

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

In the Matter of

Docket No. 97-173-ST

TREND BEAUTY COLLEGE,

Student Financial Assistance Proceeding

Respondent.

Appearances:

H.D. Allen, President, Trend Beauty College, East Alton, Illinois, for Respondent.

Renee Brooker, Esq., and Paul Freeborne, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before:

Richard F. O'Hair, Administrative Judge

DECISION

The office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department), on November 4, 1997, issued a notice of intent to terminate the eligibility of the Trend Beauty College (Trend) to participate in the 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.* Trend wishes to continue participating in the Pell Grant, Supplemental Educational Opportunity Grant, Perkins Loan, and Federal Work-Study Title IV programs, and it filed a request for hearing on this matter.

SFAP initiated this termination proceeding because Trend's Federal Family Education Loan (FFEL) Program's fiscal year 1994 cohort default rate of 57.1 percent qualifies it for termination from participation in all of the federal student financial assistance programs pursuant to the provisions of 34 C.F.R. § 668.17(a)(2). [See footnote 1¹](#) This section of the regulation authorizes the Secretary of Education (Secretary) to initiate a proceeding under Subpart G to limit, suspend, or terminate the eligibility of an institution which has a cohort default rate that exceeds 40 percent for any fiscal year. SFAP explains that the Secretary's rationale for taking this stringent action against institutions which have such a large percentage of their students defaulting on their federally subsidized student loans is his determination that schools with high default rates are drains on the federal economy and that these schools should be held responsible for this expense. 53 Fed Reg. 180,36216 (September 16, 1988, proposed rule). Additionally, he is of the opinion that an institution's cohort default rate is a factor in the determination of the institution's ability to administer properly the Title IV, HEA programs. 34 C.F.R. § 668.16(m)(1). SFAP also notes a 1991 Senate Report, *Abuses in Federal Student Aid Programs*, ("Senate Report"), S.Rep. No. 58, 102d Cong., 1st Sess. (May 17, 1991) at 10, which concluded that "schools with high default rates victimize students by leaving them with huge debts and little or no education, and consequently result in those students being left in a worse position than when they started school."

Trend's fiscal year (FY) 1994 cohort default rate of 57.1 percent was based on an average calculation which was computed by finding the average of the percentage of current and former borrowers who entered repayment in FY 1992, FY 1993, and FY 1994 and defaulted before the end of the fiscal year immediately following the fiscal year in which they entered repayment. This "average" rate was applied because Trend had fewer than 30 borrowers entering repayment in FY 1994. 34 C.F.R. § 668.17(d)(1)(i)(B). Trend was notified of its FY 1994 cohort default rate on January 6, 1997, and simultaneously informed of its right to appeal this cohort default rate. Trend did not file an appeal of this rate and, therefore, the rate became final as of that date. An additional consequence of its failure to appeal is that it is thereafter prohibited from challenging that rate in any other proceeding before the Department. 34 C.F.R. § 668.17(i).

In a termination proceeding initiated against an institution which has a cohort default rate exceeding 40 percent for any fiscal year, SFAP has the burden of showing that it has calculated a cohort default rate for the institution and that the rate exceeds 40 percent. If the institution exercises its right to request a hearing, the hearing official must find that the sanction sought by SFAP is warranted unless the institution can show, by clear and convincing evidence, that the cohort default rate is not the final rate determined by the Department and that the correct rate is 40 percent or less. 34 C.F.R. § 668.90(a)(3)(iv). [See footnote 2²](#) SFAP has clearly satisfied its burden here and Trend is subject to termination.

Trend has not submitted any evidence suggesting that its FY 1994 rate is not final or is 40 percent or less, but it has submitted a number of explanations for its excessive cohort default rates. It forcefully argues that it is not guilty of perpetrating the ills which Congress and the Secretary seek to remedy by initiating termination proceedings against every institution which has cohort default rates in excess of 40 percent. To this end, it raises eight points which are summarized below:

