UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

IN THE MATTER OF

COMPUTER PROCESSING INSTITUTE

Respondent.

Docket No. 93-32-SP

Student Financial
Assistance Proceeding

DECISION

Respondent, Computer Processing Institute ("CPI"), is a for profit career training school that participated in certain Federal student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended ("HEA"), 20 U.S.C. § 1070, et seq. A final program review determination ("FPRD"), issued on January 14, 1993, proposed that CPI pay the U.S. Department of Education ("Department") $238,592.00 in liabilities resulting from an asserted misuse of Federal funds, which was discovered during a closed school review conducted on October 23, 1992. ED Ex. 1. This proceeding represents CPI's appeal of that determination. 1/

I. STATEMENT OF THE CASE

The Department terminated the eligibility of CPI to participate in Federal student financial aid programs under Title IV of the HEA on October 19, 1992.2/ On October 23, 1992, subsequent to CPI's termination, institutional Review Branch ("IRB") specialists of the Department, located in Boston, Massachusetts, conducted a close- out program review of CPI's administration of the Title IV, HEA programs in which it participated for award years 1989-1990 and 1990-1991. This review was primarily limited to CPI's management of the Federal Perkins Loan program as IRB specialists endeavored to locate and secure all original or certified copies of Federal Perkins Loan promissory notes and records relevant to the collection of amounts due under such loans.

CPI's Federal Perkins Loan portfolio, as reported on CPI's June 30, 1992 Fiscal Operation Report, 3/ consists of 392 loans with principal balances outstanding in the total amount of $312,359.00. IRB specialists searched all student aid files, provided by CPI, for evidence of those outstanding loans and could not locate 179 student aid files that should have contained Federal Perkins Loans' promissory notes. The principal balance for those 179 loans is $149,436.00. In addition, IRB specialists located 47 student aid files that lacked original, properly executed promissory notes evidencing the borrowers' loan obligations. The principal balance for those 47 loans is $34,738.00.

In addition, during the site visit, CPI provided to the IRB specialists a copy of CPI's "Overpayment Report," dated September 4,1992, identifying amounts retained by CPI that

should have been refunded to Federal student financial assistance programs on behalf of students. According to this report, CPI retained $54,418.00 that was due and awing to the Department on behalf of 105 former CPI students. A copy of the program review report that identified both findings of noncompliance with the regulations implementing the HEA was sent to CPI on November 25, 1992.

On January 14, 1993, the Student Financial Assistance Programs ("SFAP") 4/ issued an FPRD to CPI establishing the liabilities that CPI owes to the Department under both findings. The Department also assessed informal fines totalling $99,618.00 for the regulatory violations under both findings. On February 25, 1993, CPI requested a hearing pursuant to 34 C.F.R. Part 668, Subpart H. 5/ In the January 14 letter, CPI accused the Department of taking illegal actions against CPI and attempting to personally "ruin" the former school owner, David Shefrin. CPI also alleged that Mr. Clarence Hicks, Chief of IRB, and the Closed School Section of the Institutional Monitoring Division ("IMD") of the Department, illegally refused to accept documentation in support of CPI's appeal.

By letter dated April 29,1993, Jack C. Reynolds, Director of IMD, responded to CPI's complaint that the Department refused to accept documentation relevant to CPI's appeal. This letter documents that CPI made phone calls to Mr. Hicks between January 14, 1993, and February 25, 1993, to discuss forwarding 50 boxes of student financial aid records to the Department. Mr. Hicks, contrary to CPI's assertion, did not refuse to accept documents relevant to CPI's appeal. In fact, Mr. Hicks volunteered to provide Department staff to search through the 50 boxes and locate any records that appeared to be relevant to the findings of the FPRD, including a search for Federal Perkins Loan promissory notes. Mr. Hicks then stated that he would return any documents not related to the appeal to CPI at CPI's expense. Ostensibly because CPI did not find Mr. Hicks solution acceptable, CPI failed to submit the 50 boxes in support of its appeal.

