**In the Matter of MOORE CAREER COLLEGE, Respondent**

**Docket No. 93-85-ST**
**Student Financial Assistance Proceeding**

# DECISION

I

By letter-notice dated July 15, 1993 (Notice), the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (ED) seeks to terminate the eligibility of Respondent, Moore Career College (Moore), to participate in the student financial assistance programs authorized under Title IV (Title IV programs) of the Higher Education Act of 1965, as amenaed (HEA) . SFAP also seeks imposition of a fine of $152,000 based upon an asserted failure to comply with statutory and regulatory requirements. Moore disputes the allegations of SFAP and asked for a hearing.
The Notice mostly is based on an Inspection Report issued by ED's Office of the Inspector General (OIG) which identifies several areas of regulatory concern. The Notice also is based on two program review reports issued by SFAP' S Institutional Review Branch. Some of the information contained in the OIG and program review reports extends beyond the Notice. Upon the recquuest of Moore, I strike the extraneous material.

Oral hearing was heid at Jackson, MS, on October 21-22 and November 16-18, 1993, and Washington, DC, on December 2, 1993. Post-hearing, opening and reply briefs were filed on April 1, 1994, and April 28, 1994, respectively.

II

Moore is a for-profit proprietary school with its main campus at 2460 Terry Road, Jackson, MS, and branch campuses at Meridian, Hattiesburg, and Tupelo, MS. The school was incorporated during October 1986 as Moore Career College of Jackson, Inc. Such was a prelude to a change of ownership that took place on November 1, 1986, when the school was acquired by Edward Moore. Both before and after the acquisition, Moore participated in the following Title IV programs: Federal Pell Grant, Federal Supplemental Education Opportunity Grant, Federal Perkins Loan, and Federal Work Study Programs.See footnote 1 [1]

As noted, on July 15, 1993, SFAP initiated this action to terminate Moore's eligibility to participate in the Title IV programs and to impose a fine upon Moore of $152,500.

This termination primarily is based on allegations of (1) an excessive 1990 Federal Family Education (formerly, Stafford Student) Loan Program cohort default rate, and (2) late Pell Grant and late Stafford loan refunds. There also are allegations of failure to meet regulatory financial responsibility requirements, failure to conduct proper verification of student aid application information, improper administration of Moore's ability-to-benefit test, improper disbursements of Pell grant or Stafford loan funds to stuaents not making satisfactory academic progress, failure to meet standards of administrative capability, and failure to meet the f duciary standard of

conduct. The proposed fine is based on the refund, verification, and disbursement issues. The scope and severity of these alleged acts of commission and omission are placed in issue by the parties.

III

In January 1993, Moore was notified that its Stafford student loan program cohort default rate for fiscal year (FY) 1990 was 61.9 percent. Subsequently, it was notified that the rate for FY 1991 was 41.6 percent, representing a 35 percent reduction from FY 1990. R 1.

Respondent offers testimony by a Mr. Musselman concerning the loan defaults. SFAP challenges the testimony of Mr. Musselman. However, I find him to be an informed and knowledgeable witness. He serves as a consultant and his opinions, even if treated as those of a lay person, are supported by the evidence of record. He testifies that the option of appealing the Department's cohort default rate determination for 1990 was discussed with Mr. Moore at the time that the determination letter was received by letter dated January 27, 1993. Tr. 352; ED 71. It was concluded at that time that no appeal would be made because of (1) the cost of an appeal and (2)the opinion that an appeal was unnecessary because Moore was thought to have diligently implemented a default reduction and management plan. Tr. 352.

As such, testimony at the October 1993 hearing that there were no appeals pending and that the determination was final was correct, at that time. Tr. 262. In December 1993, however, the Higher Education Technical Amendments of 1993 were enacted.

Section 4(b)(8) of the Act provides, among other things, that [t]he amendments to subsection (a)(3) and (m)(l)(B) of section 435 of this Act (the Higher Education Act of 1965, as amended) shall apply with respect to the determination (and appeals from determinations) of cohort default rates for fiscal year 1989 and any succeeding fiscal year.

Section 435(a)(3) of the Higher Education Act of 1965, as amended, 20 U.S.C. 1085(a)(3), is a new paragraph added by the 1993 Technical Amendments. It provides, among other things, that an institution may appeal a cohort default rate determination if there was improper loan servicing (in addition to other defenses). Section 2(c)(55) of the Technical Amendments.

As a result of the two provisions cited above, Moore commenced an appeal of its fiscal year 1989 and any succeeding fiscal year cohort default rate determinations upon the ground of improper loan servicing. On January 28, 1994, Moore filed a notice of intent to appeal the Department's cohort default rate determinations for fiscal years 1989, 1990, and 1991. According to the post-hearing briefs of Moore, the appeal is being processed by ED. Such appears to be conceded by SFAP.

The new paragraph (a)(3) of section 435 of HEA, clarifies the grounds for appealing cohort defaul. rates. Under HEA Section 435 and ED regulations previously promulgated to implement the cohort default rate appeais process, cohort default rate determinations are not Final until the institution exhausts its appeal rights. As such, institutions appealing cohort default rate

determinations may continue to participate in the loan programs while their appeals are pending. 34 C.F.R. 668.15(f)(7).

Based on the HEA Education Technical Amendments of 1993 and the provisions discussed herein, which were effective immediately upon **enactment, Moore** Career College obtained the right, which it has exercised and which is now recognized by SFAP, to appeal its 1990 cohort default rate. Accordingly, the 1990 cohort default rate determination of 61.9 percent issued January 27, 1993, is not final pursuant to 34 C.F.R. 668.15(f) and cannot form the basis for a proposed termination of Moore's eligibility to participate in the Title IV programs.
However, assuming that Moore's fiscal year 1990 cohort default rate is final or is not stayed pending appeal, Moore nevertheless establishes that it acted diligently to implement default reduction measures.

SFAP's proposed termination action is based in large part on a regulatory provision which authorizes the Secretary to initiate a termination action if the institution's cohort default rate exceeds 55 percent for fiscal year 1990 or exceeds 40 percent and

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has not been reduced by an increment of at least 5 percent from the prior fiscal year. 34 C.F.R. 668.15(b). The regulations further provide that it s a complete defense and "no sanction is warranted if the institution demonstrates that it has acted diligently to implement the default reduction measures describea in Appendix D." 34 C.F.R. 668.90(a)(3)(iii). The regulations do not entirely define the phrase "acted diligently to implement."

Appendix D to Part 668 of Title 34 of the Code of Federal Regulations describes measures that an institution with a high default rate may follow, but the appendix does not preclude utilization of additional measures designated to reduce defaults on student loans by student borrowers. Appendix D is divided into four sections: measures to reduce defaults by dropouts, measures to reduce defaults related to borrowers' difficulty finding employment, measures to improve borrowers' understanding and respect for the loan repayment obligation, and a general section. Within each section are numerous specific steps that are recommended, as a minimum. For example, section I contains eight numbered paragraphs, section II contains three numbered paragraphs, section III contains six numbered paragraphs with twenty-five identified subsections, and section IV contains one numbered paragraph. Among other things, issues addressed by Appendix D include such things as delayed certification of loan applications of first time borrowers, implementation of a pro rata refund policy, and various entrance and exit counseling requirements.

Following receipt of its fiscal year 1988 cohort default rate in the summer of 1990, Mr. Moore discussed the school's situation with the school's financial aid consultant, Gary Musselman. In planning a default management plan, Mr. Moore visited several schools which reportedly had good default reduction measures in place. Tr. 711-712.

The school then prepared and submitted a default management plan to the Department for approval and received such approval bv letter dated July 23, 1990. R 2 and R 3. (SFAP asserts that no plan was submitted but I find otherwise) The school's plan tracks Appendix D with a few

exceptions. Tr. 323. The most notable exception (actually an addition) is the use of a default management clerk on a full-time basis who has numerous follow-up responsibilities with former students to ensure that they are aware of their obligations and responsibilities and to ensure that the students can avail themselves of benefits to which they are entitled, such as deferments to avoid defaults. Tr. 712.

The default reduction measures were implemented by Moore in July, August, and September 1990; that is, at the end of fiscal year 1990. Tr. 318 and 716. In this regard, the fiscal year 1990 cohort default rate is determined, for example, by placina the number of students entering repayment in fiscal year 1990 in the denominator and the number of such students entering into repavment but who defaulted in f scal year 1990 or fiscal year 1991 in the numerator. Tr. 285-a6.

Because students leaving scnool have a six month grace period after their departure before they must commence repaying their loans, students who left Moore after March 1990, and before implementation of the default reauction measures, would enter repayment in fiscal year 1991, not fiscal **year 1990.** Tr. 321-22 and 34 C.F.R. 682.209(a)(3)(B). Therefore, implementation of default reduction measures in the summer of 1990 would have no effect on the fiscal year 1990 cohort default rate. The earliest impact would be on the FY 1991 cohort default rate. Tr. 88, 286-87 and 325-26.

As ED OIG officials state, the purpose of the default reduction measures is to reduce an institution's default rate. Tr. 287 and 566. As noted, Moore's fiscal year 1990 cohort default rate was 61.9 percent. Moore's fiscal year 1991 cohort default rate was 41.6 percent. This is an approximate 20 percentage point drop from fiscai year 1990 and a 35 percent reduction in the default rate. R 1. This is a significant reduction in the default rate and by itself is significant proof of diligent implementation of Moore's default reduction measures. As can be plainly seen, the 1991 cohort default rate demonstrates that the default management plan is working. Tr. 333. Of course, as previously stated, SFAP questions the ability of Mr. Musselman to design a default reduction plan.

As noted, SFAP's notice of intent to terminate and to fine Moore Career College is dated July 15, 1993. ED 1. At the same time that this letter was being prepared and sent .o Moore, ED had within its possession Moore's unpublished 1991 cohort default rate. Tr. 265-66, 269, 357.

