

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

IN THE MATTER OF

Harris School of Business,

Cherry Hill, New Jersey Respondent.

Docket No. 91-109-SP

Student Financial Assistance

Proceeding

INITIAL DECISION

This is an appeal proceeding under Subpart H of the student financial assistance program (SFAP) [1](#) at 34 CFR 668.111 *et seq.*, authorized by Title IV of the Higher Education Act of 1965 (HEA). On November 29, 1991, Harris School of Business (Harris or the school or institution) an educational institution and a proprietary school teaching word processing, computerized accounting and paralegal procedures at its facility in Cherry Hill, NJ, filed an appeal following a Final Program Review Determination (FPRD) issued on October 15, 1991. The FPRD followed a Program Review Report (PRR) which was previously issued December 14, 1989, by the Department of Education's (ED) Division of Audit and Program Review (DA&PR). Thirty-four (34) sample students files were used for the PRR for award years 1987-88, 1988-89, 1989-90. (Appendix B). In the PRR, findings of non-compliance with statutes and regulations the PRR, findings of non-compliance with statutes and regulations were made in fifteen specific areas [2](#) during the 1987-88, 1988-89 and 1989-90 school years.

Harris experienced its first DA&PR review in October 1989, the event which precipitated this proceeding. Harris states that it has taken appropriate actions to achieve compliance as specified in the FPRD and to fully understand Title IV regulations. Harris acknowledges that it apparently had insufficient administrative control over its staff during the years covered by the program review, but contends that this is no longer true. Harris alleges that it did not intentionally take advantage of those programs or benefit from any of the mistakes or oversights which occurred.

At issue in this initial decision are circumstances surrounding 23 students for which the FPRD found Harris out of compliance with the institution's published 85% attendance requirement at program mid-point. Harris submitted its appeal to contest Finding #2 - Students' Satisfactory Academic Progress (SAP); and Finding #5 - Incomplete or Missing Verification which are both included in the October 18, 1991, FPRD letter issued by ED's New York Regional Office. By an order issued December 30, 1991, Harris and the Office of Student Financial Assistance (OSFA) were directed to present their respective statements of the case in written briefs accompanied by supporting evidence. OSFA filed its opening brief on January 28, 1992; Alan S. Harris, the Director, presented the institution's brief pro se on February 28, 1992; and OSFA filed a reply

brief on March 23, 1992. By an order issued July 13, 1992, this proceeding was reassigned to this Administrative Law Judge (ALJ) for an initial decision pursuant to 34 CFR 668.118.

BACKGROUND

Alan S. Harris, together with his sister, Barbara Harris Miles, who is the school's Director of Education, and their mother, Ethel S. Harris, who founded the institution in 1965, operate the institution. The institution is located in the community where the owner and her family have resided most of their lives. The institution operated for approximately ten years before seeking accreditation in 1976 in order to participate in the Title IV SFAP. This institution is an outgrowth of an employment service which Ethel S. Harris established in 1959 after being widowed with three children. Harris received accreditation in 1978 from the Association of Independent Colleges and Institutions (AICS) now the Accrediting Commission of Independent Colleges and Institutions of the Career Colleges Association.

BURDEN OF PROOF

Although the scheduling order dated December 10, 1991, appears to incorrectly place the burden of proof on OSFA by ordering it to submit the initial brief and materials, in actuality an institution such as Harris requesting review of a FPRD has the burden of proving that expenditures questioned or disallowed were proper and that the institution complied with program requirements. 34 CFR 668.116(d). OSFA chose to comply with the schedule and make its objection for the record to avoid any further delay in this matter and seeks affirmation from the administrative law judge (ALJ) that Harris will be fully held to its established burden.

DESCRIPTION OF TITLE IV, HIGHER EDUCATION ACT (HEA) PROGRAMS

The Title IV, HEA Programs involved in this proceeding include the Pell Grant, Stafford Loan, [3](#) and Supplemental Loans for Students (SLS) Programs.

A. Pell Grant Program

The Pell Grant Program was authorized under section 411 of the HEA, 20 U.S.C. § 1070a, and the Pell regulations are codified in 34 CFR Part 690. The Pell Grant Program is also subject to the general provisions relating to the student assistance programs contained in Part F of Title IV of the HEA; the Student Assistance General Provisions regulations, 34 CFR Part 668; and the Institutional Eligibility regulations, 34 CFR Part 600, effective on May 21, 1988.

Under Pell, eligible students receive grant awards to help them pay the costs of their postsecondary education. 34 CFR 690.1. A participating institution is responsible for determining whether students are eligible to receive Pell grants, and the amount of those grants. 34 CFR 690.75. The institution also disburses the Pell grants to its students. 34 CFR 690.76 and 690.78.

The amount of each Pell grant award is determined by strict statutory and regulatory formulae. 20 U.S.C. § 1070a(a) (1986); and sections 2 through 6 of Public Law 97-301, 20 U.S.C. § 1070a,

note; 1078, note; and 1089, note (1986), 20 U.S.C. § 1070a (1987- 90). Therefore, students with the same expected family contributions and the same costs of attendance receive the same "Scheduled Pell Grant" awards, regardless of the type of institutions in which they enroll, and regardless of the type of programs in which they enroll. [4](#)

A student enrolled in a program of less than one academic year receives a percentage of his Scheduled Pell Grant award. The actual awards are calculated on a payment period basis.

B. Stafford Loan and SLS Programs

The Stafford Loan and SLS Programs (formerly called the ALAS Program) are authorized under Title IV-B of the HEA. The program regulations are codified in 34 CFR Part 682. These programs are also subject to the general provisions relating to the student assistance programs contained in 20 U.S.C. § 1088 et seq.; the provisions of the Student Assistance General Provisions regulations, 34 CFR Part 668; and the Institutional Eligibility regulations, 34 CFR Part 600.

Under the Stafford and SLS programs, an eligible student applies to a private lender for a loan. The student completes a portion of the loan application and the institution completes a portion of the loan application. The institution also certifies the accuracy of the information included on the application. 34 CFR 682.102.

If the lender decides to make a loan, a guarantee agency guarantees the lender against default on the part of the borrower. If the guarantee agency satisfies certain Federal requirements, ED reimburses the guarantee agency for all or part of the default claims it pays. 34 CFR 682.400. ED pays the interest that is due on a Stafford Loan to the lender until the loan reaches the repayment stage. 34 CFR 682.300. ED also pays a special allowance to the lender on both Stafford Loans and SLS loans until the loan is repaid or goes into default. 34 CFR 682.302. Interest rates may be higher on an SLS loan than on a Stafford Loan but the borrower may borrow more under the SLS Program than under the Stafford Loan Program.

If a lender makes a loan to a student, the lender sends the check to the institution the student is attending or scheduled to attend. After determining that the student is eligible for the loan proceeds, the institution pays the loan proceeds to the student directly by check or by crediting the student's institutional account. 34 CFR 682.604.

HARRIS' POSITION AND RELIEF SOUGHT [5](#)

On November 29, 1991, Harris submitted its appeal, and on December 2, 1991, it submitted an amended appeal with an attached addendum. Harris comments that when the institution experienced its first review, it anticipated the program review positively in the belief that it would be a beneficial learning experience, but that it discovered that in the "current anti-proprietary institution climate" the result ended up being more punitive than instructive. Harris further states that its provincial, student- centered outlook was shattered when it discovered that the foundation of its business--all it had worked for in the many years of its institutional existence--meant little in the context of ED's review. Harris avers that "the fact that we judged

ourselves by our known reputation for integrity, caring, and success in training and placing students was an anachronism. The quality of our paperwork and clerical procedures meant more. The shock was so devastating that we almost lost our will to continue; but continue we did, because the institution represents the life's work and investment of all of our family's resources." Harris points out that it has a good reputation in its community and that it focused on students and their quality of education. Harris attached to its appeal letters of reference and support from Camden and Gloucester Counties Employment and Training Centers (ETC). As of July 19, 1990, Camden ETC listed statistics for the last three (3) years for its students trained at Harris as follows:

Fiscal Year 1990 (July 1, 1989 to June 30, 1990)

Entered Training	50
Dropped	07
Entered Employment	25
Currently Enrolled	18

Fiscal Year 1989 (July 1, 1988 to June 30, 1989)

Entered Training	12
Entered Employment	09
Continued into Fiscal Year 1990	03

Fiscal Year 1988 (July 1, 1987 to June 30, 1988)

Entered Training	04
Entered Employment	04

As of July 19, 1990, Gloucester listed training and placement statistics for the last four (4) years as follows:

FY 1990

Entered Training	14
Dropped	01
No Placement to Date	

FY 1989

Entered Training	10
Dropped	01
No Placement	08

FY 1988

Entered Training	12
Dropped	02
No Placement	09

FY 1987

Entered Training	16
Dropped	01
No Placement	09

Harris states that as a result of the program review, it was finally able to integrate the full picture of its institution's interrelated but separate responsibilities to ED; to the New Jersey Department of Education; to AICS; to the county employment and training programs; to its students; and to the community-at-large. Harris submits that it learned the hard way a great deal which helped it to improve its internal procedures. Harris resolved to stamp out the types of misunderstandings, clerical errors and oversights which have led to the results of the program review which now, purportedly, severely threatens the institution financially.

