UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of **Docket No. 95-152-ST**

ALMA'S BEAUTY COLLEGE, Student Financial Assistance Proceeding
Respondent.

Appearances: Squire Padgett, Esq., Washington, D.C., for the Respondent.

Rene.e Brooker, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for the Student Financial Assistance Programs.

Before: Frank K. Krueger, Jr., Administrative Judge.

DECISION

This is a proceeding arising under Subpart G of the regulations governing the student financial assistance programs, 34 C.F.R. § 668.81, et seq., and Title IV of the Higher Education Act of 1965, as amended. On October 19, 1995, the Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED), issued to Respondent, Alma's Beauty College (Alma's) of Detroit, Michigan, a notice of its intent to terminate Alma's eligibility to participate in the various Title IV programs because of excessive default rates. Alma's offers several courses of study, including programs in cosmetology, barbering, and manicuring. It has participated in the Federal student loan programs since March 3, 1982.

Alma's timely requested review of this action by letter of October 30, 1995. Pursuant to my order of January 18, 1996, trial memoranda and other materials were submitted by the parties in preparation for an oral hearing. On February 21, 1996, however, counsel for Respondent withdrew his request for an oral hearing and counsel for both parties agreed that this matter could be decided on the basis of their submissions. Based upon the materials submitted, I find that Respondent has maintained impermissible cohort default rates, lacks administrative

capability, failed to show that it diligently implemented a default reduction program, and, therefore, is terminated from participating in the various Title IV programs.

DISCUSSION

I.

Pursuant to 34 C.F.R. § 668.17(a)(1994), the Secretary may initiate a termination action against an institution under 34 C.F.R. § 668. Subpart G, if an institution's cohort default rate exceeds certain threshold levels set forth at §§ 668.17(a)(1)(i) and (ii). Specifically, the regulation provides that a Subpart G proceeding may be initiated to limit, suspend, or terminate the participation of an institution in the Title IV program if,

(i)The institution's Federal Stafford loan and Federal SLS cohort default rate exceeds 40 percent for any fiscal year after 1989 and has not been reduced by an increment of at least 5 percent from its rate for the previous fiscal year (e.g., the 50- percent rate was not reduced to 45 percent or below); or
(ii)The institution's Federal Stafford loan and Federal SLS cohort default rate exceeds--
(A) 60 percent for fiscal year 1989;

(B) 55 percent for fiscal year 1990;
(C) 50 percent for fiscal year 1991;
(D) 45 percent for fiscal year 1992; or
(E) 40 percent for any fiscal year
after fiscal year 1992.

If the hearing official presiding over a Subpart G default rate proceeding finds that such rates were, indeed, excessive and without the necessary ameliorative reductions made, the hearing official is compelled to assign the sanction sought by the Department unless the institution can demonstrate that it fully implemented the default reduction measures set forth at 34 C.F.R. § 668, Appendix D. 34 C.F.R. § 668.90(a)(3)(iv)(1994).

Moreover, for an institution to begin or continue participation in any Title IV program, it must demonstrate that it is capable of adequately administering such a program under the standards set forth at 34 C.F.R. § 668.16 (1994). Among the criteria used in determining whether an institution is demonstrating administrative capability is the requirement that the institution have a cohort default rate in the Federal Stafford Loan and Federal Supplemental Loans for Students (SLS) programs of less than 25 percent for each of the three most recent fiscal years for which the Secretary has determined the institution's rate. 34 C.F.R. § 668.16(m)(1)(i)(1994). Ed has published the cohort default rates of participating institution since 1987.

Alma's cohort default rates under the Stafford and SLS programs are as follows:

FISCAL YEAR	DEFAULT RATE	DATE ASSIGNED
1987	83.7	9/1/89
1988	55.9	3/29/90
1989	61.0	5/28/92
1990	63.3	7/29/92
1991	53.2	8/12/93
1992	53.2	8/11/94

See ED Exhibits 6-9. Respondent has presented no direct evidence to refute these rates or evidence, per se, to show that its rates were within the permissible scope. See Alma's Br. at 3- 4.See footnote 1 *1* Clearly, the rates presented are consistently in excess of the thresholds permitted.