Considering that the notice of intent to terminate and to fine was not issued until July and the fact that the 1991 data were nearly ready for publication in July, SFAP's failure to determine the 1991 rate, while understandable, is unfortunate. As of July 1993, about a year had passed after the OIG inspection visit at Moore. Waiting a few more weeks would have helped balance the issues concerning Appendix D. A 35 percent reduction default seduction virtually speaks for itself.

Furthermore, ED's regulatory authority for taking action against an institution based upon its cohort default rate under the two provisions cited in the notice of intent to terminate and fine is logically and reasonably predicated on act,ons being taken based on the most recent fiscal year data. Sectlon 668.15(b)(1)(ii) sets out a sliding downward threshold for possible action based on fiscal years.
For example, the threshold is 60 percent for fiscal year 1989, 55 percent for fiscal year 1990, 50

percent for fiscal year 1991, 45 percent for fiscal year 1992, and 40 percent for any fiscal year after 1992. Reliance upon the most recent fiscal year data is especially important; all the more so because the 1991 cohort default rate was considerably below the termination threshold for that year (41.5 percent versus 50 percent). Here it also must be noted that sliding downward default thresholds are designed to provide institutions with time to adjust to a more cautious student loan policy presently espoused buy ED.

Similarly, section 668.15(b)(1)(i) contemplates comparing the most recent fiscal year data to the rate for the year immediately preceding it in order to determine if the rate dropped by at least 5 percent. In the instant matter, again, it is particularly important to note Moore's positive and more recent statistics.
Finally, SFAP should be held to a fairness standard. SFAP properly calls attention to a more recent cohort default rate where the subsequent default rate is higher or represents a very small decline for the purpose of proving that the institution is still not in compliance. Paul's Beauty College, Docket No. 9214-ST, U.S. Dep't. of Educ. (July 13, 1993) at 1. In the instant case, a subsequent default rate which is significantly lower is by itself strong evidence that Moore is diligently implementing Appendix D.

Webster's Ninth New Collegiate Dictionary defines "diligent" as "characterized by steady, earnest, and energetic application and effort." It defines "implement" as "to give practical effect to and ensure actual fulfillment by concrete measures." It does not mean absolute perfection. In other words, Moore's affirmative defense, created by regulation, that it demonstrate that it has "acted diligently to implement" means that it must take at least the minimum steps listed in Appendix D and thereby put into effect default reduction measures. Moore also is required to follow throucn with concrete measures resulting in a lower default rate.

Beginning in the summer of 1990, Gary Musselman began working with Moore on the development of a default reduction plan for submission to ED (R 2) and the implementation of that plan. Tr. 318, 323. His functions include participating in the selfevaluation of the causes of default and overseeing the implementation of the default reduction measures to ensure that the school diligently implemented its plan. Tr. 319, 324, 333. In fact, according to Mr. Musselman, the school's 1991 cohort default rate demonstrates that the default management plan is working. Indeed, Moore should be held up by the Department as a good example of how the concepts of default management work, according to Mr. Musselman. Tr. 333. Of course, SFAP objects to the opinions of Mr. Musselman, but I find him to be well informed and able to express lay opinion on the subject of Appendix D. Lay opinion, incidentally, is not proscribed by Federal Rules of Evidence.

As Mr. Musselman points out, the timing of the implementation of the school's default reduction plan could not affect the fiscal year 1989 or 1990 cohort default rate whatsoever. Rather, the first time the result of the school's efforts would be seen would be with the 1991 rate. In fact, the first year of full impact of the plan, according to Mr. Musselman, would be the fiscal year 1992 cohort default rate. Tr. 334.See footnote 2 [2]

When the 1989 cohort default rate came out in the summer of 1991, Moore continued its analysis of the causes of the rise in the default rate from 1988 to 1989. Mr. Musselman testifies that

Moore was surprised by an increase from 1988 to 1989. Tr. 335. One notable fact was that a predominant lender in the 1989 rate was a failed bank without internal servicing capability, The Bank of Horton. Tr. 335-37. As a result, because loans had not been serviced, the Bank of Horton could not sell them on the secondary market and this led to a bank failure. Tr. 337. When the FDIC took over the Bank, it inherited a very difficult situation and struggled to find a third party to service the loans. Id . This situation may have inhibited Moore's ability to positively impact the default rate and may be reflected in the 1990 cohort default rate. Id. However, even with a substraction for poor loans servicing by the Bank of Horton, Moore's unadjusted default rate for 1990 was so high that it seems doubtful that the pending appeal of Moore will be fully successful.
After examining the situation and fearing that a significant part of Moore's default rate problem stemmed from failures of lending institutions, Moore concentrated on working with those loans that it could affect, that s, loans handled through banks in Mississippi. Id.

From the analysis of the causes of defaults, Moore also concluded that two programs were contributing to the problem. One was the truckdriving program and the other was the general office clerk program. Tr. 339. With respect to the general office clerk program, Moore eliminated it. The effect of this action will not likely be seen until the 1992 cohort default rate becomes available. Id.

With respect to the truckdrivinc program, Moore initially attempted to make arrangements for loans to be paid back through payroll deduction, but that did not materialize. Tr. 343. As a result, **Moore took** the program out of the guaranteed student loan program and offered students private financing. Id. This occurred in the spring of 1991, which means that such corrective action will not be reflected until FY 92.

Mr. Musselman testifies that his review of student files demonstrates that all of the elements of the default reduction plan, including Appendix D, are being implemented and that Moore is acting diligently to implement Appendix D. Tr. 338. This evidence is uncontroverted except for the absence from some of Moore's files of validated exit interview forms and default prevention letters.
Indeed, ED witness, Mr. Crider, testifies that the OIG Inspection Team reviewed the implementation of all of the elements of Moore's default reduction plan and cited Moore for those areas where they believed they had found problems. Tr. 559-60. The only problems cited in the OIG report concern file documentation issues about exit counseling and issuance of default prevention letters. ED 4-11. Within the context of the notice of charges, OSFA does not otherwise challenge Moore's procedures nor the implementation of the numerous other aspects of the default reduction plan. Tr. 560 and ED 4-12.

The OIG report describes "30 discrepancies in the exit interview process." ED 4-12. The report does not inform the institution as to the specific student files relied upon by the OIG for its conclusion. SFAP also cites to defaults by students where the absence of records may suggest that they did not receive exit counselling. However, the number of students is comparatively small and does not indicate a lack of Appendix D compliance by Moore.

Mr. Crider acknowledges that no effort was made by the OIG to ask the school about the files, to make sure their conclusion that documentation was missing was correct, or to even interview the persons whose testimony on such issues would be relevant. Tr. 565, 56i3. He agrees that the school cannot respond to the OIG conclusions if it does not know the names of the relevant students and admits that he did not know if the 30 discrepancies were for 30 different students. Id. and Tr. 563, 1107.
SFAP sought to introduce testimony and exhibits regarding specific student files relied upon by OIG regarding the alleged 30 discrepancies for the first time on rebuttal. Tr. 1091-92, 1095. Initially, SFAP identified ' student records. Tr. 1107. After argument, the Tribunal agreed that all of the names SFAP wanted to rely upon would be disclosed or not cited to at all. Tr. 1109. Finally, SFAP provided citations to a few additional files. Tr. 1112. In sum, SFAP cites only a relatively few student files in support of OIG's conclusion that there were 30 discrepancies. (ED 13-8, 14-12, 22-16, 31-26, 36-32, 46-11, 48-24, 57-22, 63-19) Tr. 1090 and 1112.

The exit interview forms which SFAP refers to in those exhibits represent a small number without signatures or dates, and five without complete lender information on the forms. There **also were** certain other missing documents for the 30 files.
Certainly, it is important for an institution to maintain complete files. Assuming that exit interview files must be maintained, the fact that some few files have some incomplete documentation does not mean that the institution is not acting diligently to implement its plan. Tr. 347.

In the first instance, Appendix D does not specifically require that all procedures be documented, although such would appear to be sound practice. Secondly, as Mr. Musselman testifies, the critical issue to evaluate is whether the institution has a system in place to reduce defaults, whether the school has the people and procedures in place to administer the systems to accomplish the goal of making sure that
the students know what the1r obligations and alternatives are, and
whether the school has a system of checks and balances in place to ensure that steps are followed or made up if in fact an important step is missed at an earlier point in time. Tr. at 347.

Mr. Musselman testifies that the school follows the required default reduction steps, including exit counseling which was given to the vast majority of Moore's students. Further, the school has taken an additional step to prevent defaults. Moore employs a clerk whose job it is to stay in constant communication with former students, during and after their grace period, to ensure that they get the required notices, advice, and information. Tr. 348. As a result, if an exit interview is missed (a student may leave without advance notice), or if information about the lender is not communicated in writing (the fact that an exit interview form is incomplete does not mean the exit interview did not take place nor that an important piece of information was not transmitted), Moore's default management clerk will cover the same information in follow-up calls. Tr. 348. These phone calls take place during the student's grace period, as well as during the period of repayment. To further facilitate communication, students are given an aoo number to call the school. Id.
Mr. Musselman testifies as to his own oversight functions, which include monitoring the default clerk's job. He ensures that the clerk is assessing the status of a student, such as: whether the student was earnlng money to pay back the loan(s),

whether the student was in communication with the lender, whether the student was delinquent, whether the student was eligible for a deferment, or
whether the student's payments were too high. Tr. 349-51. The deficiencies cited by the Department with respect to alleged failure to diligently implement Appendix D at most are evidence of isolated problems. Tr. 354.