Discussion of Findings Nos. 1 and 2

Finding No. 1. Harris contends that all late refunds under Findings #1 [6](#) for the years covered by the PRR have been refunded to the lenders and the Pell Program. Appendix C-1 to C-3.

Finding No. 2. As noted in the Harris brief, the FPRD cited Harris for failing to comply with its written policy for SAP regarding attendance. In 1987/88 and 1988/89, Harris published an incentive-based standard of 85% required attendance. Harris noted on page 2 of its appeal that all of the (23) students listed in Finding No. 2 received second disbursements of financial aid funds even though their attendance was out of compliance with the school's published SAP policy at the program mid-point and thereafter. Harris further elaborated that certain mitigating circumstances form the basis of the institution's appeal. Some of the students listed in Finding No. 2 were maintaining a satisfactory grade point average (GPA), and their attendance was 80%

or better at the program mid-point. The significance of that fact is explored below. The institution's catalogs during the 1987/88 and 1988/89 years stated the following concerning SAP:

Students are required to maintain a 2.0 cumulative grade point average and satisfactory attendance (at least 85 percent) in their program."

Harris also quotes the New Jersey State Department of Education regulation in 6:46-4.12(e) which reads:

The maximum number of unexcused absences shall not exceed 20 percent of the total clock hours of the course or program.

Harris points out that the seven (7) students that it is appealing met or exceeded the States 80% attendance requirement with GPA at 2.8 or higher. (Harris brief at 11 and 12). The students are: (deleted text)(83%, 4.0) ; (deleted text)(81%, 3.8); (deleted text)(84%, 3.0); (deleted text)(81.6%, 3.0); (deleted text)(83.4%, 3.3); (80%, 4.0); and(deleted text) (83.2%, 4.0).

Relief Sought for Findings Nos. 1 and 2

Harris asserts that the repayment of "excessive interest and special allowance" (ISA) in any amount would cause a severe hardship to the institution and asks that ED's rules be relaxed in the interest of justice. Harris makes the statement that it is not a wealthy school, and that it is asking ED to reconsider positive factors in assessing the extent of liabilities due for past errors Harris made because of ignorance. It requests that ED waive the liabilities due to mitigating circumstances. Harris also notes that in the alternative, if there should be a requirement for them to repay the any Pell and ISA refunds that a plan be structured that would be both fair and manageable to both ED and the institution. (Harris letter dated 11/29/91 and appeal at 9).

Harris notes that the regulations provide at 34 CFR 668.15 that the Secretary considers it an indication of an institution's impaired capability of properly administering Title IV HEA programs if, among other things, the fiscal year default rate on loans made under the GSL and SLS programs to students for attendance at that institution exceeds 20 percent. In this regard Harris points out that in 1989 the school's cohort default rate was only 6.8 percent. Harris contends that this factor helps define the overall quality and intentions of the school, and with other factors should be weighed in determining the outcome of this proceeding.

Harris requests that its amended appeal be accepted, and in the amended appeal, requests that no liability be found for any of the 23 students who are the subjects of this appeal as cited in section 2 of the FPRD. Harris believes that this is a case where, in the interests of justice, the ALJ should find that the institution made a good faith effort to establish and apply reasonable attendance standards, although those standards differed from the published incentive.

In the alternative, Harris requests that consideration be given to the eleven students [7](#) in its original appeal for whom Harris requested that no liability be found, those students whose attendance clearly was at least 80%, in satisfaction of the New Jersey requirement that students are allowed no more than 20 percent unexcused absences in their total program. This number

includes the seven (7) students whose midpoint attendance was meeting the 80% requirement with no mitigating factors, as well as four (4) [8](#) others whose combined attendance and excused absences would have met the 80% requirement were it not for mitigating circumstances. (Harris appeal).

Harris list four (4) other students in connection with whom it is not appealing for mitigation of liabilities for these reasons:

1.) (deleted text) was also cited under Finding No. 5, which would make mitigation of her Finding No. 2 liability irrelevant according to the appeal; 2.) The placement outcomes for (deleted text) and (deleted text) were less definitive than the positive outcomes for the previous group; and 3.) Its information indicates that (deleted text), (deleted text) and (deleted text) are currently in delinquent status for repayment of their loans. (Harris appeal at 7).

Harris explains that it is providing the following information with the goal of giving ED a clearer picture of the extent of wrongdoing by the institution in not consistently enforcing its SAP policy, in the hope that ED will see that the institution was attempting to provide adequate training under difficult circumstances. [9](#)

Discussion of Finding No. 5

During the period covered by the program review, the institution had hired individuals who were "ostensibly" qualified to oversee the Financial Aid office, in addition to retaining the services of a financial aid servicer (FAME). During the program review, it became apparent that there were deficiencies in the way that these employees performed their work. Harris does not contest that verification documentation was incomplete for six (6) students. (Harris brief at 16 and appeal at 8).

Relief Sought for Finding No. 5

Harris requests that the following be considered mitigating circumstances due to their probative value:

- 1) In Harris' original appeal it states that it does not contest that the verification was incomplete for these six (6) students [10](#) but asks that ED consider "mitigating liabilities" for all students in Finding No. 5 who are not duplicated as SAP problems under Finding No. 2. (Harris appeal at 8).
- 2) In its amended appeal Harris seeks to extend its appeal under Finding No. 5 to include all ten (10) students listed in the addendum who were cited for incomplete verification instead of the six (6) listed on page 8 of the original appeal.
- 3) Harris requests that "mitigating circumstances" be considered with respect to certain items of verification that the auditors found incomplete. Harris requests that the extenuating circumstances pertaining to the verification violation be considered, and that ED's rules be relaxed in the interest of justice.

4) In Harris' amended appeal it pleads for the maximum amount of leniency in considering its total liabilities set forth in the program review because, it avers, any liability imposed, in any amount, will present a financial hardship for the school. Harris acknowledges that a liability in some amount is certain to be assessed, but it asks that the following be considered in the evaluation of the extent of the institution's liabilities:

a.) There should be taken into consideration the positive qualities of the institution, and in particular and most importantly, that the school and its officials have learned what is required of them to continue as a Title IV-eligible institution into the 90's.

b.) If the Department accepts the premises of Harris' amended appeal of Finding No. 5, ineligible second disbursements for these four students [11](#) would need to be inserted next to their names on Finding No. 2 lists.

PROGRAM REVIEW REPORT (PRR)

POSITION AND RELIEF SOUGHT [12](#)

On October 17-20, 1989, two auditors visited Harris institution for the purpose of performing a program review of the administration of the following programs: Pell Grant and GSLP. A sample of 34 student files from the award years 1987-88, 1988-89 and 1989-90 was used in this review. (Appendix B). The PRR was issued on December 14, 1989.

Discussion - Finding No. 1. Refunds to GSLP lenders and Pell Grant Programs Late or Not Made. As relates to Finding No. 1, OSFA notes in the PRR on page 3 under "Requirement," that institutions were required to refund unused loan funds to lenders within 40 days prior to February 26, 1986, thereafter, until July 20, 1989, within 30 days of the date the institution determined that the student had withdrawn; and from that date to the present, 60 days.

Relief Sought for Finding No. 1

Harris was instructed to issue a report to OSFA by conducting a review of students records from July 1, 1984 to the present to determine the extent of late or unmade refunds incorporating ISA due, as well as repayment of any outstanding liabilities. (Appendix C). Harris states on page 4 of its brief that all late refunds for the years covered by the PRR have been refunded to the lenders and under the Pell program. (See also Footnote No. 6 [ante](#).)

