which this technology has affected their progress. Tr. 289- 290.

42. Sojourner brings in speakers from throughout the world that community residents otherwise would not have an opportunity to hear. Tr. 662, 404.

43. People attending programs at Sojourner range from infants to senior citizens. The geriatric community in particular has a high rise near the College and, because of the lectures and programs offered by the College, its members have an opportunity to attend quality programs for free or at a low price. Tr. 663.

44. The experiential learning projects which each student must complete also provide a great benefit to the community. This is because Sojourner requires that all of these experiential learning projects must be directly relevant to the community. For instance, Sojourner students have set up administrative offices for small businesses that cannot afford professional consultants. Tr. 290-291.

45. Terminating Sojourner would devastate the population of the College, and the community, because if Sojourner loses its ability to provide Title IV federal financial aid to its students, Sojourner will have to close. Tr. 285, 405.

46. Based upon the eight terms he has served in the Congress of the United States and the three and one half years he has served on the Sojourner-Douglass College Board, Congressman Parren Mitchell stated that it would not be in the public interest for the Secretary of Education to terminate the Title IV eligibility of Sojourner. Tr. 404-405.

47. People in the community, many of whom are senior citizens who may not have had an opportunity to receive a formal education, have always appreciated Sojourner for what the College brings to the community. Sojourner offers an alternative to the life style the average

person witnesses in the East Baltimore area where the College is located. This alternative will be foreclosed if Sojourner is terminated from the Title IV programs. Tr. 662-663.

48. Terminating Sojourner will have a drastic effect on its students, because there is no viable alternative to Sojourner that can serve the specialized needs of the population of students Sojourner currently serves. The majority of Sojourner students are people who overcame great obstacles in order to attend college. These students have gained confidence through their attendance at Sojourner. Closing Sojourner now would pull the rug out from under these students. Although a small percentage of Sojourner students may be able to attend other institutions despite the lack of flexibility at these other institutions, most could not, and an enormous percentage would not. They would be lost. Tr. 675, 285, 406, 666-667.

49. The only degree that the College is legally authorized to award in Maryland is the bachelors degree. JT Ex. 1 at 7, ¶ 27.

50. The College awarded 20 bachelor degrees for academic year 1982-83, 28 bachelor degrees for academic year 1983-84, 25 bachelor degrees for academic year 1984-85, 41 bachelor degrees for academic year 1985-86, 41 bachelor degrees for academic year 1986-87, 28 bachelor degrees for academic year 1987-88 and 47 bachelor degrees for academic year 1988-89. JT Ex. 1 at 7-8, ¶ 28.

51. In award years 1982-83 through 1987-88, students received through the College approximately \$4,260,000 of grants under the Pell Grant Program, approximately \$3,800,000 of loans under the GSL Programs, approximately \$450,000 of grants under the SEOG Program, and approximately \$300,000 of CWS Program funds, as follows:

Award Year	Pell Grant	SEOG	CWS	GSL
1982-83	\$565,000	\$66,000	\$39,000	\$5,000
1983-84	\$538,000	\$66,000	\$51,000	\$250,000
1985-86	\$903,000	\$102,800	\$66,000	\$1,277,000
1986-87	\$977,700	\$73,600	\$47,000	\$1,131,000
1987-88	\$681,400	\$72,500	\$55,500	\$1,104,000

JT Ex. 1 at 6, ¶ 22.

SOJOURNER OFFICIALS AND CONSULTANTS

Dr. Charles Simmons was co-founder of the Homestead Montebello Center of Antioch University and served from 1972 to 1980 as co-director for that Center. He has a Ph.D from Union Graduate School in Ohio, and has completed post-doctoral studies at Harvard University Graduate School of Education in Cambridge, Massachusetts. Dr. Simmons is currently President of Sojourner. Tr. 276.

Mr. Raymond Bantum is a Systems Management Consultant to Sojourner and President of Automated Solutions, Inc. He has a B.S. degree in accounting and an A.A. degree in resource

management. He is a certified public accountant, a certified data processor, and a certified management consultant, and has 15 years of experience working with computers and accounting systems. Tr. 335.

Congressman Parren Mitchell has done work in the public sector as Executive Director of the Maryland State Human Relations Commission, with the Baltimore Anti-Poverty Program, as Chairman of the Board of Minority Business Enterprise, Legal Defense and Education Fund, and as a Congressman from the State of Maryland from 1970-87. In 1988 he became a member of the Board of Sojourner, having previously to that been asked to serve on several college boards but having agreed and served only on the Antioch College Board in the 1970's. Tr. 399.

Mr. Douglas Bucher is the Director of Financial Aid at the Community College of Baltimore ("CCB") and is responsible for the total financial aid operations of that school, consisting of approximately 10,000 students, of which approximately 4,000 are reviewed for aid. Mr. Bucher administers over \$5 million in financial assistance to students, and is responsible for all federal, state and institutional reports as required by the different governmental agencies that are involved with CCB. Mr. Bucher is the Financial Aid Consultant to Sojourner. Tr. 407-408.

Mr. William Paul Coates, who is now employed at Howard University as an African American reference librarian and subject specialist, is the owner and publisher of Black Classic Press which republishes works by and about people of African descent. Mr. Coates has been affiliated with Sojourner since 1975 when he began as a student at the Antioch Montebello Center. Mr. Coates has been a student, a student-teacher, a faculty member, and, as an alumnus, has worked as a fundraiser and as a recruiter for the college. Tr. 445-446.

Ms. Laverne Lawal is Business Office Director of Sojourner and has been affiliated with Sojourner since 1975, when she started out as a student of the Homestead Montebello Center of Antioch College, the forerunner of Sojourner-Douglas. She received a Bachelor of Arts Degree in Political Science in 1978. Tr. 473-474. Ms. Lawal did not major or minor in accounting while earning her degree. She took one course in basic accounting after she obtained her degree. Tr. 516-517. She has been Sojourner's Business Office Director since 1980. Tr. 473.

Ms. Linda Trusty is the Director of Financial Aid at Sojourner and has been affiliated with the College since she attended Sojourner as a student in 1985. In March of 1989, she became Acting Financial Aid Director. Prior to her position as Acting Financial Aid Director at Sojourner, Ms. Trusty worked at Delaware Valley School of Trade for over a year as a financial aid counsellor. Tr. 567.

VI. DISCUSSION AND ADDITIONAL FINDINGS OF FACT.

A. Non-Federal Audits.

1. Under governing regulations, the College's financial and compliance audit of its administration of the Pell Grant, GSL, SEOG, CWS, and Perkins Loan Programs for the 1982-83 and 1983-84 award years was required to be submitted to ED by March 31, 1985. JT Ex. 1 at 2, ¶ 8.

2. An award year is a period of time between July 1 of one calendar year and June 30 of the next calendar year, e.g., the 1982-83 award year is the period between July 1, 1982, and June 30, 1983. JT Ex. 1 at 1, ¶ 1.

3. The College failed to submit a financial and compliance audit to ED of its administration of the Pell Grant, GSL, SEOG, CWS, and Perkins Loan Programs for the 1982-83 and 1983-84 award years until January 14, 1991. JT Ex. 1, at 2, ¶ 9, Ex. SJ-11 and 13.

4. On January 31, 1991, the ED Office of Inspector General returned three copies of the financial and compliance audit of the College's administration of the Title IV, HEA Programs for the 1982-83 and 1983-84 award years that the College submitted on January 14, 1991, while retaining one copy for its files. Based upon its review of the audit report, the Office of Inspector General stated that the audit report did not fully comport with the requirements for financial and compliance audits. JT Ex. 1 at 6-7, ¶ 23, Ex. G-36 and G-37.

5. Under governing regulations, Sojourner's financial and compliance audit of its administration of the Pell Grant, GSL, SEOG, CWS, and the Perkins Loan Programs for the 1984-85 and 1985-86 award years was required to be submitted to ED by March 31, 1987. JT Ex. 1 at 3, ¶ 11.

7. On January 31, 1991, the ED Office of Inspector General returned three copies of the financial and compliance audit of Sojourner's administration of the Title IV, HEA Programs for the 1984-85 and 1985-86 award years that Sojourner submitted on January 14, 1991, while retaining one copy for its files. Based upon its review of the audit report, the Office of Inspector General stated that the audit report did not fully comport with the requirements for financial and compliance audits. JT Ex. 1 at 7, ¶ 24, Ex. G-36 and G-37.

8. Under governing regulations, Sojourner's financial and compliance audit of its administration of the Pell Grant, GSL, SEOG, CWS, and Perkins Loan Programs for the 1986-87 and 1987-88 award years was required to be submitted to ED by March 31, 1989. JT Ex. 1 at 4, ¶ 14.

9. The College has failed to submit a financial and compliance audit to ED of its administration of the Pell Grant, GSL, SEOG, CWS and Perkins Loan Programs for the 1986-87 and 1987-88 award years. JT Ex. 1 at 4, ¶ 15.

10. The field work for the financial and compliance audit for 1982-83 and 1983-84 was performed between December 1985 and November 5, 1990. Ex. SJ-11-7. The audit report itself was dated November 5, 1990. Ex. SJ-11-11.

11. The field work for the financial and compliance audit for 1984-85 and 1985-86 was performed between December 15, 1988, and November 5, 1990. Ex. SJ-12-7. The audit report itself was dated November 5, 1990. Ex. SJ-12-9.

Under normal circumstances OSFA disburses Pell Grant and Campus-Based program funds to institutions on the basis of their requests. It does not require those institutions to account for those funds prior to disbursement. Therefore, when OSFA disburses such funds, it does not know whether the funds are going to eligible students, whether students are receiving the correct award

amounts, or whether the institutions are making required refunds to students or to the programs. Also, under the GSL Programs, neither OSFA nor lenders know when lenders disburse loan checks to institutions on behalf of student-borrowers, whether the loan checks are being processed correctly, whether students are still eligible to receive those loans checks, or whether the institutions are making required refunds to lenders.

An institution participating in the Title IV, HEA Program accounts to OSFA for the Title IV, HEA Program funds it receives, and accounts to OSFA for its administration of the Title IV, HEA Programs, by submitting to OSFA a financial and compliance audit, conducted by an independent auditor, of its administration of those programs. The institution must have such an audit performed at least once every two years. An institution that participates in the Campus-Based Programs must submit that audit to OSFA by March 31 following the end of the last award year being audited.

An institution therefore fails to account to the Secretary for the Title IV, HEA Program funds it receives when it fails to submit a required audit of those programs. Also an institution fails to account to the Secretary for its administration of those programs when it fails to submit that audit.

As stated above, pursuant to regulation Sojourner was required to submit a financial and compliance audit of its administration of the Title IV, HEA Programs for award years 1982 thru 84 by March 31, 1985. For award years 1984 thru 1986 the audit was due by March 31, 1987. On January 14, 1991, Sojourner did submit an audit for both of those two-year periods. However, one of them was between 5 and 6 years late, while the other was between 3 and 4 years late.

As required by regulations, Sojourner submitted the two audits to the ED-OIG. However, the ED-OIG returned each audit to Sojourner and its auditors because the audits did not fully comport with the requirements for such financial and compliance audits. When it returned each audit, the ED-OIG noted the deficiencies in the audit reports that caused the audits to be returned, citing the relevant standards, and requested that the auditors revise the report by correcting those noted deficiencies. In general, the deficiencies related to the absence of information required to be provided in such audits. Ex. G-37.

The OIG stated, in part, as follows:

"The Auditor's Report on Internal Accounting Controls" in both reports were incomplete. They should have included an identification of significant internal accounting controls which the auditor evaluated, the control categories that were not evaluated, and the material weaknesses identified as a result of the evaluation. (March, 1984 SFA Audit Guide, Pages 42- 43). The auditor's internal controls report did not identify all material weaknesses.

The audit reports did not always contain fully developed audit findings. To illustrate, Findings Nos. 4, 5 and 6 on page 18 of the report covering the period ending 1983 and 1984 . . . should have been monetarized with questioned costs.

The institution's "Formal Response to the Title IV Biennial Audits for the Years Ending 1984 and 1986" indicated that the institution has significant potential liabilities to . . . [ED] based on the ED-OIG audit for the period July 1, 1980 to June 30, 1982 and the OSFA program reviews for the periods July 1, 1984 to June 30, 1987 and July 1, 1987 to June 30, 1989. However the audit reports did ' contain a disclosure of these material facts.

Ex. G-37.

Pursuant to regulations, Sojourner was required to submit a financial and compliance audit of its administration of the Title IV, HEA Programs for award years 1986-87 and 1987-88 by March 31, 1989. As of the time of the hearing in this case it was almost two years past the deadline and no audit had been submitted.

Thus, Sojourner failed for almost six years to submit financial and compliance audits of its administration of the Title IV, HEA Programs for award years 1982 thru 84, and failed for almost four years to submit such audits of its administration of the Title IV HEA Programs for award years 1984 thru 86, and has not submitted an audit of its administration of such programs for the award years 1986-1988.

It is clear that the failure of Sojourner to submit financial and compliance audits to OSFA as relates to the 1986-88 award years and the failure of Sojourner to submit audits for the 1982-84 and 1984-86 award years until almost 6 years and 4 years, respectively, after they were due, constitute violations of §§ 668.12, 668.23, 674.19, 675.19, 676.19, 682.612, 690.84 and 690.85 as such regulations existed at the times of the violations.

Further, these violations also constitute a breach of Sojourner's fiduciary duties in violation of § 668.82. In keeping with the prior discussion as to the reasons why the submittal of these audits down through the years is necessary, it is also clear that these are serious violations of law.

B. 1987 Program Review.

I. General.

Ms. Merrill-Jean Bailey of the OSFA Program Review Branch on January 6-8, 12, 1987, conducted a review of the records of twenty-three (23) Title IV recipients and the fiscal records pertaining to those programs for 1984-85, 1985-86, and 1986-87 award periods. On March 20, 1987, a Program Review Report was issued.

On August 5, 1987, Sojourner submitted a response to the Program Review Findings. In 1989 during a subsequent Program Review another program reviewer, Mr. John Kolotos, discussed the "open" findings from the 1987 report with Sojourner's president and other officials of the college. The following are the open findings concerning which violations of law are alleged. [4](#)

2. Finding No. 4 - Failure to Apply Satisfactory Progress Policy.

On April 21, 1986, Sojourner paid \$1,575 of Pell Grant Program funds to a student, [student name], who was not making satisfactory progress under Sojourner's own satisfactory progress standard. Sojourner agreed to repay the \$1,575 to its Pell Grant Program account funds. Exhibits G-2-3, G-4-3. The \$1,575.00 which Sojourner agreed to repay was to be repaid following instructions for repayment of the liability, which instructions were to come from ED. Ex. G-3-4, the 1989 Program Review report under Finding No. 4 requirement states: "Instructions for the payment of this liability will be provided in subsequent correspondence." In subsequent correspondence, however, ED failed to follow up with any instructions to Sojourner informing it how, when and where to repay the \$1,500.00. Tr. 154-155.

As of the date of the 1989 review, Sojourner had not repaid its Pell Grant Program account for the overpayment to Robin Clark. Exhibit G-3-4. Sojourner made that payment on January 17, 1991. Ex. SJ-19.

Sojourner therefore, did violate § 668.16 on April 21, 1986, by paying Pell Grant Program funds to a student who was not maintaining satisfactory progress, however, Sojourner resolved the issue on January 17, 1991, by restoring the funds.

3. Finding No. 5 - Failure to Obtain Financial Aid Transcripts.

The 1987 Program Review Report stated that the records of 23 Title IV recipients from the 1984-87 award period were examined and that the reviewer noted that four of the sample of 23 had indicated that they had attended other institutions of higher education. However, financial aid transcripts from those institutions were not in the students' files.

The issue arises as to whether these facts are proof of a violation of § 668.14 during the period in question. The testimony of Mr. Kolotos indicates that there is uncertainty as to this. He stated in part as follows:

THE WITNESS: Well, I can describe in general detail -- I mean, you are correct that financial aid transcript regulations do change over time. In general, if a student has attended another post-secondary institution on at least a half-time basis, then the institution that the student is currently attending must request a transcript from the prior institution. That applies to most of the Title IV Programs.

There was a period of time that if the student was to apply and receive only a guaranteed student loan, that the current institution did not have to make a request. The current regulations are much different. They require that a transcript be obtained no matter what the Title IV-A student is going to be receiving.

Tr. 31.

§ 668.14 previously stated, in part, as follows:

§ 668.14 Financial aid transcript.

(a) (1) Disbursing money only after receiving a transcript-general rule. If informed by a student that he or she attended another eligible institution on at least a half-time basis, the institution the student is currently attending shall not disburse any title IV funds (other than Guaranteed Student Loan and Parent Loans for Undergraduate Students checks where the institutions not the lender) to that student before obtaining a properly signed financial aid transcript from the institution or institutions the student previously attended, unless the other institution or institutions each indicate, in writing that they are not required to provide a transcript under the provisions of paragraph (b) or paragraph (c) (2) or (c) (3) of this section. The student's current institution may disburse title IV funds on the basis of such a written notice or notices.

It is apparent that the regulation in effect during the applicable period had exceptions wherein under certain circumstances, even if a student had attended another institution of higher education, there would be no requirement that a financial aid transcript be obtained from the prior institution.

In this case the only evidence as to this alleged violation was that four students were receiving some type of unspecified Title IV financial aid and had attended another institution of higher education. There was no information as to whether these students had even been at least half-time students at the prior institutions, or whether they were presently receiving aid which did not fall within the exceptions. No testimony was placed in the record from the person who conducted the 1987 review and no further documentary evidence was entered from that review which would supply the missing information. Further, Mr. Kolotos stated that he had not personally reviewed the work papers from the 1987 review. Tr. 259-263.

Consequently OSFA has failed to prove a violation of a regulation under finding No. 5 of the 1987 Program Review.

4. Finding No. 5 - Failure to Correctly Award and Disburse Pell Funds.

The program review report of March 20, 1987, relating to the January 1987 review, contains an entry under finding No. 6 to the effect that "The reviewer found one (1) student who had previously received a Bachelor's degree and received a Pell Grant in the amount of \$1,050." (The name and SSN of that student were also listed.) A violation of § 690.4 was alleged.

OSFA then ordered the return of the Pell Grant funds disbursed to that student. OSFA also ordered Sojourner to review the files for the 1985-87 award years to insure that there were no recipients who had previously received a Bachelors degree and to report the results.

Sojourner responded in its August 5, 1987, letter (Ex. G-4) that its student's award was revised prior to year end and a corrected pay document had been forwarded to ED, that therefore there would be no need to return any funds, and finally that the review showed that no other student had received a Bachelors degree.