Upon assignment of this matter to the undersigned, I issued an order on April 14, 1993, that required CPI to submit its opening brief by May 19, 1993. On May 3, 1993, CPI filed a letter requesting that the letter, coupled with its earlier letter dated February 25 (referred to hereinafter as the "letters"), be accepted as the opening brief of CPI, in compliance with my order. A reply brief of SFAP 6/ was filed June 7, 1993.

II. PRELIMINARY MATTERS

A. THE INFORMAL FINES SOUGHT BY SFAP CANNOT BE REVIEWED IN THIS PROCEEDING.

As a result of the two findings of regulatory non-compliance, SFAP imposed informal fines within the FPRD as a penalty for CPI's dereliction, in addition to the liabilities assessed. These are informal fines and, as such, cannot be adjudicated within an FPRD appeal. 7/ Consequently, there is no need for any discussion within this proceeding in defense of the informal fines sought by the Department.

B. THE DEPARTMENT'S REFUSAL TO WAREHOUSE, AT GOVERNMENT EXPENSE, 50 BOXES OF CPI's STUDENT AID RECORDS, THAT ARE IRRELEVANT TO CPI'S

APPEAL, IS NOT A DEFENSE TO CPI'S FAILURE TO SUBMIT DOCUMENTATION IN A TIMELY FASHION.

CPI failed to submit documentation in a timely fashion, in accordance with the regulations, which require an institution to submit admissible materials within 45 days from the date the institution receives the FPRD. See 34 C.F.R. §§ 668.1 13(b) and 668.1 16(e)(1)(iv). CPI claims that the Department illegally refused to accept 50 boxes of student aid records, and that CPI, therefore, could not submit documentation relevant to its appeal.

CPI contacted the Department during the time between January 14 and February 25 to discuss forwarding 50 boxes of student financial aid files to the Department. The Department replied, by telephone and through a confirmation letter, that it would accept all 50 boxes from CPI, review the boxes for relevant documentation, and ship back to CPI any irrelevant documentation at CPI's expense. Notwithstanding this offer from the Department, CPI failed to submit any documentation in support of its appeal and now expresses its intention to destroy all 50 boxes of student aid records.

CPI's unwillingness to undertake the expense of shipping costs is the only thing that prevented CPI tram submitting the 50 boxes to the Department. The Department is not a storage facility for closed schools' student aid records, and is not legally obligated to warehouse, at government expense, 50 boxes of student aid records that are irrelevant to an institution's appeal. Consequently, the Department's request that CPI pay the expense of reshipping documents found to be irrelevant is reasonable. CPI's refusal to send the boxes of documentation under these terms does not serve as a defense to CPI's failure to submit required documentation in support of its appeal.

Furthermore, it is doubtful that any relevant documents would be found among the 50 boxes that CPI proposed to ship to the Department. The IRB specialists conducted the review at CPI with the specific intent to locate and secure all original or certified copies of Federal Perkins Loan promissory notes. This fact was clearly communicated to CPI staff in advance of the site visit because CPI staff provided to IRB specialists the individual student aid file that CPI kept for each student who received a Federal Perkins Loan. It was those files that IRB specialists combed in search of promissory notes. CPI's present claim that relevant documents are contained in these 50 boxes is a weak attempt by CPI to avoid the payment of liabilities CPI owes to the Department.

In conclusion, CPI has no defense for its failure to submit documentation relevant to its appeal to the Department in a timely fashion, namely Federal Perkins Loan's promissory notes, as required by 34 C.F.R. §§ 668.113(b) and 668.1 16(e)(1)(iv). Furthermore, it is unlikely that any of the 50 boxes of student aid records CPI proposed to ship to the Department contains promissory notes evidencing legally enforceable debts.

C. CPI'S ADDITIONAL MISCELLANEOUS CLAIMS ARE IRRELEVANT TO THESE PROCEEDINGS AND, AS A MATTER OF LAW, MAY NOT BE CONSIDERED IN DETERMINING WHETHER THE FPRD AT ISSUE IS TO BE UPHELD.

The administrative law judge ("ALJ") must decide whether "the final program review determination issued...was supportable, in whole or in part." 34 C.F.R. § 668.118(b). Such a decision addresses the specific findings in the FPRD for which there is a dispute that is cognizable by the AU. In this regard, the AU must base his decision on evidence properly presented by the parties. 34 C.F.R. § 668.118(c).