The evidence cited by SFAP supports two possible conclusions. Either that the exit interview process was incomplete because the exit interview forms were not fully completed, or that the exit interview process was complete but that the forms were not adequately completed. Mr. Musselman testifies that the evidence cited by SFAP demonstrates nothing more than incomplete forms. His own examination of the files shows that, as a rule, exit interviews do take place. OIG, on the other hand, reviewed only a few files which were selected upon an undisclosed subjective basis.
Notwithstanding, even if the exit interviews were not complete, the evidence supports no greater conclusion than that the problem was sporadic. Further, Moore's check and balance system of following up through the extra efforts of a default management clerk cured any earlier error and demonstrates active, diligent, and good faith efforts to implement Appendix D. See also testimony of Baylis Lee at Tr. 1026-27. Furthermore, the Southern Association of Colleges and Schools (SACS) mandated a visit to the school in May 1993 which took place as a result of the OIG Report. This visit resulted in a SACS conclusion that Moore had implemented Appendix D. R 33 at 663.
Mr. Musselman testifies that in eighteen years he has never seen a school that did not have files with missing pieces of paper. Tr. 354. Mr. Oscar Howard, ED's program reviewer, testifies that lack of documentation of exit counseling or of each step in the process is a very common citation. Tr. 181. See also ED Federal Student Financial Aid Handbook 1993-94 at 97. Furthermore, ED witness Mr. Howard testifies that every school where he has checked compliance with Appendix D has documentation or had at least one step missing, in his opinion. Tr. 181.

As stated, Moore's default reduction plan with respect to exit counseling issues does not rest solely upon the exit interview process at the school. It is supplemented by the check and balance and supplemental process implemented through the effort of a default management clerk. This position was created in the summer of 1990 and is presently occupied by Stella Standberry. Tr. 712, 725, 745-48. The default management clerk's functions are described in writing. See e.g. R 4, and R 7 at 91.
Though the OIG team was introduced to Ms. Standberry and told about her function, the OIG inspection team inexplicably did not interview her. Tr. 568, 752. Ms. Standberry's broadest function is to make sure students are aware of their rights and obligations. Tr. 745-52.

Through her, the institution establishes not only a check on the exit interview process to cure omissions if an exit interview item was missed, such as advising the student of lender information to create awareness of deferment options, but also an awareness of student rights and obligations during and after the grace period. This is accomplished by creating a line of communication after the student leaves the school. In other words, whether a step was missed or not, Ms. Standberry, who communicates with each student who leaves the school, creates a heightened awareness for the student while also serving as a facilitator for the student. Id.

According to the institution's records, the default management clerk
spends all of her time contacting borrowers to counsel them on the repayment obligation and to assist them in completing and filing deferment forms and requests for forbearance. We provide the borrowers with the forms by mail, we follow up with them to assist them in completion of the forms, and we ask them to return the forms to us so that we can ensure that they are correctly completed. Then we send the forms directly to the lender or service, and follow up with the lender and service to ensure that the forms are acted upon appropriately. When the deferment or forbearance period expires, we again follow up with the borrower to ensure that he or she either begins to make payments or, if warranted, requests additional deferment or forbearance assistance. We are with the borrower every step of the way, and this cannot help but have a very significant effect on the future default rates.

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R 7 at 91. These functions are supplemented by a nationwide toll-free number and a series of three grace period letters, all of which are designed to ensure constant contact with the lenders, servicers, guarantee agencies, and students.
Ms. Standberry testifies that she talks to as many as 75-80 students a day. Tr. 877. (Probably 80 an hour is an exaggeration but, as noted, she was not interviewed by OIG) Her function, in her mind, is to solve problems. Tr. 878. She talks to each student during the grace period and for up to two years after they have left the school to make sure they know of their obligations, that repayment responsibilities are about to begin, who the lender is, what the repayment schedule is, or why they are delinquent in their payments. Tr. 863-70.

Through these telephone conversations, Ms. Standberry covers all of the items shown on the exit interview form (see e.g. R 2 27 and Tr. at 1020-22 [testimony of Baylis Lee]). Ms. Standberry develops a contact sheet for each student and records details from each conversation on the forms. R 6. During these conversations she also determines if a loan payment deferment is appropriate, such as if the student is unemployed or for other reasons. She ensures that former students receive the proper forms and obtain a proper deferment. This facilitation process avoids a default. Id .
The performance of Ms. Standberry's functions does not mean that no defaults will occur. It does mean that fewer defaults will result, especially when compared to a default reduction plan without her role.

Perhaps if the default reduction process were taking place without her function, the few errors alleged by the SFAP in the implementation of Moore's Plan might be more meaningful. Indeed, Moore's exhaustive follow-up procedure is at least as meaningful as the exit interview process. Moore follows both processes, albeit with some few exceptions in the case of the latter.

With respect to the absence of default prevention letters from several files, Ms. Pinkerton testifies for Moore that this occurred during an isolated period of time because of a misunderstanding by a new secretary who assumed new responsibilities. Tr. 989. She testifies that the institution discovered the problem and found that the new secretary did not realize, until reminded, that copies of the letters needed to be retained and placed in the files. Nevertheless, the school determined that the letters were mailed.

Finally, it should be noted that SFAP's position on the diligent implementation of Moore's default reduction measures is in conflict. A 1993 program review report raised issues regarding Moore's implementation of Appendix D. This was separate from the OIG report. Moore responded to the program review report including the default reduction issues and initially received a Final Program Review Determination letter, later retracted, from the regional office closing out the matters at issue including Appendix D issues. R 29. As to this issue, the regional office proposed resolving the matter with a $1,000 informal fine, far different from the termination proposed by OIG.

Clearly, the Department's regional office did not consider Moore/s implementation of Appendix D to be of such a nature as to require any serious further action. A $1,000 informal fine is minimal. When the regional office considers the results of the program review to be very serious, it will normally recommend an adverse action. Tr. 181-82. This they did not do with Moore.

Mr. Howard, a witness from the ED regional office, acknowledges that the school responded to the 1993 program review and that he made no effort to challenge the school's response to the issues raised in the report except with respect to exit counseling. In other words, the school's responses to the issues of consultation with accrediting commissions to improve curricula and conducting self-evaluation activities are uncontroverted.

Mr. Howard offers no explanation why the above referenced close-out letter was, during the hearing itself, retracted. The fact that this occurred, however, is indicative of a conflict within SFAP regarding the issue of Moore's implementation of Appendix D.

In summary, the 1990 cohort default rate relied upon by SFAP as a principal ground for the proposed termination is not final. As such, it cannot serve as a basis for any proposed action. Arguments by SFAP with respect to Moore's likelihood of succeeding on the appeal are not without some merit, but must be disregarded by me because I am not the ED official designated to decide the cohort default rate appeal of Moore. Not only is SFAP's argument as to the likely outcome speculative, but it ignores this Tribunal's repeated statement that it would not be a trier of the validity of the cohort default rate. Under the facts and circumstances of this issue, this Tribunal has no alternative other than to conclude that the 1990 rate is not final.

Notwithstanding the fact that the 1990 rate is not final, Moore's evidence specifically and overwhelmingly demonstrates that it acted to diligently implement Appendix D. This evidence includes the intensive work of Moore's default management clerk, Stella Standberry. This work includes, among other things, a check and balance on the exit counseling process because she covers all required points in her conversations with former students. The evidence also includes the ultimate point of evidence which is the outcome.

Moore's cohort default rate dropped from 61.9 percent in 1990 to 41.6 percent in 1991. Most revealingly, Moore's 1991 rate dropped by 20 points or 35 percent.
Furthermore, Moore's Initial and Reply Posthearing Briefs tend to show that the school's 1992 cohort default rate will be even lower than that testified to by Mr. Moore's testimony at the hearing. Moore says that he has received the data and calculation from the Mississippi Guaranty Student Loan Agency for fiscal year 1992. The asserted calculation on 960 borrowers in

repayment is 26.25 percent. These statistics, although not formally in evidence, tend to show that Moore is acting to diligently implement Appendix D. These figures would reflect the following:

| Fiscal Year | Cohort Default Rate |
|---|---|
| 1990 | 61.9 |
| 1991 | 41.6% |
| 1992 | 26.25% |

ED witness Ms. Coombs testifies that Appendix D and other default reduction measures, at best, only reduce the likelihood of a default. Tr. 1179. Moore challenges the status of Ms. Coombs as an expert witness. She, as in the case of Mr. Musselman, is very well informed, although plainly the latter knows much more about Moore than Ms. Coombs, who reviewed only a few records of Moore. Thus, SFAP's argument that the absence of counseling documentation for only a relatively few students demonstrates lack of diligent implementation of Appendix D is rejected.

SFAP also argues that Ms. Coombs is the most qualified person to testify on this subject is unwarranted. Ms. Coombs has participated in only a handful of program reviews and at the time that she assisted in program reviews, Appendix D did not exist in fact or as a concept. Tr. 1242. Further, since January 1990, when she became a responsible official for default management and ED policy on this subject, she has not done any site visits to determine if diligent implementation of Appendix D was taking place at any school. Tr. 1244. Although her overview opinions are authoritative, they are not factbound as pertains to Moore. As noted, she reviewed only a few of the student files of Moore and those files are shown to be non-typical.
Much of SFAP's evidence herein on Appendix D implementation is based on an OIG sampling process. The OIG sampling process is egregiously flawed because there was no method to it other than subjective judgement. Despite the inspection by five persons
over five weeks (or 125 person days), only a relatively few of Moore's files are offered as evidence of Moore's conduct. The results are highly suspect and cannot be extrapolated.