If part way through the award year an institution finds information that changes the amount of a student's Pell Grant, it may correct the payment document as long as at the end of the year the payment document and roster of Pell payments are correct. OSFA views such corrected

payments as if the institution had awarded the student the correct Pell Grant. From June 30 until December 31 of each year, institutions have time to correct errors for the preceding award year. Mr. Kolotos testified that institutions have typically generated student payment reports around December. Tr. 85, 429-431.

Therefore, in view of the circumstances as explained in Sojourner's letter of August 5, 1987, there would be no violation of § 690.4.

Mr. Kolotos, the 1989 program reviewer, testified briefly concerning the 1987 finding and stated that:

The college . . . concurred with the finding and indicated that a reversal was made during that year. Part of that reversal would entail the submission of what is a payment document to the PELL Grant Program indicating that the money that the student was scheduled to receive has been reduced to zero, and that they had in fact filed this payment document. I asked the institution officials to give me some evidence or proof that had been done, and they were unable to provide me with any evidence that it had been done.

Tr. 27-28.

Mr. Kolotos, at the beginning of his report as to the 1989 program review referred to certain "open" findings from the 1987 program review and stated as to finding number 6 that Sojourner must submit evidence that the entire disbursement in question was returned to the Pell Grant program account.

The program review reports are proper evidence before this tribunal. However, as to this issue they are hearsay evidence as is the testimony given by Mr. Kolotos since he was not the person involved in the 1987 program review but was referring to the statements contained in the 1987 program review report. The present proceeding however is not an accounting case. In this case Sojourner is charged with violations of law and, as a consequence, OSFA is demanding its termination from eligibility to participate in Title IV, HEA programs. Further, in this type of case OSFA bears the burden of proof.

The evidence on this issue supplied by Sojourner is of no less quality or weight than that supplied by OSFA. In this instance OSFA presented no documentary evidence to prove the basic facts as to the status of the student in question or the Pell Grant payment other than the program review reports. OSFA did not call, as a witness, the 1987 reviewer who might have testified as to the facts which were the foundation for his report. All that OSFA produced was a copy of a statement of facts that was in the 1987 program review report (Ex. G-2), and a similar reference in the 1989 program review report (Ex. G-3) as well as Mr. Kolotos' hearsay testimony. Yet, other documentary evidence in the record, (Ex. G-4) constitutes a complete explanation and response to OSFA's allegations. In this letter of August 5, 1990, signed by Mr. Hutchins, Sojourner's Director of Financial Aid, he explained that the Pell Grant award in question had been revised before the end of the year involved and that a correction document had been forwarded to the Department of Education.

OSFA chose not to present the testimony of the 1987 program reviewer or to present documentary evidence as to the actual status of the student or the Pell Grant payment.

Therefore, the evidence on Sojourner's side of the case is at least equal to the hearsay evidence presented by OSFA. As stated above OSFA has the burden of proof as to a most serious matter that involves OSFA's allegation of violations of law. OSFA therefore has not carried its burden of proof.

5. Finding No. 10 - Failure of Due Diligence Administering NDSL.

In 1987, Sojourner had a 75.23% default rate on loans it made under the NDSL Program. In the program review report, OSFA required Sojourner to take steps to reduce its default rate. Ex. G-2-8. A violation of § 668.17(a) (1) was alleged.

Sojourner responded in its August 5, 1987, letter (Ex. G-4) and stated as follows:

The College is aware of the problems with the NDSL default rate. Three steps are being taken to resolve it:

First, two new collection agencies have been selected to receive accounts. The College will start immediately referring delinquent loans to these agencies.

Second, the College will add a temporary person in the business office to prepare delinquent accounts that have been through collection agencies for assignments.

Third, the College financial aid staff will offer rights and responsibilities seminars for current student borrowers and alumni. Most of the school's borrowers remain in the Baltimore area after graduation or withdrawal. It is hoped that these seminars can reaffirm the importance of repaying the borrowed funds.

Ex. G-4-4 .

The 1989 program review report referred to this finding and the tri-part plan which Sojourner proposed to reduce the default rate, and stated: "Institutional officials informed the reviewer that none of these actions had been implemented (referring to the tri-part plan)."

However, officials of Sojourner also testified that steps had been taken to reduce Sojourner's NDSL Loan default rate. Such steps included having Mr. Obayanju do a due diligence on the loan notes and hiring two additional collection agencies to collect the loan notes. Tr. 537-539.

Laverne Lawal testified with regard to the collection of \$7.00 in outstanding NDSL loans in answer to questions asked by Mr. Kraut, which were as follows:

Q. You reported that you received Perkins loan repayments. Did you received any repayments during the period of July 1989 through June 30, 1990, during the 1989-90 award year?

A. Yes, I believe we did.

Q. Are you aware that you reported to the Department of Education on your 1990 FSAP that you did not receive any Perkins loan repayments for that period, that you signed, you were one of the signatures on that application and report?

A. I was not aware that I had left that payment out.

Mr. Wiesenfelder then asked the witness:

Do you recall approximately what the size of that one payment is that Mr. Kraut was referring to?

The witness: \$7.00.

Tr. 565-566.

Despite the fact that Sojourner did put into operation a tri-part plan to reduce the NDSL default rate, there was a violation of the regulation in question which provided, in part, as follows:

§ 668.17 Additional factors for evaluating administrative capability and financial responsibility.

(a) The Secretary considers that loan default and withdrawal rates may impair an institution's capability of properly administering student financial aid programs authorized under title IV if
(1) The default rate on Guaranteed Student Loans, Parent Loans for Undergraduate Students or National Direct Student Loans made to students for attendance at that institution exceeds 20 percent of the principal of all those loans that have reached the repayment period; . . .

§ 668.17(a)(1)

A 75.23% default rate in the NDSL Program is a serious violation. However, it should be noted that Sojourner has not awarded a loan under the NDSL program since the 1983-83 school year.
Ex. G-4-5.

6. Finding No. 11 - Failure to Retain NDSL Promissory Notes.

The 1987 Program Review Report states as follows at Finding number 11:

The institution did not retain the original copy of the promissory note for any NDSL loans; the student received the original while the institution has maintained the carbon copy of the promissory note.

This is restated as an "open" finding in the 1989 Program Review Report and alleged to be in violation of §§ 674.19, 674.32, and 674.42. The 1989 report went on to state:

In its response to this finding, SDC stated that "after reviewing student records located in the financial aid office, it appears that most of the original notes are on file in inactive folders in the financial aid office." The notes that Ms. Bailey exam examined were duplicates maintained in the Business Office.

Since the College's Program Review response did not definitively account for all of the notes, the reviewer requested documentation verifying the status of these notes. Institutional officials did not provide the requested information.

Ex. G-3-6 and 7.

However, Sojourner has at all times been in physical possession of the original NDSL loan promissory notes. Mr. Kolotos was informed by Ms. Lawal, Sojourner's Business Office Director, that the notes were available for his review in the financial aid office. Tr. 479-480, 553-555.

The original promissory notes for the NDSL loan program were kept all together in a looseleaf book in the Financial Aid Office. They were not housed in individual student files. Tr. 563-564. Ms. Trusty, the Financial Aid Director, had just started a few months before Mr. Kolotos conducted his review and she may not have known where the original promissory notes were located. Tr 564. In this regard it is important to note that Sojourner had not awarded an NDSL to any students since the 1983- 84 school year and the 1989 staff had all arrived after 1983-84. Ex. G-4-5. The president of Sojourner testified that Mr. Kolotos and his former supervisor, Mr. Gargano, actually saw the original promissory notes on a visit to the school. Tr. 303.

Whether or not the 1989 program reviewer saw the original promissory notes is irrelevant to the real issue as to whether Sojourner actually retained the original promissory notes. The testimony of Sojourner's officials has established this to be a fact. Dr Simmons, and Ms. Lawal were in a better position to know the actual facts as to this matter and they were credible witnesses. Therefore, OSFA has failed to establish a violation of either § 674.19, § 674.32, or § 674.42.

7. Finding No. 13 - Failure to Properly Make and Report PELL and SEOG Expenditures.

The 1987 Program Review Report contained a finding alleging that Sojourner overexpended its 1984-85 and 1985-86 authorization for PELL and SEOG funds by the amount of \$165,670.00, and that there were discrepancies in the expended amounts reported on the FISAP versus the Report of Expenditures all in violation of § § 676.19, 690.82, 690.83, and 690.84. However, no foundation for the figures was ever presented.

The 1989 Program Review Report referred to this finding and stated, in part, as follows:

Result: The institution responded to this finding on February 8, 1988. However, it was unclear as to how the institution resolved the reported discrepancies and overexpenditures. SDC officials could not clarify the institution's response.

Requirement: The College must present this finding to independent auditors for review. The results of this review must be reported in the institution's non-federal audit. A copy of this audit report must be submitted to the Regional Office for review before this finding can be closed. This does not relieve the institution of further required actions.

Ex. G-3-8.

During the hearing the 1989 program reviewer, Mr. Kolotos, made the following statement as to this finding:

The program reviewer for the prior review cited the school for an over- expenditure of funds, meaning that for each year an institution has a certain authorization or allocation of funds and the finding entailed that they had spent more in those programs than they were authorized to spend.

In response to that finding, the institution submitted a very lengthy response to that, and I could not determine from their response that -- first of all, I couldn't determine from their response if they had satisfied the reviewer's concerns, meaning that was there an overexpenditure or not. From what I could gather, the institution claimed that there wasn't an over-expenditure because the prior reviewer had overlooked or misconstrued certain things.

I asked the people present at the meeting if they could clarify their response for me so that we could close it, but unfortunately, nobody at the meeting could give me any type of clarification regarding that finding.

Tr. 28-29 (emphasis added).

The net result of the present status of the record on this finding is confusion in the mind of OSFA's witness and overall confusion in the record. As mentioned previously this is not an accounting proceeding. OSFA has the burden of proof to present adequate evidence that a violation of law has in fact occurred. OSFA has failed to meet this burden.

8. Finding No. 14 - Failure to Resolve Open Findings-Audits of 1980-82.

The 1987 Program Review Report contained a statement as to a prior audit as follows:

The institution currently has not finalized the audit for the period 1980-82, conducted by the Department's Office of Inspector General.

Ex. G-2-10.

Sojourner, in its response of August 5, 1987, stated that legal counsel were working on resolution of the audit and that a number of items were yet to be resolved. Ex. G-2-10

The 1989 Program Review Report also contained a comment as to this:

The audit conducted for the 1980-81 and 1981- 82 award years by the Office of the Inspector General (OIG) had not been closed. . . . The President informed the reviewer that the OIG audit is still open.

Ex. G-3-8

A violation of § 668.12 [actually 668.13] was alleged. However, no proposed findings of fact as to the foundation for such an alleged violation were set forth by OSFA. The record does not disclose any actual factual evidence as to the foundation for such an alleged violation of law.

There is no way of knowing which clause of § 668.13 is alleged to have been violated or what liability, if any, is claimed by OSFA.

Therefore, OSFA has failed meet its burden of proof as to any specific violation of § 668.13.

C. 1989 Program Review.

I. General.

Mr. John Kolotos, a Program Review Specialist in the OSFA Program Review Branch, on July 12-14, 20, 1989, conducted a review of the records of twenty-three (23) students which included awards for the 1987-88 and 1988-89 award years.

Mr. Kolotos had commenced work as a Program Reviewer with OSFA about 6 months before he conducted the 1989 Program Review of Sojourner ("1989 Review"). Tr. 150-151.

A Program Review is a snapshot look at how a school is administering its Title IV programs at the time of the review. The students selected for review are not selected on a statistically valid or scientific basis during a Program Review; instead they are selected at random to see how the school is administering Title IV programs with regard to these students.

Mr. Kolotos based his 1989 Review findings, with regard to whether Sojourner had proper documentation for its Title IV, transactions, on the documentation that he found in Sojourner's financial aid and admissions files that he was given. Tr. 133- 134, 304-305 and 591-592.

Student files are not required to contain all documentation of Title IV aid transactions. Tr. 21. However, the 1989 Reviewer reviewed the files that Sojourner provided to him. At the time he was given student files, documentation relating to the 23 students whose files he was reviewing also was contained in other files that the 1989 Reviewer did not review. Tr. 133- 134, 304-305 and 591-592.

However, the reviewer could do no more than review the records actually provided to him by Sojourner at the time of the review.

Under such regulations as § § 690.82 and 668.23 Sojourner has the duty to give an authorized representative of the Secretary of Education access to the records required by the program

regulations and any other pertinent books, documents, paper, and records. When Sojourner's personnel were asked by the reviewer for records pertaining to specific subjects and specific students, all such records should have been shown to him.

The 1989 Program Reviewer has no knowledge of the current status of the Title IV files regarding the 23 students who were the subjects of the 1989 Review. The 1989 Reviewer has not made an effort to discern which findings or parts of findings from the 1989 Review may have been correct in July 1989, but are no longer correct due to additional information which has recently been received. Tr. 136.

2. Finding No. 3 - Inadequate Accounting Records.

As a result of finding No. 3 it was alleged in the August 16, 1990, termination notice that Sojourner has failed to establish and maintain a system of internal fiscal controls, that Sojourner fails to maintain on a current basis financial records that reflect all Title IV, HEA program transactions, and that Sojourner fails to maintain documentation to support Title IV expenditures as claimed on required quarterly reports to ED and on its Pell Grant payment summary for 1987-88 in violation of § § 668.23, 674.19, 675.19, 676.19, 690.81, 690.82 and 690.83.

Finding No. 3 states, in part:

The Fiscal Officer could not provide the reviewer with any documentation supporting reported Title IV expenditures for any EDPMS 272's prepared for the 1987-88 and 1988-89 award years (through the period ending 3/31/89) nor for the 1987-88 Application and Fiscal Operations Report.

Ex. G-3-11.

For award years 1982-83, 1983-84, and 1984-85, Sojourner did not establish or maintain general ledger control accounts and related subsidiary accounts that identify individual Title IV, HEA Program transactions and separate those transactions from all other institutional financial activity. Tr. 528.

a. Non-Federal Audit Findings as to Accounting Records.

In the audit report for the two award years ending June 30, 1984, sojourner's own auditor found that:

The institution did not maintain adequate records to determine that all students met the eligibility requirements for the grant and loan programs. Nor did the Institution maintain adequate financial records which allowed for the proper identification of fund transfers and grants to students.

The BEOG, SEOG, CWS and NDSL program receipts records totaled \$2,447,476 of which \$928,085 could not be identified by source. Also, the bank Statements for the BEOG and NDSL programs contained disbursement of \$287,755 and \$8,433 respectively, the purposes for which could not be determined.

The College did not maintain an accounting system for financial aid programs whereby the financial results of grant performance could be fairly and timely determined as required by the Federal reporting requirements.

Exhibit SJ-11-9.

That audit went on to state:

[O]ur study and evaluation disclosed the following conditions that we believe result in more than a relatively low risk that errors or irregularities in amounts that would be material in relation to the statement of changes in SFA program fund balances of Sojourner-Douglass College may occur and not be detected within a timely period. The recordkeeping function is less than adequate. Third party documents (bank statements) could not be reconciled to a general ledger because deposits and withdrawals were not recorded in a book of original entry. The College did not maintain an accounting system which accounted for inter-fund receivables and payables nor did the system adequately identify disbursements for grants to students and bank reconciliation statements were not prepared for any of the financial aid program bank accounts.

Ex. SJ-11-17

In the audit report for the two award years ending June 30, 1986, Sojourner's own auditor found that as of November 5, 1990, Sojourner's financial management system still had not put into operation the necessary controls to ensure that program funds for the two year period ending June 30, 1984, were accounted for properly.

The audit report for the two award years ending June 30, 1986, contained the following comments:

1. Pell Grant

The College entered into an agreement with the Office of Education on August 11, 1980 to participate in the Pell Grant (BEOG) Program. This program provides eligible students with financial assistance to help defray the cost of post-secondary education. Program funds in the amount of \$1,565,551 were authorized for the two year period ended June 30, 1986. The Colleges' record-keeping system was inadequate to substantiate the amount of grants to students from this fund. Grants recorded in the financial records differed from grants authorized by the Financial Aid Office by \$241,424. This difference has not been reconciled.

Ex. SJ-12-5.

2. Supplemental Educational Opportunity Grants (SEOG) Programs:

The SEOG Program was established at Sojourner-Douglass College on May 30, 1980, under Title IV, Part A, of the Higher Education Act of 1965, as amended. During the two years ended June 30, 1986, Program Funds were authorized in the amount of \$172,334. The amount of awards to students, however, could not be substantiated from the Colleges' record-keeping

system. The financial records indicate that grants to students totaled \$235,921, which is in excess of Federal authorizations by \$63,587. The Financial Aid Office records indicate that authorized awards should total \$141,347. These differences were not reconciled.

Ex SJ-12-6.

3. The Business Office's financial records do not reflect all financial transactions, and the recordkeeping system is inadequate in that assets, liabilities and fund balance are not maintained on a program by program basis. Additionally, the Financial Aid Office did not maintain adequate records with regards to student eligibility. Accordingly, we could not determine whether all grant recipients were in fact eligible for assistance. Furthermore, we were unable to reconcile financial aid authorizations from the Financial Aid Office to the accounting records of the Business Office. These items are discussed more fully in Section III, Findings and Recommendations, of this report.

In our opinion, because of the material inadequacies discussed in the preceding paragraph, the statement referred to above does not present fairly the changes in SFA Fund Balances of Sojourner-Douglass College for the two years ended June 30, 1986, in conformity with generally accepted accounting principles.

Ex. SJ-12-9.

[In response to this, Ms. Lawal, the Business Office Director, stated that the College had and does have all of the records for these particular award years. However they were not in the format that the auditor requested. The records were in part manual and in part computerized. Tr. 505-508.]

The audit report for the period ending June 30, 1986 went on to state:

4. Our study and evaluation made for the limited purpose described in the first paragraph would not necessarily disclose all material weaknesses in the system. Accordingly, we do not express an opinion on the system of internal accounting control of Sojourner- Douglass College as a whole or on any of the categories of controls identified in the first paragraph. However, our study and evaluation disclosed the following conditions that we believe result in more than a relatively low risk that errors or irregularities in amounts that would be material in relation to the Statement of Changes in SFA Program Fund Balance of Sojourner-Douglass College may occur and not be detected within a timely period. The recordkeeping function is less than adequate. Deposits and withdrawals indicated on the bank statements are not always recorded in the cash disbursements journal, and the bookkeeping system does not account for inter-program receivables and payables. Additionally, significant unreconciled differences exist between the amount of Student Aid approved in the Student Aid Office and the amounts posted to the student records in the accounting department (Business Office) . Also, the FISAP reports which were submitted to the Department of Education contained student aid information that could not be reconciled to records in either the Business Office or the Financial Aid Office.