CPI included in its letters appealing the FPRD, a discussion of its belief that the Department is out to get CPI and Mr. David Shefrin, personally, and that the Department, toward that effort, has taken illegal actions against CPI that caused CPI to mismanage its Federal student financial aid programs. Specifically, CPI claims that the Department illegally refused to accept student financial aid records, refused to accept an alleged offer made by CPI for the sale of CPI, caused CPI to close its doors, illegally terminated CPI's access to funds under the Federal SLS program, and incorrectly calculated CPI's cohort default rate. None of these allegations constitutes a valid or legal defense to the two findings in the FPRD. Thus, the only response made by CPI to the FPRD is to accuse the Department of allegedly illegal practices and wrongdoing.

III. FINDINGS IN DISPUTE

A. CPI OWES THE DEPARTMENT $184,174.00 BECAUSE CPI MISMANAGED ITS FEDERAL PERKINS LOAN PROGRAM BY FAILING TO OBTAIN OR MAINTAIN PROPERLY EXECUTED, ORIGINAL OR CERTIFIED COPIES OF PROMISSORY NOTES EVIDENCING BORROWERS' LOAN OBLIGATIONS.

The Federal Perkins Loan Program, formerly known as the Perkins Loan Program, is authorized by Title IV, Part E of the HEA, as amended. 8/ 20 U.S.C. § 1087 aa-ii. Under this program, the Federal Government advances funds to institutions of higher education to establish a Federal Perkins Loan Fund ("Fund") for loans to financially needy students. The loans are made at a very low rate of interest. The institution provides a matching contribution (the ratio of federal to institutional funds is 9:1) and administers the loan Fund. 34 C.F.R. § 674.8(a).

Pursuant to the Federal Perkins Loan Program, institutions are required to obtain a signed promissory note, that is approved by the Secretary, from each borrower. 34 C.F.R. § 674.31(a). The promissory note must contain certain provisions regarding interest, repayment, cancellation, prepayment, late charges, security and endorsement, assignment, acceleration, cost of collection, and disclosure of information to credit bureaus. 34 C.F.R. § 674.31(b). An institution is required to keep the original promissory notes and repayment schedules in a locked, fireproof container until the loans are satisfied, or until the original documents are needed in order to enforce the loan obligation. 34 C.F.R. § 674.19(e)(4)(i).

Institutions holding loans in default can assign these loans to the Secretary of Education ("Secretary"), as long as the loans are legally enforceable. 20 U.S.C. § 1087cc(a)(5) (B). Institutions may be required to assign to the Secretary a loan if the institution has knowingly failed to maintain an acceptable collection record with respect to such loan. 20 U.S.C. § 1087cc(a)(5)(A). In that event, the institution may be required to assign the note to the Secretary without recompense. 20 U.S.C. § 1087cc(a)(5)(A)(i). The Secretary has the authority to determine that a loan assigned to the United States is legally unenforceable because of the acts or

omissions of the institution. The Secretary may make this determination with or without a judicial determination regarding the enforceability of the loan. 34 C.F.R. § 674.50(g)(1). When this determination is made the institution must reimburse the Fund, or the Secretary in the case of an institution that is closed, for that portion of the outstanding balance on a loan assigned to the United States, which the Secretary determines to be unenforceable because of the act or omission of the institution. 34 C.F.R. § 674.50(g)(2). The Secretary will take assignment of a loan only if the institution provides to the Secretary an original, or certified copy of an original promissory note that is properly executed; otherwise, the Secretary determines that the loan is not legally enforceable. 34 C.F.R. § 674.31; 34 C.F.R. § 674.50(c)(2).

Since CPI is now closed, the Secretary is responsible for CPI's portfolio of outstanding Federal Perkins Loans, which totals $312,359.00. ED Ex. 7. In order to take collection action against students for the outstanding balance of these loans, the Secretary requires that CPI provide to the Secretary original, or certified copies of all promissory notes. CPI failed to obtain or maintain properly executed, original or certified copies of promissory notes for 226 loans, in violation of the provision of 34 C.F.R. §§ 674.19 and 674.31. ED Ex. 5. Consequently, CPI must pay the Department $184,174.00.