IV

The OIG Inspection Report, based upon a student's last day of attendance, identifies 16 asserted late refunds to the Pell grant account for the following students:

| STUDENT (ED Ex.) | DATE REFUND DUE | DATE REFUND MADE | # DAYS LATE | REFUND AMOUNT |
|---|---|---|---|---|
| [Student name] | 11-30-91 | 01-17-92 | 48 | $ 443 |
| [Student name] | 08-24-91 | 01-09-92 | 138 | 417 |
| [Student name] | 10-24-91 | 03-23-92 | 151 | 1,200 |
| [Student name] | 01-02-92 | 03-03-92 | 61 | 511 |
| [Student name] | 11-09-91 | 01-21-92 | 73 | 438 |
| [Student name] | 05-08-92 | 07-06-92 | 59 | 66 |
| [Student name] | 09-21-91 | 01-09-92 | 110 | 408 |
| [Student name] | 01-11-92 | 02-17-92 | 37 | 496 |

| | | | | |
|---|---|---|---|---|
| [Student name] | 02-18-92 | 04-20-92 | 62 | 1,200 |
| [Student name] | 05-31-92 | 07-01-92 | 31 | 1,424 |
| [Student name] | 12-14-91 | 01-17-92 | 34 | 443 |
| [Student name] | 10-21-91 | 01-17-92 | 88 | 426 |
| [Student name] | 06-15-91 | 07-01-92 | 382 | 751 |
| [Student name] | 09-28-91 | 01-09-92 | 103 | 66 |
| [Student name] | 12-19-91 | 02-24-92 | 67 | 207 |
| [Student name] | 10-04-91 | 01-09-92 | 97 | 438 |

**TOTAL: $8,934**

The 16 refund periods average 98 days and $525. A prior
1991 program review report previously cited Moore for a single failure to pay a Pell Grant refund in a timely manner. Moore
owed a Pell Grant refund of $211, which was made approximately 36 days late. ED 6-6.
The OIG inspection report, again based on the last day of attendance, found that Moore made 32 assertedly late Stafford

Loan refunds on behalf of the following 30 students.

| STUDENT (ED Ex.) | DATE REFUND DUE | DATE REFUND MADE | # DAYS LATE | REFUND AMOUNT |
|---|---|---|---|---|
| [Student name] | 12-14-91 | 03-03-92 | 80 | $1,009 |
| [Student name] | 04-24-92 | 07-06-92 | 73 | 1,207 |
| [Student name] | 11-25-91 | 01-09-92 | 45 | 495 |
| [Student name] | 02-17-92 | 03-23-92 | 35 | 629 |
| [Student name] | 04-13-92 | 07-01-92 | 79 | 1,768 |
| [Student name] | 02-18-92 | 03-03-92 | 14 | 797 |
| [Student name] | 11-23-91 | 01-09-92 | 47 | 455 |
| [Student name] | 10-20-91 | 01-09-92 | 81 | 572 |
| [Student name] | 03-17-92 | 07-27-92 | 132 | 315 |
| [Student name] | 10-28-91 | 03-09-92 | 133 | 1,312 |
| [Student name] | 11-29-91 | 03-09-92 | 101 | 1,312 |
| [Student name] | 12-30-91 | 01-21-92 | 22 | 100 |
| [Student name] | 12-01-91 | 01-17-92 | 47 | 515 |
| [Student name] | 12-14-91 | 02-17-92 | 65 | 1,207 |
| [Student name] | 02-08-92 | 04-06-92 | 58 | 35 |
| [Student name] | 12-16-91 | 01-21-92 | 36 | 74 |
| [Student name] | 03-06-92 | 07-06-92 | 122 | 602 |
| [Student name] | 12-16-91 | 01-09-92 | 24 | 572 |
| [Student name] | 05-29-92 | 07-27-92 | 59 | 1,312 |
| [Student name] | 11-05-91 | 01-09-92 | 65 | 1,207 |
| | 11-05-91 | 01-21-92 | 77 | 350 |
| | 11-05-91 | 04-06-92 | 153 | 1,312 |
| [Student name] | 02-14-92 | 06-22-92 | 129 | 1,312 |

| | | | | |
|---|---|---|---|---|
| [Student name] | 12-22-91 | 01-17-92 | 26 | 1,049 |
| [Student name] | 03-22-92 | 04-06-92 | 15 | 100 |
| '[Student name] | 03-07-92 | 04-20-92 | 44 | 640 |
| [Student name] | 10-28-91 | 01-09-92 | 73 | 1,313 |
| [Student name] | 05-24-92 | 07-06-92 | 43 | 1,312 |
| [Student name] | 09-14-91 | 01-21-92 | 129 | 200 |
| [Student name] | 01-18-92 | 02-24-92 | 37 | 2,415 |
| [Student name] | 12-29-91 | 01-17-92 | 19 | 644 |



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[Student name] 08-27-91 07-06-92 314 1.313
**TOTAL: $27,455**

According to OIG, on average, the 32 refund periods were 74 days late, and averaged $857. Out of 127 Pell and Stafford refunds reviewed by Ihe inspectors, 48 assertedly were late. Moore was also cited in an ED March 28, 1991 Program Review Report relative to Stafford refunds. The prior program review found that Moore made two late Stafford Loan refunds. One refund for $438 was made 32 days late, and the second refund for $2970 was made 62 days late. ED 6-6.

Thus, according to OIG, for 16 students, Moore made Pell Grant refunds that were on average over 98 days late, and averaged $525 per refund; for 30 students, Moore made 32 late Stafford Loan refunds that were on average 74 days late, and averaged $857 per refund. Thus, Moore is charged with paying a total of 48 Pell grant refunds and Stafford loan (GSL) refunds late. However, Moore's enrollment during 1991 was about 1,000 students. SFAP, unfor,unately does not state how many timely refunds were made during the relevant period. The numbers cited mostly likely are the worst case for Moore.

For Pell grants, an institution is required to pay refunds to the Pell account within 30 days of the date that the student officially withdraws or is expelled or the institution determines that a student has unofficially withdrawn. 34 C.F.R. 668.22(e)(5).

For guaranteed student loans, an institution is required to pay refunds to a lender within 60 days after the students withdrawal as determined under 682.605(b)(1)(i) or (b)(3). 34 C.F.R 682.607(c)(1)(1991). Section 682.605(b)(1) provided in 1991 that the student's date of withdrawal is the earlier of

(i) The date the student notifies the school of the student's withdrawal, or the date of withdrawal specified by the student, whichever is later; or

(ii) The date of withdrawal as determined by the school. At the time the refunds were due in this matter, ED had promulgated no regulations, standards, or guidelines with respect to setting a limitation on what was a reasonable period of time for a school to make a determination after the student's last date of attendance. Thus, a current regulatory provision **establishing** 25 days after

the last date of attendance as the norm is inapplicable. However, in my view, 30 days of absence from class by a student should be enough to put a school on notice of a student's withdrawal. Based upon this view, I find that the number of late payments was not as great as alleged by SFAP. I also note that the great majority of late payments were during a six month period, as is later explained. SFAP's proposed action, as noted, is based almost entirely on an Inspection Report issued by the OIG. ED 1. The Report was issued on January 22, 1993. It followed and "reported" on the OIG' s unannounced "inspection" of the College by five employees of the OIG, which took place over a five week period, from July 30, 1992, to September 1, 1992. ED 4. Carol Lynch, Director, OIG Inspection Teams, testifies that as of the hearing date a total of thirty-six (36) OIG inspection reports involvlng institutions had been issued. Tr. 200. Of these 36 institutionS, 26 had been terminated and two notices of intent to terminate had been issued (one of wAich was Moore). Tr. 203-06. The remaining eight probably will be the subject of termination recommendations or actions. Tr. 217.

Mr. W. Reece Crider was the OIG Inspection Team Leader. Mr. Crider has been on five inspections and team leader on three inspections. Tr. 534, 541. He has recommended termination of the eligibility of the subject institution in all three inspection reports for which he was team leader, including Moore. Tr. 541.
Mr. Crider, when asked why Moore was selected for **inspection, listed** several factors. One important reason for selection was that Moore Career College was previously owned by a Mr. Bundy who was a separate target of the OIG. Tr. 537-540. Another institution previously owned by Mr. Bundy, Coastal College in Louisiana, was inspected and, in fact, was visited immediately before the Moore visit. Tr. 540. Another reason, of course, was the extremely high cohort default rate.
Mr. Crider expected to find problems at Moore Career College and was there to look for them. Tr. 542, 551.

According to the OIG Interim Standards, due professional care means using "good judgment in choosing inspection methodology and preparing reports." R 48-8. OIG Standards require "sufficient, complete, and relevant information" to afford reviewers a reasonable basis for making judgments and reaching conclusions and "when appropriate, statistical methods may be used to establish sufficiency" in order to "lead a prudent person to the same conclusion as that of the inspectors." R 44; 13, 14.

The inspection of Moore Career College was accomplished by five persons over five weeks, or 125 person days. Tr. 676. During this period of time, OIG examined 58 files which were "judgmentally" selected by the team. However, as to "late" refunds, it appears that the OIG reviewed the entire universe for only about an eight-month period during the latter part of calendar year 1991 and the first half of 1991. ED 4-6. (During the period of time covered by the entire OIG inspection [July 1, 1989, through August 31, 1992], approximately 3,000 students were enrolled at the institution. Tr. 549.)

Mr. Crider testifies that the 58 file sample was not a statistically valid sample. Tr. at 480. He acknowledges that it was not valid as a basis to project to the universe or from which to extrapolate interpretations. Tr. 544; see also the similar lay testimony of Mr. Musselman, Tr. 375. Mr. Crider testifies that he did not use statistical sampling, as the OIG Standards suggest,

because it would have been too "time consuming" and because it is "just as easy to refute a statistical sample as a judgmental sample." Tr. 544.

Mr. Crider's position is without merit. A validly drawn statistical sample is important. The numerosity of a violation may be a valid factor to consider in a termination action.

Further, OIG only examined files from the Jackson location and ignored Moore's three branches. Mr. Crider testifies that this was because of insufficient "time." Tr. 558. The claim that the OIG team had insufficient time to take a larger sample or to examine files at the branches is not plausible.

