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

In the Matter of **Docket No. 96-125-SP**

DEVRY INSTITUTE OF TECHNOLOGY, Student Financial Assistance Proceeding
Respondent. PRCN: 199610612192

Appearances:

Dr. Francis Cannon, DeVry Institute of Technology, Irving, Texas, for DeVry Institute of Technology.

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

Before:

Judge Richard F. O'Hair

DECISION

DeVry Institute of Technology (DeVry) participates in the various student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* These programs are administered by the office of Student Financial Assistance Programs (SFAP), U.S. Department of Education (ED). On August 5, 1996, SFAP issued a Final Program Review Determination (FPRD) in which it sought the return of Title IV federal funds. The FPRD is based upon the program review report for the 1993-94 and 1994-95 award years, and DeVry filed a request for review.

SFAP contends that DeVry provided Title IV funds to a student who was not eligible to receive such funds because the student did not provide evidence of registration with the Selective Service System. According to SFAP, DeVry improperly disbursed $7,400 in Pell Grants and $22,767 in Stafford and SLS loans to this student. DeVry denies all liability, maintaining that it properly waived the requirement that the student provide Selective Service documentation.

I

The regulations governing the Title IV programs contain many requirements for a student to be eligible to receive student financial assistance funds under these programs. One of these requirements is that a student must either have registered with the Selective Service or be able to demonstrate why he or she is not required to do so. 34 C.F.R. § 668.7(a)(13) (1994)See footnote 1[1] Until a student who is applying for Title IV, HEA program assistance files a Statement of Registration Status with the institution certifying either that he is registered, or is not required to be registered, the institution may not disburse any Title IV funds to the student or certify any Title IV loan funds. 34 C.F.R. § 668.33(a), (b). An institution may waive the requirement that a student file a Statement of Registration Status if it determines, based on clear and unambiguous evidence that the student is or was not required to be registered with the

Selective Service. 34 C.F.R. § 668.33(b).

The student in question enrolled at DeVry from March 5, 1990, to June 18, 1993. During that time, the student received a total of $7,400 in Pell Grant funds, $11,797 in Stafford loan funds, and $10,000 in SLS funds. The 1989-90 Student Aid Report (SAR) for this student, which was dated January 24, 1990, listed his birthday as June 24, 1960, which made him 29 at the time that he signed the SAR. The SAR also indicated that the Selective Service did not confirm his registration or exemption status. Nonetheless, on February 9, 1990, the student signed the Statement of Registration Status section of the SAR and certified that he was registered with Selective Service.

DeVry argues that, in accordance with § 668.33(b)(1), the school waived the requirement that the student file a Statement of Registration Status because the school determined that the student was not required to be registered with the Selective Service. DeVry bases its argument on the fact that the school's file for this student included a copy of a Temporary Resident Card from the U.S. Immigration and Naturalization Service (INS) known as Form I-688. The card was issued on September 18, 1987, and shows that the student's date of birth was June 24, 1960. DeVry argues that this card indicated that the student was admitted to the U.S. in September 1987, when he was 27 years old. DeVry relies upon page 2-31 of the 1992-93 Federal Student Financial Aid Handbook, which states that "[i]f you entered the U.S. for the first time after you attained age 26, you are exempt from registration with the Selective Service...." DeVry also submitted notes from the institution's Director of Financial Aid contained in this student's financial aid file which explains the decision to issue a waiver. SFAP points out, however, that the Form I-688 does not verify that the student entered the U.S. in September 1987. On its face, the card simply states that it was **issued** on September 18, 1987. It does not indicate when the student actually **entered** the U.S. Moreover, as discussed below, DeVry's own files contained evidence indicating that this student was attending a high school in the U.S. on his eighteenth birthday, which was June 24, 1978. Therefore, DeVry incorrectly assumed that this student had entered the U.S. on September 18, 1987, at age 27, which was the basis for its determination that the student was not required to be registered with the Selective Service and its waiver of the requirement that the student file a Statement of Registration Status.