B. CPI MUST PAY THE DEPARTMENT $54,418.00 FOR OVERAWARDS OF FEDERAL FUNDS MADE BY CPI

An institution that participates in Federal student financial assistance programs under Title IV of the HEA, acts in the nature of a fiduciary in its administration of these programs and is, therefore, 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. 34 C.F.R. §§ 668.82(a) and (b). Funds received by an institution under the Federal Pell Grant program, the Federal SEOG program, the Federal Work Study program, and the Federal Perkins Loan Program are held in trust for the intended student beneficiaries and the Secretary. 34 C.F.R. § 668.16. The institution, as a trustee of Federal funds, may not use or hypothecate Title IV, HEA program funds for any other purpose. 34 C.F.R. § 668.16.

CPI provided to IRB specialists a report made by CPI identifying $54,418.00 in overpayments that CPI's owes to the aforementioned Federal programs on behalf of student beneficiaries. ED Ex. 8. That report shows that CPI has a balance on each student account that is in excess of the total cost of attendance at CPI CPI does not dispute that it received this amount in overawards, and the document, provided by staff at CPI, speaks for itself. CPI asserts as its only defense, a claim that any money owed is owed directly to students rather than the Department See CPI'S February 25 letter, page 4. The report does not specifically identify for each student account the Federal program in which the overaward was made. It does, however, show that CPI received all monies that it credited to its students' accounts from Federal student financial assistance program funds. CPI, therefore, owes the Department $54,418.00, the full amount of the overaward, on behalf of former CPI students.

IV. FINDINGS AND ORDER

In accordance with 34 C.F.R § 668.118(b), it is found, except for informal fines as to which I have no jurisdiction, that the FPRD is supportable in its entirety. The appeal of CPI is denied.

Dated this 8th day of June, 1993.

Paul S. Cross
Administrative Law Judge
Office of Higher Education Appeals
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-3644

1/ This proceeding is governed by the procedures in the Department's regulations at 34 C.F.R. Part 668, Subpart H.

2/ Prior to Its termination, CPI participated in the following Title IV, HEA programs: the Federal Pell Grant program, 20 U.S.C. § 1070a, et seq.; the Federal Supplemental Education Opportunity Grants ("SEOG") program, 20 U.S.C. § 1070b; the Federal Perkins Loan program, 20 U.S.C. § 1087aa-ii; the Federal Work Study program, 42 U.S.C. § 2751-2756b; the Robert T. Stafford Federal Student Loan ("Federal Stafford Loan") program, 20 U.S.C. § 1071, et seq.; the Federal Supplemental Loans for Students ("SLS") program, 20 U.S.C. § 1078-1; and the Federal PLUS program, 20 U.S.C. § 1078-3.

3/ An institution is required to annually submit to the Secretary, a Fiscal Operations Report that identifies the amount of Federal Perkins Loans outstanding. 34 C.F.R. § 674.19(d)(3).

4/ This office was formerly called the Office of Student Financial Assistance ("OSFA").

5/ These regulations were superseded by Section 490(b) of P.L. 102-325, effective as of July 23, 1992. SFAP subsequently referred the case to the Office of Hearings and Appeals of the Department for assignment to a hearing official. ED Exs. 3 and 4.

6/ SFAP was granted a one week extension to file its brief due to an unexpected family emergency that necessitated that counsel for SFAP be called out of town.

7/ Informal fines are to be distinguished from a formal fine action that is instituted by the Compliance and Enforcement Division of SFAP, pursuant to 34 C.F.R. Part 668, Subpart G.

8/ Prior to being named the Perkins Loan Program, this program was called the National Direct Student Loan Program and is a continuation of the National Defense Student Loan Program authorized by Title II of the National Defense Education Act of 1958. See Education Amendments of 1972, Pub. L. No. 92-318, § 137(d)(1), 86 Stat. 235 (1972), which provided that all rights and duties created under Title II were deemed to be vested under the new Title IV, Part E.