Returning now to subject of late refunds, the OIG inspection team did not discuss the late refund issue with Moore. Tr. 587. However, Moore agrees that 13 of the 32 listed GSL or Stafford refunds were late, but argues that nine of them were not as late as OIG contends. R 13, 14, 15. Moore also disputes a finding that the remaining 19 refunds were late under the law at the time for the reasons addressed below. Moore also agrees that nine of the 16 listed Pell grant refunds were late, but again disagrees with the number of days. R 16, 17.
Ms. Acka Dolloff, the school's director, testifies about the process for handling refunds. After a student misses school for one week, the school takes action to contact the student to determine if there is a problem Tr. 918-19. The process of communicating with the student can take some time. If the student indicates that he or she is experiencing a momentary problem, the student may be placed in a "returning to school," file. Id. If the student subsequently does not return to school other attempts are made to determine the student's intention and, if no response is received, then the student is considered unofficially withdrawn. Id. If the student, however, asks for more time to work a problem out, for example, then the school may wait. Id. Normally, this process results in a resolution or determination within a few weeks of the student's last date of attendance. Id., Tr. at 838.
Again, in summary, SFAP alleges that Moore paid 16 Pell grant refunds late. ED 1-3. Moore agrees that late refunds were paid to nine students as identified in R 17. See also R 55. With respect to these nine students, however, Moore submits that the 30 day deadline for making the payment should be calculated from the date Moore "determined" the student unofficially withdrew and that, therefore, the number of days late is not as great as stated by SFAP.

Moore goes on to say that for two of the students (Students' names) the date of determination (DOD) was less than 30 days after the last date of attendance (LDA). R 17, R 55. Their refunds according to Moore, were paid 45 and 59 days late, respectively. Id. For three others (Students name), the DOD was about thirty days after the LDA. Id. Their refunds were paid 56, 36, and 121 days late, respectively.
For the remaining persons on the list, the DOD according to Moore, ranges from 60 days (Student name) to 180 days (Student name). In this regard, in some situations an institution can determine that communications were ongoing with the student which possibly would have had the effect of stretching out the DOD.

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See e. g. Student name at R 55. Nonetheless, Moore's normal process would, in most cases, lead to a determination within 4-6 weeks after the LDA. Tr. 838. In unusual cases, a diligent

determination process could take longer.
In sum, Moore does not dispute that refunds were late. It rightfully claims, however, that some of the refunds were not as late as the OIG claims based on a more rational analysis. The total amount of Pell grant refunds which were paid late under Moore's methodology is $4,129.

With respect to the remaining Pell grants cited as being late, Moore does not agree. R 16. Student name, for example, involved an overaward which was refunded.
Student name was also not due a refund. Rather, Moore learned about her default after it had already received the first Pell disbursement. Moore chose to refund the amount, although it may not have been required to do so. Tr. 786-88.
Of the remaining four students, Moore maintains that the DOD dates were reasonable (45 to 60 days after the LDA) and, in each of these cases, the refund was paid within 30 days of the due date after the DOD. R 16.

Of 32 alleged late GSL refunds, Moore agrees that 13 were late. R 14 and R 15. Moore also agrees that three of these were late to the extent identified by OIG involving about $837. R 15. Moore does not agree with the number of days late alleged by OIG with respect to the other nine. R 14.

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In each of these cases, Moore computes the refund due date to be 60 days from the DOD.See footnote 3 [3] Moore's records also demonstrate that in many of these cases, Moore was in communication with the student for some period of time after the student stopped attending and that until the school could determine that the student would not be returning, it did not make a determination that the student had unofficially withdrawn. R 55.

The Moore DOD's after the last date of attendance ranged from 1 day (Student name), to 6 days (Student name), to 1 week (Student name), to 2 weeks (Student name) to 4 weeks (Student name, Student name, Student name), to 12 weeks (Student name). The days late, therefore, ran from 70 (Student name) to 7 days (Student name).
As for the remaining 18 students, Moore has no records on (Student name) or (Student name) and believes the OIG lost these files. R 13. Moore's refund check for Student name was stolen and repaid upon discovery of the theft. Tr. 795, R 55.
(Student name) and (Student name) are both situations where Moore wrote multiple refund checks because the bank requested reissues. Tr. 790-91, R 55. In these cases, the initial checks were timely. It, thus, appears that the late refunds for (Student name), (Student name), (Student name), and (Student name) are satisfactorily explained by Moore.

With respect to the remaining 12 students, 4 Moore's position is that it acted diligently to determine if the student had unofficially withdrawn, which in some cases might have taken longer than four to six weeks. However, once the DOD was made, Moore concedes that some refunds were late although not as late as SFAP alleges.
Late refunds are not acceptable and the late refunds which did take place should not have occurred. Notwithstanding, the circumstances surrounding their occurrence are not an egregious example of falsification of records or fraud, nor is there any evidence to even suggest that the late payments were volitional, willful, or the result of a general disregard for regulatory

compliance and fiduciary duties. Moore did not make its **student** withdrawal determination at its own leisure. It observed the required process, but was too self-serving. As I previously opined, I think that a DOD generally should have been 30 days after the LDA. Under this methodology, the Stafford refunds for (Student name), (Student name), (Student name), (Student name), (Stuaent name) and (Student name) may have been timely. Further, Moore took corrective or remedial action to rectify problems. Mr. Moore and Ms. Pinkerton testify that a long time employee, Ms. Lavonne McLemore, was promoted to school director in August 4(Student name), (Student name), (Student name), (Student name), (Student name), (Student name), (Student name), (Student name), (Student name), (Student name), (Student name), and (Student name). The chart is in error with respect to (Student name) whose refund should have been paid within 30 days after he failed to return from a leave of absence. R-13.

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1991 when Ms. Pinkerton was promoted to senior director. Tr. 773, 996. Prior to her promotion, Moore was not experiencing, nor was it cited for, any systemic problem with late refunds. Ms. McLemore, however, was unable to ensure that refunds were timely paid during her six month tenure as school director.
Ms. Pinkerton noticed through her evaluative visits that Ms. McLemore was not ensuring that all refunds were being timely paid. Tr. 996-97. Ms. Pinkerton emphasized the importance of paying refunds timely, but, notwithstanding the evaluations of Ms. McLemore, they became progressively worse. R 54. The September 1991 evaluation noted that she was cn a 90 day probationary period and needed to demonstrate her competence; the November 1991 evaluation noted that Ms. McLemore needed to become more involved in financial aid and the final evaluation in January 1992 concluded by stating that she had not improved since November and needed to be replaced. R 54. This period of difficulty coincides with the late refund period focused on by OIG.

As Ms. Pinkerton testifies, she did not remove or demote Ms. McLemore sooner because she was trying to give her a chance to take the responsibility and prove her capability. Tr. 999. Ms. McLemore was also continued to assure her supervisors that she was on top of refunds.

On February l, 1992, Ms. McLemore was demoted back to assistant director, a position she had previously filled in a competent manner. Tr. 774. Of the 48 late refunds listed by OIG, 14 of the 16 Pell grants and 23 of the 32 GSL's occurred during the six month tenure of Ms. McLemore. Proof that the corrective action taken was appropriate is demonstrated by the Department's 1993 program review which does not cite any late refunds. ED 5. This, notwithstanding, Oscar Howard testified that late refunding is a common finding on program reviews. Tr. 146. Through Moore's system of checks and balances, Moore discovered the late refund problem many **months before** the OIG even appeared on its unannounced visit. Moore also ensured that any unpaid refunds were paid. At no time pricr to or subsequent to this six month period and the OIG report has any evaluator of Moore cited the institution for anything more than a few sporadic late refunds.

In October 1993, in preparation for this hearing, Moore asked Dr. Howard Steed, who did not testify, to develop a random sample of files to assess timeliness of refund payments during three time periods. A total of 60 files were randomly selected by Dr. Steed who is said to have used a

technique similar to that used when he reviewed schools for state licensing visits and on accrediting evaluations. R 37. Dr. Steed is experienced as an evaluator for the Southern Association of Colleges and Schools, Accrediting Commission, the Accrediting Commission of the Association of Independent Colleges and Schools, and executive involvement for the Council of Postsecondary Accreditation and other educational organizations. R 37.

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The sample is intended to evaluate the timeliness of refunds and, therefore, only files of drop-out students are used. Tr. 776. Ms. Acka Dolloff, Moore's school director, participated with Dr. Steed in the sampling. She testifies that he selected the sample time periods, that she identified the students who had dropped out and that he selected the names for the sample. Tr. 923. The files were then pulled and brought to him and were examined by Dr. Steed, Ms. Baylis Lee, the school's financial aid director, and Mr. Moore. Tr. 923-24.

The three periods of time which were examined were July 1989 to September 1991, September 1991 through JanLary 1992, and February 1992 to August 1992. R 21. Twenty student files were randomly selected for each period. Only one late refund was **identified** by these individuals. That late refund was 9 days **late under** a strict methodology and was in the September 1991 through January 1992 time period, i.e. the period that Ms. McLemore was director. R 21 - 299, 308. The analysis computed refund due dates from the date of determination which was limited to no more than 30 days from the student's last date of attendance.

Dr. Steed's analysis demonstrates that the late refund matter was neither systemic nor a result of a general disregard of the school's fiduciary duties. In fact, as Mr. Moore testifies, the school's refund request sheets show a date in the upper right hand corner which is usually within five days of the request. Tr. 777. Thus, Moore's personnel problem occurred during a limited period of time, was identified by the school, and addressed or corrected by the school. Dr. Steed's analysis corroborates the testimony of Mr. Moore, Ms. Pinkerton, and Ms. Dolloff. Tr. 777. As Ms. Dolloff also testifies, Moore was in substantial compliance with its refund responsibilities before and after this six month period. Tr. 931. The late refunds which are at issue herein are not a basis for a termination.

