



## Ineligible Programs

A program is eligible for Pell Grant purposes only if it is at least six months in length. 34 C.F.R. § 668.8(a)(2). A six month training program is defined in 34 C.F.R. § 600.2 as one which provides at least 600 clock hours, or 24 quarter credit hours, of supervised training.

Branell is accredited by the Southern Association of Colleges and Schools (SACS) as a quarter credit hour school, and SACS had approved Branell's curricula submissions for its 1990- 91 program year. However, these curricula submissions identified programs of significantly more credits and clock hours than the students were actually required to attend during that same program year. Further, SACS was never notified of, nor did SACS approve of, these changes which reduced the originally scheduled program lengths.

The 1990-91 audit report reviewed the files of 145 students. Sixty-two of those students graduated during the audit period and it was discovered that 48 of those graduates did not earn a sufficient number of clock hours/quarter credits to be eligible for the Pell Grants which they were paid. These deficiencies of credit hours occurred because Branell did not require the students to attend a sufficient number of clock hours (had an inadequate program length) to justify the number of credits which were awarded. The audit report specifically noted a variety of reasons for these deficiencies:

1. Academic modules for day time students were scheduled for 19 or fewer class days rather than the 20 class days that were used in credit assignment calculations.

2. Scheduled school holidays occurred during academic modules which further reduced class days.

3. Evening students were scheduled to attend 3 class days less per module than day students.

4. Students could obtain credit for classes by simply passing an examination or transferring credits from other schools rather than attending classes at Branell.

5. Students were allowed to earn credit for more than one class during the time scheduled for a single class.

Therefore, because of these deficiencies, some programs were of insufficient length to qualify as eligible programs.

## Less Than Academic Year Programs

For purposes of awarding a Pell Grant to a student attending a proprietary school such as Branell, a full payment may be made to a full-time student who completes 36 quarter credit hours (if the school measures progress in credit hours, but does not use a semester, trimester, or quarter system) or 900 clock hours (if the institution measures academic progress in clock hours). 34 C.F.R. § 600.2. The audit also discovered there were programs which were ineligible

for full Pell Grant payments because Branell did not require attendance for a sufficient number of clock hours for the courses to be considered to be an academic year in duration. Therefore, for these reasons, there was an excess award of Pell Grants for some of the offered programs. Taking into account both types of deficiencies, the auditors concluded the students in the sample group were paid \$9448 in excess Pell Grants and, projected to the total students enrolled, it was estimated Branell erroneously awarded \$160,246 excess Pell Grant funds during the program year.

Branell generally argues that this finding is without a factual basis. First, it maintains it is difficult to defend itself against the program determination because the deficient courses are not identified for them. However, ED Exhibit 51, titled an "Analysis of Excess Pell Paid to Graduates," identifies all 62 of the sampled students by name and lists their respective programs. This data was made available to the school, at least from the date of the filing of the Department's brief on this matter, and presumably at the time of the initial audit report.

The institution points out that the auditors' determinations regarding program length are incorrect and it directs our attention to its catalog for a listing of the correct program lengths. The auditors considered the course length described in the catalog; however, they elected to base their findings on actual hours scheduled for the programs, which were ascertained from an analysis of pertinent school records and interviews with students and employees. Like the auditors, I am not persuaded by materials in the school's catalog when the records and personal recollections of what actually transpired all point to the conclusion that the catalog overstated the number of hours required to complete a program, or when a student admits he or she was not required to attend the number of class hours which would constitute a full academic year. Accordingly, I find the students were paid excess Pell Grants because either their program was not an eligible program, or they were erroneously considered to have completed full academic year programs.

Branell also argues that Finding 1 reflects an attempt by the Department to enforce credit hour/clock hour equivalencies or accrediting agency curriculum criteria. This argument is without any merit. SACS approved a series of programs which were offered by Branell based on the

school's affirmation of content and length, using a curriculum unit measurement of Branell's choice. If Branell later shortens the length of courses or does not require its students to attend as many classes as were originally designated at the time of approval by SACS, Branell should not be permitted to complain that the Department is attempting to exercise regulatory authority over curriculum matters which Branell established. The Department has a legitimate interest in ensuring that Pell Grants are paid to eligible students who are enrolled in eligible programs. If the school does not wish for its programs to maintain this eligibility, that is its prerogative; however, the loss of Pell Grant eligibility will be the natural result. I find the Department was properly exercising its role of monitoring the expenditure of Pell Grants and was not attempting to regulate curriculum matters.

## Finding 2

The auditors determined that out of the 145 students sampled, Branell disbursed Title IV SFA funds to 6 students who were not eligible to receive them. Projected out to the entire student population at Branell, this results in a liability of \$65,405.

To be eligible to receive Title IV funds, a student must have a high school diploma, or its recognized equivalent; or have the ability to benefit based on the administration of a nationally recognized, standardized, or industry developed test. 34 C.F.R. §§ 668.7(a)(3)(i) and (b).

Three of the six ineligible students did not have high school diplomas, but were provided SFA funds even though they did not achieve passing scores on the ability to benefit (ATB) tests. [See footnote 1](#) / The fourth student was awarded SFA funds because of a passing score on the ATB test, but this occurred at a time when Branell was not admitting students based solely on their ATB performance. The fifth student was ineligible to receive SFA funds because she had defaulted on a prior student loan. The regulations, at 34 C.F.R. § 668.7(a)(7), provide that a student who is in default on a prior SFA loan is not eligible to receive further SFA funds until the student repays, or makes arrangements to repay, the prior loan. The last student of the sample was ineligible for two reasons: 1) Branell failed to complete a verification of inconsistent information in the student's Financial Aid Transcript (34 C.F.R. § 668.51); and 2) the student's score on the ATB test was insufficient to qualify for entrance into the program.