Discussion - Finding No. 2. Standards Inadequately Applied to SAP. The PRR revealed that Harris' written policy of SAP for the continued eligibility of Title IV aid was not applied to seven (7) of the 34 sample student, Nos. 1, 10, 17, 21, 23, 27 and 28. [13](#) (Appendix B).

According to its published policy (emphasis added), Harris segments its programs into quarters at lengths of ten (10) weeks. However, at intervals of five (5) weeks, students must maintain a 2.0 cumulative GPA and absences cannot exceed 15 percent. If these requirements are not met for the first five-week period, students are allowed to continue their courses for the next five weeks but must attain Harris' academic and attendance requirements by the end of this second

five-week period (which completes the quarter) . If Harris' requirements are not met by the end of the second five week period, the student is not eligible for continued Title IV aid.

In the PRR, Student 1 was used an example who enrolled to begin classes on April 25, 1988, in the 750-hour Word Processing Secretary program which has a weekly schedule of 25 hours per week. At completion of the first five-week period, the student had 55 present hours and 70 absent hours. By completion of the second five-week period, the student had 85 present hours and 30 absent hours with a grade point average of 2.0. These two five week periods concluded the students first quarter. The student had no make-up hours during the first and second five-week periods. Therefore, the student exceeded even the 15 percent allowable absences for the two five-week periods. However, on July 13, 1988, Harris credited the student's account with the second loan disbursement of \$1,207.04 although by this date the student had a total of 165 present hours and 100 absent hours, which did not meet the attendance requirement for continued eligibility. Additionally, the student's account was credited with a second Pell disbursement of \$917 on September 8, 1988; an improper payment since the student did not meet the required standards. 34 CFR 668.14 and 34 CFR 668.16.

Relief Sought for Finding No. 2

At a point in time before the FPRD was performed, the PRR auditors requested the institution to determine, as part of the review, whether any student should not have been paid because of failure to demonstrate continued eligibility and required the institution to prepare a list in a prescribed format which demonstrates: award year; students name; social security number; and amount of ineligible payment, by program, with an added requirement that the amount reported for Guaranteed Student Loan (GSL) should be the amount certified, not disbursed. Second disbursements were to be considered half of the certified amount. The PRR auditors instructed Harris that the result must be certified as to its accuracy and completeness by a Certified Public Accountant, whose statement must accompany the response. Upon receipt, the auditors were to have provided instructions on repayment of the liabilities identified.

Discussion - Finding No. 5. Incomplete or Missing Verification. According to the PRR, the institution has not adhered to verification procedures as set forth in the federal regulations. Student #21's file record contained an 88/89 SAP which was flagged for verification, but no verification process was completed. Although student #22's file record did contain the completed verification worksheet, the student's file record does not contain the required 1987 tax return. The PRR used the 1987/88 and 1988/89 Verification Guide as a reference. The requirement under Title IV programs is that Title IV aid disbursements without complete or proper verification are institutional liabilities to the Federal Aid programs.

Relief Sought for Finding No. 5

In addition to completing verification for students #21 and 22, Harris was instructed to review the files of all Title IV aid recipients selected for verification during the 88/89 award year to ascertain the full extent of incomplete/missing verification. The institution was also directed to resolve all verification deficiencies, including the ones noted above, within a 30-day period. In cases where verification results in a change to a student's index, scheduled award and expected

disbursement, the institution is liable for the difference between the correct and actual disbursement. Also, for each case where the verification process has not been completed as required, the institution is liable for the actual disbursement. 34 CFR 668.56. 34 CFR 668.57. 34 CFR 668.58.

FINAL PROGRAM REVIEW DETERMINATION (FPRD)

The FPRD dated October 15, 1991, which precipitated this appeal followed the PRR issued December 14, 1989, as discussed above. The FPRD revealed that "The institution has taken corrective action to resolve findings Nos. 3, 4 and 6-15. Therefore, these findings may be considered closed." Accordingly, no further consideration will be given in this decision to those findings with regard to which the FPRD determined that Harris has taken appropriate corrective action and which, in the FPRD, are considered to be closed.

Discussion - Final Program Determination for Finding No. 1

Harris was required to make a review of students who received second and subsequent Title IV disbursements during the 1987/88, 1988/89 and 1989/90 awards years to determine the extent of ineligible students who continued to receive Title IV aid although the requirements were not met. However, under Finding #1, even though Harris made an effort to inform the reviewers that the date of determination for withdrawn or terminated students was within 30 days after the last date of attendance, or 30 days from the date of expected return for a student on leave of absence and refunded \$54,811 (rounded) to the GSL lenders and \$6,925.77 to the institution's Pell Grant account, the record shows that Harris did not always make timely refunds of unearned tuition to the lenders and/or Title IV programs within the time periods prescribed by regulations after it determined that a student was no longer in attendance. [14](#) 34 CFR 668.21 and 668.22. 34 CFR 682.607.

Relief Sought for Finding No. 1

ED seeks that Harris be fined an amount in accordance with the severity of the deficiency. The amount should be determined upon review of the report of the students who withdrew or were terminated by the institution from July 1, 1984 to the present to determine the extent of late or unmade refunds. Since ED pays excessive ISA on late refunds for Stafford Loans, ED seeks reimbursement in the amount of \$3,740. (Appendix C).

Discussion - Final Program Determination for Finding No. 2

OSFA asserts that the institution's policy of SAP for the continued eligibility of Title IV aid was not applied to seven students selected in the sample. (Appendices B and D) .

Relief Sought for Finding No. 2

OSFA requests that Harris be required to repay \$13,462 ([15](#)) to ED for ineligible Pell grant awards, and that the institution pay the current holders of the loans the balances for all students identified in the FPRD, a total of \$19,801. [16](#) The institution would then be free to attempt to

collect on the loans, as per the terms of the original promissory notes, directly from the borrowers. Since ED pays excessive ISA on the ineligible portion of GSLP loans made to students, the institution must reimburse ED for this amount. [17](#) A total of \$7,997 (rounded)[18](#) was due if payments were made by November 29, 1991. The formula now used to calculate ISA is as follows: Stafford refund (GSLP) amount x .0098 x No. of Months Outstanding (a partial month counts as one full month) .

Discussion - Final Program Determination for Finding No. 5.

OSFA asserts that the institution did not adequately verify two students in the 1988/89 sample who were selected for verification, and therefore, was required to review the files of all Title IV aid recipients selected for verification during the 1988/89 award year. CFR 668.56 and 668.57.

Relief Sought for Finding No. 5

ED seeks repayment by Harris of \$9,314 in Pell awards to ED for students who were disbursed Title IV aid without complete or proper verification. The institution must also pay the current holders of the loans the balances for all students identified in Appendix E-1 totaling \$12,932 (rounded) . The institution then would be free to collect on the loans, as per the terms of the original promissory notes, directly from the borrowers.

Discussion - Total Liabilities Sought by ED

According to the FPRD, ED seeks payment by Harris of total liabilities due to holders of GSLP program notes as a result of this review in the amount of \$88,857 (rounded). However, Harris has already repaid \$54,811 of the \$88,857. The remaining amount to be remitted to the holders of GSLP program notes are as follows:

Finding No. 2	\$19,801 GSLP program notes
Finding No. 5	<u>\$12,932</u> GSLP program notes
Total	\$32,733 GSLP program notes

Total liabilities due to ED as a result of this program review are \$47,142. The remaining liabilities to be remitted based on this FPRD are as follows:

Finding No. 1	\$ 3,740 ISA
Finding No. 2	\$13,462 Pell Grant 19
	\$ 8,460 ISA 20
Finding No. 5	\$ 9,314 Pell Grant 21
	<u>\$ 5,703</u> ISA
Total	\$40,216

Finally, the FPRD lists informal fines on pages 4 and 5 of the FPRD in relation to Finding No. 1 wherein the reviewers found numerous instances of late or unmade refunds. Because the institution had previously been cited for similar findings in the institution's audit report dated September 29, 1986, control #02- 71684, OSFA is proposing that Harris be fined \$100 for each of the 60 cases found in the study, or \$6,000. The FPRD noted that the institution is not obligated to pay this proposed fine. However, if the institution chooses not to pay the fine, OSFA can refer this case to the Program Compliance Branch, Division of Audit and Program Review wherein this Branch may initiate a formal administrative action pursuant to Title 34, Part 668, Subpart G, which provides for assessment of a larger fine, limitation, loss of advance funding privileges, suspension or termination of eligibility proceedings. The OSFA further elaborated that repeat findings in future program reviews or failure to resolve satisfactorily the findings of this program review may lead to administrative proceedings to fine, limit, suspend or terminate the institution pursuant to Part 668, Subpart G, of the Student Assistance General Provisions regulations. Harris must insure that confirmation of the resolutions of the program review findings are verified in the institution's next audit report.