Ex. SJ-12-17 and 18.

b. Regulatory Requirements.

Title IV, HEA Program regulations require that:

An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

and that . . .

Each institution shall keep intact and accessible records pertaining to the application for and receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

§ § 674.19(d) and (e), 675.19(b) and (c), 676.19(b) and (c), 690.81, and 690.82.

c. Record Keeping Requirements Were Violated.

It is clear from the findings of the above cited audits that during the periods of the award years 1982-1984 and 1984-1986 Sojourner violated the above cited regulations by failing to establish and maintain on a current basis financial records that reflected all program transactions and also, violated these regulations in other respects as described by the auditors in Exhibits SJ-11 and SJ-12. It is also clear that as of the time of the Program Review of July 1989, these violations continued.

Even as late as November 5, 1990, certain shortcomings as to such record requirements, as applied to the records from 1982-86, were still not remedied. This is more specifically described in the above mentioned audit exhibits.

d. Recent Improvements in Accounting System.

Substantial improvements in Sojourner's administration of its finances have occurred recently. As a result of these improvements, former Congressman Parren Mitchell now serves on Sojourner's Committee of Finance and Business. He also serves on the Board of Sojourner. Tr. 399, 403.

These improvements have resulted from the setting up of a computerized fiscal and accounting system. This system became operational about June or July of 1990. Tr. 362-363. It took a considerable period of time to develop the system. Mr. Raymond Bantum, a systems management consultant began the design and development of this particular system about 1987 or 1988. Tr. 337.

Another system had been developed earlier. Mr. Bantum had been contacted by the College in 1982 to provide his services as a systems management consultant. The work to be completed by Mr. Bantum was to take place in three phases: the first, converting a manual system to a single-

user automated accounting system; the second, converting the single-user system to a multi-user network system with multiple terminals; and the third, developing a comprehensive interactive database system linking the various aspects of the College in a multi-user environment. Tr. 336.

Mr. Bantum worked with Sojourner from 1982-1985 to improve its fund tracking system by setting up a student accounts receivable system to track actual tuition charges, to post various payments against the student's records, and to create a financial accounting system that dealt with the financial statements of the College, including the balance sheet income statements and budgeted departmental statements. He also developed both a purchase order and accounts payable system and a payroll system. Tr. 336-337.

Prior to the 1984-85 academic year, all the work in the Business Office was done manually; then in 1984-85, the Business Office began to enter information on its accounts receivable computer system. As a result of the 1987 Program Review, the Business Office brought in additional people. Changes were instituted in how the Business Office received, recorded, entered, and checked financial aid information from the Financial Aid Office. Schedules were updated describing who was responsible for what, when each activity was to be done, who was going to check it, and when it was going to be checked. Tr. 478- 479.

The automation of Sojourner's Title IV programs accounting system which Sojourner requested Mr. Bantum to develop in 1987 or 1988 was to fit in with the Federal Assistance Financial System [DFAF] initially. Tr. 337-339.

The Blue Book was the basis for Mr. Bantum's system. This book gives guidelines to proper accounting for the Title IV funds. However, although the Blue Book listed the various accounts and debit and credit aspects of what should be considered in the balance ledger, it did not include what the actual supporting documentation should be. Therefore, Mr. Bantum had to go through the entire book and look at each transaction to determine what would be proper supporting documentation to support each entry. This process took time to develop the logic and incorporate it into the system. Tr. 338-339.

Mr. Bantum ran into obstacles in creating the DFAFS software because the federal assistance financial system program, which was initially set up under the Department of Health and Human Services, was changed by ED. In December 1988, the Department of Education switched over to a program retitled EDPMS, for Payment Management System. ED changed some of the accounts and the structure of those accounts, which forced Mr. Bantum to reconvert the account structures to take into account the effect of the new changes in the Blue Book. Tr. 338-339.

Mr. Bantum stated that his system gives Sojourner the ability to fulfill its responsibility of maintaining the fiscal integrity of the student aid funds and submitting periodic reports to the Federal government. Tr. 353.

The auditor's comments in Exhibits SJ-11-7 and SJ-12-25 about the inadequacy of the College's accounting system referred to the records as they existed in 1986, and did not refer to information that had been run through Mr. Bantum's DFAFS system. Tr. 375-377, 487.

Mr. Bantum's DFAFS system creates an audit report as illustrated in Exhibit SJ-21-14. This report shows each transaction, the date of the transaction, the debit and credit account, the amount, the suggested support per the suggestion that the computer brought up, and then the actual support. The actual support would be a specific ledger or other type of document that would actually support each entry such that any auditor would be presented with this report for a particular year, see that it is in balance, specifically test each of the entries going to the particular ledger into a particular office, and be able to ask for a particular document that will tie into this particular report. Tr. 351, SJ-21-14.

The chart in Exhibit SJ-21-6 illustrates the flow of cash from award authorization all the way through the depositing of funds into the general account. Tr. 345-346.

Exhibit SJ-21-9, the event log form, provides for the listing of source documentation for all entries and acts as an internal back-up control so that system transactions can be manually reconciled with computer printouts. This ensures that data from the manual form actually gets into the computer system. Tr. 346-350.

The events documentation report depicted in Exhibit SJ-21-17 is the heart of the system. It takes events listed in the Blue Book that would occur in each program and, in the order of occurrence, allows the Business Office manager to identify the event from a list of all the different events that can occur in each program from the point of the award authorization all the way through the year-end close out. Once the Business Office manager identifies the event code, the computer automatically brings in the description of that event so there is a clear understanding of what that event deals with. It also brings in a suggested report. Exhibit SJ-21-17 demonstrates this process. No person in the Business Office can make up his or her own entries. The entries have been reviewed and are standardized in accordance with the Blue Book. This system will then debit the proper debit account and credit the proper credit account that deals with a particular event per the Blue Book. Tr. 343, 347- 350.

Exhibit SJ-21-19 illustrates the account listing of the Title IV accounts which were taken from the Blue Book. It separates accounts starting each program with a separate number. For instance, all Pell accounts start with "1," SEOG accounts start with "2," and so on. It also allows for nine equal "other" accounts in case Sojourner wants to track any special funds from Title V or Title III projects, or any other funds. Tr. 350, Ex. SJ-21-19.

The DFAFS system has enabled Sojourner to go back and input previous years' information, although the entry of data for the previous years had not yet been completed at the time of the hearing. The system also allows the College to track each Federal dollar and provide information and documentation for transfers which apply to each student. Tr. 487-488.

Mr. Bantum's DFAFS system was fully operational in June or July of 1990. As of the hearing, the system was partially operational for the 1982-84 and 1984-86 award years. The system was also partially operational for other award years. However, the 1982-84 and 1984-86 award years were not as yet completed and entered into the system when the auditors completed their biennial audits. Ex. SJ-11 and SJ-12, Tr. 486.

Mr. Bantum's DFAFS system allows the College to adhere to the Blue Book's requirements for separate program ledgers, self-balancing ledgers, which means that for every debit entry, there is a corresponding credit entry. This ensures the integrity of the system. The system also allows for specific identification of funds to be debited and credited when certain events occur. The system is self-balancing once an event is identified, the computer pulls in those debit and credit accounts. This system is also set up to be flexible, so it provides the College with the ability to make modifications and changes (i.e., to add additional ledgers, additional account codes, and additional transactions if a need arises in the future). Tr. 340, 341, 353, 368, 485 Ex. SJ-21-3.

Mr. Bantum has reviewed Sojourner's actual ledgers, paying particular attention to the current 1990-91 ledgers to ensure that the information was current from July 1, 1990, up to the present, to review the information for proper sequence, and to review the prior ledgers going back to the 1980-81 year to bring all the ledgers up to date. But he did not review the ledgers for accuracy. Tr. 363, 365-366.

From Mr. Bantum's examination of the ledgers after the system had been in operation, he was able to ascertain that the personnel he had trained to run the system were imputing the information properly. Tr. 369.

Ms. Laverne Lawal, Ms. Cora Ray and the Data Entry Operator have all been trained by Mr. Bantum on the use and operation of the 1990 DFAFS system. They have all done data input, have all run reports, and are all using the data base system properly. Tr. 366.

Mr. Bantum has visited the school on at least five occasions after setting up the new system and has examined and reviewed the ledgers to ensure that when the reports were printed from the ledgers the necessary information was included to ensure that the system integrity was intact, that the ledgers did balance, which they did, and to review that proper documentation supporting entries were made and that when the auditor looked at these particular ledgers, that they could go back and look at supporting documentation. Tr. 365,366.

The booklet created by Mr. Bantum that is SJ-21 provides information for an individual concerning the system and the training given by Mr. Bantum to the individuals working in the Business Office with the program was not only to train them, but also to field questions on improvements and enhancements that the College might desire to add to the system. Tr. 367.

Mr. Bantum created the instruction manual, which is Exhibit SJ-21, with the intention of it being used to familiarize internal personnel, the Business Office, the Financial Aid Office, and external auditors with what the system was capable of doing, what the system is supposed to do, and the logic behind the system. Tr. 344-345, 367.

The DFAFS system tracks day-to-day financial aid activity and includes every transaction. This system adds greatly to the ease of entering those transactions. The system also allows the College to track each Federal dollar and provide information and documentation for transactions which apply to each student. Tr. 487-488.

Mr. Bantum has specifically designed his system to be easy to use, keeping in mind the fact that particular system users have other responsibilities and tasks to deal with in addition to operating his system. Mr. Bantum personally has reviewed and confirmed that the information input into the system by Ms. Lawal and Ms. Ray is complete and the entries were put in the proper order, and therefore is confident in their ability to use the system. Tr. 341-343, 369, 511.

Mr. Bantum reviewed the ledgers to see that the computerized accounting system was in compliance with the format of the system he set up but he was not hired for and did not perform any audit duties such as checking accuracy with source documents. Tr. 356, 363, 365, 366.

Summary - Inadequacy of Accounting Records

As stated previously, it is clear from the findings of the cited audits and the 1989 Program Review that Sojourner failed in the past to establish and maintain on a current basis, financial records that reflected all program transactions in violation of various regulations concerning fiscal procedures and records 5 and also violated those regulations in other respects as described by the auditors in Exhibits SJ-11 and SJ-12. However, it is also true that a new computerized fiscal and accounting system has been in operation since July of 1990, and, if such system is properly maintained, it would be unlikely that there would be a repetition of these past violations.

The question of future operation of the computerized fiscal and accounting system will be discussed later in this decision under the subject of Administrative Capability.

3. Finding No. 4 - Excess Cash in the Federal Bank Account.

The termination notice in this case alleges: "The College violated regulatory and procedural requirements by drawing cash from ED in excess of its immediate needs, thereby having the use of funds to which the College was not entitled at the time." Violations of 690.74; 31 C.F.R. ? 205.4 (U.S. Department of Treasury regulations); U.S. Department of Treasury Circular 1084; the ED Blue Book, Chapter 5; ED Payment Management System Users Manual; and ED Payment Management System Cash Management Standards and Regulations, Section 302 are alleged.

The 1989 Program Review Report states as follows at Finding No. 4:

SDC drew down Federal Funds in excess of its immediate cash needs in the 1987-88, and 1988-89 award years. In each of these award years, the institution made initial draw downs of \$500,000 or more in Federal Funds. SDC did not expend these funds until at least 90 days had elapsed since the funds were received.

Ex. G-3-12

Exhibit G-32 shows that Sojourner drew Federal Funds at the beginning of July so that the balance in its DFAFS Account was \$256,323.29 on July 6, 1987. By July 20, 1987 this was reduced to \$114,723.29 and by July 30, 1987, this was reduced to \$2,542.61. On July 31, 1987,

\$216,973.00 was drawn. By August 27, 1987, the balance in the account was reduced to \$65,061.10. By September 30, 1987, it was reduced to \$24,976.91 by October 1, 1987, it was reduced to \$8,324.35 and by October 27, 1987, the balance in the account was reduced to \$74.45.

Exhibit G-32 also shows that \$500,000 was drawn on August 1, 1988. On August 26, 1988, the balance in the DFAFS Account was \$316,278.22. On September 29, 1988, the balance was \$169,740.12. The balance was then reduced to \$4,532.42 on October 31, 1988.

The Business Office's decision to make the \$500,000 drawdown referenced in the 1989 Review Report was based on an estimate of the number of students who would be enrolled and receiving aid in a particular semester or trimester period. Tr. 301, 481.

The monies drawdown were not expended as quickly as anticipated because certain documentation necessary to account for these funds and to transfer them out was not received as quickly as the Business Office had expected. Tr. 482.

Under § 690.74 and 31 C.F.R. § 205.4 cash advances under the circumstances here shall be limited to the minimum amounts needed and shall be timed to be in accord with the actual, immediate cash requirements of the recipient organization. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursement by the recipient.

Sojourner has acted in good faith in its dealings with ED and in its use of federal funds. Tr. 306, 363, 365-366, 403, 418-419, 439 and 578. However, it can be seen that as to the period of July, 1987 to October, 1987 and during the period of August 1988 to October 31, 1988, a considerable amount of Federal funds were drawn down and remained in Sojourners DFAFS Account for a considerable period beyond immediate need. Tr. 125-128, Ex. G-32. These circumstances constituted violations of 31 C.F.R. § 205.4. [6](#)

4. Finding No. 5 - Lack of Due Diligence and Servicing of the Perkins (NDSL) Loan Portfolio.

The termination notice alleges that: Sojourner does not administer the Perkins (NDSL) Loan Program properly, Sojourner has not performed billing, collections, litigation or fiscal recordkeeping for its Perkins (NDSL) Loan portfolio since April, 1987, and that Sojourner also failed to maintain its Perkins (NDSL) Loan fund in an interest-bearing account. Violations of §§ 674.18, 674.19, and 674.41 through 674.51 were alleged.

The 1989 Program Review Report states as follows at Finding No. 5:

The general requirements for due diligence are delineated in Subpart C (§§ 674.41-51) of the Perkins Loan regulations. Specific functional responsibilities require institutions to:

- a) conduct an exit interview with the borrower;
- b) retain signed Promissory Notes and repayment schedules; and,

c) perform billing, collection, and, if necessary, litigation procedures.

In addition, institutions are required to maintain fiscal and accounting records of all Perkins Loan fund activity in accordance with Section 674.19 of the Title IV regulations.

SDC used Wachovia Services as its Perkins Loan billing and record keeping agent until April 1987. Since that time, Sojourner-Douglass College has not performed any billing, collections, litigation or fiscal recordkeeping for its entire Perkins Loan portfolio. In lieu of the absence of non-federal audits and inadequate institutional records, the reviewer could not determine the current status of any borrower or the disposition of Perkins Loan fund account balances; the institution did not have a separate interest-bearing account for Perkins Loan funds and, the Fiscal Officer could not account for any fund transfers from Wachovia Services back to the institution at the time that the service contract was terminated.

In addition, the institution reported identical figures, item for item, for its Perkins Loan Program, on Part III of the FISAPs for the years ending June 30, 1985, 1986, 1987 and 1988.

Ex. G-3-13.

Sojourner agreed to carry out a three-part plan to lower its Perkins Loan Program default rate. One Part of the plan involved the use of two new collection agencies to collect delinquent loans; the second part of the plan involved the assignment of a person in the business office to prepare delinquent loans that had been to a collection agency for assignment to ED; and the third part of the plan involved the provision of seminars for current and former students on the rights and responsibilities of borrowers under the Perkins Loan Program. JT Ex. 1 at 5, Ex. G-4-4.

Sojourner assigned Mr. Obayanju to work solely on Perkins (NDSL) loan collections in its Business Office from 1987-1989 and, in addition, hired two outside collection agencies to collect on outstanding Perkins (NDSL) loans. Tr. 539, 555-563. Mr. Obayanju left Sojourner in 1989. Tr. 562.

Management Adjustment Bureau was one of the financial collection agencies hired to assist Sojourner in collecting on outstanding Perkins (NDSL) loan funds, CDI was the other. Tr. 539, 556.

OSFA required Sojourner to engage an independent certified public accountant to review and reconstruct its entire Perkins Loan Portfolio. Sojourner complied with OSFA'S request. In addition, as agreed with OSFA, the first report by the outside auditors will be to OSFA. Once it is determined which loans the institution is to continue to manage, the institution will aggressively manage those loans through outside collection agencies. Tr. 555-563, Ex. G-3-14.

Sojourner has not engaged in new loans under the Perkins Loan Program. The last loans of this type were under the NDSL Program during the 1983-84 award year. Therefore, it appears that Sojourner's responsibilities in this regard relate mainly to the collection of amounts due. It appears that Sojourner has not been diligent in this regard. The default rate in 1987 was 75.32%. It apparently has not improved very much since then. Sojourner has also failed to keep the

Perkins (NDSL) funds in a separate interest bearing bank account. Therefore, Sojourner has violated § 674.19 and provisions contained within Subpart C of 34 C.F.R. 674 relating to due diligence in administering the Perkins (NDSL) program.

It appears that as of the date of the hearing Sojourner had not yet received back from the CPA the reconstruction of the Perkins (NDSL) portfolio, which matter had apparently been in the CPA'S hands for about a year. It is incumbent upon Sojourner to obtain the portfolio and take the action required by the regulations.

It should be noted that this finding relates to the same subject matter involved in finding No. 10 of the 1987 program review.

5. Finding No. 6 - Incomplete Verification.

The termination notice alleges that Sojourner failed to perform verification for thirteen of the seventeen students selected for verification in the sample of twenty-three students. Violations of Subpart E of 34 C.F.R. 668 are alleged.

An institution must require an applicant to verify the information contained on a student's financial aid application if OSFA selects a student for verification, the institution believes that information contained on the application is inaccurate, or if the student is selected by the institution to receive an award under the campus-based programs or requests the institution to certify his or her GSL Program application and the student has not provided the institution with a Student Aid Report (SAR). § 668.54. The documentation acceptable for verification of the information is set forth in § 668.57.

If an institution does not believe or have reason to believe that the application information is inaccurate, it may make one disbursement of Pell Grant Program funds, one disbursement of Campus-Based Program funds, and may certify a GSL Program loan application before the application information is verified. However, it may not disburse GSL Program loan proceeds to a student until verification is completed. § 668.58(a)(2).