The initial determination to be made is whether this student was actually required to register, but did not do so. As discussed previously, this student had an INS Form I-688 card. SFAP argues that the Form I-688 card is issued primarily to illegal aliens who entered the U.S. prior to January 1, 1982, implying that the student in question was an illegal alien, and notes that illegal aliens are required to register for Selective Service. This position is supported by the Department's Student Financial Aid Handbook and by the Selective Service documents offered into evidence by DeVry. The Handbook explains that the Immigration Reform and Control Act of 1986 (IRCA) made it possible for certain categories of aliens, including illegal aliens, to receive temporary resident status and eventually permanent resident status. An alien who was eligible for temporary resident status under IRCA, and who applied to the INS, received the Form I-688A card. Once an individual's application for temporary resident status was approved, the applicant turned in the Form I-688A at the local INS Legalization Office and received a Form I- 688. While possession of a Form I-688 does not prove that the student in question was an illegal alien, it raises a strong inference. As noted above, the Selective Service documents offered into evidence by DeVry indicate that almost all male aliens living in the U.S., including illegal aliens, legal permanent residents, and refugees, must register if they are between 18 and 25 years old. The only exceptions are for noncitizens who are in the U.S. on student or visitor visas or are part of a diplomatic or trade mission.

SFAP also notes that DeVry's file for this student contained a transcript indicating that he had attended a U.S. high school in Philadelphia from July 1977 until his graduation in August 1978, at which time he was 18 years old and, thus, would have been required to register with Selective Service. DeVry responds that "subsequent information and documentation was received from the student that documents that he was on a F-1 Visa while attending the U.S. based high school." DeVry argues that the Handbook and Selective Service rules confirm that this student was not required to register on his eighteenth birthday because he was on a F-1 Visa. Nonetheless, I am not convinced that the document offered by DeVry is a valid F-1 Visa. The authenticity of the document is questionable, since it contains numerous handwritten additions, including the phrase "F-1." Moreover, as SFAP notes, the document contains the dates March 7, 1978, and March 6, 1982, but the transcript from the Philadelphia high school indicates that the student was already in attendance in July 1977. In addition, the document contains the phrase "American Language Inst Clovis, Calif." and does not mention the Philadelphia high school. Finally, the document is marked "Cancelled." [sic] The document does not indicate if or when the student entered the country using this purported visa or when it was canceled. Therefore, this document is of little value here.

The preponderance of the evidence supports the contention that this student was required to register with Selective Service. Other than the student's statement on the SAR that he had registered, there is no other evidence indicating that the student was actually registered. Section 668.33(f) states that an institution that waives the requirement that a student file the Statement of Registration Status is liable for any Title IV funds provided to a student who was required to register, but who was not registered, if the institution made its determination that the student was not required to register on the basis of ambiguous or conflicting information. Both of these are true here. DeVry relied on ambiguous and conflicting information regarding his status under the Selective Service registration law, since the school had the student's signed SAR on which he claimed that he actually was registered, as contrasted with the SAR's failure to confirm this fact. DeVry's determination that the student was not required to register was not reasonable since 1) the student stated on his SAR that he was registered, 2) DeVry incorrectly assumed that the student entered the U.S. in September 1987, 3) DeVry did not even make this determination until February 11, 1993, well after most of the funds in question had already been disbursed, and 4) DeVry admits at page 2 of its brief that it did not have the purported F-1 Visa at the time that it made its determination. As a result, I find DeVry improperly waived the registration requirement under § 668.33(b)(1) and, therefore, has failed to satisfy its burden of persuasion under 34 C.F.R. § 668.116(d) to show that its expenditures were proper. Therefore, DeVry must refund the $7,400 in questioned Pell Grant funds to the U.S. Department of Education and repurchase all Stafford and SLS loans disbursed to the student in question.

ORDER

On the basis of the foregoing, it is hereby ORDERED that DeVry Institute of Technology shall repay $7,400 to the United States Department of Education in the manner authorized by law and shall repurchase all Stafford and SLS loans disbursed to the student in question.

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Judge Richard F. O'Hair

Dated: February 19, 1997

SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested to the following:

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Footnote: 1 [1]*Unless otherwise noted, all cites are to 34 C.F.R. (1994).*