GENERAL DISCUSSION AND CONCLUSIONS

The parties offered statements of facts from among which the Judge has selected and adopts certain facts as set out in Appendix G hereto. Other statements of facts offered by Harris, to which OSFA raised objections, are rejected because, for one thing, they pertain to a so-called "de facto" SAP policy said to have been followed by Harris in evaluating students' academic progress in lieu of the school's published SAP policy. Under the governing regulations the standards to be followed by the institution with regard to continued academic eligibility of students for Title IV financial assistance are those standards established and published by the institution in conformance with the regulations, and none other. See 34 CFR 668.7(a)(5) and (c). Other statements of facts offered are rejected as not germane to the issues herein or because they are not adequately supported in the record, and still others are rejected because they constitute argument or discussion rather than facts. A number of statements of facts offered by Harris and by OSFA are not shown in Appendix G because such facts are found and discussed at other points in this decision.

It must be found at the outset, and it is found, that Harris, the institution that requested the review of the FPRD, has the burden of proving under 34 CFR 668.116(d), among other things:

- (1) That expenditures questions or disallowed were proper;
- (2) That the institution complied with program requirements.

Accordingly, in the determinations that follow, the institution will be held to be fully accountable under its established burden of proof.

At the outset, also, the Judge concludes and finds that Harris has not adequately sustained its burden of proof, with regard to Finding No. 1 in that the school did not always and fully make timely refunds of unearned tuition within the time periods prescribed by regulation after it found or should have found that students were no longer in attendance; with regard to Finding No. 2 in

that the school's established and published SAP policy was not shown to be adequately or consistently followed in determinations of the continued eligibility of students for Title IV financial aid; and with regard to Finding No. 5 in that the school did not adequately adhere to the verification requirements set forth in the regulations in verifying information contained in student financial aid applications. These conclusions and findings are based on the record as a whole, and will be discussed hereinafter.

At the outset, finally, cognizance should be taken of the position held and strongly pressed by Harris on brief that undue concern and emphasis is expressed in this proceeding by OSFA regarding "The quality of our [Harris'] paperwork and clerical procedures," so much so, in fact, that what is regarded by the Harris family as the most salient features of the school, namely, its reputation and longevity in the local community, its focus on students and quality of education, and its success in training and placing its student body, said to be composed in large part of "non-traditional students with exigent circumstances," appears to be treated by OSFA as anachronistic. Characterizing themselves on brief as "educators first," concerned primarily with the educational aspects of classroom content, educational programs, student services and placement, the Harris family stresses the high regard with which the school is held, allegedly, by the local, county and state agencies concerned with training and employment, and the "shock" that the Harris family experienced after the October 1989 PRR, the results of which they found to be "more punitive than instructive." On brief, the Harris family also stresses its resolve to eliminate through automation of record-keeping functions the misunderstandings and clerical errors and oversights which, they allege, led to the results of the PRR and which, they allege severely threaten the school financially. They stress their resolve, also, to adhere fully in spirit and practice to the Title IV regulations.

What Harris appears to request at this time, in the interest of justice, is that against the negative factors cited in the FPRD there be weighed certain positive factors and mitigating circumstances which, it alleges, help define the overall quality and good intentions of the institution. The mitigating circumstances that Harris appears to rely on include the fact that Harris had no prior PRRS to provide guidance, that supposedly experienced employees failed to competently administer the school's programs, and that repayment of substantial funds by the school would impose severe hardship. Harris contends that the ends of justice in this case require that there be a relaxation, modification or waiver of the regulatory requirements in recognition of the school's good faith efforts to establish and apply reasonable attendance standards, and, although conceding that its documentation verification was incomplete as to certain students, Harris contends that there should also be considered what Harris terms "the notable achievement represented by the school's 1989 cohort default rate of 6.8 percent." A positive factor to be weighed in the balance, according to Harris, is that the training given to a number of students was of sufficient quality to provide them the means to be employed and to repay their student aid loans. OSFA correctly points out in its reply brief that the Administrative Law Judge is bound by all applicable statutes and regulations, and may not waive such statutes and regulations or rule them invalid. See 34 CFR 668.117(d). This is so here, particularly, where the regulations sought to be waived or modified are substantive regulations governing Title IV eligibility, and where the ends of justice impel the proper administration and accounting of federal funds earmarked for education.

Based on the evidence, Harris' first review, the PRR, was long overdue, not because the institution was less than caring or student-centered but simply because, as it now appears, ED regulations and Harris' published policy were not being followed. The purpose of a program review according to regulation is to steer an institution in the right direction in order for it to continue to participate in any or all of the Title IV programs. Harris' criticism that the quality of its paperwork and clerical procedures were given undue attention lacks merit. The ED regulations set forth standards under 34 CFR 668.14 of administrative capability wherein an institution demonstrates it is capable of adequately administering its program. The allegation that previous employees had apparently misrepresented themselves and were not qualified to administer the school's programs, and that, therefore, the institution eventually took measures to assume control over the administrative aspects does not establish a mitigating circumstance. The regulations at 34 CFR 668.14 provide that in order for an institution to begin and to continue participating in a Title IV, HEA program, that institution shall demonstrate to the Secretary that it is capable of adequately administering that program under the standards established in this section. The institution must communicate to the individual designated to be responsible for administering Title IV, HEA programs, all the information received by an institutional office that bears on a student's eligibility for Title IV, HEA program assistance; must use an adequate number of qualified persons to administer the Title IV program; and must administer Title IV programs with adequate checks and balances in its system of internal controls and divide the functions of authorizing payments and disbursing funds so that no office has responsibility for both functions with respect to any particular student under the programs.

At the time Harris submitted its application to the AICS certain requisite materials were made available to the institution describing standards to which an educational institution is held responsible, as well as procedures such an institution must follow. The accreditation agencies set fairly strict standards as to an institution's mission, and schedule reviews for the institution and its programs. Harris should have made itself aware of the AICS standards and procedures by checking its records or by asking for a report from its subordinates on a periodic basis. 34 CFR 602.13.

Relief Sought for Findings Nos. 1 and 2.

Although Harris did not go into detail for Finding No. 1 stating only that all refunds were paid, the record shows that \$3,740 in ISA had accumulated by the time the appeal was filed and has not been paid. For Finding No. 2 Harris requested that ED's rules be relaxed in the interest of justice. According to 34 CFR 668.117(d), as previously stated herein, the administrative law judge is bound by all applicable statutes and regulations and may not waive applicable statutes and regulations or rule them invalid. Harris also requested that its 6.8 percent cohort default rate be considered. However, there is no showing how this figure was calculated or of how it is relevant to the outcome of this proceeding. Harris' statement that mitigating circumstances be taken into account because there has been no prior program reviews to provide specific guidance has no merit. The record shows that Harris was previously cited for similar findings in the institution's audit report dated September 29, 1986, to which ED in its September 30, 1988 (control number 02-71684) response letter directed Harris to take corrective action on this and other findings. The standards and appeal procedures for a program audit are essentially the same as for a program review. This audit should have put Harris on notice that there was an existing

problem because the institution is responsible for appropriate check and balances in its system of internal controls, as previously pointed out.

Harris requested that its amended appeal be accepted and, at the same time, that no liability be found for any of the 23 students cited in Finding No. 2 of the FPRD. The regulation set forth the guidelines that institutions are to use to seek review. A certain number of days are allowed for filing appeals with pertinent facts and reasons supporting its position. Harris contends that since it filed its appeal pro se, it should be permitted to expand the basis of its appeal. There are no such exceptions for pro se respondents. The regulations contemplate that institutions may proceed with or without counsel. 34 CFR 668.116(i) and 34 CER 668.117(d)(1). However, there was an oversight in Harris's original appeal for a student, (deleted text) under Finding No. #2 but not Finding No. #5. The student's refund due in the amount of \$1,313 was not calculated in the original appeal. This refund accrued ISA of \$463 as well but was not paid in full at the same time. Therefore, this portion of the amended appeal which corrects this error is accepted.