V

Another issue raised by SFAP is whether Moore correctly calculated the GSL refunds or charges for four students: (Student name), (Student name), (Student name), and (Student name). ED 16 (ED concedes that (Student name) was not owed a refund.) Specifically, SFAP argues that Moore applied an incorrect calculation which resulted in a lesser amount being refunded. Tr. 591-92.

Mr. Crider testifies that OIG ccmbined two different policies to arrive at Moore's refund obligation for students enrolled in a thirteen month program. Tr. 592. Specifically, OIG applied the Department's pro rata policy and the SACS policy for a program over 12 months in length. Id.

The regulatory provision relied upon by SFAP is 34 C.F.R. 682.606(b)(1) or (b)(2). This regulation provides that if a school receives notice that its fiscal year default rate exceeded 30 percent, the school's refund policy must conform with the pro rata refund calculation described in paragraph (c) or the requirements of (b)(1), whichever results in the larger refund amount. However, the pro ra ta requirement does not apply beyond the student's mid-point in the program or six months after the commencement of the program. Paragraph (b)(1) provides that the refund policy shall be either the policy under applicable state law or under accrediting commission standards, whichever is larger.

In other words, if the school falls under this requirement to use or consider using a pro rata policy, and Moore did, then it is supposed to compare the pro ra ta with the state and accrediting commission policies and apply the one policy which returns the larger amount. As a qualificatior. on the pro rata policy, the regulation provides that it only applies for calculation purposes up to the mid-point in the program or six months into the program. Paragraph (b)(2) clearly states that the comparison is between paragraphs (b)(1) and (b)(2) and that the school is to apply one policy, whichever results in the larger amount to the student.

No legal support exists under ED's regulations for the proposition that Moore was to combine two different refund policies. OIG action herein is based on Mr. Crider's interpretation of the above cited provision. Tr. 595-96. In fact, contrary to the regulation, Mr. Crider testifies that the school was supposed to apply the accreditation policy, period. Tr. 599. Later, he testified that the school should have applied both accreditation and pro rata. Tr. 603.

In the interest of understanding the OIG's analysis, Moore submits tables for each of the four students comparing refund calculations under the pro rata, SACS, and OIG approaches. R 60. The left column is how Moore actually calculated the refunds, the second column shows the refund using the SACS policy only (80 percent of the tuition charged), and the third column is Moore's understanding of how OIG would do the refund calculation (divide the total tuition charged by 13 months, then subtract one month from the total and pro rate the rest). Tr. 951. However, Moore's table results in refund figures under the OIG approach which do not agree with SFAP's allegations in ED 1-6. Further, Mr. Crider fails to explain how the refund figures shown in ED 16 are derived. Ms. Dolloff, who prepared the analysis in R 60, also testifies that the school's refund calculation methodology was reviewed by SACS and AICS and neither found fault with the approach followed by Moore. Tr. 953.

SFAP's allegation is without foundation and does not support a termination action. If the 13-month period offered by OIG is sound, it neither supports a fine nor termination, at least until ratified in an ED regulation.

In summary, as to topics IV and V preceding, almost entirely all late refunds occurred because of a change in personnel and a failure on the part of the principal person responsible for ensuring timely payments to do her job correctly. Moore accepts responsibility for her simple neglect. There is, however, no evidence to support OIG's conclusion that the late refunds were deliberately delayed.

In fact, all of the evidence is to the contrary. For example, the evidence of record regarding the analysis of late refunds by Dr. Howard Steed graphically shows that no remotely similar data for

comparable periods of time before and after Ms. McLemore's tenure exist. R 21; 299, 308. The evidence also shows that it was Moore that identified the problem and corrected it, not the OIG. By the time of the OIG visit, the matter had been discovered and corrected. Tr. 774; R 54.

The date Moore prepares a daily Pull Sheet does reflect, in many instances, the date from which Moore would normally calculate the refund due date, and this date is frequently within 3-4 weeks of the student's last date of attendance. (Even under new ED regulation almost 4-weeks are allowed) Ms. Dolloff's testimony corroborates this point. Tr. 838, 918-19. However, this is not always the case, as she also testified. That is, there are times and circumstances when the determination date may be later because of a student's circumstances and for that reason the determination would be delayed. It must also be remembered that at that time, ED's regulations did not specify a time within which to make such a determination. The critical factor was reasonableness under the circumstances. Moore essentially complied with its duty.
SFAP's statement that a "rule of reason to calculate a student's last date of attendance" is, however, correct. The applicable regulations address the determination of when a "student has unofficially withdrawn or the "date of withdrawal as determined by the school." 34 C.F.R. 668.22(e)(5) & 682.605(b)(1)(ii). Withdrawal date and last date of attendance are not necessarily synonymous. In the absence of a fixed time established by regulation, the reasonableness of the school's determinations should be determined on the basis of the facts and circumstances of each particular case. Moore was diligent in paying timely refunds, except for a few isolated incidents.

SFAP's argument with respect to the termination issue rests on the fact that Moore paid some refunds late. No evidence exists that Moore was unwilling to make refunds. The applicable regulation speaks to a school's ability to meet all of its financial responsibilities, including paying refunds. 34 C.F.R. 668.13(b). Failure to pay refunds timely is not, however, in all cases even evidence of an unwillingness to pay refunds. In Moore's case it was not. Further, Moore's financial responsibility is demonstrated by the fact that it discovered and corrected the late refund situation by replacing the person principally responsible for ensuring timely payment, and by paying the refunds that were not made. Hence, SFAP does not present a case for termination.

SFAP's repeated general references to "problems," such as late refunds, having previously been identified, is also grossly misleading. SFAP opening brief at 21. The prior program review scarsely identified any late refunds. It is incorrect to say
that there was a late refund problem or to assert that there is evidence of a continuing violation.

VI

As noted the OIG inspectors, during their 12S person days, reviewed the files of relatively few students. Of 56 students, "judgementally" selected for verification, OIG assertedly found improper or incomplete verification and documentation for 12 of the students. ED 4. These are:

**(Student name)** (ED Ex. 7) - 1991-92 program award year. The application for student financial aid (ASFA) shows the student as a dependent and lists his parents income, but the student's file did not contain the parents' federal income tax returns. In addition, the student's application for **enrollment** stated that the student was married, but the check mark was whited out and "singlell was checked. If the student were single, the ASFA should not include the name of the student's

"spouse." The name of the student's "spouse" is on the ASFA, along with her place of employment.

**(Student name)** (ED Ex. 9) - 1991-92 program **award year.** The December 17, 1991, ASFA shows the parent's home is worth $50,000, but the Student Aid Report (processed on December 19, 1991, and signed by the student on February 21, 1992) shows the value as $3,000. The school used the home value provided in the Student Aid Report (SAR). The ASFA states that the parent's 1990 income was $25,647. In addition, the ASFA states that the student is married, but the November 27, l991, enrollment application states that she is single.

**(Student name)** (ED Ex. 17) - 1991-92 program award year.See footnote 4 [4] The student's June 13, l991 Loan Application states that her 1990 income is $1,116, but her 1040EZ federal income tax return shows that her 1990 income is $1,499.

**(Student name)** (ED Ex. 20) - 1990-91 program award year. The student's June 12, 1990 needs testS shows student 1989 income of $8,244 and spouse income of $4,818, for a total of $13, 062. Based on the total income, the student would have been eligible to receive a Pell Grant of only $413. The student's September

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26, 1990, needs test shows student 1989 income of $4,818 and no income for her spouse. This made the student eligible to receive a $2,300 Pell Grant, and $1,150 in Pell funds was disbursed to the student. In addition, the student's entrance interview form states that the student is married, and on the ASFA the student checked the "married" box, but "Status Change to Separated" is handwritten at the top of the same page of the ASFA.

**(Student name)(ED** Ex. 24) - l991-92 program award year. The student's file contained an August 8, l991 ASFA and a corrected September 3, 1991 ASFA. The first ASFA showed the student's 1990 income as $10,080, and the College did an independent needs analysis for the student. The student's file did not contain the student's 1990 federal income tax return, and did not show that the College requested a copy of the student's 1990 return. The second ASFA stated that the student was a dependent, stated that his parents did not claim him as a dependent on their 1990 federal tax return, and stated that he did not have resources of $4,000 or more.

**(Student name) (ED** Ex. 27) - 1991-92 program award year. The student's October 3, 1991 ASFA stated that his 1990 income was $4,680, but his corrected December 12, 1991 ASFA stated that his 1990 income was $2711. The student's file contained a 1990 1040EZ federal income tax return, listing income of $2711. The return was signed but not dated. The student's file did not contain a properly executed copy of the student's 1990 return. In addition, the student's October 3, 1991 ASFA stated that he received resources of more than $4,000 in 1990.

**(Student name)** (ED Ex. 30) - 1991-92 program award year. The student's June 16, 1991 SAR states that the number of family members is six, but the June 13, l991, verification worksheet shows family members as two. There is no indication in the file that the College corrected or considered the conflicting information.

**(Student name)** (ED Ex. 31) - 1991-92 program award year. The student's file contained a September 16, 1991 corrected ASFA showing parent income of $5,724 and student income of $7,716, but the file did not contain the student's original ASFA. The student's September 20, l991 SNAP report6 shows parent income of $5,724 and student income of $7,716. However, the September 26, l991 SNAP report shows only the student income of $7,716. The October 7, l991 SAR shows student income of $7,716 and parent income of $5,724.

6 SNAP is the name of an independent student aid processor who provides the College with student aid reports.

(Student name) (ED Ex. 44) - 1990-91 program award year. The February 20, 1991 enrollment application states that the student is single, but in the space for spouse a name is given, her employer is identified, and the student lists his mother-in-law as a reference. The student's Electronic Student Aid Report (processed on March 14, 1991 and printed on March 18, 1991) states that the student is not married.