The evidence relating to the thirteen students that OSFA alleges were not properly verified has been reviewed to determine whether violations of the regulations took place. The following are the findings as to individual students:

a. [student name]. In this case the records and testimony show that the required verification was not carried out for the 1988-89 award year prior to the date that a GSL loan payment was made and that a second Pell Grant payment was made. Ex. SJ-1, Ex. G-15, Tr. 44-56, Tr. 586-587, 619-625.

b. [student name]. [student name] is an independent student. An Earned Income Credit (EIC) of \$550.00 was not reported on the Student Aid Report (SAR) for the 1988-89 award year. Sojourner objects to the aforementioned finding partly on the ground that the copies of the 1040 income tax form and the SAR were not submitted as evidence. However, there is testimony as to the contents of these documents given by the program reviewer who prepared an official report

in the course of his regular duties reflecting these same facts as observed. In light of this, Sojourner, being in possession of the documents in question, could have presented them in evidence, in rebuttal, if the facts as stated by the program reviewer were in error. It did not do so although it did produce other documents as to this same student. It appears that Ex. SJ-15 is Part 3 of the SAR. The absence of this income from the records affects the amount of the Pell grant award. Ex. G-6, Ex. SJ-15, Tr. 56-65, 602-603.

c. [student name]. The tax return (Form 1040) which was to be used for verification for the 1987-88 award year was unsigned. Ex. G-16, Tr.65-66.

d. [student name]. Inadequate documentation as to income was accepted for the 1987-88 award year. The Form 1040 was questionable because of the date of July 26, 1989 for a 1986 return as well as the failure to list the withholding tax which could have been refunded. The W-2 alone would not comply with the regulations. The record indicates that verification did not take place before GSL payments and a second Pell grant award shown on Ex. G-17-3 Ex. SJ-2-7 indicates that [student name] was 40 years of age when he filled out the Verification Worksheet. The form also states that his date of birth was November 24, 1948. Therefore, it was at least November of 1988 and most likely July of 1989 when that form was prepared by [student name]. GSL payments took place in September 1987 and November 1987 as well as March 15, 1988. Ex. G-17, Ex. SJ-2, Tr. 66-72, Tr. 587-590, Tr. 625- 629.

e. [student name]. Sojourner did not obtain a Federal income tax return form to verify the income of Albert Brown for the 1987-88 award year. Yet Sojourner did make Pell grant disbursements on July 29, 1987, and November 13, 1987, as well as GSL disbursements on August 17, 1987, and December 1, 1987. Ex. G-3-30, Ex. G-18, Tr. 72-73. Sojourner however objects to this finding because it is based only on the testimony of the reviewer, his working papers, and the Program Review report. This, however, is adequate evidence to make this finding.

The 1989 Reviewer could only review the records provided to him by Sojourner at the time of the review. Under the regulations, previously reviewed (such as § 690.82 and § 668.23), Sojourner had the duty to give an authorized representative of the Secretary of Education access to the records required by the program regulations and any other pertinent books, documents, papers, and records. Therefore, when Sojourner's personnel were asked by the reviewer for the records pertaining to the instant subject of verification of student aid application information, all records as to that subject, as to the specifically named students, should have been given to him and in the absence of a 1040 income tax form, or an equivalent substitute as authorized by § 668.57(a), the reviewer should be entitled to make a finding that such did not exist in Sojourner's records.

It has been pointed out that the Sojourner official who provided files to the review was fairly new in the position and was not familiar with all of the files. Therefore, the failure to give the reviewer all the files that did exist at that time was not intentional. However then to counter any finding that a copy of the income tax form or its equivalent was not used to verify income, it would be up to Sojourner to present evidence at the hearing to rebut such evidence of the reviewer. If in fact a copy of an income verification document was in the records of Sojourner as

of the time of the review, then it could have been presented at the hearing in rebuttal. However it was not and the present finding is the only logical result.

f. [student name]. In this case the records and testimony show that the required verification for the 1987-88 award year was not carried out prior to the date that GSL loan payments were made the first having been made in September 1987. Ex. G-7, Ex. SJ-18, Tr. 73-77, Tr. 636-638, 694-700.

g. [student name]. Sojourner did not obtain a Federal income tax return form to verify the income of Rosalyn Stephens for the 1988-89 award year. Sojourner made 2 Pell Grant disbursement and 2 GSL payments during the 1988-89 award year. The discussion relating to [student name] applies to this case. Ex. G-3-31, Ex. G-8, Tr. 77-78.

h. [student name]. Sojourner did not obtain a Federal income tax return form to verify the income of [student name] for the 1987-88 award year. Sojourner made 2 Pell Grant disbursements in April, 1988 and 2 GSL payments in May and June of 1988. The discussion relating to [student name in g.] applies to this case. Ex. G-3-31, Ex. G-14, Tr. 78.

i. [student name]. The student was selected for verification in the 1986-87 and 1987-88 award years. Sojourner did not obtain a Federal income tax return form to verify the income of [student name] for those award years. Sojourner made 2 Pell Grant disbursements in August and November 1987 and GSL payments in February and March 1988. The discussion relating to [student name in g.] applies to this case. Ex. G-3-31, Ex. G-10, Tr. 78.

j. [student name]. Sojourner did not obtain a Federal income tax return form to verify the income of [student name] during the 1987-88 and 1988-89 award years. Sojourner made 2 Pell Grant disbursements and 2 GSL disbursements during the 1987- 88 award year and 2 Pell Grant disbursements and 3 GSL disbursements during the 1988-89 award year. The arguments relating to [student name in g.] apply to this case. Ex. G-3-31, Ex. G- 11, Tr. 78.

k. [student name]. It was alleged that Sojourner did not verify the 1987-88 award year application information for [student name]. Linda Trusty reviewed the file of [student name] with regard to the 1989 Review finding that the College had not verified [student name]'s application information for the 1987-88 award year. [student name] was selected for verification, as evidenced in Exhibit SJ-3-1 by the asterisk beside the SAI. The necessary verification documentation was found in a separate folder which had been kept by Ms. Trusty's predecessor. Ms. Trusty came across this file after the 1989 Reviewer had left the College. Final verification of [student name]'s application, which is Exhibit SJ-3-7, was already in existence prior to the 1989 Review and prior to Ms. Trusty becoming Financial Aid Director. Ex. G-19, Ex. SJ-3, Tr. 79, 590-595, 629-633, 679-681. Therefore, OSFA has failed to carry the burden of proof as to this alleged violation.

l. [student name]. It is alleged that the 1987 Federal 1040 income tax return Sojourner obtained to verify the 1988-89 application information was not signed. The 1989 Program Reviewer's clear statement that he observed the document in an unsigned state when he reviewed it in July

1989, has not been rebutted by Sojourner despite the fact that such document (Ex. SJ-4-7) contained a signature at the time of the hearing. Ex. SJ-4, Ex. G--13 , Tr. 79-80.

m. [student name]. Sojourner did not obtain a Federal income tax return form to verify the income of [student name] for the 1988-89 award year. Sojourner made 2 Pell Grant and 1 GSL loan disbursement during the 1988-89 award year. The discussion in the [student name in g.] case also applies to this case. Ex. G-20, Tr. 80.

Summary - Verification

As stated above OSFA has failed to carry its burden of proof as to verification issues involving [student name]. However, as to the other twelve students listed above under Finding No. 6, violations of Subpart E of 34 C.F.R. § 668 have been proved. Six of these violations relate to a failure to verify the income of such students during specific award years. The discussion above concerning the case of [student name in g.] sets forth the reasoning applicable to these cases in that the fact that a Federal income tax return or one of the equivalents authorized under § 668.57 (a) was not present in the files given to the 1989 Reviewer is evidence that verification as to income was not carried out. The institutions, under the regulations, are required to maintain these files for the students with all of the required documents and information; and such institutions are also required to give an authorized representative of the Secretary of Education access to these records such that the reviewer would have seen them if they existed.

6. Finding No. 7. - Inadequate Satisfactory Progress Policy.

The termination notice alleges that the College failed to apply acceptable satisfactory academic progress standards, resulting in awards to ineligible students. A violation of § 668.14 is alleged.

The 1989 Program Review Report states as follows at Finding No. 7:

The College did not sufficiently articulate its Satisfactory Progress Policy for the purpose of determining continued student receipt of Title IV financial assistance. As a result, ineligible students received Title IV aid.

An acceptable Satisfactory Progress Policy was approved by the Regional Office on September 13, 1989. This policy was developed as a consequence of the institution being on the Reimbursement System and was a prerequisite for approving institutional cash requests.

Ex. G-3-16.

OSFA has not presented evidence showing that Sojourner's Satisfactory Progress Policy was in violation of § 668.14.

7. Finding No. 8 - Incorrect Stafford Loan Certifications.

The termination notice alleged that the College improperly certified student Stafford loan applications, resulting in ineligible students receiving loans. Violations of § § 682.603 and 682.401 are alleged.

Under the Stafford (GSL) Program, a student attending an eligible institution that participates in the GSL Programs applies to a private lender for a loan. The student completes one portion of the application. The institution completes another portion, and then certifies to the accuracy of the information it provides. The information that the institution provides includes the student's adjusted gross income, estimated cost of attendance, estimated financial assistance for the period to be covered by the loan, and expected family contribution. § 682.603.

If an institution incorrectly calculates and certifies a student's cost of attendance, expected family contribution or estimated financial need on the student's GSL loan application, that incorrect calculation and certification could result in the student receiving a smaller or larger loan than the student would otherwise be eligible to receive. JT Ex. 1 at par. 19.

OSFA alleges in the 1989 Program Review Report, that Sojourner did not properly certify Stafford loan applications for fourteen students. The report states that the certification errors include: (1) non-reporting or misreporting of other aid, (2) the cost of attendance was incorrectly calculated, (3) family contribution figures were improperly prorated, (4) incorrect determination of academic grade levels, (5) lack of a need analysis, and (6) no Pell Grant Eligibility determination was made prior to loan certification.

The analysis of the evidence as to each individual student is as follows:

a. [student name]: In this case OSFA claims that Sojourner did not include as "estimated financial aid for loan period," in item 34 of [student name]'s loan application, a Maryland State Scholarship and CWS employment. OSFA also alleges that the College further listed her Pell Grant award as \$2,100 instead of \$2,200. Sojourner on the other hand states that it did complete a needs analysis that included the Maryland State Scholarship, CWS and \$2,200 in Pell Grant awards, and that [student name] was awarded the proper amount of GSL loan. Sojourner further stated that no adjustments needed to be reported to ED, and that the Maryland State Scholarship and CWS received after the loan application did not have to be included on the application.

OSFA has not provided evidence that a certification provided to a lender actually contained the errors alleged. Ex. SJ-1-9, a copy of the first page of a guaranteed student loan application, contains changes that were made to figures in items 32, 33, 34, 35 and 36. From the evidence presented in this case, there is no way of knowing what certification figures actually were forwarded by Sojourner. Ex. G-15, Ex. SJ-1, Tr. 44-56, 99-104, 582, 619- 625.

As stated previously this is not an accounting case. In this type of proceeding OSFA has the burden of establishing all elements needed to prove a violation of law. OSFA has failed to carry the burden of proof as to any violation of the pertinent regulations.

b. [student name]. A GSL application was certified by Sojourner on August 4, 1987. However, the records as to this application did not contain required information as to income. There was no

evidence on the record as to an application for a Pell Grant. There was no SAR in the records. A GSL disbursement was made on November 6, 1987, and two Pell Grant payments were made on March 30, 1988. Therefore, based upon the records there was inadequate information upon which to base the certification. In accordance with discussions under Finding No. 6, Sojourner has an obligation under the regulations to maintain all of the records needed to set forth the foundation for a GSL certification. Further, Sojourner has an additional obligation to give the 1989 reviewer access to these records and when that reviewer informed Sojourner personnel that he was requesting the records for certain specific students it was their obligation to show him all of the records on that subject. If certain specific records that are necessary to constitute the foundation for a certification are not in the records presented to the reviewer it is logical to conclude that they never existed and that the certification could not have been made in accordance with the regulations. If in fact Sojourner was aware of the existence of such records and found that Sojourner personnel erroneously failed to give them to the reviewer, then Sojourner's remedy was to present such evidence at the hearing. If this were done then the findings would take into consideration the additional rebuttal evidence of Sojourner. In this case there was no evidence presented by Sojourner which rebutted OSFA's evidence. Ex. G-21, Tr. 84, 104-106.

c. [student name]. In this case, OSFA claims that Sojourner had no documentation to support the information it originally provided on the student's loan application, which it certified was accurate, and that Sojourner then changed all the information that it had previously certified as accurate. This case, however, is similar to that of [student name in a.] (above) in that Sojourner presented Ex. SJ-4-5 which contained a copy of a GSL application (Ex. SJ-5-7) that contained changes made to figures in items 33, 34, 35, and 36. From the evidence presented in this case there is no way of knowing what certification figures actually were forwarded by Sojourner. Ex. G-5, Ex. SJ-5, Tr. 106-107, 598-602, 633-636. OSFA has failed to carry the burden of proof as to any violation of the pertinent regulations.

d. [student name]. In this case OSFA claims that Sojourner did not consider CWS earnings as "estimated financial aid for loan period" on her loan application, and that Sojourner listed [student name] as a junior on her application when in fact she was still a sophomore. This case is similar to that of [student name in a.] in that Sojourner presented Ex. SJ-6-1 containing a copy of a GSL application that contained changes made in figures in items 34 and 36. From the evidence presented in this instance there is no way of knowing what certification figures actually were forwarded by Sojourner. Further the GSL application signature of the borrower is dated June 29, 1989. There is no way of telling the actual date that the school official signed the certification. The suggested date for disbursement is some date in June 1989. Ex. G-23-3 shows no GSL disbursement. The dates on that ledger cover a period from July of 1988 to April 24, 1989. The 1989 reviewers testimony as to the student's grade level does not cover the entire period preceding the GSL application. Therefore, there is no foundation for a challenge to the student's grade level. Ex. G-23, Ex. SJ-6, Tr. 108-110, 608-609. OSFA has failed to carry the burden of proof as to any violation of regulations.

e. [student name] - In this case OSFA claims that Sojourner had no documentation to support the information it originally provided on the student's loan application, which it certified was

accurate, and that Sojourner then changed all the information that it had previously certified as accurate.

This case is similar to that of [student name in a.]. Sojourner presented Ex. SJ-15-3, a copy of a GSL application that contained changes to figure in items 33, 34, 35, and 36. From the evidence presented, there is no way of knowing what certification figures actually were forwarded by Sojourner. Ex. G-6, Ex. SJ-15, Tr. 110, 602. OSFA has failed to carry the burden of proof as to any violation of regulations.

f. [student name] - The certification of July 23, 1987 on the GSL application was erroneous in that the estimated financial aid for loan period (Item 34) was listed at \$1150.00 (which was a Pell Grant) but did not include a SEOG financial aid of \$200.00. Also the family contribution listed on the SAR was \$9170.00 (adjusted to \$8405.00) while the expected family contribution (Item 35) on the GSL application was listed at \$1950.00. Ex. G- 16, Tr. 110.

g. [student name] - Sojourner certified a GSL loan application which contained erroneous information in that it stated that the expected family contribution was \$1200.00 while the SAR stated it at \$4,970.00. The loan period was approximately seven months and one week. Therefore the adjusted family contribution would be approximately \$3003.00. Also the GSL loan application set the estimated financial aid for the loan at \$2100.00 but the scheduled award was \$1650.00. The result is that the need was about \$2092.00 while the Sojourner certified the loan for \$2625.00. Ex. G-22, Tr. 110-111.

h. [student name]. Sojourner certified a GSL loan application which contained erroneous information in that it stated that the expected family contribution was \$1700.00 while the SAR stated it at \$8,760, which when adjusted to the loan period, would be \$8,030.00. Also the GSL application set the estimated financial aid at \$1050.00. This did not take into consideration the SEOG award funds of \$1300.00. The cost of attendance for its loan period was \$10,330.00. Therefore there would be no need for a loan. However, Sojourner certified a loan for \$2500.00. Ex. G-7, Tr. 111-112.

i. [student name]. Sojourner certified a GSL application which contained erroneous information in that it stated that the expected family contribution was \$600.00 while the SAR stated it at \$4160.00. The prorated family contribution would then be \$1040.00. Ex. G-14, Tr. 112.

j. [student name]. OSFA alleges that a letter from the guarantee agency indicated that this student had obtained a prior Stafford Loan, but that loan amount was not reported on the loan application. Also, it is alleged, that documentation in the file indicated that the student received Veterans Administration benefits. The reviewer could not determine if the amended family contribution was required to be, or was adjusted for, VA benefits.

There is inadequate evidence to sustain these allegations. The statements made both in the documents and the testimony are too indefinite. Copies of the documents referred to by the reviewer could have been submitted in evidence. But even then the allegations as to veterans benefits could not likely be proved in view of documents Sojourner submitted in evidence at Ex. SJ-14. Exhibit SJ-14-1 is the accounts receivable sheet for [student name], which shows no credit

amount for veterans benefits. Further, Step 8 of Exhibit SJ-14-5, which addresses the question of veterans benefits, shows that the student did not list any amount or any number of months as to such benefits. Therefore, OSFA has failed to carry the burden of proof as to a violation of any regulations. Ex. G-9, Ex. SJ-14, Tr. 112-113, 609-610, 639-641.

k. [student name]. A GSL application was certified on April 22, 1987 which contained erroneous information as to the expected family contribution in that it was listed at \$500.00 while the SAR listed it at \$6160. Since the loan period was April 20, 1987 to October 23, 1987, a period of six months, the family contribution adjusted for the loan period would be about \$3080.00. Another GSL application was certified on January 25, 1988 listing a family contribution of \$1200,00 while the SAR listing for family contribution was \$5400.00. However the record is inadequate to fully assess whether there was an error. OSFA also alleged errors in the GSL application certified on August 30, 1988, however the testimony along with documentary evidence was too indefinite to determine whether there were errors. Ex. G-3-35, Ex. G-10, Tr. 113-114.

l. [student name]. A GSL application, signed by the student on August 10, 1987 was certified (however the certification was not dated). Sojourner erroneously certified that the student's expected family contribution was \$1,200.00 even though his expected family contribution on the SAR was \$4,520.00. Based upon the period of the loan, the family contribution would be approximately \$4140.00. GSL payments were made in December 1987 and September and December 1988. There was no documentation in the record as to circumstances indicating that the family could not contribute in accordance with the amount listed in the SAR. Ex. G-3-35, Ex. G-11, Tr. 115-116.

m. [student name]. OSFA has alleged that Sojourner certified on her loan application that she was a sophomore whereas she was a freshman. However, the record indicates prior attendance at another postsecondary institution and \$3500.00 in prior loans. Therefore, there is inadequate proof as to what is the proper designation. OSFA placed a document in the record as Ex. G-12-5 which denominates the student as a freshman, however that record does not relate to the period in question. That record indicates date of entrance in spring 1986. The loan period in this instance is July 29, 1987 to February 8, 1988. The GSL payment is dated October 13, 1987. OSFA has failed to carry the burden of proof as to any violation of regulations. Ex. G-3-35, Ex. G- 12, Tr. 116.

n. [student name]. Sojourner requested the following findings of fact:

With regard the (SIC) [student name] and the 1989 Review finding that for the 1987-88 award year, the college erred in reporting [student name]'s expected family contribution on her GSL application, Linda Trusty reviewed [student name]'s file. Ms. Trusty examined Exhibit SJ-4-12, which is [student name]'s student loan application, and compared item 30b of the application to [student name]'s family contribution. Item 30b should have amounted to \$4,260.00. Linda Trusty made the adjustment and found that [student name] would still have been eligible for her award and loan amount after the adjustment. To make this determination Ms. Trusty performed another needs analysis to redetermine [student name]'s family contribution. The needs analysis is displayed in Exhibit SJ-4-19.