According to Harris, the seven students listed on page 4 and 5 of its amended appeal met the State's 80% absenteeism requirement and GPA and were maintaining satisfactory progress for receipt of financial aid disbursements under the institution's "working policy"--even without consideration of any mitigating circumstances or hardship-based excused absences. Concerning the other four students listed on page 6 of the appeal and page 15 of the brief, even though the GPA was either a 2.0 or above, the attendance levels of the students, (deleted text) (deleted text) (deleted text) and, (deleted text) were well below the required published (emphasis added) 85% attendance requirement established by the institution.

Based on the guidelines set forth in the regulations, two of the four students will be given consideration. (deleted text), who, according to the institution's records, is repaying her loan, had domestic, legal and child custody problems which apparently had an adverse affect on her attendance. Because of these special circumstances which fall under the definition of section 668.7(c) (2) (ii) (C)²² consideration will be given. According to the record, a refund was made on behalf of (deleted text) for \$1,313, but \$528 (rounded) in ISA is still due. (deleted text) had a car accident which negatively affected her attendance from that point thereafter, but paid a refund of \$1,313. There is still a balance of \$463 ISA due but also falls within the guidelines set forth under section 668.7(c)(2)(ii)(B) for injury or illness of the student. Finally, (deleted text) for whom the record shows only that she is repaying her loan with no explanation as to why her attendance was only 72% (13% below the institution's published attendance requirement), even though her GPA was 2.8% will be required to pay the calculated ISA on her loan for \$566. She does not fall under regulations defined in Section 668.7(c)(2)(ii)(B) or (C). According to the record, finally, the other four students, (who was at the time of the program review paying her loan), (deleted text), (deleted text) and (deleted text) are delinquent on their loans.

Relief Sought for Finding No. 5.

Verification by institutions of information submitted by applicants for student financial assistance is for the purpose of determining the amount of Pell Grants and GSLPs a student is qualified to receive. 34 CFR Subpart E. Without verification, there is only guesswork. Appendix E shows the results of incomplete or missing verification for which liability must be imposed in

amounts as follows: (a.) (deleted text) owes a GSLP refund for \$77.78; (b.) (deleted text) owes \$2,275 in GSLP funds; (c.) (deleted text) owes a Pell refund of \$916; (d.) (deleted text) owes \$2,625 in GSLP funds and \$1,833 in Pell Grant funds totalling \$4,458; (e.) (deleted text) owes \$1,312 in GSLP funds and \$854 in Pell Grant funds; and (f.) (deleted text) owes \$916 in Pell Grant funds. Equitable arrangements must be made in accordance with the regulations under 34 CFR 682.607, Payment of a Refund to a Lender, which holds the institution responsible in cases where the students are unable to repay, and 34 CFR 690.79, Recovery of Overpayments.

The amended appeal is accepted only to correct an error for (deleted text) who refunded \$1,313 to the GSLP fund, as previously noted. The balance of the appeal is denied for the reasons stated by OSFA.

Just as ED is held to a strict regulatory standard so must Harris be held responsible for being aware of the manner in which its funds and programs are administered. ED advances funds to guarantee lending agencies which in turn allocate funds to institutions. Harris' argument that it should not be held to its "published standard" but may utilize instead another "working, normative" standard which required no more than 20% unexcused absences, and its contention that the students were in compliance with this "de facto" standard fails. [23](#) A written published SAP policy is essential to proper operation of student financial assistance programs under Title IV. Under the Pell Grant program, for example, an institution may allocate a grant to a student only after the institution determines, among other requirements, that the student is eligible under 34 CFR 668.7 and 34 CFR 690.75(a). For a student to be eligible, the institution must determine whether the student:

"If currently enrolled, is maintaining satisfactory progress in his or her course of study according to the institution's standards of satisfactory progress. (emphasis added).

An institution's "published policy" is thus essential for proper disbursement of federal funds. Furthermore, a "published policy" is critical for proper auditing and accounting of federal funds. Without a written, published policy it would be impossible to determine from the institution's records whether Pell Grants and other loans were properly disbursed. Auditors should not have to inquire into an institution's "working," "de facto" or "normative" policy in order to audit disbursements. Students should also be able to rely on application of the published policy. 34 CFR 668.13(b)(1). It would be contrary to the regulatory scheme to permit Harris to justify expenditures because it allegedly applied a different, more lenient, unwritten, unpublished policy. Harris acknowledge, moreover, that students were not in compliance with Harris' published standard. Harris also acknowledged that not all of the students met even the "de facto" SAP policy, but asserted that their progress was otherwise satisfactory based on grades, job placement, or loan repayment.

Regarding, finally, the amount of ISA refunds due as a result of default claims, Harris is one among numerous institutions that utilize the same programs through ED. As noted earlier, ED not only pays the guarantee agency for all or part of the default claims it pays, ED advances funds to pay ISA to the lender until the loan is repaid or goes into default. 34 CFR 682.300. Interest rates may be higher on an SLS loan also and borrowers may borrow more under the SLS programs. A guarantee agency must have a Federal advance for claim payments agreement to

receive and use Federal advances to pay default claims. 34 CFR 682.400(b)(2). Pursuant to 34 CFR 682.405(a)(1), the Secretary may enter into a supplemental reinsurance agreement with a guarantee agency that has a reinsurance agreement and that meets the requirements of this section. Under a supplemental reinsurance agreement, the Secretary reimburses the guarantee agency for up to 100 percent of its losses, with certain exceptions. See also 34 CFR 682.404. A guarantee agency guarantees lenders against losses due to default by the borrower on GSLPP and PLUS Program loans. If the guarantee agency meets certain Federal requirements, the guarantee agency is reimbursed by the Secretary of Education for all or part of the default claims it pays. It is thus apparent, and the Judge so finds, that ED does in fact have a great responsibility when it comes to default loans and ISA. 34 CFR 682.100(b)(1) and (2).

IT IS ORDERED:

The FPRD issued on October 15, 1991, by the designated ED official is supportable, in part as follows:

Harris is liable for accrued ISA on late refunds for \$3,740 (Finding No. 1); Harris is liable for the ineligible funds disbursed from the institution for inadequately applied SAP (Finding No. 2); and Harris is liable for improper verification (Finding No. 5) as follows, with certain exceptions: [24](#) According to 34 CFR 668.7(c) (2) (B) and (C) illness and other special circumstances affect certain students' attendance and such students will not be held to be ineligible for assistance by reason of the loans or the accrued ISA. Adjustments must be made for these students who received GSLPs and Pell Grants outlined in Appendix D [25](#) as follows: a.) (deleted text) was affected by depression which led to absenteeism. She received a Pell Grant. B.) (deleted text) had a car accident and from that point student's attendance was affected. The record shows that (deleted text) is repaying her loan. C.) (deleted text) had domestic, legal and child custody problems and is repaying loan.

Harris is liable and must make the necessary equitable arrangements to pay the adjusted GSLP funds and the adjusted ineligible Pell grant funds. Additionally, Harris is liable for the ISA accrued which totals \$7,997 as outlined in Appendix D (Finding No. 2).

The students which are the subject of this appeal, except those named immediately above, were not in compliance with Harris' published 85% SAP requirement, and are therefore deemed ineligible. Harris is also liable for improper verification which is necessary for the agency to determine the amount of GSLPS and Pell grants that are disbursed for students based on the financial need under the various loan programs and/or the expected family contribution (EFC). Therefore, Harris must make the necessary equitable arrangements with the agency and the students to pay the adjusted GSLPs and Pell Grants funds and the ISA accrued for each (Finding No. 5).

The FPRD included proposed informal fines of \$100 each in some 60 cases of late or unmade refunds previously cited in the 1986 audit report. The FPRD noted that the institution is not be obligated to pay these \$100 fines, but at the same time, ED

reserved the right to reopen this portion of the case so as to institute proceedings outlined under Part 668, Subpart G which provides for fine, limitation, suspension or termination proceedings if Harris does not comply. Harris is notified that although it is a school that from all appearances apparently cares about its students education, standards will be set so that the regulations set forth by ED in the future will be complied with.

