

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

In the Matter of

**EMPEROR'S COLLEGE OF
TRADITIONAL ORIENTAL MEDICINE,**

Respondent.

Docket No. 96-48-SP

Student Financial
Assistance Proceeding

ACN: 199440900064

Appearances:

Dr. Bong Dal Kim, President, Emperor's College of Traditional Oriental Medicine, Santa Monica, California, for the Respondent

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

Before:

Allan C. Lewis, Chief Administrative Law Judge

DECISION

This is an action initiated by the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education to recover \$7,230.00 in loan proceeds and \$1,334.00 in interest and special allowance paid by the Department with respect to the loan. This action was proposed pursuant to a final program review determination in which SFAP found that Emperor's College of Traditional Oriental Medicine (College) had certified and disbursed proceeds from a Federal Family Education Loan to a student who was ineligible for the loan due to the student's default status on a prior Federal Family Education Loan. [1/](#)

An institution may not release Federal Family Education Loan proceeds to a student who has previously attended another eligible institution until the receipt of the student's financial aid transcript from that institution. 34 C.F.R. § 668.19(a)(3) (1993). Financial aid transcripts from prior institutions attended by the student provide the current institution with information reflecting whether the amount of the current loan will exceed the Federal student loan limits and whether the student has previously defaulted on a student loan. 34 C.F.R. § 668.19(a)(4)(ii). A student is not eligible for Title IV financial aid if he or she is in default on a Federal Family Education Loan. 34 C.F.R. § 668.7(a)(7).

In the instant case, College received on March 13, 1993, a student's financial aid transcript from the Technical Career Institute, a postsecondary institution previously attended by the student. The transcript indicated that the student was in default on a Federal Family Education Loan. Nevertheless, College made an initial disbursement on a Federal Family Education Loan to this student on September 20, 1993, and, ultimately, disbursed loan proceeds in the total amount of \$7,230.

In its request for review, College indicates that an ESAR (electronic student aid report) was received in November 1994 and argues that--

[t]he loan was certified on 9/04/93. ECTOM [College] believes that the policy regarding ESARs may have just then been changed, in August 1993. As a result, the certifier of the loan was unaware of the new policy.

While College's argument is vague and unclear regarding ESARs, it does not matter because SFAP's position is based upon the receipt by College of the financial aid transcript from the Technical Career Institute. Regarding the receipt of the financial aid transcript, College maintains in its brief that it--

believes that the understanding of the former Financial Aid Officer was that the request for and receipt of the FAT [financial aid transcript] were the requirements of the U.S. Department of Education's Title IV Program and that the institute was therefore in compliance.

This argument is specious. Mere possession of a financial aid transcript does not satisfy the Department's regulations; rather, the institution must utilize the information therein to ascertain the eligibility of the student for another Title IV loan. In this case, the student's financial aid transcript indicated that this student was in default on a student loan and, therefore, the student was ineligible for the loan. Thus, College improperly certified and disbursed \$7,230.00 of Federal Family Education Loan proceeds.

Next, College requests that the repayment of \$7,230.00 in loan proceeds be waived and that the \$1,334.00 in interest and special allowance paid by the Department be forgiven since the loan proceeds were received by the student; the current loan is being repaid; the prior defaulted loan was paid off; and the College has implemented procedures to prevent a reoccurrence of this nature. SFAP responds that a waiver is inappropriate. In its view, the student was ineligible for the loan according to the regulations. Moreover, the repayment of the defaulted loan, some two years after the disbursements in issue, does not affect his ineligible status.

While College argues, in effect, no harm -- no foul, there is a policy concern here. Congress and the Department implemented a system designed to promote postsecondary education. In order for this system to function effectively, it is important for each postsecondary institution to follow the governing rules. Moreover, the violation in this case, while it may have been caused by oversight, involved an elementary and significant matter which arises with respect to all student loan applicants. Given these circumstances, a waiver or forgiveness of the sums sought is not appropriate.

Lastly, there is a matter of the appropriate remedy in this case. In prior cases, SFAP has sought three different remedies. It has sought payment of the loan proceeds to it. SFAP has requested damages reflecting the estimated loss to the Department based upon the cohort default rate. Finally, it has demanded that the institution purchase the loan from the lender.

In this action, SFAP modified its initial request to recover the loan proceeds somewhat and now requests only the unpaid balance of the loan. This demand is the least appropriate of the remedies because the Department acts primarily as a guarantor of the loan in question. As a guarantor, the Department has not yet suffered any damage and may not. Moreover, as the loan is paid down, an event which is occurring in the instant case, the potential liability of the Department is reduced. Thus, the Department's receipt of the unpaid balance at this point would produce an unjust enrichment each time the borrower pays off a portion of the loan.

The estimated loss approach is a statistical-type concept which applies in the context of a group. This approach, while more reflective of the damage potentially sustainable by a guarantor, is not really applicable in the context of a single loan, especially where, as here, the student was previously in default of a student loan. Cf. *In re Fisk University*, Dkt. No. 94-216-SP, U.S. Dep't of Education at 6 (Oct. 5, 1995). The purchase of the loan by the institution is the most appropriate relief in this case. It passes the risk of loss to the institution and eliminates the Department's status as a guarantor.

ORDER

On the basis of the foregoing, it is **HEREBY ORDERED** that the Emperor's College of Traditional Oriental Medicine shall purchase the outstanding loan of [student name] and shall pay the U.S. Department of Education the sum of \$869.69. 2/

Allan C. Lewis
Chief Administrative Law Judge

Issued: July 12, 1996
Washington, D.C.

1/ This matter was resolved without an oral argument since the positions of the parties were presented in an adequate manner in their submissions.

2/ On brief, SFAP concedes that it incorrectly determined the amount of interest and special allowance owed the Department. Its recalculation reflects a liability of \$869.69.