(Student name) (ED Ex. 57) - 1990-91 program award year. The student's undated verification worksheet states that he filed a 1989 federal income tax return. However, elsewhere on the same page it states that he did not file a 1989 return. In addition, the worksheet states that the student has two children, but the student listed only himself as a family member on his September 27, 1990 ASFA.

(Student name) (ED Ex. 65) - 1991-92 program award year. The student stated on his ASFA that a federal income tax return was filed, but the student's file did not
contain a copy of the return.

(Student name) (ED Ex. 66) - l990-91 and 1991-92 program award years. The College selected the student for verification, but verification was not performed. In addition, the student's file contained no 1989 federal income tax form. Furthermore, on one ASFA for the 1990-91 award year the student is classified as a dependent, while a second 1990-91 ASFA shows her status as independent. The file does not show that this discrepancy was resolved.

Moore disbursed to the 12 students approximately $21,211 in Pell grant funds and approximately $19,838 in Stafford loan funds. Assertedly these disbursements were not proper because the College did not verify application information. Furthermore, Moore received notice of some verification violations in the March 28, l991 program review report. ED 6-7 and 6-8. Failure to conduct proper verification may result in federal funds being disbursed to ineligible students. The initial verification process involves collection of information on the student through the application for financial aid and other information. The school puts all the relevant information into a computer and receives feed-back from ED which, in essence, tells the school which student's application data must be verified. Tr. 1027-28 (Ms. Baylis Lee). Once a student has been identified for verification, the school follows procedures outlined in the Department's Verification Guide and the school's Policy and Procedure Manual. Tr. 1028.

SFAP has made allegations based upon OIG's Report that Moore conducted improper or incomplete verification for 12 students. ED 1-7. Moore disputes SFAP's allegations and seeks to

demonstrate that the verifications properly were completed for ten of the twelve students and that, in nearly all cases, there are no dollar consequences associated with the resolution of the matters.

With respect to Student (Student name), Moore does not agree with the SFAP allegation at ED 1-7. Ms. Lee testifies that there is no conflict of information. Tr. 1031. Moore, as with many schools, resolves conflicts through discussion. In this case, the school discovered that the form was incorrectly completed and therefore whited out an answer. Tr. 1032. ED regulations and the Verification Guide do not direct schools concerning how to resolve conflicts. Tr. 1032. Resolution does not require documentation in all cases. Id. Also, if there is no dollar consequence to the different version of the facts, the school properly may proceed to award the financial aid. Tr. 1033. Contrary to SFAP's allegation, the white-out which SFAP thinks ls suspicious was not on the verification form, but on the enrollment form. Id.

With respect to (Student name), the documentation shows two different income amounts for the student for 1990 ($1,116 and $1,499). It was reported to Moore that the student had $1,116 in income. The student was selected for verification and when she brought in her tax return which shows $1,499 in income. Tr. 1034. Once the school received the tax return, the conflict was cleared up. Tr. 1034. As Ms. Lee testifies, by reference to the Verification Guide, R 61 and R 23, and Mr. Crider agrees, the analysis of the student's income and number of family members reveals that there was no financial aid consequence from the apparent conflict and no violation. Tr. 645, 1036. There was, therefore, no need for the school to take the matter any further. R 61, 34 C.F.R. 668.59.

Student (Student name) involves a change in status from married to separated, as a result of which the school resubmitted her SAR. Tr. 1036. This does not involve a violation. If the student tells the school that there is a change, then the school helps the student redo the student aid application. Tr. 1037, R 23-409. Ms. Lee testifies that there was no violation of any regulation by handwriting the status change at the top of the page. The school is entitled to rely on the student's reapplication which is signed by the student. Tr. 1037-38, R 23412. No violation occurs. Mr. Crider admits that resubmitting the SAR because of the change was correct. Tr. 646. He claims, however, that the school should have obtained additional documentation from the student to support the claim of separation. Notwithstanding, he does not cite to any regulation which would require such additional documentation. Tr. 647.

Student (Student name) changed his status from independent to dependent student based on discussion with the school. Tr. 1039, R 23, 356 -62. The discussion reveals that he did not have a tax return, that he had no children, and that he was living at home. Tr. 1040-42. He earned money from a variety of sources, but did not file an income tax return because of his low income. From the individual's point of view, funding would have been higher if he had remained independent. Tr. 648, 1042. As well, a corrected Electronic Student Aid Report (ESAR) was submitted. Tr. 1039-40, 1043, R 23, 361-62. SFAP's claim that he should have produced his parent's tax return is without merit because his parents did not file one. Their income was too low. Tr. 648.

Student (Student name) file contains a signed but undated tax return. He originally reported income of $4,680 but when he produced a tax return, it only showed $2,711. R 23, 353; Tr. 1044. This resolves the conflict. That the return is not dated is irrelevant to the verification process since the requirement is that the return be signed. Tr. 1044. Further, this conflict involves no dollar consequence. Tr. 1044. SFAP's objection and alleged violation is that the return was undated. However, Mr. Crider admits that the Department's regulations do not require anything more than that the return be signed. Tr. 649, 34 C.F.R. 668.57(a)(i).

Student (Student namej involves an adjustment by the school for an exception based on the financial aid officer's professional judgment. ED's regulations permit the exercise of professional judgment. Mr. Crider admits such. Tr. 650, 1046. In this case, the file reflects the fact that professional judgment was exercised. However, Mr. Crider personally believes that more documentation should be in the file. Tr. 652. The action of Moore, however, is documented. ED 31-12; R 23 408. The option to exercise professional judgment on isolated cases is a provision which has been available for a long period of time. Tr. 1047. In this case, the school relied upon the act of the parents not permitting the student to file separately. Tr. 104951.
Student (Student name) supplied information on his application stating that he was single. He was selected for verification and on the verification worksheet he said he had two children with his wife. Tr. 1056-57; R 23, 363-370. His verification worksheet shows $1,770 in income from odd jobs. R 23, 370. The school resolved the discrepancy regarding the filing of a tax return for 1989 by discussing that with him when he brought his verification worksheet. With income of $1,770, he would not have filed a tax return. Tr. 1058. The school properly relied upon his signature on the verification worksheet.

Student (Student name) involves a discrepancy between the size of his family as reported on the SAR and the size reported on the verification worksheet. The Verification Guide provides that if the verification is done within 90 days from the signed date of the student financial aid application, then the school does not have to verify household size. Tr. 1045; R 23 - 415, 422. The needs analysis is dated May 21, 1991, which would normally be done when the student signs the application or within a few days of the application. Tr. 1045. The student's SAR was processed on June 6, 1991, which means that the verification took place within a 90 day period. Tr. 1046.

Student (Student name) states on his enrollment application that he is single, but a spouse's name also is on the form. ED Ash. 44-4. On the application for student financial aid he says that he is single. R 23, 423. Tr. 1054. The school spoke with him; it was discovered that he is engaged to be married and is the father of a child. Tr. 1055. The ESAR, thus, is correct as per the application. Tr. 1056; ED 44-7. All of the information is consistent except for one block on the enrollment application, and **that was** resolved through discussion.

Student (Student name) first said that he filed a tax return, but when he was asked to produce it, he said he had not filed one. Tr. 1058-59. On a verification worksheet he said that he earned $4,400 in odd jobs. R-23 at 381-82. The school properly relies on this document. There is a signed statement from his father that he does not claim his son for tax purposes.

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Tr. ;059. The father's tax return itself is not on file with Moore.
Moore, thus, agrees that verification is not proper with respect to only two of the twelve students: (Student name) and (Student name).

VII

The OIG found an incorrect certification for student (Student name). ED 66 (b)-4, R 11, 205-207. She received a Stafford Loan of $1,207. ED 66 (b)-14. The proper score for her examination should have been eight, which i9 below the minimum score used by Moore during this time. Tr. 834.

However, initially SFAP alleged that Moore admitted six students as ability-to-benefit (ATB) students who did not meet the minimum passing test scores for admission. ED 1-10, 11. (Student name), (Student name), (Student name), (Student name), (Student name), and (Student name). SFAP alleged that, as a result of the alleged improper admissions, $16,000 was improperly awarded under Title IV.
As Mr. Crider testifies on direct, OIG compared the student's actual score on the Wonderlic test to required minimum scores as published in a Moore Career College catalog. Tr. 468;

ED 84-8.

SFAP's action is based on comparing student test scores to the list of minimum passing scores cited by Mr. Crider from a Moore catalog. Tr. 468, 622-24; ED 84. Mr. Crider's analysis lS erroneous.

Mr. Moore testifles that the OIG was provided with at least four documents concerning ATB scores. Tr. 800. These include the catalog referenced by Mr. Crider, another catalog which identifies itself as being for the same year but which only applied to the period from January to July 1991, a one page document of Wonderlic test scores dated February 25, 1989, and two other one page sheets of Wonderlic test scores dated January 22, 1991, and July 1, 1991. ED 84, R 156, ED 85, R 52, Tr. 799803.
These documents show what the school was doing to stay in compliance with changing ATB requirements. ED 8S is a list of the scores relied upon by Moore from February 1989 to January 22, 1991. Tr. 799-803. R S2-1 is a list of Moore's minimum passing scores for the period from January 22, 1991, to July 1, 1991, which is the same as the list contained in R 56, Moore's catalog for this same period. Tr. 944-45. Testing requirements changed as of July 1, 1991. Ms. Dolloff testifies that the scores shown in R 56 and R 52-1 are the result of Moore's analysis and sample testing. Tr. 942. Accordingly, Moore changed its requirements and these are reflected in R 52-2 and the catalog relied upon by Mr. Crider (ED 84). Tr. 943.