An appeal may be filed by respondent within 15 days of its receipt of this initial decision. A party wishing to appeal the decision shall submit a brief or other written material to the Secretary explaining why the decision of the administrative law judge should be overturned or modified. The party appealing the initial decision shall, simultaneously with its filing of the appeal, provide the opposing party with a copy of its brief or other written material. In its brief to the Secretary, the party appealing the initial decision may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by (1) the admissible evidence already in the record; (2) matters that may be given official notice; or (3) stipulations of the parties. The opposing party shall, simultaneously with the filing of any response, provide a copy of its response to the appeal to the party appealing the initial decision. Neither party may introduce new evidence on appeal, and in the event the initial decision is not appealed within the time limit specified in section 668.119(a)g the initial decision automatically becomes the final decision.

By Administrative Law Judge Paul J. Clerman on February 5, 1993, at Washington, D.C.

SERVICE LIST

A copy of this document was sent to the following:

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UNITED STATES DEPARTMENT OF EDUCATION

BEFORE THE
OFFICE OF HIGHER EDUCATION APPEALS
WASHINGTON, D.C.

IN THE MATTER OF

Harris Institution of Business, Assistance

Cherry Hill, New Jersey

Respondent.

Docket No. 91-109-SP

Student Financial

Proceeding

CERTIFICATE OF SERVICE

The undersigned Administrative Law Judge does hereby certify that on February 5, 1993, a copy of the Initial Decision in the above-captioned proceeding was served upon Allen S. Harris, Director of Harris School of Business, 654 Longwood Avenue, Cherry Hill, New Jersey 08002, counsel, pro se for the Respondent, and a copy of the initial decision was served upon Stephen M. Kraut, Office of the General Counsel, Department of Education .

Paul J. Clerman
Administrative Law Judge
United States Department
of Education before the
Office of Higher
Education Appeals

Appendix G

STATEMENTS OF FACTS

Offered by Harris and adopted by the Judge.

Respondent, Harris School of Business, is a one-year, proprietary school teaching the following programs at one location in Cherry Hill, New Jersey: Word Processing, Secretarial, Computerized Accounting, and Paralegal

On October 17-20, 1989, OSFA conducted an on-site program review at the school, covering the 1987-1988, 1988-1989, and 19889-1990 award years.

OSFA issued a Program Review Report on December 14, 1989, and a Final Program Review Determination on October 15, 1991.

Harris' understanding of attendance regulations published by the New Jersey Department of Education was that New Jersey limited the number of unexcused absences to no more than 20 percent of the total number of hours of the program.

If a student was maintaining satisfactory grades and attendance in the program according to Harris' understanding of the New Jersey requirement of no more than percent unexcused absences, a student was permitted to receive student financial disbursements.

In its original request for review which Harris filed on November 29, 1991, Harris limited its appeal for liability to seven students who were clearly maintaining satisfactory progress for receipt of financial aid disbursements under the school's working policy--even without consideration of any mitigating circumstances or hardship- based excused absences.

In its original request for review, Harris also appealed repayment on an additional four students, who are typical of the majority of students cited in Finding #2, whose combined attendance and excused absences met the school's normative standard of no more than 20 percent unexcused absences. In addition, these four were considered particularly noteworthy because of their placement outcomes and loan repayment status.

Harris does not contest that verification documentation was incomplete for students named in Finding #5.

Offered by OSFA and adopted by the Judge.

In order to remain eligible for Title IV assistance, including Guaranteed Student Loans and Pell Grants, a student must maintain satisfactory progress in his or her course of study according to the institution's standards of satisfactory progress.

Under the Title IV programs, institutions must selectively verify information contained in student financial aid applications which is used to calculate a student's expected family contribution, or EFC.

Appendix A

GLOSSARY OF ACRONYMS, ABBREVIATIONS AND OTHER TERMS

AICS	Association of Independent Colleges and Institutions
COHORT	A default rate in the repayment of STAFFORD or SLS student attendance loans calculated on the basis of the repayment records of current and former students at a particular institution during a specific fiscal year or the average for the most recent fiscal three-year period, as defined at 34 CFR 668.15(h)(1)(i), effective July 1, 1992.

DA&PR	Division of Audit and Program Review
ED	Department of Education
EFC	Expected Family Contribution
ETC	Employment and Training Centers
FAME	Financial Aid Servicer
FPRD	Final Program Review Determination
GPA	Grade Point Average
GSLP	Guaranteed Student Loan Program
HEA	Higher Education Act of 1965
ISA	Interest and Special Allowances
JTPA	Job Training Program student
OSFA	Office of Student Financial Assistance
PELL	Pell Grant Program
PLUS	Federal program which encourages the making of loans to independent undergraduate students, graduate and professional students, and the parents of dependent undergraduate students to help pay the costs of the students' education.
PRR	Program Review Report
SAP	Students' Satisfactory Academic Progress
SEOG	Supplemental Educational Opportunity Grants
SFAP	Student Financial Assistance Program
SLS	Supplemental Loans for Students
STAFFORD	Stafford Loan Program

Appendix B

AWARD YEAR 87/88

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.

AWARD YEAR 88/89

- 13.

- 14.
- 15.
- 16.
- 17.
- 18.
- 19.
- 20.
- 21.
- 22.
- 23.
- 24.
- 25.

AWARD YEAR 89/90

- 26.
- 27.
- 28.
- 29.
- 30.
- 31.
- 32.
- 33.
- 34.

Appendix C

FINDING #1 REGUNDS TO LENDERS - LATE

	REFUND DUE	REFUND MADE	AMT	MOS	CALC ISA	ALREADY REFUNDED	ISA DUE
84/85	12/22/84	08/12/85	559.07	9	49.30		49.30
84/85	06/26/85	09/29/86	48.00	16	7.52		7.52
84/85	07/08/84	03/05/85	1,250.58	9	110.30		110.30
84/85	10/24/84	02/08/85	2,375.00	5	116.37		116.37
84/85	06/13/85	09/30/86	1,175.00	16	184.24		184.24
84/85	01/08/85	04/27/90	1,058.00	64	663.57	568.04	95.53
84/85	10/19/85	04/25/86	1,276.50	7	87.56		87.56
84/85	04/12/85	09/30/86	1,259.00	18	222.08		222.08
84/85	12/31/84	01/18/85	2,500.00	0	0.00		0.00
84/85	05/03/85	09/30/86	479.00	17	79.80		79.80
84/85	09/27/85	04/27/90	84.00	56	46.09	42.81	3.28
84/85	08/30/85	09/13/85	2,354.69	0	0.00		0.00
85/86	07/11/86	09/30/86	283.11	3	8.32		8.32

85/86	01/05/85	03/05/85	385.25	3	11.32	11.32
85/86	04/28/86	09/30/86	91.04	6	5.35	5.35
85/86	04/04/86	09/30/86	448.00	6	26.34	26.34
85/86	11/18/85	09/30/86	247.98	11	26.73	26.73
85/86	05/02/86	09/30/86	81.83	5	4.00	4.00
86/87	09/16/87	06/18/90	1,677.73	34	559.01	559.01
86/87	02/20/87	12/07/87	343.06	11	36.98	36.98
86/87	04/19/87	07/07/87	126.95	4	4.97	4.97
86/87	05/30/87	10/13/87	819.49	6	48.18	48.18
86/87	10/23/86	N/A	1,175.00	0	0.00	0.00
86/87	03/27/87	03/25/87	2,467.50	0	0.00	0.00

FINDING #1 REGUNDS TO LENDERS - LATE (Cont.)

	REFUND DUE	REFUND MADE	AMT	MOS	CALC ISA	ALREADY REFUNDED	ISA DUE
86/87	01/25/87	05/06/87	1,175.00	5	57.57		57.57
86/87	11/07/86	04/27/90	216.85	42	89.25		89.25
86/87	04/19/87	07/31/88	601.69	16	94.34		94.34
86/87	02/20/87	10/15/87	416.53	9	36.73		36.73
87/88	10/13/87	07/31/88	502.66	10	49.26		49.26
87/88	11/01/87	12/07/87	1,207.96	0	0.00		0.00
87/88	N/A	04/30/90	2,033.33	0	0.00		0.00
87/88	03/03/88	10/10/89	1,604.74	20	314.52		314.52
87/88	05/06/88	02/17/89	1,207.96	10	118.38		118.38
87/88	08/07/88	04/30/90	1,312.00	21	270.00		270.00
87/88	05/29/88	04/27/90	392.35	24	92.28		92.28
87/88	05/01/88	07/31/88	267.65	3	7.86		7.86
87/88	08/13/88	01/24/90	1,207.04	18	212.92		212.92
87/88	05/07/88	04/30/90	1,312.08	24	308.60		308.60
87/88	01/11/89	04/30/90	1,312.00	16	205.72		205.72
88/89	11/04/88	05/30/89	1,234.22	7	84.67	78.62	6.05
88/89	12/16/88	04/30/90	1,234.22	17	205.62	190.93	14.69
88/89	03/15/89	04/27/90	1,186.09	14	162.73	151.11	11.62
88/89	12/28/88	04/27/90	930.71	17	155.05	135.51	19.54
88/89	11/26/88	04/27/90	602.55	18	106.28	93.21	13.07
88/89	11/12/88	08/23/89	385.50	10	37.78	31.57	6.21
88/89	01/08/89	04/30/90	1,312.00	16	205.72	191.03	14.69
88/89	04/12/89	04/27/90	545.36	13	69.48	49.62	19.86

88/89	06/08/89	06/08/90	1,246.11	13	158.75	149.54	9.21
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FINDING #1 REGUNDS TO LENDERS - LATE (Cont.)