As noted above, the excessiveness of the default rate bears directly on the second ground asserted by SFAP in this matter. The issue of administrative capability is dictated by 34 C.F.R. § 668.16. See 34 CFR § 668.16(m)(1)(i). Therein, the Secretary determines that an institution is administratively capable if it has a cohort default rate, as defined at 34 C.F.R. § 668.17, on loans made under the Federal Stafford Loan and Federal SLS programs of less than 25 percent for each of the three most recent fiscal years for which the Secretary has determined the institution's rate. Alma's has clearly and consistently maintained such default rates at a percent well in excess of the 25 percent noted. Therefore, it is obvious that Alma's must be found to lack administrative capability, as defined under the governing regulations.

II.

The sole question remaining is whether Alma's diligently implemented the appropriate default reduction management plan pursuant to 34 C.F.R. § 668. Appendix D. The burden is upon Alma's to demonstrate that it implemented such measures. 34 C.F.R. § 668.90(a)(3)(iv).

As a threshold matter. Alma's points out that the standards at Appendix D require diligent efforts to implement a default reduction program and that such language does not mean that they meet "absolute perfection." That assertion is correct. In its brief, at pages 5-11,

Alma's provides an online of the default reduction measures set forth at Appendix D and alludes to some steps by which it has attempted to implement such measures.

Counsel for SFAP, however., correctly points out that Alma's relies solely upon trial memorandum assertions and the

documentary evidence submitted. Such documentation, SFAP correctly notes, "is, largely, nothing more than standard documentation demonstrating minimum compliance with Title IV requirements--documentation that is required of all participating institutions." SFAP Reply Br. at 2-3. A far more persuasive argument, however, is that standing by themselves, the memorandum's assertions and the exhibits submitted cannot here carry Respondent's burden without more; oral testimony is needed to make the link between the representative exhibits and the assertions that certain functions were regularly and pervasively implemented. Inasmuch as Alma's withdrew its request for an oral evidentiary hearing, wherein witness testimony might have been presented to substantiate its assertions, there is little weight that I can lend to Alma's argument and conjecture as the record currently stands.See footnote 2 *2*

First, Appendix D, Section I, contains measures to reduce defaults by dropouts. The eight measures set forth range from student screening processes, counseling, and reduction of withdrawal rates to the implementation of a pro rata refund policy and delaying certification of first time borrower's loan applications. Alma's submitted representative samples and a brief argument regarding progress reports maintained to monitor student progress, letters to students warning them that they would be dropped from the Pell/GSL program if a certain average was not maintained, and the implementation of a day care center. See Respondent's Br. at 5-6; Respondent's Exhibit Sec. 1, Nos. 3, 3A, 9A; Respondent's Exhibit Sec. 1, Nos. 1A, 4, 9A, and Respondent's Exhibit Sec. 1, No.5. Such documentation alone, however, fails to directly address or link Alma's efforts to the eight measures set forth in Section I.

Second, Appendix D, Section II, regards measures to reduce defaults related to difficulty by students receiving loans of finding employment. Such measures include the expansion of an institution's job placement program, attempts to improve its job placement rate and licensing examination pass rate by working with its accrediting body, and establishing a liaison for job information. Alma's limited exhibits, Respondent's Exhibit Sec. 1, Exhibit 1A; Sec. 2, Exhibits 1A, 2, 2A, 3, and 3A, reveal little as to such job placement efforts. Alma's submitted a description of its placement program, a letter to the Michigan Employment Security Commission requesting that an employment posting be made, one employer survey, and one graduate survey to demonstrate its compliance with Section II. Such documents, without more, cannot meet the Respondent's burden of establishing that Alma's efforts met the dictates of Section II.

Third, with regard to Appendix D, Section III, at various stages an institution is to contact each student/borrower, urge the student to repay his or her loan(s) and emphasize the consequences of default by means of telephone contacts and letters sent with the designation "Forwarding and Address Correction Requested." The institution also is required to update its records regarding the addresses, telephone numbers, and employers' addresses for each borrower and ascertained at the time of admission information regarding family and references so as to afford the institution a variety of ways to locate a student who later moves without notifying his or her lender. Section III also spells out certain points to be made during counseling regarding financial assistance. Alma's submitted several exhibits related to the above. Respondent Exhibits 3-1 through 3-20. For the most part, these exhibits are intended to demonstrate the types of written correspondence and records Alma's maintained pursuant to Section III. Such evidence, however, cannot carry Respondent's burden alone. The samples submitted provide no indication that such documentation was maintained on all student borrowers; indeed, the samples submitted do not even consistently follow the same student, i.e. one complete file may have proved more persuasive. Such evidence begs testimonial support to provide the necessary links between samples and actual practice, from use with regard to two or three students to the entire borrowing pool.See footnote 3 *3*

Finally, there is no evidence that the annual comprehensive self-evaluation described at Appendix D, Section IV, was implemented, diligently or not, by Alma's. While it may be assumed that such a process of review and reflection would be inherently a part of any improvement program, without more, I cannot find that one was put forth.