These findings of fact are adopted. GSL payments were made on August 20, 1987 and November 30, 1987. Ms. Trusty became Director of Financial Aid at Sojourner in March 1989. By the statements made in the requested findings of fact, Sojourner has admitted that the original GSL application as certified was in error as to the expected family contribution.

Sojourner also requested the following findings of fact which are adopted:

Ms. Trusty also reviewed [student name]'s file for the 1988-89 award year with regard to the 1989 Review finding that the College had verified [student name]'s application with an unsigned 1987 tax form which indicated a \$548.00 unearned income credit not included as income on [student name]'s application. Exhibit SJ-4-7 now has [student name]'s signature on it. A needs analysis performed by Ms. Trusty, which is Exhibit SJ- 4-5, revealed that [student name] received her proper award and that ED did not have to be notified of any change once the earned income tax credit was included in the calculation. Ex. G-3-35, Ex. G-13, Ex. SJ-14, Tr. 116, 603-606.

Summary - Incorrect Stafford Loan Certification

Fourteen violations of law have been alleged in the above entitled category. However, as to six, OSFA failed to present adequate evidence to prove the allegations. Eight other alleged violations have been proved, most of which involve erroneous information contained in the certifications for GSL Program loan applications

8. Finding No. 9 - Award Determinations Not Documented.

The termination notice alleged that Sojourner did not apply proper need analysis criteria to determine the amount of awards for recipients of GSL Loans and campus-based funding (Perkins Loan, CWS and SEOG). Violations of §§ 668.7, 674.9, 674.10, 674.13, 675.9, 675.10, 675.19, 676.9, 676.10, and 676.19 are alleged.

In the 1989 Program Review Report OSFA states that:

The Campus-based and Stafford Loan regulations require institutions to perform, and document, the need analysis used to determine the amount of the awards that a student is eligible for under these programs. This is accomplished by:

- 1) Using an approved need analysis methodology to determine the student's Effective Family Contribution (EFC);
- 2) Determining the student's cost of attendance; o determine the student's Effective Family Contribution (EFC);
- 3) Determining other student resources;
- 4) Using all Federal and non-Federal aid in determining need; and,

5) Applying specific program requirements, general student eligibility criteria, and/or institutional policies in determining student eligibility.

Ex. G-3-18.

OSFA then goes on to allege that:

There was no documentation evidencing the proper application of these criteria. For example:

1) Prior to February 3, 1988, institutions were required to obtain written acceptance of Campus-based aid from students, i.e., a signed Award Letter. Although this provision was eliminated from the Campus-based regulations beginning February 3, 1988, institutions must still document award determinations. SDC did not obtain signed Award Letters prior to February 3, 1988 or document its award determinations after that date;

2) SDC relied on the SAR to obtain a Family Contribution (FC). An approved third party, or hand calculated FC was not used. The SAR FC was not properly prorated to reflect the institution's non-standard enrollment periods;

3) The College did not take into consideration all other Federal and non-Federal aid;

4) Student cost of attendance was incorrectly calculated for Stafford Loans, (a) full-time student tuition and fee allowances were used for part-time students, and, (b) the room and board allowances were based on the student's dependency status. Beginning with the 1988-89 award year, statutory changes required the room and board allowance to be computed as follows:

*an allowance of not less than \$1,500 for a student without dependents residing at home with parents.

*for all other students an allowance based on the expenses reasonably incurred by such students for room and board, except that the amount may not be less than \$2500.

5)SDC did not have an SEOG awarding policy which, (1) gave priority to Pell Grant eligible students and, (2) set parameters for selecting students with exceptional need.

Ex. G-3-19.

The 1989 reviewer discussed this finding in very general terms during the hearing. Tr. 128-129. However at no time in this testimony of the reviewer was there any allegation or evidence as to specific violations relating to individually named students under Finding No. 9. Further in the documentary evidence as to Finding No. 9, Ex. G-3-18 through G-3-20, there are no allegations or evidence as to specific instances of individual student cases where there was a violation of the regulations mentioned in Finding No. 9.

The failure of OSFA to so specify alleged violations results in a situation wherein Sojourner has no opportunity to know what they must defend against under Finding No. 9. consequently

OSFA has failed to either properly allege or prove any violations of regulations under Finding No. 9.

9. Finding No. 10 - Invalid or Improper Pell Grant Disbursements.

The termination notice alleged that Sojourner made improper Pell Grant disbursements, by failing to obtain correctly completed Student Aid Reports and by disbursing incorrect amounts to students. Violations of § § 690.75, 690.76, 690.78, 690.80 and 690.83 were alleged.

In the 1989 Program Review Report OSFA stated, in part, that:

Institutions must obtain a valid Student Aid Report (SAR) prior to disbursing Pell Grant funds. A SAR is considered valid if it does not contain any erroneous information or incorrect assumptions. Furthermore, the student, and other applicable parties, are required to update certain household size and dependency status information if this information has changed since the Pell Grant application was originally completed. The student must sign the Updated Information section of the SAR to certify that the application data is correct as of that date, before the institution makes an initial Pell Grant disbursement.

The SAR's for students #3, #6, #7, #11, #13, and #18 were not signed.

Ex. G-3-21.

§ 690.61(a), effective since 1988, provides, in part, as follows:

§ 690.61 Submission process and deadline for student aid report.

(a) Submission process. (1) Except as provided in paragraph (a) (2) of this section, in order to receive a Pell Grant at an institution, a student shall submit a valid Student Aid Report (SAR) to that institution.

(2) An institution may make one disbursement of a student's Pell Grant without a valid SAR if it follows the procedures described in § 690.77.

Prior to 1988, the pertinent part of § 690.61 stated as follows:

§ 690.61 Submission process and deadline for student aid report.

(a) Submission process. (1) In order to receive a Pell Grant at an institution, a student shall submit a valid Student Aid Report (SAR) to that institution.

§ 690.2, effective during the years covered in Finding No. 10, provides, in part, as follows:

Valid Student Aid Report: A student Aid Report--

(a) On which all of the information used in the calculation of the applicant's expected family contribution is accurate and complete as of the date the application is signed; and

(b) For the Pell Grant Electronic Data Exchange, that is signed by the applicant, his or her spouse, and the applicant's parents if the applicant is a dependent student.

§ 668.58, effective during the years covered in Finding No. 10, provides, in part, as follows:

§ 668.58 Interim disbursements.

(a)(1) If an institution has documentation that indicates that the information included on an application is inaccurate, until the applicant verifies or corrects the information included on his or her application, the Secretary does not and the institution may not--

(i) Disburse any Pell Grant or campus-based program funds to the applicant;

....

(2) If an institution does not have documentation that indicates that the information included on an application is inaccurate, until the applicant is verified or corrects the information included on his or her application, the Secretary or the institution--

(i) May withhold payment of Pell Grant and campus-based funds; or

(ii)(A) May make one disbursement of any combination of Pell Grant, NDSL, or SEOG funds for the applicant's first payment period;

The SAR in Part 1 and Part 2 sets forth procedure by which the applicant shows verification as required by the regulations (Example is at Ex. SJ-1-1 through SJ-1-4). Ex. SJ-1-4 contains instructions as to completion of Part 2 if changes of certain items are made. This requires signing & dating a certification. The instructions also provide that if no change is made, then the applicant completes the STUDENT'S USE BOX on Part 1 of the SAR. That box (Ex. SJ-1-2) contains a statement beginning: "I certify that, as of the date I sign this statement. . . ."

Therefore, if Part 1 of the SAR is not signed and dated showing the applicant's certification as to the accuracy of the required information, then Sojourner could make only one disbursement of any combination of Pell Grant, NDSL, or SEOG funds.

The 1989 reviewer testified that in preparing his work sheets setting forth the results of his analysis as to execution of the certification by the students he would make an entry in the Pell Grant section of the work sheet beneath "verification". There he would indicate the date that the student signed the SAR, or a notation that it was not signed. Tr. 81.

The facts as to the status of individual student records as of July 1989, the month observed by the 1989 reviewer are as follows:

a. [student name] had not signed her SAR prior to the time that she received her second Pell Grant disbursement. Her second Pell Grant disbursement was no later than April 1989 while the signature on the SAR is dated November 16, 1989. Ex. SJ-5-2. The SAR had not been signed when the reviewer observed it in July 1989 and the 1988-89 award year ended June 30, 1989. Ex. C-S, Ex. SJ-5, Tr. 80.

b. [student name] had not signed her SAR. She did received Pell Grant disbursements on August 12, 1987 and March 7, 1988 and a SEOG payment on September 30, 1987, for the 1987-88 award year. Ex. G-16, Tr. 80-81.

c. [student name] had not signed the SAR, prior to receiving a second Pell Grant disbursement on November 19, 1987, for the 1987-88 award year. Although Ex. SJ-2-2 shows a date of July 26, 1987 for the signature on the SAR, Sojourner's Director of Financial Aid established that the actual signing took place in 1989. Ex. G-17, Ex. SJ-2, Tr. 81, 625-626.

d. [student name]. OSFA alleges that [student name] did not date his SAR. However the evidence on this issue is confusing. The reviewer's notes on this issue state that the SAR was signed and was not dated, but then goes on to state that it was signed on November 23, 1988. Sojourner argues that it is inherently inconsistent to state that the SAR is not dated yet state the date on which the SAR was signed. In view of the fact that OSFA could have submitted a copy of the document in question, but did not do so, and is relying on the reviewer's work sheet which is confusing; OSFA has failed to prove a violation of the regulations. Ex. G-11, Tr. 81-82.

e. [student name] had not signed the SAR prior to July 18, 1989. He received a second Pell grant payment on April 28, 1988 for the 1987-88 award year as well as two SEOG payments during that award year. Ex. G-7, Ex. SJ-18, Tr. 73-77, 82-83, 636-638,694-700.

f. [student name] had not signed the SAR, but did receive a second Pell grant payment on April 28, 1988 for the 1987-88 award year. Ex. G-14, Tr. 83.

g. [student name]. OSFA alleges that [student name] did not sign his SAR. However a SAR signed on August 25, 1987, was found by the present Sojourner Director of Financial Aid in a separate folder which had been kept by the Director's predecessor. This was found after the 1989 reviewer had left the college. Therefore, OSFA had failed to carry the burden of proof as to this alleged violation. Ex. G-19, Ex. SJ-3, Tr. 79, 83, 590-595, 629-633, 679-681.

h. [student name] received two Pell grant disbursements on March 30, 1988 for the 1987-88 award year, however Sojourner did not have a SAR covering this type of award. Ex. G-21, Tr. 83-84, 104-106.

i. [student name]. OSFA alleged discrepancies in the payments of Pell Grant awards. However the records do not present a clear showing as to violations of law. Certain Pell Grant awards set forth on student account records and as reflected in the Pell Grant Payment Document are not accounted for in OSFA's claim of discrepancies. Ex. G-6, Ex. G-28-11, Ex. SJ-15, Tr. 85-86, 93, 602-603.

j. [student name]. There was a discrepancy in the Pell Grant award of Ida Moore between Sojourner's student account card for [student name] and the Student Payment Summary. Ex. G-16-3, Ex. G-28-9, Tr. 87. Sojourner disbursed \$273 to [student name] for the Fall 1987 trimester when she was entitled to receive \$287.50. Sojourner disbursed \$432 to [student name] for the Winter 1987 semester when she was not entitled to receive any Pell Grant disbursement because she had fewer credits than needed for a half-time student. Ex. G-16, Tr. 87-90.

k. [student name]. Sojourner did not properly calculate the Pell Grant award of [student name] and thus underpaid her in that her scheduled award was \$1650.00 but Sojourner disbursed only \$1238.00. Ex. G-22, Tr. 90.

l. [student name]. OSFA alleges that Sojourner overawarded a Pell Grant to [student name] in that \$1350.00 was paid whereas the maximum should have been \$350.00. The evidence produced however is incomplete, confusing, and inconsistent. The 1989 reviewer testified that there was a SAR in the file with an SAI of 1791 and that at that index level the student was entitled to \$350.00. Then the reviewer refers to another payment summary indicating an SAI of 766. Then he refers to a third SAR with an SAI of 731. But the reviewer did not indicate what the amount of payment would have been with an sai of 731. Ex. G-24, Tr. 90-91. Therefore OSFA has failed to prove a violation of the regulations.

m. [student name]. Sojourner disbursed twice the amount of the Pell Grant award that [student name] was entitled to receive. The scheduled award was \$1650.00, however, during the 1987-88 award year, she attended only one trimester beginning March 15, 1988. Therefore she should have received \$825.00 instead of the \$1650.00 received. During the award year 1988-89, based upon or scheduled award of \$2150.00, [student name] should have received \$1075, however she received \$825.00. Ex. G- 8, Tr. 91, 93-94.

n. [student name]. Sojourner disbursed almost twice the amount of Pell Grant award that [student name] was entitled to. The scheduled award was \$1650.00. However, she attended one trimester and should have received \$825.00. She received \$1450.00. Ex. G-14, Tr. 92.

o. [student name]. Sojourner over awarded Pell Grant disbursements to [student name] during the 1987-88 award year. She attended or registered for one trimester beginning on March 11, 1988 as a three-quarter time student. The scheduled award for that year was \$1650.00. Therefore she should have received payment as a three-quarter time student for only half of the \$1650.00. She received \$1650. Ex. G-25, Tr. 92-93.

Summary - Invalid or Improper Pell Grant Disbursements

Fifteen violations of law have been alleged in the above entitled category. However as to four OSFA has failed to present adequate evidence to prove the allegations. Eleven violations have been proved, and of these six involve unsigned or absent SARs while five involve erroneous awards, four of which are serious violations.

10. Finding No. 11 - Lack of Withdrawal Documentation/Refunds.

The termination notice alleged that Sojourner failed to calculate or make timely refunds to GSL Program lenders for students who withdrew from Sojourner during award years 1987-88 and 1988-89, that the reviewer examined the files of ten students who withdrew from Sojourner during the reviewed years, and that Sojourner did not maintain the documentation required to show whether refunds were due for those ten students. Violations of § § 668.21, 668.22 and 682.607 are alleged:

In the 1989 Program Review Report OSFA states that:

According to the Student Confirmation Reports, prepared by the College for submission to its guarantee agency, the following students withdrew from classes during the reviewed award years: #2, #12, #19, #20, #21, #22, and #23.

Three additional files for withdrawn students were selected (Attachment B, Section II).

There was no withdrawal documentation or evidence that any applicable Title IV refunds were made in any of these files.

Ex. G-3-23.

An institution participating in the GSL Program must report to the guarantee agency that guarantees the loans of its students the enrollment status of the students who receive GSL Program loans as required by ? 682.610(c). Student status includes whether the student is still enrolled at the institution, and if the student is not enrolled, the student's last day of attendance. The document which is used for this purpose is called a student confirmation report. Tr. 116-117.

The facts as to the status of individual students as of July 1989, the month observed by the 1989 reviewer are as follows:

a. [student name]. OSFA alleges that Sojourner reported on a student confirmation report that [student name]'s last day of attendance was March 5, 1988 but that there was no documentation in the student's files to support that statement. Ex. G-21, Tr. 118. However this student did not withdraw. He had started in the fall of 1987-88, completed a trimester, returned for winter 1987-88, and completed a full trimester of November 23, 1987 to March 5, 1988. The student did not re-enroll for the next trimester. A study of the regulations alleged to have been violated, §§ 668.21, 668.22 and 682.07, fails to show a requirement of documentation, beyond that in Sojourner files, as relates to a student who does not re-enroll. Ex. SJ-7-1, Ex. G-21, Tr. 494-495. OSFA has failed to prove a violation of any regulations.

b. [student name]. OSFA alleges that Sojourner reported on one student confirmation report that [student name]'s last day of attendance was March 9, 1989 and on another, September 28, 1988, and that there was no documentation in the student's files to support either statement. [student name] began in Spring 1987- 88 and completed a trimester. She returned in the Fall 1988-89. She did not return in Winter 1988-89. She returned in Spring 1988-89 and withdrew the same day. Ex. SJ-7-1.