	REFUND DUE	REFUND MADE	AMT	MOS	CALC ISA	ALREADY REFUNDED	ISA DUE
88/89	07/06/89	04/27/90	2,260.41	10	221.52	185.13	36.39
88/89	05/04/89	08/23/89	127.17	4	1.99	4.63	0.36
88/89	11/27/89	04/30/90	753.27	6	44.29	34.27	10.02
88/89	04/14/89	06/28/90	1,041.12	15	153.04	492.72	0.00
89/90	N/A	01/24/90	1,890.00	0	0.00	0.00	0.00
89/90	02/09/90	04/20/90	248.05	3	7.29	0.00	7.29
89/90	02/09/90	04/11/90	400.82	3	11.78	0.00	11.78
89/90	12/01/89	04/19/90	94.65	5	4.64	3.45	1.19
89/90	06/03/89	09/28/89	1,234.22	4	48.38	123.55	0.00
89/90	06/03/89	04/19/90	78.78	11	8.49	2.57	5.92
89/90	01/20/90	04/20/90	603.77	4	23.66	16.48	7.18
89/90	05/15/90	04/20/90	66.18	0	0.00	0.00	0.00
			TOTAL				3,739.68

Appendix D

FINDING #2: STANDARDS OF SATISFACTORY ACADEMIC PROGRESS

	NAME	SS#	GSL DISB	SLS DISB	PELL DISB	TOTAL
87/88			1,313.00	0.00	875.00	2,188.00
87/88			1,313.00	0.00	0.00	1,313.00
87/88			1,313.00	0.00	875.00	2,188.00
87/88			1,313.00	0.00	1,100.00	2,416.00
87/88			1,313.00	0.00	438.00	1,751.00
87/88			1,313.00	0.00	771.00	2,084.00
87/88			0.00	0.00	563.00	563.00
88/89			0.00	0.00	917.00	917.00
88/89			1,313.00	0.00	0.00	1,313.00
			-----	-----	-----	-----
			\$9,191.00	\$0.00	\$5,539.00	\$14,730.00
87/88			0.00	0.00	917.00	917.00
87/88			105.96	0.00	0.00	105.96

88/89		1,313.00	0.00	313.00	313.00	
88/89		0.00	0.00	0.00	0.00	
		-----	-----	-----	-----	
		\$1,418.96	\$0.00	\$1,230.00	\$2,648.96	
87/88		0.00	0.00	917.00	917.00	
87/88		105.96	0.00	0.00	105.96	
88/89		1,313.00	0.00	313.00	313.00	
88/89		0.00	0.00	0.00	0.00	
88/89		1,313.00	0.00	0.00	1,313.00	
88/89		0.00	0.00	0.00	0.00	
		-----	-----	-----	-----	
		\$1,313.00	\$0.00	\$0.00	\$1,313.00	
87/88		1,313.00	0.00	875.00	2,188.00	
87/88		1,313.00	0.00	830.00	2,143.00	
87/88		1,313.00	0.00	1,100.00	2,413.00	
87/88		1,313.00	0.00	875.00	2,188.00	
87/88		1,313.00	0.00	1,100.00	2,413.00	
87/88		1,313.00	0.00	1,100.00	2,413.00	
88/89		1,313.00	0.00	813.00	2,126.00	
		-----	-----	-----	-----	
		\$9,191.00	\$0.00	\$6,693.00	\$15,884.00	
		GSL	SLS	PELL	GRAND TOTAL	
TOTALS	FOR EACH	PROGRAM	\$21,113.96	\$0.00	\$13,462.00	\$34,575.96

FINDING 2: STANDARDS OF SATISFACTORY PROGRESS INTEREST & SPECIAL ALLOWANCE

NAM SS#	DATE	REFUND	AMT	CALC	MONTHS	CALC	ISA	ISA DUE
	BURSED	MADE		MONTHS		ISA	REFUNDED	
87/88	04/29/88	11/29/91	1,313.00	43.04	44	566.17		566.17
87/88	04/29/88	11/29/91	1,313.00	43.04	44	566.17		566.17
87/88	09/29/87	11/29/91	1,313.00	50.04	51	656.24		656.24
87/88	09/29/88	11/29/91	1,313.00	38.01	39	501.83		501.83
87/88	09/30/87	11/29/91	1,313.00	50.01	51	656.24		656.24
87/88	12/10/87	11/29/91	1,313.00	47.67	48	617.64		617.64

87/88	N/A	11/29/91	0.00	0.00	0	0.00	0.00
88/89	N/A	11/29/91	0.00	0.00	0	0.00	0.00
88/89	01/03/89	11/29/91	1,313.00	34.85	35	450.36	450.36
88/89	03/07/89	11/29/91	47.89	32.78	33	15.49	15.49
87/88	N/A	FINDING 1	0.00	0.00	0	0.00	0.00
87/88	07/13/88	11/29/91	105.96	40.57	41	42.57	42.57
88/89	12/20/88	04/27/90	1,313.00	16.21	17	218.75	51.63 167.12
88/89	N/A	FINDING 5	0.00	0.00	0	0.00	0.00
88/89	N/A	FINDING 5	0.00	0.00	0	0.00	0.00
88/89	N/A	FINDING 5	1,313.00	0.00	0	0.00	0.00
88/89	N/A	FINDING 5	0.00	0.00	0	0.00	0.00
87/88	04/29/88	11/29/91	1,313.00	43.04	44	566.17	566.17
87/88	05/02/88	11/29/91	1,313.00	42.94	43	553.30	553.30
87/88	07/07/88	11/29/91	1,313.00	40.77	41	527.56	527.56
87/88	05/02/88	11/29/91	1,313.00	42.94	43	553.30	553.30
87/88	07/07/88	11/29/91	1,313.00	40.77	41	527.56	527.56
87/88	07/13/88	11/29/91	1,313.00	40.57	41	527.56	527.56
88/89	09/29/88	11/29/91	1,313.00	38.01	39	501.83	501.83
TOTAL ISA DUE							\$7,997.09

Appendix E

FINDING 5: VERIFICATION MISSING OR INCOMPLETE

NAME	SS#	GSL REFUND DUE	PELL REFUND DUE	TOTAL REFUND DUE
88/89		77.78	0.00	77.78
88/89		2,625.00	1,512.00	4,137.00
88/89		2,275.00	0.00	2,275.00
88/89		0.00	916.00	916.00
88/89		0.00	1,833.00	1,833.00
88/89		2,625.00	1,833.00	4,458.00
88/89		1,312.00	854.00	2,166.00
88/89		0.00	916.00	916.00
88/89		1,391.72	0.00	1,391.72
88/89		2,625.00	1,450.00\	4,075.00

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\$12,931.50	\$9,314.00	\$22,245.50