Branell challenges the conclusions in Finding 2 on the grounds that these represent minimal error percentages. They point out that originally this finding included 13 violations, but that after Branell supplied additional documents, the number of violations was reduced to its present six. The institution concludes that this small number of violations does not justify the estimation of liability based on a statistical extension. I find this argument to be without merit. The statistical sampling approach has been a frequently used tool in assessing liability for these

types of violations, provided the sample of student files selected was large enough to assure its status as a fair representation of the entire group. [See footnote 2](#) I am convinced that in this sampling, the number of files selected to be audited is representative of the whole. [See footnote 3](#) Furthermore, the institution always has the opportunity to refute the statistical analysis by conducting a complete audit of all files to ascertain the exact amount of SFA funds which were improperly disbursed to ineligible students. In other words, the institution can always refuse to accept the findings of the statistical extension and compute the amount owed based upon a 100 percent student file audit. Here, Branell has not elected to use this second option and must be bound by the results of the statistical sampling.

### Finding 3

Finding 3 alleges that Branell made early, second disbursements of funds to student accounts and that the institution made refund payments which were not always accurately computed or paid in a timely manner.

#### Early Disbursements

For institutions which do not use academic periods such as semesters or quarters, there are two payment periods. The first is between the beginning and midpoint of the academic year and, the second is between the midpoint and end of that academic year. 34 C.F.R. §§ 668.22; 690.3(b). Additionally, the payment period does not end until the student has completed the number of clock hours scheduled for that term. The auditor discovered that out of 145 files examined, 112 students received second disbursements of Pell Grants and Stafford Loans; of those, 25 were made before the student had completed the work covered by the first payment. Although the auditor did not indicate a liability for this deficiency, the institution was advised to revise its procedures to preclude future early second disbursements.

### Incorrect and Late Refunds

The regulations require an institution to pay a refund of Stafford Loans, Supplemental Loans for Students, and Special Parent Loans for Undergraduate Students on behalf of a student who withdraws or is terminated from enrollment prior to the time the institution earns the full amount of the tuition and other charges. 34 C.F.R. § 682.606. A similar requirement exists for the Pell Grant program. 34 C.F.R. § 668.22. Of the 145 student files subject to the audit, Branell was obligated to provide refunds for 35 students. Of those, seven refunds were incorrectly computed. The audit also disclosed that 20 of the 35 refunds were not timely-made. ED Exhibit

28 lists the 35 students entitled to refunds and indicates the seven refunds with errors in computation, and the reasons therefore, as well as indicating those refunds which were not timely. The auditors admonished the institution for the late refunds, but made no monetary assessment. For the seven incorrectly computed refunds, the auditors projected a liability of \$60,042.

Branell denies it has any liability for unpaid refunds for three reasons. It contends that, first, payment has already been made for three of the seven cases and it offers copies of unnegotiated checks as proof; second, there are no refunds due for three of the remaining four cases because the auditors applied an improper standard for refunds; and third, it is improper to make a supportable projection of liability for the one remaining refund case. All three bases for objection are rejected.

An after-the-fact correction of an error discovered during an audit does not in any way negate the validity of the original sample projection, other than to reduce that liability by any payments which can be authenticated. Therefore, if Branell can present suitable proof of payment of three refunds, that will reduce the overall projected liability only by the total amount paid. However, the overall liability is a proper projection of the seven erroneously computed refunds.

Branell measures its academic year in terms of academic credits. Therefore, the auditors used the students' completion of academic credits to determine the amounts of refunds owed by the institution. Branell argues that the refunds should be computed on the number of weeks of classes completed rather than on credits completed. The auditors have convinced me that the use of credits completed is a more realistic measure of performance. Not only is this how the institution measures progress in a program, but it also avoids the problem created by the fact that some students complete all required academic credits in fewer weeks than others. Therefore, the

use of the credits is the only common standard against which all students' performance can be measured. Finally, since all seven erroneously computed refunds have been substantiated, a projected liability of \$60,042 is justified.

## FINDINGS

I find the following:

Branell awarded Pell Grants for programs which did not meet the minimum length requirements and awarded excess Pell Grants for programs which were scheduled for less than an academic year, resulting in an erroneous payment of \$160,246 of Pell Grant funds;

Branell disbursed \$65,405 in Student Financial Assistance funds to students who were ineligible to receive such funds;

Branell made early second disbursements to student accounts; and

Branell made refunds to student accounts which were not timely paid and were deficient in the amount of \$60,042.

## ORDER

Based on the foregoing it is hereby--

ORDERED, that Branell repay \$285,693 to the applicable Title IV program account or to the applicable student lenders.

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Richard F. O'Hair

Issued: July 22, 1994  
Washington, D.C.

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## S E R V I C E

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A copy of the attached initial decision was sent by **CERTIFIED MAIL, RETURN RECEIPT REQUESTED** to the following:

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*[Footnote: 1](#) 1 During my examination of these tests, I noted that one of the student exams had been incorrectly graded in that the student was not given credit for an additional correct answer. Even if the test were correctly graded, the student would still have not achieved a passing score.*

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*[Footnote: 2](#) 2 See, e.g., *In the Matter of Empire Technical School*, Dkt. No. 91-53-SP, U.S. Dep't of Educ. (Dec. 13, 1993).*

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*[Footnote: 3](#) 3 The sample of 162 files was taken from a student body of 1697 enrolled during the program year.*