An official Sojourner withdrawal document for [student name] confirms the date her withdrawal as March 9, 1989, for the Spring 1988-89 period. Thus, OSFA's conclusion that no documentation supports the student's withdrawal is incorrect. Ex. SJ-7-12, a Sojourner Request for clearance of withdrawal signed by Rosalyn Stephens, states that she wished to return to college when student finances "get straight." A document such as Ex. SJ-7-12 was not produced as to the other alleged last date of attendance of September 28, 1988. Ex. G-8, Tr. 118-20, 135, 493.

c. [student name]. OSFA alleges that Sojourner did not have documentation to support its statements regarding the last day of attendance of [student name]. However, this case is the same as that of [student name in a.] in that [student name] simply did not re-enroll. No violation of any regulations has been proved by OSFA. Ex. G- 12, Tr. 120, 494-495.

d. [student name]. This case is the same as that of [student name in c.] in that [student name] completed the trimester but did not re-enroll at the time the student confirmation report was submitted. No violation of any regulations has been proved by OSFA. Ex. G-75, Ex. SJ-7, Tr. 120, 494-495.

e. [student name]. OSFA alleges that Sojourner did not have documentation to support its statements regarding the last day of attendance of [student name]. The 1989 reviewer referred to the date of March 4, 1989 as to withdrawal. Tr. 120. No documentation as to that alleged withdrawal is contained in the record. However, the record does show that the student started in the Fall 1987-88 trimester and completed that trimester, then returned in the Winter of 1987-88 and withdrew after the trimester was over. There is an official withdrawal document in the record for March 28, 1988 (Ex. SJ-7-10). Then she returned for the Fall 1988-89 trimester but did not complete it. An official withdrawal document is in the record for October 4, 1988 (Ex. SJ-7-9). She returned for the Winter 1988-89 trimester. But she did not return for the Spring 1988-89 trimester. She returned for the Winter 1988-89 trimester. But she did not return for the spring 1988-89 trimester. She returned for the Fall 1989-90 trimester but did not return for the Winter 1989-90 trimester. Ex. SJ-7-1, Ex. G-13, Tr. 120, 491-492. No violation of regulations has been proved as to this student.

f. [student name]. OSFA alleges that Sojourner did not have documentation to support its statements regarding the last day of attendance of [student name]. The 1989 reviewer testified that the student confirmation report indicated he was no longer enrolled as of March 4, 1989. However, this is similar to the [student name in c.] case. The instant student simply did not re-enroll for the Spring 1988-89 trimester. The record shows that the student began in Fall 1988-89 and completed a trimester, returned in Winter 1988-89 and completed a trimester of November 21, 1988 - March 12, 1989. He did not return for Spring 1988-89. But he did return in the Winter of 1990-91. He withdrew on December 14, 1990 and the record contains an official withdrawal document for December 14, 1990 (Ex. SJ-7-13). Ex. SJ-7-1, Ex. G-26, Tr. 120, 494-495. No violation of regulations has been proved by OSFA in this case.

g. [student name]. OSFA alleges that Sojourner did not have documentation to support its statements regarding the last day of attendance of [student name]. However, Ex. SJ-6-5 is an official withdrawal document for [student name] for a withdrawal on March 6, 1989, because [student name] was hospitalized. Ex. G-20, Ex. SJ-6-5, Tr. 121, 494. No violation of law has been proved by OSFA.

h. [student name]. It does not appear that OSFA has requested findings as to this student, however, this student did not withdraw but simply failed to re-enroll for the next trimester. Tr. 494-495. No violation of law has been proved by OSFA.

i. [student name]. It does not appear that OSFA has requested findings as to this student; however, Sojourner did submit Ex. SJ-7-11 a memorandum concerning her withdrawal. It states: "This notice is official approval of the request from [student name] for withdrawal for Fall 1987-88 and Spring 1987-88." The notice is dated February 17, 1989. Ex. SJ-7-11, Tr. 492-493. No violation of law has been proved by OSFA.

j. [student name]. It does not appear that OSFA has requested findings as to this student, however, Sojourner has submitted Ex. SJ-7-14 and Ex. SJ-7-15 which represent official approval of Mr. Rudolph's withdrawal for medical reasons during Fall 1987-88. Tr. 493-494, Ex. SJ-7-14, Ex. SJ-7-15. No violation of law has been proved by OSFA.

Summary - Lack of Withdrawal Documentation/Refunds.

Ten violations of law, have been alleged as to the first part of this category concerning lack of documentation while an unknown number of violations have been alleged as to making untimely refunds. OSFA has failed to prove a single one of these violations. It is considered most significant that OSFA has totally failed to establish the required proof in view of the very large number of extremely serious allegations of violations of law.

11. Finding No. 12 - CWS Students Underpaid for Hours Worked.

The termination notice alleges that Sojourner underpaid CWS wages to students until April, 1989, by improperly counting the students' hours worked. A violation of § 675.19 was alleged.

The 1989 Program Review Report states as follows at Finding No. 12.:

The institution did not properly count hours worked for CWS recipients until April, 1989. SDC counted hours and minutes on a base ten numbering system, i.e, 3 hours 30 minutes plus 3 hours 30 minutes, was calculated to be 6.60 hours. Consequently, CWS students were underpaid.

Ex. G-3-24.

With regard to the 1989 Review report which cited Sojourner for miscalculating CWS hours, the issue concerned recording the minutes worked as the portion of the hour that they represented instead of recording the total number of minutes. This method of calculation which occurred prior to Ms. Trusty's being hired as Financial Aid Office Director, surfaced in the Fall of 1988, was addressed by Sojourner prior to the 1989 Review, and a different and correct method was being used by Sojourner prior to the 1989 Review.

Therefore prior to 1989 there had been violations of the regulations as relates to the amount of pay which the CWS students should have received for their work. However, by 1989 Sojourner was following the regulations. OSFA has not presented evidence as to the extent of the under payments and it appears that the violations occurred through lack of understanding as to how the hourly totals were to be computed. Ex. G-3-24, Tr. 129- 130, 480, 482-483.

12. Finding No. 13 - Missing Financial Aid Transcripts.

The termination notice alleges that Sojourner failed to obtain financial aid transcripts for nine students in the sample who attended other postsecondary schools. Violations of § § 668.14, 668.19 and 690.65 were alleged.

Fourteen of the students sampled attended other postsecondary educational institutions before they attended Sojourner. Exhibits G-3-24 to G-3-26, and Exhibits G-5 through G-26.

Part of 1989 reviewer's work papers was a work sheet. On that work sheet, there was an item in the top quarter of the page headed "F/A Transcript." If Sojourner's records indicated that the student attended another institution, Mr. Kolotos would identify that college in that item. Tr. 33-34.

If the 1989 reviewer found a financial aid transcript for that student, Mr. Kolotos would indicate that fact in that item , by noting "received," a variation thereof, or "OK." See, for example, the work sheet for [student name], Exhibit G-24-1. If the reviewer did not find a financial aid transcript, the name of the other institution the student attended would be included in that item on the work sheet but no "received" or "OK" notation would be included. Tr. 33-36.

As a result of the 1989 Review, the reviewer instructed Sojourner to submit financial aid transcripts with other supporting documentation for several award years, which was in addition to the directive issued in the 1987 Review. Tr. 274. Mr. Kolotos also created a detailed format for the information and instructed that it be used. In compliance with the instructions of Mr. Kolotos, Sojourner formatted and submitted transcripts for each of the years requested, spending several hundred man hours gathering the necessary submissions.

Mr. Kolotos never contacted Sojourner to inquire about the status of the financial aid transcripts he had requested. Also, Mr. Kolotos performed no review on the transcripts mailed to him until the hearing began. Upon performing a review of the transcripts he admitted receiving, Mr. Kolotos discovered that Sojourner had obtained most of the transcripts that were required. Tr. 255-257, 596-598.

Sojourner was instructed to submit transcripts that they had during the award years in questions as well as other that were obtained later. Therefore, there is no way of determining whether all of the transcripts had been obtained at the time of the award years or after the fact, simply by basing such a determination on the fact that transcripts for those award years were submitted. No conclusions can be drawn about violations based upon the number of transcripts referred to either in Exhibit SJ-8-1 or SJ-8-2, because Mr. Kolotos asked for all transcripts, regardless of whether they were originally obtained or obtained subsequently. Tr. 274.

At the time of the 1989 Review, Ms. Trusty had been Sojourner's new Financial Aid Director for about three months may not have known where certain documents were filed or where certain records including the financial aid transcripts that were gathered in response to the 1987 Review, were located. Tr. 304- 306, 591-592.

Mr. Kolotos is unaware of whether financial aid transcripts have now been obtained for each of the students he testified had missing transcripts when the 1989 Review was performed. Typically, OSFA allows schools to obtain missing transcripts without penalty. Tr. 140.

The purpose of such a transcript is to enable the institution to determine whether a student is eligible to receive Title IV, HEA Program funds, 20 U.S.C. § 1091(a) (3) (A student is ineligible to receive Title IV, HEA Program funds if the student is in default on a loan obtained at another institution or has received an overpayment on a grant received at another institution), or the amount of Pell Grant awards. § 690.65 provides that a student who received a Pell Grant at one institution during an award year and then transfers must have that first disbursement taken into account by the second institution when that latter institution calculates a further Pell Grant for that student. Before April 30, 1985, the citation to this regulatory provision was 34 C.F.R. 690.67.

The facts as to the status of individual student records are as follows.

a. [student name]: OSFA alleges that Sojourner disbursed Title IV, HEA Program funds to [student name] without requesting a financial aid transcript even though she disclosed to Sojourner that she had attended another institution of higher education before enrolling in Sojourner. Tr. 33, Ex. G-3-24, Ex. G-5-1.

However, [student name]'s financial aid transcript was one of the transcripts located by Sojourner and mailed to the 1989 reviewer. Ex. SJ-8-2, Ex. SJ-8-23. OSFA has not established when the transcript provided by Sojourner to the 1989 reviewer was requested or received by Sojourner. Therefore, OSFA has failed to establish a violation of any regulations. Ex. G-5, Ex. SJ-8, Tr. 33-34.

b. [student name]. OSFA alleges that Sojourner disbursed Title IV, HEA Program funds to [student name] without requesting a financial aid transcript even though he disclosed to Sojourner that he had attended another institution of higher education before enrolling in Sojourner. Tr. 33, Ex. G-3-24, Ex. G-6-1.

However, [student name]' financial aid transcript was one of the transcripts located by Sojourner and mailed to the 1989 reviewer. Ex. SJ-8-2, Ex. SJ-8-26. OSFA has not established when the transcript provided by Sojourner to the 1989 reviewer was requested or received by Sojourner. Therefore, OSFA has failed to establish a violation of any regulations. Ex. G-6, Ex. SJ-8, Tr. 34.

c. [student name]. OSFA alleges that Sojourner disbursed Title IV, HEA Program funds to [student name] without requesting a financial aid transcript even though he disclosed to Sojourner that he had attended another institution of higher education before enrolling in Sojourner. Tr. 34, Ex. G-3-24, Ex. G-7-1.

However, the award year in question began in 1987. At that time the pertinent regulation was that quoted in Section VI. B. 3. of this decision relating to the 1987 program review. As stated at that section, it is apparent that the regulation in effect during that period had exceptions wherein, under certain circumstances, even if a student had attended another institution of higher

education, there would be no requirement that a financial aid transcript be obtained from the prior institution. There was no information as to whether this student had been at least a half-time student at the prior institution. No testimony was placed in the record from the person who conducted its 1989 review and no further documentary evidence was entered from that Review by OSFA which would supply the missing information. Consequently OSFA has failed to prove a violation of a regulation as relates to [student name]. Ex. G-7, Tr. 34.

The above discussion relates to the status of this case based upon the presentation of OSFA. However, Sojourner has submitted an Ex. SJ-18 which contained a "Student's Cumulative Record (Ex. SJ-18-7) for [student name]. It shows that [student name] started at Sojourner in the Winter of the 1983-84 award year and attended consistently through 1988, having received a Bachelor of Arts degree on July 3, 1988.

Therefore there could not have been a violation of these regulations during the period alleged for the 1989 program review. However, Ex. SJ-18-7 also indicates that the student attended the Community College of Baltimore prior to 1983, and that 39 credits were transferred to Sojourner. It is difficult to tell when the student actually attended the Community College of Baltimore. The year 1980 is listed under the title "Community college of Baltimore" and under that is a listing of credits in at least eleven different courses. It does not appear likely that all of those courses were taken in 1980. However, the fact is that no violation of law has been alleged under this regulation which goes back to 1983 as relates to [student name].

d. [student name]. OSFA alleges that Sojourner disbursed Title IV, HEA Program funds to [student name] without requesting a financial aid transcript even though she disclosed to Sojourner that she had attended another institution of higher education before enrolling in Sojourner. Tr. 34; Ex. G-3-24, Ex. G-8-1. The circumstances of this case are the same as that of [student name]. Therefore, OSFA has failed to establish a violation of any regulations. Ex. SJ-8-2, SJ-8-22, Ex. SJ-8-26, Tr. 34-35, Ex. G-8.

e. [student name]. OSFA alleges that Sojourner disbursed Title IV, HEA Program funds to [student name] without requesting a financial aid transcript even though she disclosed to Sojourner that she had attended another institution of higher education before enrolling in the College. Tr. 35, Ex. G-3-24, Ex. G-9-1. The circumstances of this case are the same as that of [student name in b.]. Therefore OSFA has failed to establish a violation of any regulations. Ex. SJ-8-2, Ex. SJ-8-7, Ex. SJ-8-8, Ex. G-9, Ex. SJ-14, Tr. 35.

f. [student name]. OSFA alleges that Sojourner disbursed Title IV, HEA Program funds to [student name] without requesting a financial aid transcript even though he disclosed to Sojourner that he had attended another institution of higher education before enrolling in the College. Tr. 35, Ex. G-3-24, Ex. G-10-1.

However, the award year in question began in 1987. At that time the pertinent regulation was that quoted in Section VI. B. 3. of this decision relating to the 1987 program review. As stated at that section, it is apparent that the regulation in effect during that period had exceptions wherein, under certain circumstances, even if a student had attended another institution of higher education, there would be no requirement that a financial aid transcript be obtained from the

prior institution. There was no information as to whether this student had been at least a half-time student at the prior institution. No testimony was placed in the record from the person who conducted its 1989 review and no further documentary evidence was entered from that review by OSFA which would supply the missing information. Consequently OSFA has failed to prove a violation of a regulation as relates to [student name]. Ex. G-10, Tr. 35-36.

g. [student name]. OSFA alleges that Sojourner disbursed Title IV, HEA Program funds to [student name] without requesting a financial aid transcript even though he disclosed to the College that he had attended another institution of higher education before enrolling in the College. Tr. 36-37, Ex. G-3-24, Ex. G-11-1. The circumstances of this case are the same as that of Lawrence Ross. Therefore, OSFA has failed to establish a violation of any regulations. Ex. SJ-8-22, Ex. SJ-8-24, Ex. G-11, Tr. 36-37. In addition the determination as to [student name in f.] (above) also applies in this case.

h. [student name]. OSFA alleges that Sojourner disbursed Title IV, HEA Program funds to [student name] without requesting a financial aid transcript even though she disclosed to the College that she had attended another institution of higher education before enrolling in Sojourner. Tr. 37, Ex. G-3-24, Ex. G-12-1. The circumstances of this case are the same as that of [student name in b.]. Therefore, OSFA has failed to establish a violation of any regulations. Ex. G-12, Ex. SJ-8-2, Ex. SJ-8-22, Ex. SJ-8-27, Tr. 27. In addition the determination as to [student name in f.] also applies to this case.

i. [student name]. OSFA alleges that Sojourner disbursed Title IV, HEA Program funds to [student name] without requesting a financial aid transcript even though she disclosed to Sojourner that she had attended another institution of higher education before enrolling in the College. Tr. 37; Ex. G-3-24, Ex. G-13-1. The circumstances of this case are the same as that of [student name in b.]. Therefore, OSFA has failed to establish a violation of any regulations. Ex. G-13, Ex. SJ-8-2, Ex. SJ-8-22, Ex. SJ-8-23, Tr. 37.

Summary - Missing Financial Aid Transcripts

Eight violations of law have been alleged as to this category. It is considered most significant that OSFA has failed to prove a single one of these serious allegations of violations of law.

13. Finding No. 14 - High Perkins and Stafford Loan Default Rates.

The termination notice alleges that Sojourner fails to meet the regulatory requirements for administrative capability because of its student loan default rates, that the program review revealed a 1987 Cohort Stafford Loan default rate of 42.80 percent and a Perkins Loan Program default rate of 75.23 percent, and that the Secretary considers such excessive default rates as having an adverse effect on an institution's ability to administer the Title IV, HEA programs properly. Violations of § 668.15 are alleged.

The joint stipulation herein provided, in part, as follows:

Sojourner's 1987 cohort default rate under the GSL Program was 42.8% and its default rate under the Perkins Loan Program is 75.23%. JT Ex. 1 at 1, para 3.

NDSL (Perkins) Program

Part of these allegations relate to violations discussed above in sections VI. B. 5. and VI. C. 4. of this decision. Those violation were mentioned in the 1987 and 1989 program review reports and related to the 75.23% default rate on loans Sojourner made under the NDSL Program (the predecessor of the Perkins Loan Program).

Under the Perkins Loan Program, a participating institution establishes a revolving Perkins Loan Program Loan Fund and makes loans from the revolving Loan Fund to its eligible, financially needy students. The major portion of the Loan Fund consists of Federal funds.

The student borrowers repay the institution for the loans they receive and the institution re loans those repaid funds to other student borrowers. An institution must exercise due diligence in billing and collecting outstanding loans in accordance with 34 C.F.R. Part 674, Subpart C.

As stated previously Sojourner was to take action to lower the NDSL default rate by (1) referring delinquent accounts to two collection agencies, (2) adding a temporary person in the business office to prepare delinquent accounts that had been through collection agencies for assignment, and (3) causing its financial aid staff to offer rights and responsibilities seminars for current student borrowers and alumni.

Some action was taken such as retaining the collection agencies in 1987 and having Mr. Obayanjo carry out step number two. Some money was collected but not enough to reduce the default rate below 75%. Tr. 537-539.

No new NDSL (Perkins) loans have been made by Sojourner since the 1983-84 award year. At the time of the hearing in this case the subject matter of the collectibility of the notes was being determined by an outside auditor, Taylor and Jennings, at the recommendation of the Department of Education, and then a determination would be made as to which should be turned over to that Department. Tr. 555-566.

Therefore, there had been no real reduction in the NDSL (Perkins) default rate as of the time of the hearing in this case. Although Sojourner has not engaged in NDSL loan activity for some years the fact remains that Sojourner has failed to meet the regulatory requirements set forth in § 668.15 in that the continuation of a 75% default rate on loans made under of NDSL (Perkins) program is an indication of the institutions impaired capability of properly administering Title IV, HEA programs.

GSL (Stafford) Program

The status of the GSL (Stafford) Program is entirely different from that of the NDSL Program. Although the 1987 Cohort Stafford loan default rate was 42.80%, the parties stipulated as follows:

The College reduced its 1988 cohort default rate under the Guaranteed Student Loan Programs to 34.2%, and was commended by the Secretary of Education for this reduction in the default rate. (Exhibit SJ-10).

JT Ex. 1 at 1, para. 4.

Sojourner's president referred to Exhibit No. SJ-10 in his testimony. Tr. 296-298. This letter dated March 29, 1990, sent by the Deputy Assistant Secretary for Student Financial Assistance to the president of Sojourner stated, in part:

The Secretary commends you for the reduction in your institution default rate. Your school was notified last year that it was expected to implement the default reduction measures stipulated in 34 C.F.R. 668.15, Appendix D, Sections I-IV. However, since your default rate is now between 30.1 and 40 percent, your school has the option to propose a default management plan that differs from Appendix D. . . .

Therefore, although the default rate is greater than the 20% rate mentioned in § 668.15(a)(1), and is therefore some indication of an impaired capability of properly administering Title IV, HEA programs, the fact is that a considerable improvement in reducing the default rate did take place to the point where the Secretary of Education commended Sojourner for its action.