FINDING 5: VERIFICATION MISSING OR INCOMPLETE INTEREST & SPECIAL ALLOWANCE

GSL DISBURSED	REF WILL BE MADE	AMOUNT	MONTHS	MONT	CALC	ISA
88/89	09/29/88	11/29/91	77.78	38.01	39	29.73
88/89	09/26/88	11/29/91	1312.00	38.10	39	501.45
	12/18/88	11/29/91	1313.00	35.38	36	463.23
88/89	10/24/88	11/29/91	2275.00	37.18	38	847.21
88/89	N/A		0.00			
88/89	09/19/88	11/29/91	1312.00	38.33	39	501.45
	12/12/88	11/29/91	1313.00	35.57	36	463.23
88/89	09/26/88	11/29/91	1312.00	38.10	39	501.45
	03/13/89	11/29/91	1313.00	32.58	33	424.62
88/89	09/19/88	11/29/91	1312.00	38.33	39	501.44
88/89	N/A		0.00			
88/89	09/22/88	11/29/91	1312.00	38.24	39	501.45
	11/29/88	11/29/91	79.72	36.00	37	28.91
88/89	10/31/88	11/29/91	1312.00	36.95	37	475.73
	12/23/88	11/29/91	1313.00	35.21	36	463.23
TOTAL ISA						\$5,703.11

FINDING #2: STANDARDS OF SATISFACTORY ACADEMIC PROGRESS

NAME SS#	GSL DISB	SLS DISB	PELL DISB	TOTAL
88/89	79.72	0.00	0.00	79.72
88/89	1,313.00	0.00	756.00	2,069.00
88/89	1,313.00	0.00	917.00	2,230.00
88/89	1,313.00	0.00	725.00	2,038.00

FINDING 2: STANDARDS OF SATISFACTORY PROGRESS INTEREST & SPECIAL ALLOWANCE

NAME SS#	DATE BURSED	REFUND MADE	AMT	CALC MONTHS	MONTHS	CALC ISA	ISA REFUNDED	ISA DUE
88/89	11/29/88	11/12/91	79.72	36.00	37	28.91	0.00	28.91
88/89	12/18/88	11/12/91	1,313.00	35.38	36	463.23	0.00	463.23

88/89	12/12/88	11/12/91	1,313.00	35.57	36	463.23	0.00	463.23
88/89	12/23/88	11/12/91	1,313.00	35.21	36	463.23	0.00	463.23

1 For ease of reference, SFAP and other initialed or abbreviated terms or acronyms used in this decision are shown in a glossary in Appendix A. Such terms will be set out in full the first time used, and thereafter the short term will be used.

2 With the exception of the outstanding findings which are the subject of this appeal (Findings #1, #2 and #5), the school has made the necessary corrections to close the remaining Findings Nos. 3, 4, and 6-15 as stated in the FPRD.

3 Supplemental Educational Opportunity Grants (SEOG) and Guaranteed Student Loan programs falls under the Pell Grant and Stafford Loan programs, respectively.

4 A "Scheduled Pell Grant" is the award a full-time student would receive for a full academic year. 34 CFR 690.2. Awards to individual students could differ depending on a student's enrollment status. i.e. full-time, three-quarter-time, or half- time, whether the educational program in which the student enrolled was less than a full academic year, and the length of time the student was enrolled during an academic year. See 34 CFR 690.63 (1985 through 1990).

5 Harris requests that an oral hearing be convened in this proceeding because, it contends, it would facilitate a clarification of the issues and a clearer understanding of Harris' position. Although a trial-type hearing is authorized under section 487(b) of the HEA as well as under the authority of the ALJ as set forth at 34 CFR 668.116(b) and (g), an oral hearing is necessary only to the extent that the issues and the position of the parties need clarification, unless the judge determines otherwise. In this case this judge concludes that the issues herein may be resolved adequately on the basis of the parties' written submissions.

6 The record shows that only the refunds were paid, but not the interest and special allowances (ISA) accrued on the loans which total \$3,740.

7 Harris pointed out that these eleven students demonstrated satisfactory progress by the additional objective measures of grades (all 2.8 or higher). Currently two students borrowers are either delinquent or in default. ((deleted text) and (deleted text), respectively). One was recently laid off due to the downturn in economy and went into default for \$2,161.27 on January 16, 1992. The eleven students received a total of \$6,473 in Pell funds and \$11,817 in GLS disbursements. Harris contends that ED did not pay excessive ISA on the ineligible portion of the GSLS because the students were in fact satisfactory students. Harris explains that since seven out of the nine (78%) of the borrowers are repaying their loans, ED did not have to expend excessive funds to purchase these loans out of default.

8 Harris noted that two of the four students cited (deleted text) and (deleted text) had special circumstances (either car accident, harassment by father of children, or death in the family), for which they accrued additional excused absences, but were in compliance under Harris'

application of its "normative, working attendance policy." Also one student, (deleted text) is repaying her loan according to the record. Another student, (deleted text) is a Job Training Program (JTPA) student with no loan to repay. (Deleted text) received only a Pell grant for \$917. Their combined SAP was below 85%.

9 Of the four students listed above, (deleted text) is shown as repaying her loan although it is delinquent. (deleted text) has had numerous medical and other family problems and waived placement assistance.(deleted text) had poor attendance due to emotional and legal problems and ultimately dropped out of school to start a training- related job. (Deleted text) had poor attendance and stayed on her existing job which was not entirely training-related. (Deleted text) also appears under Finding No. 2 again. See Footnote 13.

10 The six students are: (deleted text), (deleted text), (deleted text), (deleted text), (deleted text), and (deleted text).

11 Harris expressed concern that this explanation might be confusing, since the lists refers to each other. So Harris submitted a revised printout of Finding No. 5 liabilities for those four students to illustrate their outstanding liabilities -- if their appeal of Finding No. 5 is accepted as a whole. The students are: (deleted text), (deleted text), (deleted text) and (deleted text). See Appendix F.

12 Finding Nos. 1, 2 and 5 were addressed in the 10/17/89 PRR. At a later time Findings Nos. 3, 4 and 6-15 was closed in the FPRD letter dated October 15, 1991. There a disclaimer in the PRR read "although the review was thorough, it cannot be assumed to be all inclusive. . also, it does not relieve the institution of its obligation to comply with all of the statutory or regulatory provisions governing Title IV programs." (emphasis added).

13 The students are (deleted text), (deleted text), (deleted text), (deleted text), (deleted text), (deleted text) and (deleted text).

14 Because the institution was previously cited for the same findings in the institution's audit report dated September 29, 1986, ED in its September 30, 1988 (control number 02-71684) response letter directed Harris to take corrective and documented action on this and other findings. The FPRD proposed that Harris be fined \$100 for each of the 60 cases found in the study. (See the FPRD at pages 5 and 6.)

15 This figure is identified in Appendix D-2 at the end of this initial decision.

16 On page 5 of OSFA's brief filed 1/28/92r it notes that the GSL liability is hereby reduced to \$19,801 from \$21,114 originally stated in the FPRD. Since the issuance of the FPRD, Harris provided evidence that a \$1,313 refund was paid for (deleted text). Harris appeal at 1.

17 ED makes Federal advances to a guarantee agency for claim payments to receive and use to pay default claims. 34 CFR 682.300 and 34 CFR 400(b)(2).

[18](#) In the third group of students at the bottom of the attachment for Finding #2 SAP and ISA, (deleted text) GSL disbursement was not listed as ineligible under Finding #5 only her Pell Grant was. Therefore, ISA should have been calculated under Finding #2 for her second disbursement of GSL. The record shows that (deleted text) repaid \$1,313. The calculated ISA was \$463. The ISA was not paid.

[19](#) This figure represents ineligible Pell Grant awards.

[20](#) This amount is calculated for GSL funds that should have been paid by November 29, 1991, and alternatively must be increased since timely payment was not made.

[21](#) This figure represents Pell Grant awards through ED for students who were disbursed Title IV aid without complete or proper verification.

[22](#) Pursuant to 34 CFR 668.7(c) in order for a student to receive assistance under the GLS, PLUS, and SLS programs an institution shall... (2) Determine that the student is making satisfactory academic progress at the end of that student's second academic year of attendance at the institution on the basis of a finding that -- (i) The student has at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements; or (ii) The student's failure to have at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements, was caused by -- (A) The death of a relative of the student; (B) An injury or illness of the student; or (C) Other "special circumstances. . . ."

[23](#) Harris' argument, moreover, has no factual support in the record. It has provided no evidence that the students complied with its "de facto" policy.

[24](#) The figures in Appendix E will need to be adjusted accordingly.

[25](#) This includes (deleted text) who received a Pell Grant of \$917 and was cited in Footnote No. 8. (deleted text) attendance was 78.6% with no explanation as to whether mitigating circumstances were involved or whether she completed the program. The form which is attached to Harris' appeal was not validated to show that (deleted text) completed the program but it was verified and signed by Barbara Harris apparently for (deleted text) placement for employment.