III.

Alma's further urges consideration of what it claims are mitigating circumstances based on the school's large enrollment of students from disadvantaged economic backgrounds. Respondent cites to 34 C.F.R. §§ 668.17(d)(ii)(A)(2) and (B)(1)(1994) as its basis for such consideration. That consideration is outside of my purview.

The regulation cited is applicable as an appeal consideration only after notice of termination from the Federal Family Education Loan (FFEL) program, a program including the Stafford Loan Program and the SLS program. Alma's lost its eligibility to participate in the FFEL program due to its high default rates on October 2, 1991. ED Exhibit 4. At that

time, however. Alma's chose not to appeal its termination from the FFEL program. Id., see also Respondent's Trial Memorandum at 4. The issue now before me, however, involves an entirely

different process. This matter, to terminate Alma's from continuing to participate in any student financial assistance programs authorized under Title IV for maintaining excessive cohort default rates, is a different proceeding.See footnote 4 *4* Therefore, I do not have the power or authority to review such equitable consideration.

In brief, the termination provisions of 34 C.F.R. § 668.17 and the Appendix D defense operate to require that an institution with default rates like Alma's diligently implement the measures listed in Appendix D; termination sanctions apply automatically to a school that fails to diligently implement those measures. 54 Fed. Reg. 106, 24115 (June 5, 1989), see also 34 C.F.R. § 668.90(a)(3)(iv)(1994). Absent a valid Appendix D defense, the hearing official is constrained to impose the sanction sought. Id.

ED has met its burden by setting forth its initial notice with substantiating evidence. At that point, the burden shifter to Alma's to show that the default rates were in error. Respondent has failed to demonstrate that the rates before me are incorrect or that Alma's falls within the safety zone of permissible default rates. Respondent also had the burden to demonstrate that it diligently implemented the provisions of Appendix D, which it failed to do. Therefore, I am compelled to terminate the Respondent from participation in the Title IV, HEA programs.

FINDINGS AND CONCLUSIONS

1) Alma's Beauty College Maintained cohort default rates far in excess of the threshold limits prescribed at 34 C.F.R. § 668.17.

2) Alma's Beauty College lacked administrative capability under the requirement set forth at 34 C.F.R. § 668.16.

3)Alma's Beauty College failed to carry its burden of demonstrating that it diligently implemented a cohort default reduction program pursuant to 34 C.F.R. § 668.90(a)(3)(iv).

4) Consideration of the mitigating factors noted at 34 C.F.R. §§ 668.17(d)(ii)(A)(2) and (B)(1) is not available in a Subpart G termination proceeding.

ORDER

ORDERED, that Alma's Beauty College is terminated from participating in the various Title IV programs.

April 22, 1996
Frank K. Krueger, Jr.
Administrative Judge

S E R V I C E

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

Squire Padgett, Esq.
1835 K Street, N.W.
Suite 900
Washington, D.C. 20006

Rene.e Brooker, Esq.
Office of the General Counsel

U.S. Department of Education
600 Independence Avenue, S.W.
Washington, D.C. 20202-2110

Footnote: 1 *1 Respondent points to an August 20, 1991, letter from the Michigan Guaranty Agency (MGA) to demonstrate that the default rates asserted by the Department were conceded by MGA as being inaccurate. Alma's Exhibit 1-9. Respondent is in error. The MGA letter notes only, with regard to fiscal years 1987-1989, that some of the data provided to the Department for its calculations was found to be inaccurate. However, despite MGA's commentary that Respondent could appeal the rates for the years in question, Respondent did not pursue such an appeal of the rates at issue. See Alma's Br. at 4.*

Footnote: 2 *2 Indeed, Respondent's memorandum contains a number of references to how a particular assertion will be shown, but is not so shown therein, obviously in anticipation of oral testimony.*

Footnote: 3 *3 In addition, there is no indication that Respondent established standards by which its sales representatives explained to students that, if they were ultimately dissatisfied with, or failed to receive the educational services offered by the school, repayment of the student loan would still be necessary. See Appendix D, Section III, paragraph 4.*

Footnote: 4 *4 Alma's presently participates in the Federal Pell Grant Program, 20 U.S.C. § 1070a, et seq., 34 CFR Part 690.*