The OIG visited Moore in July and August 1992 and may have initially received the catalog in effect at that time (ED 84). Ms. Pinkerton testifies that she gave R 52 and ED 85 to the OIG. Tr. 985-86. She also testifies that there were two catalogs in 1991 and that she gave Mr. Crider both sets. Tr. 987. Ms.

Dolloff also testifies that the OIG had all the relevant information, including the two versions of the catalog for the different periods. In other words, OIG was presented with all the information and documents in evidence. Tr. 981-87.
Applying a list of minimum passing scores for the period of testing involved (R 56 and the list used before July 1991), all of the cited students except (Student **name) met** the minimum passing score requirement. ED 14-4, 22-4, 36-4, 52-3, 53-4, 66b4, 1-10-11, R 56, R52-1. Therefore the OIG charge does not support a termination or fine action.

VIII

Moore's Satisfactory Academic Progress (SAP) policy allows students three months to bring his or her cumulative grade point average (GPA) up to at least 2.0 or a C grade. The policy provides that if the student fails to achieve the required GPA, Moore's policy is to consider the student not to be making satisfactory academic progress. If a student is not making satisfactory academic progress, the student will lose his or her eligibility for federal financial aid and will be terminated from Moore. ED 84, 13-16, Tr. 475.

Under this policy, Moore allegedly disbursed Pell grant or Stafford loan funds to four students who were not eligible to receive the disbursements because they were not making satisfactory academic progress. The violations for the four students are summarized as follows:

| STUDENT (ED Ex.) | DATE DETERMINED NOT MAKING SAP | DISBURSE DATE | AMOUNT | PROGRAM |
|---|---|---|---|---|
| (Student name) (24) | 01-16-92 | 05-19-92 | $1,200 | Pell |
| (Student name) (28) | 04-13-92 | 07-08-92 | 1,207 | Stafford |
| (Student name) (30) | 10-09-91 | 11-01-91 | 2,400 | Pell |
| (Student name) (52) | 08-21-91 | 09-05-91 | 1,207 | Staffora |

Moore is charged with not properly applying its satisfactory academic progress standards to four students who, as a result, are said to have improperly received about $6,000 in Title IV funds. Were there evidence of a general disregard for applying the institution's satisfactory academic progress standards, Moore would agree that this could be a serious violation. However, errors committed by Moore in not terminating these students and disbursing Title IV funds to them are not of a nature to conclude that there was a systemic problem or general disregard for complying with Title IV requirements.

Mr. Crider admits that these finding are not evidence of a serious systemic problem by Moore. Tr. 546-47. Four students out of 56 reviewed, and out of 3,000 for the period reviewed, is not evidence of anything more than a few mistakes.
Ms. Dolloff described the school's policy for determining satisfactory academic progress and the process for identifying whether satisfactory academic progress is being met by each student. Tr. 953-55. That is, if a student's GPA falls below 2.0, then the student is counseled and put on probation. The student has one term to bring the GPA up; if it is still below 2.0 after the term, he or she is continued on probation for one more term. At the end of that second consecutive term, the student is terminated for 60 days.

Moore applies the policy by examining a student's grades when they are posted. A list presently is maintained by Ms. Dolloff and at the time in question it was maintained by a fulltime counselor (Ms. Bobbi Gates) whose sole function was to work with students to maintain their grades and implement the SAP policy. If the student has a GPA problem the student is sent to counseling. Ms. Dolloff testifies that Ms. Gates is no longer with the school, but that she thought her performance was very good. Tr. 956. Further, she testifies that the student errors addressed on this issue were isolated events and that they were "certainly not the norm." Tr. 956. IX
SFAP seeks $152,500 in fines. A fine is intended as a punishment. It is based upon the gravity of the violation and the size of the institution.

In the instant case, Moore shows that there were only a relatively few violations. None was the result of bad faith.

The evidence also shows that the bulk of the late refunds essentially were due to neglect by an employee in a new position. These were not due to a willful or volitional action by the institution and were not the result of any bad faith by the school. Lastly, the school discovered the problem and the school remedied the situation.

Obviously, no fine should be imposed for the alleged incorrectly calculated refunds since none were incorrect. With respect to the late refunds, no fine is in order under the circumstances.

With respect to the verification issue, SFAP proposes $20,000 based on the alleged 12 violations and alleged "continuing" violation. Moore shows that only two of the twelve alleged improper verifications are meritorious and that there is no "continuing" violation as such. Verification is important. However, the isolated violations which occurred here are not of such a consequence as to justify a fine.
Concerning the ability-to-benefit issue, Moore shows that only one of the six students was improperly admitted. Admitting an ineligible student is serious. Again, however, the error was isolated. No fine is in order.

Moore admits that three or four students were disbursed additional funds after they should have been terminated because they were not making satisfactory progress. These also were isolated events and not within the normal process followed at Moore. Further, no evidence exists to support any other conclusion. SFAP's proposed fine of $3,500 per offense is excessive. The total amount of Title IV funds disbursed to the students after the point where they should have been terminated was only $3,600.
In addition to the above, two other factors must be considered. First, Moore has not participated in the Federal loan programs since October 1992 and may not be able to resume participatiOn in Federal loan programs until 1996. More importantly, this proceeding has been costly to Moore in many ways, including decreased revenues and increased expenses. To date, Moore has spent about $65,000 on attorney's fees and costs including expenses incurred prior to but leading up to this action. These costs must be considered in terms of the fine or punishment imposed upon Moore. Fines should not become another means of obtaining unwarranted termination.

In summary, I conclude that a fine is neither necessary nor appropriate. Also, as noted earlier, termination is not warranted This is because in the first instance, the majority of SFAP's

substantive claims herein are not supportable.
SFAP's claim that Moore's cohort default rate supports a termination action is invalid for three reasons: (1) the 1990 cohort default rate upon which the action is based is not final and, therefore, the proposed action is premature; (2) SFAP's action based on the 1990 cohort default rate ignores the school's much reduced 1991 rate which, while still high, is not one which would support a prima facie case for termination based on a high default rate; and (3) the school overwhelmingly demonstrates that it is diligently implementing default reduction measures, going beyond the requirements of Appendix D.

SFAP's claim that Moore paid some refunds late is correct. However, a termination based on this ground is not warranted for several reasons. First, OIG failed to conduct an inspection in such a manner as to produce sufficiently reliable data that a reasonable factfinder could reach the same conclusions as the OIG about the severity of institution's alleged non-compliance with Title IV requirements. Even then, many of SFAP's conclusions about the scope of the late refund problem are not supportable. Secondly, SFAP's conclusions are based on an interpretation of law with respect to determining the student's date of withdrawal which only now is the subject of an ED regulation. Therefore, whether a refund was late and, if so, **how late was not** exactly fixed at the times in question. In my own view, the school should make a determination of a student's status within 30 days of the date of last attendance or else explain why. In my opinion, Moore's explanation of at least 11 of the refunds is reasonable.

Thirdly, the late refunds at issue are limited, almost in total, to a specific six month period of time and were caused by an identifiable personnel problem. Fourthly, Moore discovered the problem, Moore remedied it before the OIG Inspection took place (by replacing the person in charge), and Moore ensured that all refunds were paid. SFAP's claim that this is a continuous violation is incorrect in that the evidence of prior occurrence demonstrates nothing more than a rare occurrence.
With respect to the allegation that Moore incorrectly calculated refunds for students attending a thirteen month program, the evidence clearly shows that this allegation is without foundation. Similarly, the allegations regarding improper verification and improper admission of ability-tobenefit students are almost entirely without merit. Of twelve alleged improper verifications, only two substantially are valid. Of six alleged improperly admitted ability to benefit students, only one was improperly admitted. In both of these situations, the number of violations alleged is small and the number of violations actually proven is even smaller. These grounds warrant neither termination nor a fine. Mr. Moore's background is in education. He has a master's degree in education and ten years of teaching experience in public education. Tr. 693. Mr. Moore also is recognized by his peers and others as a knowledgeable and active individual in the private career school area. This is evidenced by his leadership **roles and activity on** the Southern Association of Colleges and Schools ("SACS") Appeals Board; as a team leader for SACS on evaluations of member schools; as a team leader for the Accrediting Council of Independent Colleges and Schools ("AICS") on evaluations of member schools; and as a member of the State of Mississippi's Commission of Proprietary School and College Registration, the entity created to oversee proprietary institutions. Moore Career College has a main campus in Jackson, as well as branch campuses in Meridian, Hattiesburg, and Tupelo. Tr. at 696. Moore is licensed to operate by the State of Mississippi and accredited by SACS. It is in good standing with both agencies. Its

students are low income. Two-thirds graduate and are placed in jobs. I observed, Mr. Moore throughout the hearing. I believe him to be a serious and determined educator.

His current salary is $60,000 a year and he is not a "profiteer" as alleged by SFAP.
All things considered, this fine and termination proceeding is dismissed.

Dated this 20th day of May, 1994.

Paul S. Cross
Administrative Law Judge
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Footnote: 1 [1] *Citations to the Hearing Transcript are set forth as Tr. . OSFA's exhibits are referred to as ED Respondent's exhibits are referenced as R*

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Footnote: 2 [2] ***In this regard, Mr. Moore testifies that he spoke with the Mississippi guarantee agency about the projection of the school's 1992 cohort default rate and was told that the default rate would fall again, perhaps 5 percent - 7 percent and would likely be in the percentage range of mid to high 30s. Tr. 714. On brief, Respondent represents that, more recent contact with the agency indicates that the rate will be closer to 26 percent.***

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Footnote: 3 [3] *Moore's chart is in error with respect to (Student name) who did not return from a leave of absence on September 30, 1991. The refund due date for him should have been 30 days from the date he was to return to school. Therefore, his refund was 70 days late.*

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Footnote: 4 [4] *A needs test is a calculation required by federal Title IV program regulations. The test is used to determine the amount of student financial aid a student is entitled to receive.*