D. Fiduciary Duties.

The termination notice alleges that the violations cited in the 1987 and 1989 program review reports show that Sojourner has failed to administer the Title IV, HEA programs in the capacity of a fiduciary, in violation of § 668.82.

The Secretary has established a standard of conduct for an institution that participates in the Title IV, HEA Programs. Section 668.82(a) provides that: "A participating institution acts in the nature of a fiduciary in its administration of the Title IV, HEA programs."

In that capacity:

. . . the institution is subject to the highest standard of care and diligence in administering the programs and in accounting to the Secretary for the funds received under those programs.

§ 668.82(b).

Section 668.82 goes on to provide that:

(C)An institution's failure to administer the Title IV, HEA programs, or to account for the funds it receives under those programs, in accordance with the highest standard of care and diligence required of a fiduciary, constitutes grounds for a fine, or the suspension, limitation or termination of the eligibility of the institution to participate in those programs.

The net effect of all of the violations of regulations set forth above is that Sojourner in the past has not acted as a fiduciary is required to act in administering the Title IV, HEA programs and therefore has also violated § 668.82. This is particularly true as relates to the failure to maintain adequate accounting records and the failure to submit financial and compliance audits to OSFA in a timely manner as relates to those due in 1985 and 1987 and the total failure to submit an audit which was due in 1989.

There are multiple violations in the sense that audits are required in the NDSL (Perkins), CWS, SEOG, GSL, and Pell Grant Programs. Even those audits filed in January of 1991 (previously due March 31, 1985 and March 31, 1987, respectively) must be revised to correct deficiencies. All of the other miscellaneous violations of regulations, covering a period of more than six years, analyzed above, are evidence of a failure in the past to exercise the highest standard of care and diligence in administering the Title IV, HEA Programs. These include such matters as incomplete verification of student aid applications, incorrect certification of Stafford loan applications, erroneous Pell grant disbursements, drawing of cash in excess of immediate needs, and lack of due diligence in servicing the NDSL (Perkins) loan portfolio.

E. Miscellaneous Issues.

1. Administrative Law Judge's questions of Witnesses.

Sojourner has objected to the Administrative Law Judge basing his determination on any evidence elicited by the Administrative Law Judge during the hearing in response to his questioning of witnesses that exceeded the bounds of issue clarification. However, there is ample authority for an administrative law judge to ask the questions which were asked in this proceeding. The judge does have the authority to question witnesses, not only for the purpose of clarifying testimony, but also to elicit additional information. The administrative law judge:

may question the witness initially if its likely to forestall extensive examination by others. He should interrupt when the witness and counsel are at cross purposes, when the record may not reflect with clarity what the witness intends to convey, or when for some other reason assistance is needed to assure orderly development of the subject matter. At the close of cross or redirect, the Judge may question the witness to clarify any confusing or ambiguous testimony or to develop additional facts.

K.C. Davis, Treatise on Administrative Law (2d ed.) § 17.13, p. 321.

See also Hanson v. Waller, 888 F.2d 806, 812 (11th Cir. 1989);
Moore v. United States, 598 F.2d. 439, 442 (5th Cir. 1979);
United States v. Pisani, 773 F.2d 397, 403 (2d Cir. 1985)

Consequently any objections by Sojourner to questions by the administrative law judge as well as to the consideration of evidence thereby elicited are overruled.

2. Uniformity of Application and Enforcement of Regulations.

Sojourner has argued that this proceeding is a classic case of selective prosecution violative of 20 U.S.C. § 1232(c) which provides, in part: "All such regulations shall be uniformly applied and enforced throughout the United States." (Emphasis added.)

Sojourner then refers to facts set forth in a statement in the Federal Register by the Department of Education [(54 Fed. Reg. 11356) (1989)] concerning over 1,500 institutions that had not filed audits for the award years 1981-85. Sojourner also refers to another report on the same subject.

Sojourner then refers to information contained in U.S. Department of Education Office of Inspector General Semi-annual Reports to Congress which relate to 2,660 postsecondary institutions which held funds in excess of their immediate need.

Sojourner then argues that the "Secretary must enforce his rules uniformly and either take termination action against all schools whose audits were as late as Sojourner's or who drew down excess cash or take that action against none of those schools. Since the Secretary has elected not to terminate all those schools, this action must be dismissed as violative of 20 U.S.C. § 1232(c)."

This kind of reasoning cannot be the foundation for the dismissal of this type of administrative proceeding. Any institution which has violated the subject regulations can be the subject of this type of proceeding. The fact that other institutions also have violated regulations, but at that time are not the subject of an enforcement proceeding, does not affect the right to proceed against any others. The volume that may be involved as well as variation of circumstances are such that not all violation proceedings can be ongoing at the same time.

F. Consideration of Remedies and Penalties.

I. Termination Issue.

OSFA argues that termination of an institution's eligibility to participate in the Title IV, HEA Programs is warranted when it breaches its fiduciary duty to administer those programs in accordance with the highest standard of care and diligence.

OSFA refers to § 668.82(c) and argues:

When the Secretary explicitly established this new termination standard, in the preamble to that regulation, the Secretary expressed his interpretation of that regulatory provision. He stated that if OSFA could prove that an institution breached its fiduciary duty, OSFA did not also have to prove the institution's continuing inability or unwillingness to properly administer the Title IV, HEA Programs or account for Title IV, HEA Program funds to demonstrate that termination of that institution was warranted:

A paragraph (c) has been added to that section [§ 668.82] to make clear, consistent with section 487(b)(1)(D) of the Higher Education Act, that an institution may have its eligibility to participate in the title IV student financial assistance programs terminated solely because it failed to properly administer the programs, or account for the funds it received under the programs. The

designated ED official need not show continuing inability or unwillingness of an institution to properly administer the programs or account for funds.

48 Fed. Reg. 45670, 45673 (October 3, 1983) (emphasis added) Exhibit G-41.

OSFA'S Brief at 15.

OSFA, however, did not include from the above reference in the Federal Register, the last sentence of the quoted paragraph. The conclusion of the paragraph is:

An institution may, on the other hand, use its current ability to properly administer the programs and account for the funds it receives as a factor justifying the imposition of a lesser penalty.

48 Fed. Reg. 45670, 45673 (October 3, 1983). Exhibit G-41.

OSFA also argues that Sojourner's failure to submit financial and compliance audits of its administration of the Title IV, HEA Programs for award years 1982-83, 1983-84, 1984-85, 1985-86, 1986-87, and 1987-88 warrants the termination of Sojourner's eligibility to participate in the Title IV, HEA Programs .

OSFA goes on to argue:

In a 1989 proposed regulation and in the preamble to that regulation, the Secretary expressed his current policy regarding the relationship between an institution's failure to submit financial and compliance audits and the institution's continued participation in the Title IV, HEA Programs. This regulation was proposed to implement "the Secretary's initiative to improve the monitoring and accountability of the . . . Title IV, HEA programs." 54 Fed. Reg. 11354 (March 17, 1989). Exhibit G-38.

In the preamble, the Secretary stated his policy and described the proposed regulations as follows:

The Secretary proposes to amend this section [§ 668.90(a)(3)] to provide for the termination of an institution's participation in the Title IV, HEA programs if the institution fails to submit an audit report required under 34 C.F.R. 668.23 by the applicable statutory or regulatory deadline date and . . . has a history of missing the deadlines over a period of four years. In addition, the administrative law judge would have to uphold a termination action taken against an institution for these reasons.

Id. at 11356.

While this proposed regulation, 341 C.F.R. 668.90(a)(3), is not legally binding in this proceeding, it nevertheless expresses the Secretary's current policy that an institution should be terminated from the Title IV, HEA Programs if it misses a deadline date for submitting an audit and had previously missed such a deadline date in the preceding four years.

The College has not just missed a deadline for submitting an audit for the 1986-87 and 1987-88 award years; it has never submitted an audit for those years. The College has not just missed a deadline for submitting an audit for the 1982-83, 1983-84, 1984-85, and 1986-86 award years; it has never submitted acceptable audits for those years. Clearly, under the Secretary's current policy, as reflected in the proposed rule and preamble discussion, the College's eligibility to participate in the Title IV, HEA Programs should be terminated as a result of its failure to submit audits.

OSFA's Brief at 21-22 (footnote omitted).

OSFA then goes on to argue that Sojourner's continuing inability to administer the Title IV, HEA Programs in accordance with its governing statutes and regulations constitutes a serious breach of Sojourner's fiduciary duty to administer those programs in accordance with the highest standards of care and diligence, and warrants the termination of Sojourner's eligibility to participate in the Title IV, HEA Programs.

In its brief OSFA states as follows:

As the evidence presented in this proceeding demonstrates, the College has continually failed to administer the Title IV, HEA Program in accordance with those programs' governing statutes and regulations. In addition to the failure to submit required audits, these failures include the failure to establish and maintain a record keeping system that supports program expenditures, the awarding of Title IV, HEA Program funds to transfer students without obtaining financial aid transcripts, the awarding Title IV, HEA Program funds to students who did not complete the verification process, the failure to properly verify applicant information, the improper calculation of Pell Grant awards, the improper disbursements of Pell Grant awards, the failure to accurately certify GSL program loan applications, the draw down of Title IV, HEA Program funds far in excess of the College's need for those funds, the absence of records indicating student withdrawals, and the failure of the College to exercise due diligence in collecting outstanding loan payments under the Perkins loan Program.

OSFA's Brief at 23-24.

Sojourner argues in its brief:

Thus, the totality of the circumstances involved in a particular case must be taken into account in order to reach a fair decision. After all, the Secretary does not seek to terminate institutions for failure to administer error free Title IV programs. On the contrary, the Secretary reserves termination for habitual violators who consistently violate the body of Title IV laws. The Secretary's policy on the Termination of Eligibility ("Termination Policy") , as expressed in the preamble to his final regulations, provides:

The termination of an otherwise eligible institution's eligibility for student financial aid programs is an extremely serious measure. As a general matter, this procedure will be undertaken only when (1) an institution has consistently violated the statute and regulations governing the aid

programs and the standards of financial responsibility and (2) attempts to remedy this situation have failed.

(42 Fed. Reg. 64567) (1977) (Emphasis added.)

The allegations OSFA successfully proves, taken together, must at a minimum demonstrate that Sojourner "has consistently violated the statutes and . . . regulations governing the aid programs and the standards of financial responsibility, and administrative capability and attempts to remedy this situation have failed." (Id.) (Emphasis added.)

The facts of this case clearly demonstrate that any past violations committed by Sojourner fall far short of the pervasive pattern of consistent and egregious violations necessary to warrant termination under the Termination Policy.

Sojourner's Brief at 137-138.

This case involves 19 categories of violations of law. Within these categories 83 specific violations are alleged. However it is significant that OSFA failed to prove 41 of the alleged violations of regulations.

Nevertheless, of those proved, there are a number of significantly serious violations of law which constitute violations of fiduciary duties in that Sojourner has not in the past exercised the highest standards of care and diligence in administering the Title IV, HEA Programs.

Two of the most significant violations involved the failure to maintain adequate accounting records (a system of internal fiscal controls) and failure to submit, or timely submit, biennial non-Federal financial and compliance audits. Other significant violations have been reviewed in section D of this decision, "Fiduciary Duties".

The question then arises as to what is the proper remedy in view of the significant past violations involved in this case, and in view of the nature and status of the institution itself, including its ability to resolve those past violations of regulations. Should there be a termination of the eligibility of Sojourner to participate in Title IV, HEA Programs as argued by OSFA; or should there be an alternative remedy as argued by Sojourner.

Sojourner argues that:

Before such a drastic sanction as termination can be imposed, the Administrative Law Judge needs to consider the effect closure of Sojourner will have on its students and on its community.

A future without Sojourner is a future without postsecondary education for its students. The hardship to these students, to the Baltimore community, and to society as a whole cannot be measured in dollars and cents .

Sojourner is unique in its ability to respond to the needs of the Baltimore community. It is the only private, pre-dominately Black institution of higher education in the State of Maryland. In

addition, it enjoys the distinction of serving working adults who raise families and who themselves, in turn, provide valuable services to the community.

Sojourner has sculpted a rare environment atypical to that offered in conventional educational institutions. It has created an environment in which adult students can remain devoted enough and inspired enough to complete their education and in which many of the obstacles that bar the attendance of working adults at institutions like Bowie State University, Coppin State College, and Morgan State University are removed. For instance, Sojourner's classes begin in the evening. Students may choose from any of the institution's offerings and receive instruction at night and on Saturday. At many conventional institutions only a limited number of courses are available on evenings and weekends.

Sojourner also has an on-site child care center. In fact, this free child care center is one of the primary reasons many students are able to attend the College. . . .

Sojourner benefits its students and the Baltimore community by requiring each student to complete an experiential learning project in the community. These projects have included work such as organizing a neighborhood youth center and assisting workers in organizing a union. In numerous instances students have been offered permanent positions as a result of these projects. . . .

At Sojourner, students may receive credit for prior learning and independent study. Programs are individualized to allow students the flexibility to move at their own pace in accordance with their own abilities and work schedules. . . .

Sojourner is a community-controlled, community conceived, and community focused institution. It is the collegiate component of the Dunbar Community School campus, which offers pre-kindergarten, elementary, middle, and high schools. It's campus houses a Mayor's Station, a Department of Social Services office, and several other related agencies. Add to all this the fact that over 38% of Sojourner's graduates have enrolled in post-graduate programs and that its annual retention rates average 80%, and it is clear that Sojourner offers its students an incomparable and irreplaceable educational opportunity. See Exhibit SJ 22.

Sojourner's Brief at 157-160. (footnotes omitted).

Sojourner has made substantial progress towards resolving the failure of the past relating to the inadequacy of the accounting system and the inadequacy of execution to accomplish the requirements of the financial aid regulations.

Between late February and early March of 1989, Mr. Douglas Bucher was contacted by Dr. Charles Simmons about the possibility acting as a consultant to Sojourner in the Financial Aid Office. Dr. Simmons contracted with Mr. Bucher to assist Linda Trusty, who at the time was a recently hired Financial Aid Officer with experience in the proprietary sector of higher education. Tr. 410.

In January or February of 1990, OSFA approved Mr. Bucher to sign off on reimbursement documents after OSFA had reviewed the documents on its own for six months and had been satisfied with the results, since OSFA placed Sojourner on the reimbursement system in July of 1989. Tr. 411-413.

Mr. Bucher has a bachelors degree from Gannon University and a master degree in student personnel from Michigan State. He has had approximately nine years of financial aid experience. He serves on the Executive Board of the Delaware/DC/Maryland Association of Student Financial Aid, and has been Treasurer of that organization for the past two years. He has also been active in and on many committees of the Eastern Association of Student Financial Aid. Mr. Bucher has been involved in the National Association of Student Financial Aid and on various committees and organizations. He has served on the Eastern Region Financial Aid Advisory committee for the American College Testing Program, and he serves on the Financial Aid Advisory Committee for the American Association of Junior and Community Colleges, and Junior College Association. Mr. Bucher has acted as a trainer for the National Association of Student Financial Aid and for the Eastern Association. He also does extensive training in the local area for the DC, Delaware and Maryland Association of Financial Aid. In addition, Mr. Bucher has acted as a financial aid trainer of financial aid professionals employed by ED through NASFAA in their delivery system workshops. Tr. 408-410.

Linda Trusty is a qualified financial aid professional. She networks with other financial aid professionals and is very active in the local Association of Student Financial Aid of which she is a member. Sojourner encourages and supports Ms. Trusty's attendance at various workshops and her participation in other such professional endeavors to enhance Ms. Trusty's abilities and improve the operation of the Financial Aid Office. Tr. 417-418.

After Ms. Trusty receives aid applications, she requests the documents that are necessary to back up the information on the application if the student is chosen for verification or if there are some discrepancies or questions concerning the application. Once Ms. Trusty has received and reviewed all documentation to make sure that all the regulations have been complied with, she gives it to Mr. Bucher, and he then reviews it. Tr. 413-416.

For the 1988-89 award year, Mr. Bucher and Ms. Trusty went through the GSL loan applications and documented on the Stafford certification sections what a student's budget was, their family contribution, their aid, etc., to make sure that the students were still guaranteed or were qualified for the particular funds received.

With regard to the 1988-89 award year, the GSL awards made were correct. Those students who received GSLs were not given improper awards for the 1988-89 award year. The review included the entire 1988-89 award year. Those that Ms. Trusty corrected were for years serviced by her predecessor. Tr. 611-612.

In his role as financial aid consultant to the College, Mr. Bucher reviews everything and certifies that everything that is needed under the Title IV statute and regulations to make an award under whatever Title IV program that is specifically involved, has, in fact, been done by the College. Tr. 413-416.

With respect to the award years during which Ms. Trusty has been Financial Aid Director, i.e., the 1988-1989, 1989-1990, and the 1990-1991 award years, Sojourner has been capably administering the Title IV student aid programs in compliance with all aspects of the statutes and regulations governing the Title IV aid programs that Sojourner participated in for those award years. Tr. 578, 418-419.

Ms. Trusty held her position as Financial Aid Director during the time of the July 1989 Program Review. Prior to the July 1989 Program Review, after her arrival in March 1989, Ms. Trusty with the assistance of Douglas Bucher took independent steps to improve financial aid administration at Sojourner. Ms. Trusty created forms to enable the Financial Aid Office to operate more efficiently and with greater accuracy. She created loan questionnaires, such as the verification worksheet to be used as a guide and to be referred to by her and her staff when verifying students. She also created award control cards and created a data base system for financial aid. She recognized the need for and began to standardize documents and information. This standardization helped to remove misunderstandings with students in regard to terminology. Tr. 569-570.

Mr. Bucher has participated in the Title IV program administration of Sojourner-Douglass College for the '88-89, '89- 90 and '90-91 award years. Based on his personal knowledge, Sojourner-Douglass College is now and has been for those award years adequately administering the Title IV programs that the College is currently participating in. Tr. 418-419.

Sojourner has responded to OSFA's requests to obtain and reconstruct records at a considerable expenditure of staff time. As an example the 1989 Program Reviewer requested that Sojourner reconstruct the 1987-88 and 1988-89 award years for all Title IV recipients and send that reconstruction to him in a format which he provided. Performing this Reconstruction, submitting the financial aid transcripts, and handling the other things that the Reviewer requested occupied 90% of Sojourner's financial aid officials' time each day. The financial aid office, however, still performed the necessary day-to-day activities with the assistance of two CWS students and as a result of the new procedures and forms originated by the financial aid director and Sojourner's financial aid consultant. Tr. 577-578. This required that Ms. Trusty contact other offices and ask them for documents that would help her to reconstruct each financial aid recipient's aid folder. This consisted of satisfactory progress reports, accounts receivable forms from the Business Office, an academic transcript from the Registrar's Office, and everything that the Financial Aid Office would normally look at or check on before providing aid to an eligible student. He asked that Sojourner-Douglass College copy this information and send it to him. During this reconstruction, Ms. Trusty would not only have to gather these documents, she would have to review each document and what was in the student's folder to make a comparison and match. She also took notes on each folder. Tr. 577-578.