1. Trend notes that, by examining its "actual" cohort default rate for each specific year, as distinguished from the "official" rate used by the Department which relies on a three-year average, its cohort default rate has dropped every year from FY 1992, going from 83.3 percent for FY 1992 to 0 percent for FY 1995.
2. Trend voluntarily discontinued participation in the FFEL program on August 25, 1992, once it received the July 1992 notification of its FY1990 cohort default rate of 45.5 percent. It views this voluntary withdrawal as a responsible decision which was made after it realized too many of its former students were not repaying their loans.
3. Even though Trend recognized it had a problem with defaulting students, it believes it was irretrievably caught in a cycle which could only end in doom. By the time of its July 1992 notification, it had already certified loans which would not go into a repayment status for another year, followed by a two-year period during which a student could default. Its only recourse was to fervently apply default reduction measures and hope that the bulk of its students would begin repayment on schedule.
4. Trend argues that the guaranty agencies should share the blame for high cohort default rates because those entities are directly involved in collecting loans for their various schools, and the latter are not participants in this process. Trend notes that the default rates by the various guaranty agencies around the country range from a low of 2.1 percent to a high of 36.1 percent, and from this it infers that the guaranty agencies, and not the institutions, should be penalized by the Department.
5. Trend asks that I base my decision on its actual cohort default rate for FY 1994 of 37.5 percent, rather than on the official rate of 57.1 percent which, as mentioned above, is the product of a three-year average. Trend attacks the Department's use of this formula by pointing out that, because of averaging, even if Trend had no students

going into repayment in fiscal years 1993 and 1994, it would still have an excessive cohort default rate for FY 1994 because of an extremely high rate for FY 1992, one which it considers to be an anomaly. Trend also mentions that this proceeding is very unfair to it and its students because it is based on a very small number of borrowers, only 12 for FY 1992, and eight for both FY 1993 and FY 1994.

6. Trend complains that the Department's efforts to terminate it are not wisely expended because of the low number of loans and low dollars involved here. For fiscal years 1993 and 1994, its three defaults for each year involved only \$7,875, and of the three FY 1994 students, one loan has been paid, one is repaying her loan, and one remains in default. Trend suggests the Department's energy should be directed to "schools with low default rates but high default dollars," arguing that it is those schools which are responsible for the billions in student loan default costs about which the Department complains.

7. Trend argues that its problem with high cohort default rates originated with the severe economic condition which followed the Midwest floods of Spring 1993. Many beauty salons in the vicinity of the institution closed after the flooding, and this eliminated employment opportunities for many of its 1993 and 1994 graduates. Other students dropped out and had trouble finding employment for the same reason. Without a place to work, these people were unable to repay their loans. Trend notes that the Department recognized the devastating effect of this flooding on educational institutions and it refers to the Secretary's Dear Colleague Letter (GEN 93-23, August 1993) in which the Secretary said he would consider the effect of the flooding on each institution and give it appropriate concessions. Trend believes the Department should give it a concession in this case because its high cohort default rate was a direct result of those calamitous weather conditions.

8. Trend explains that it did not appeal its FY 1994 cohort default rate because "[t]he parameters for appeal are very narrow and did not match the circumstances that we described above for students defaulting on other loans in 1993 and 1994." It attempted to appeal its FY 1993 rate, but this effort was unsuccessful because it was unable to submit its appeal to its state guaranty agency within the allotted time.

In conclusion, Trend cannot understand what federal funds will be saved by terminating its Title IV eligibility now, even though it ceased certifying loans five and one-half years ago. Furthermore, it projects that for calendar year (CY) 1996, because of the averaging method used for computing the rate, it will still have a cohort default rate of 37.5 percent, the same rate it has for CY 1995, even though it will have no students entering repayment.

As compelling as some of these arguments may be, the regulations preclude the hearing official from considering any of them. 34 C.F.R. § 668.90(a)(iv). That section directs that the hearing official must find SFAP's prayer for termination of an institution's eligibility is warranted, unless the institution can show that the cohort default rate is not the final rate and that the correct rate is 40 percent or below. Trend has not shown that its cohort default rate for FY 1994 is not final or that the correct rate is 40 percent or below. Applying this criteria, Trend must be terminated.

ORDER

On the basis of the foregoing, it is hereby ORDERED that the eligibility of Trend Beauty College to participate in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965 be terminated.

Judge Richard F. O'Hair

Dated: April 28, 1998

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 cited regulations are contained in 34 C.F.R. and refer to the 1997 edition.

Footnote: 2 ² See also *Academy for Career Education, U.S. Dept. of Education, Dkt. No. 97-124-ST (Feb. 20, 1998)*; *Alladdin Beauty College #32, U.S. Dept of Education, Dkt. No. 97-108-ST (Dec. 15, 1997)*; *Palm Beach Beauty & Barber School, U.S. Dept. of Education, Dkt. No. 97- 102-ST (Oct. 23, 1997)*.