In response to the 1989 Review, the Business Office was charged with the responsibility of pulling together previous bank statements and performing a reconciliation, as well as reconciling other Financial Aid and Business Office records and reconstructing previous years' information. In addition, the format that OSFA directed that sojourner use in performing and submitting the reconciliation and reconstruction caused the process to be delayed. Tr. 489-490. The Business

Office complied in good faith with every request made by the Program Reviewers for additional information as a result of the 1987 and 1989 Reviews. Tr. 489-490.

Summary

It is apparent then that Sojourner has at all times acted in good faith. It has always responded to OSFA's requests to obtain and reconstruct records. Although in the past substantial deficiencies existed and although as to past years records deficiencies still remained as of the time of the hearing, Sojourner has made substantial efforts to improve the accounting records with a new system and expert assistance. It has also made substantial efforts to improve the operation of its student financial aid administration by the hiring in 1989 of a Director of Financial Aid who had certain prior experience, but who also has had assistance and training from an experienced consultant who is under contract to Sojourner. This consultant, amongst other things, oversees the operation of Sojourners GSL programs under the reimbursement system and has been approved by OSFA to sign off on reimbursement documents. It is apparent that Sojourner has invested thousands of dollars and thousands of hours to carry out these responsibilities and to improve its systems.

In view of the fact that termination of an institution's eligibility for student financial aid programs is an extremely serious measure [7](#) and in view of all the circumstances reviewed above it would appear that a procedure imposing one or more limitations as well as a fine upon the institution is in order rather than terminating its eligibility to participate in Title IV, HEA Program. § 668.90(a)(2). [8](#)

When such a unique institution, that has always acted in good faith, tries as hard as Sojourner has to remedy past deficiencies, it should be given an opportunity to prove itself. The limitations of a probationary status as described below should give it that opportunity.

In this regard the public interest in safeguarding public funds should be protected by the continuance of the reimbursement system which has been required by OSFA since 1989. By this system, including the activity of Mr. Bucher, the consultant who OSFA has approved to sign off on reimbursement documents, past deficiencies relating to the drawing of excess cash, Pell grant disbursements, incomplete verification, improper certifications, need analysis and documentation should be eliminated.

The use of the new record keeping and financial aid systems, under the guidance of expert consultants should resolve the other major past deficiencies. In this regard the fact that the Secretary of Education on March 29, 1990 commended Sojourner for reducing its 1988 GSL cohort default rate to 34.2% [9](#) is evidence of improvement.

However, the results of properly executed audits is the only way of determining whether the severe deficiencies of the past as described by the auditors in Ex. SJ-11 and Ex. SJ-12 will be remedied.

Therefore, the limitation of a probationary status during the time necessary to reach a conclusion as to the results of audits is necessary. In view of the fact that a non-Federal biennial audit will

be due on March 31, 1993, and in view of the need of time for study of the submittal, it is considered that a two year period is appropriate. During the interim all overdue audits, if not already filed, must be filed in acceptable status as required by law and all past deficiencies must be remedied in accordance with the statutes and regulations. If it appears to OSFA officials that reasonable progress is not being made towards these ends a petition may be filed to reopen this determination. In addition a petition may also be filed if it appears that any additional limitations are necessary in order to accomplish the above mentioned requirements.

2. Penalty Issue.

Under 34 C.F.R. § 668.92 the decision maker is required to take into account the gravity of the institution's violations or failure to carry out the relevant statute, regulation or agreement, or the gravity of any misrepresentation and also the size of the institution.

Although numerous violations of law in many different categories were alleged in the termination and fine notice, OSFA requested fines in only five categories of violations. Therefore, the consideration of penalties will relate only to those five categories.

Size

The first factor we will consider is size. The latest figures as to financial aid processed for Sojourner students relates to the 1987-88 award year. Pell grant awards were \$681,400, SEOG awards were \$72,500, CWS payments were \$55,500, and GSL disbursements were \$1,104,000. The total number of students earlier this year was about 300-310. During the academic year 1988-89, 47 bachelors degrees were awarded. The college is located in one building leased from the City of Baltimore. This therefore should be categorized as a small college.

Gravity

The nature of the violations relating to failure to submit biennial financial and compliance audits is very serious.

Under normal circumstances OSFA disburses Pell Grant and Campus-Based program funds to institutions on the basis of their requests. It does not require those institutions to account for those funds prior to disbursement. Therefore, when OSFA disburses such funds, it does not know whether the funds are going to eligible students, whether students are receiving the correct award amounts, or whether the institutions are making required refunds to students or to the programs. Also, under the GSL Program, neither OSFA nor lenders know when lenders disburse loan checks to institutions on behalf of student-borrowers, whether the loan checks are being processed correctly, whether students are still eligible to receive those loans checks, or whether the institutions are making required refunds to lenders.

An institution participating in the Title IV, HEA Program accounts to OSFA for the Title IV, HEA Program funds it receives, and accounts to OSFA for its administration of the Title IV, HEA Programs, by submitting to OSFA a financial and compliance audit, conducted by an independent auditor, of its administration of those programs.

Sojourner was required to submit a financial and compliance audit of its administration of the Title IV, HEA Programs for award years 1982 thru 84 by March 31, 1985. For award years 1984 thru 1986 the audit was due by March 31, 1987. On January 14, 1991, Sojourner did submit an audit for both of those two-year periods. However, one of them was between 5 and 6 years late, while the other was between 3 and 4 years late. These audits have been returned so that the auditors can make needed versions. As to the audit due on March 31, 1989. This had not been submitted by the time of the hearing on February 20-22, 1991. Since audits were submitted for the two oldest periods and since no audit had been issued for the latest period, it is considered that each is a very serious violation of approximately the same magnitude.

OSFA has requested a fine for each award year even though the regulations call for one biennial audit for a period of two award years. It is considered that there should be a fine as to each of the three biennial audits. In view of the small size of the college it is considered that \$5,000 is appropriate for each of the three violations.

The second general category of violation relates to a failure to resolve 1987 program review deficiencies. There were seven findings left from that 1987 program review. However OSFA proved only two of the seven and one of those proved related to mismanagement of the Perkins loan program which is also a separate general category for which OSFA is asking a separate fine. The one item remaining related to an erroneous award that was later paid back by Sojourner. Therefore in view of the small size of the college it is considered that a \$500.00 fine is appropriate.

The third category of violation concerns the drawing of excess federal cash. This is a very serious violation. Cash advances under the circumstances here shall be limited to the minimum amounts needed and shall be timed to be in accord with the actual, immediate cash requirements of the recipient organization. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursement by the recipient.

Sojourner has acted in good faith in its dealings with ED and in its use of federal funds. However, as to the period of July, 1987 to October, 1987 and during the period of August 1988 to October 31, 1988, a considerable amount of Federal funds were drawn down and remained in Sojourners DFAFS Account for a considerable period beyond immediate need.

This a very serious violation, however, it should be pointed out that there has been no determination that Sojourner is indebted to the United States government for any amount of money arising out of either the 1987 or 1989 program reviews. Because of Sojourner's size, a fine of \$3000.00 is considered appropriate.

The fourth category of violation to mismanagement of the Perkins Loan Program. This has been a very serious violation in the past. The default rate of 75% in 1987 had not materially improved at the time of the hearing in this case. However, the last loans of this type were awarded during the 1983-84 award year. Therefore, although this is not a matter which can become a greater problem the fact is that Sojourner should have been more diligent in carrying out the prescribed procedures during a considerable number of years. Because of the size of Sojourner, it is considered that an appropriate fine is \$2000.00.

The fifth category of violation relates to an alleged mismanagement of the Stafford Loan Program. However, it is not considered that a violation meriting a fine has been carried out by Sojourner in view of the fact that the Deputy Assistant Secretary for Student Financial Assistance commended Sojourner on March 29, 1990 for reducing its 1988 cohort default rate to 34.2%. It is also significant that this was again reduced in 1989 to 30.4%.

VII. CONCLUSIONS OF LAW

A. Sojourner-Douglass College is an otherwise eligible postsecondary educational institution authorized to participate in student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended.

B. Except as specifically stated, Sojourner has violated the regulations implementing Title IV of the Higher Education Act as set forth below:

1. Non-Federal Audits.

Sojourner failed to submit financial and compliance audits to OSFA of its administration of the NDSL, CWS, SEOG, GSL, and Pell Grant Programs for the 1982-84 and 1984-86 award years, (which were due by March 31, 1985, and March 31, 1987, respectively), until January 14, 1991, and also failed to submit such an audit of its administration of the Perkins, CWS, SEOG, GSL, and the Pell Grant Programs for the 1986-88 award years, (which was due by March 31, 1989). Such failures constitute violations of §§ 668.12, 668.23, 674.19, 675.19, 676.19, 682.612, 683.91, 690.84, and 690.85 and also constitute a breach of its fiduciary duty in violation of § 668.82.

2. 1987 Program Review Findings.

a. Sojourner failed to apply its satisfactory progress policy in violation of § 668.16 (finding #4).

b. Sojourner failed to exercise due diligence in administering the NDSL Program in violation of § 668.17 (finding #10).

c. OSFA failed to prove the following alleged violations of law:

1. That Sojourner failed to obtain financial aid transcripts, in violation of § 668.14 (finding #5) (4 violations alleged).

2. That Sojourner failed to correctly award and disburse Pell Grant funds, in violation of § 690.4 (Finding #6).

3. That Sojourner failed to retain NDSL promissory notes, in violation of §§ 674.19, 674.32 or 674.42 (finding #11).

4. That Sojourner failed to expend funds correctly and fail to report expenditures correctly under the Pell Grant and SEOG Programs, in violation of § § 690.82, 690.83, 690.84 or 676.19 (finding #13).

5. That Sojourner failed to resolve the open findings from the audits of award years 1980-81 and 1981-82, in violation of § 668.13 (finding #14).

3. 1989 Program Review Findings.

a. Sojourner 1.) failed in the past to establish and maintain a system of internal fiscal controls, 2.) failed in the past to maintain on a current basis financial records that reflected all Title IV, HEA program transactions, and 3.) failed in the past to maintain documentation to support Title IV expenditures as claimed on required quarterly reports to ED and on its Pell Grant payment summary for 1987-88 in violation of § § 668.23, 674.19, 675.19, 676.19, 690.81, 690.82 and 690.83 (finding #3).

b. Sojourner drew cash from ED in excess of its immediate needs, thereby having the use of funds to which the College was not entitled at the time in violation of 34 C.F.R. § 690.74 or 31 C.F.R. 205.4 (U.S. Department of Treasury Regulations); (finding #4).

c. Sojourner failed to perform billing, collections, litigation or fiscal recordkeeping for its Perkins Loan portfolio since April, 1987, and also failed to maintain its Perkins Loan fund in an interest-bearing account in violation of § § 674.18, 674.19, and subpart C of 34 C.F.R. Part 674 (finding #5).

d. Sojourner failed to properly perform verification for twelve of the seventeen students selected for verification in the sample of twenty-three student in violation of Subpart E of 34 C.F.R. Part 668 (finding #6) (13 Violation alleged, 12 proved).

e. Sojourner improperly certified Stafford loan applications in violation of § § 682.401 and 682.603 (finding #8) (14 Violations alleged - 8 proved).

f. Sojourner made improper Pell Grant disbursements, by failing to obtain correctly completed Student Aid Reports and by disbursing incorrect amounts to students in violation of § § 668.23, 668.55, 690.75, 690.76, 690.77, 690.80 and 690.83 (finding #10) (15 Violations alleged - 11 proved) .

g. Sojourner underpaid CWS wages to students until April 1989, by improperly counting the students' hours worked, in violation of § 675.19 (finding 12).

h. Sojourner failed to meet the regulatory requirements for administrative capability because of its Perkins Loan Program default rate of 75.23 percent in violation of § 668.15 (finding #14).

i. OSFA failed to prove the following alleged violations of law:

1. That Sojourner failed to apply acceptable satisfactory academic progress standards, resulting in awards to ineligible students in violation of § 668.14 (finding #7).
2. That Sojourner failed to apply proper need analysis criteria to determine the amount of awards for recipients of Stafford Loans and campus-based funding (Perkins Loan, CWS and SEOG) in violation of § § 668.7, 674.9, 674.10, 674.13, 674.19, 675.9, 675.10, 675.19, 676.9, 676.10 or 676.19 (finding #9).
3. That Sojourner failed to calculate or make timely refunds to Stafford Loan Program (formerly known as Guaranteed Student Loan Program) lenders for students who withdrew from the College during award years 1987-88 and 1988-89. That Sojourner failed to maintain the documentation required to show whether refunds were due for ten students who withdrew during that period in violation of § § 668.21, 668.22 or 682.607 (finding #11) (10 violations alleged).
4. That Sojourner failed to obtain financial aid transcripts for nine students in the sample who attended other postsecondary schools in violation of § § 668.14, 668.19 or 690.65 (finding #13) (9 violations alleged).

4. Fiduciary Duties.

Sojourner breached its fiduciary duties in violation of § 668.82 as relates to the violations of regulations set forth above.

C. The action of the U.S. Department of Education seeking to terminate is modified in that rather than terminate Sojourner's eligibility to participate in Title IV, HEA Programs, limitations as set forth in the order herein will be imposed. D.A fine of \$20,500.00 against Sojourner for violations found herein is appropriate.

VIII. Determinations as to the Proposed Findings of Fact and Conclusions of Law.

OSFA and Sojourner filed their proposed findings of fact in conjunction with their posthearing briefs. Such proposed findings and briefs, insofar as they can be considered to have contained proposed findings and conclusions, have been considered fully, and except to the extent that such findings and conclusions have been expressly or impliedly affirmed in this decision, they are rejected on the grounds that they are, in whole or in part, contrary to the facts and law or because they are immaterial to the decision in this case.

IX. ORDER.

On the bases of the foregoing findings of fact and conclusions of law, and all the proceedings had herein, it is hereby:

ORDERED, That the eligibility of Sojourner-Douglass College to continue participation in student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended, not be terminated but that a probationary period of two years be established as a limiting action requiring the continuation of the reimbursement system of payment which was

made effective July 14, 1989. In further limitation and as a part of the provisions of probation is a requirement that all overdue non-Federal biennial audits, if not already filed, must be filed in acceptable status as required by law and that all other past deficiencies, including those enumerated in the findings in this proceeding, must be remedied in accordance with the statutes and regulations.

If it appears to OSFA officials that reasonable progress is not being made towards these ends a petition may be filed to reopen this determination. In addition a petition may also be filed if it appears that any additional limitations are necessary in order to accomplish the above mentioned requirements.

IT IS FURTHER ORDERED, That Sojourner-Douglass College immediately and in the manner provided by law pay to the United States Department of Education a fine in the sum of \$20,500.00.

John F. Cook
Administrative Law Judge

Issued: December 31, 1993
Washington, D.C.

SERVICE LIST

A copy of this decision was sent by certified mail to the following:

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1 All citations to Section numbers are to Title 34 of the Code of Federal Regulations unless otherwise indicated.

2 20 U.S.C. § 1094 (c) (2) (B) states as follows:

(B) (i) Upon determination, after reasonable notice and opportunity for a hearing on the record, that an eligible institution-

(I) has violated or failed to carry out any provision of this subchapter and part C of subchapter 34 of Title 42 or any regulation prescribed under this subchapter and part C of subchapter I of chapter 34 of Title 42; or

(II) has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, and the employability of its graduates, the Secretary may impose a civil penalty upon such institution of not to exceed \$25,000 for each violation of misrepresentation.

(ii) Any civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the institution of higher education subject to the determination, and the gravity of the violation, failure, or misrepresentation shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the institution charged.

3 20 U.S.C. § 1094(c)(1)(D) states as follows:

(D) the limitation, suspension, or termination of the eligibility for any program under this subchapter and part C of sub-chapter I of chapter 34 of Title 42 of any otherwise eligible institution, or the imposition of a civil penalty under paragraph (2) (B) whenever the Secretary has determined, after reasonable notice and opportunity for hearing on the record, that such institution has violated or failed to carry out any provision of this subchapter and part C of subchapter I of chapter 34 of Title 42, any regulation prescribed under this subchapter and part C of subchapter I of Chapter 34 of Title 42, or any applicable special arrangement, agreement, or limitation, except that no period of suspension under this section shall exceed 60 days unless the institution and the Secretary agree to an extension or unless limitation or termination proceedings are initiated by the Secretary within that period of time.

4 In view of the fact that the violations alleged in this case range over a period of 4-5 years, which involve numerous changes in regulations, all references to regulations relate to the status of the regulations at the time of the alleged violations.

5 § § 668.23, 674.19, 675.19, 676.19, 690.81, 690.82 and 690.83.

6 There was a period in July of 1989 wherein \$250,000 was drawn from Federal funds and thereafter large portions of those funds remained in the DFAFS Account for up to approximately 90 days, however, at that time Sojourner had been placed on a cash reimbursement status and instead of returning the funds, Sojourner, as instructed by Mr. Kolotos, held the funds in its federal account and drew it down in increments. Tr. 302, 311, 332, 483-485, Ex. G- 32-24 and Ex. G-32-1.

7 The termination of an otherwise eligible institution's eligibility for student financial aid programs is an extremely serious measure. As a general matter, this procedure will be undertaken only when (1) an institution has consistently violated the statute and regulations governing the aid programs and the standards of financial responsibility and administrative capability, and (2) attempts to remedy this situation have failed.

42 Fed. Reg. 64567 (1977).

8 It is significant to note again the prior reference to part of the preamble to the regulation which was the predecessor to ? 668.82 to the effect that an institution may use its current ability to properly administer the programs and account for the funds as a factor justifying the imposition of a lesser penalty. 48 Fed. Reg. 45670, 45673 (October 3, 1983. Ex. G-41) . It is also significant to note that although OSFA alleged at least 83 specific violations of law in this case, it failed to prove 41 of these alleged violations.

9 The FY 1989 cohort default rate on Stafford Loan and SLS Programs was reduced further to 30.4%. Judicial or official notice is taken of an official communication of June 1991, from the United States Department of Education (William L. Moran, Director, Student Financial Assistance Programs) to Sojourner as to this subject. A request was made on November 14, 1991 by Sojourner's attorney that such notice be taken, copy to OSFA's attorney. OSFA's attorney did not object.