

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

In the Matter of

Docket No. 98-37-SF

HOLLYWOOD SCHOOL OF BEAUTY CULTURE & ADVANCED HAIR DESIGN,

Student Financial Assistance Proceeding

Respondent.

Appearances:

Gene A. Miller, Educational Consultant, for Hollywood School of Beauty Culture & Advanced Hair Design.

Jennifer L. Woodward, 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

Hollywood School of Beauty Culture & Advanced Hair Design (Hollywood) participates in the federal student financial aid programs authorized under Title IV of the Higher Education Act of 1965 (Title IV, HEA), as amended, at 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 (Department). This appeal regards a notice of intent, issued by SFAP, to fine Hollywood \$10,000 based on the failure of the school to submit Student Status Confirmation Reports (SSCRs) to the Department's National Student Loan Data System (NSLDS). [See footnote 1¹](#) The fine action is pursuant to section 487(c)(3)(B) of the HEA, at 20 U.S.C. § 1094(c)(3)(B) (1996) and 34 C.F.R. § 668.84 (1997).

The notice of intent to fine addresses funding data available for the 1995-96 award year, and was sent on March 10, 1998. Preceding this notice, a standard Dear Colleague Letter (GEN- 96-17) was sent to all institutions reminding them of their obligations to submit the SSCRs to NSLDS. The Department records indicate that this letter was sent to Hollywood on August 31, 1997. In addition, NSLDS sent an individual reminder to Hollywood on October 6, 1997. On October 20, when SFAP still had not received communication from Hollywood, SFAP sent a warning which stated that the school's failure to submit the SSCR reports to NSLDS could result in administrative action. A separate warning letter was again sent on October 30. On October 31, NSLDS sent a second SSCR report followed by another set of reminder and warning letters dated December 8, 22, and 29 respectively. SFAP alleges that despite these multiple correspondences Hollywood still had failed to submit its SSCR to NSLDS as of May 6, 1998, the date of SFAP's brief, which was more than 31 weeks beyond the initial due date of the report.

Under 20 U.S.C. § 1094 (c)(3)(B) and 34 C.F.R. § 668.84(a) the Department may fine an institution up to \$25,000 for each violation of any provision of Title IV or any regulation or agreement implementing that Title. The amount of the fine reflects both the size of the institution as well as the gravity of the offense.[See footnote 2²](#) In this case, SFAP acknowledges that Hollywood is a small institution, but it contends that the school's failure to submit the SSCRs is a serious violation that impedes the government in effectively administering Title IV, HEA loan programs.[See footnote 3³](#)

Since October 1990 Hollywood has employed Educational Management Consultants (EMC), a servicer owned by Mary Clare. The school describes a series of communication problems that existed between Hollywood and EMC during the period of October to December 1997. Beginning in October, Hollywood received a reminder letter from NSLDS which it forwarded to EMC with instructions to submit the SSCR to NSLDS. When Hollywood received no response from EMC the school simply assumed that the SSCR had been submitted as instructed. Hollywood notes that subsequent to this time, there was little correspondence with EMC and telephone conversations with Mary Clare were evasive. EMC contends that it submitted the August SSCR, but that it was unable to provide electronic files to Hollywood.

Hollywood retained Mr. Gene Miller as the new servicer. His office received the first SSCR file on January 1, 1998. This SSCR was completed and submitted on March 14. An acknowledgment dated March 17, 1998, was sent to Hollywood. NSLDS issued and dated the final warning letter on March 2, 1998, followed by the notice of intent to fine on March 10, 1998.

Hollywood bases its appeal on the belief that the fine imposed by the Department is unreasonable considering the brief time lapse between the last warning letter and the notice of intent to fine. Hollywood states that it transmitted the SSCR before the school received the notice of intent to fine. The school further states that it always has submitted the reports with due diligence, but that because of circumstances beyond its control, the August 1997 SSCR was late. Hollywood points to both its past record as well as the expeditious nature in which it submitted the subsequent regular SSCR to rebut SFAP's allegations that Hollywood ignored its responsibilities. As a result, the school seeks some mitigation in this matter.

ANALYSIS

In reviewing the foregoing evidence, it appears that a fine is an appropriate means of disciplining Hollywood for its regulatory non-compliance, although the amount should be less than that requested by SFAP. Clearly, Hollywood misunderstands the purpose of the Department's imposition of a fine for SSCRs submitted well past the directed date. SFAP relies on accurate and timely [See footnote 4⁴](#) SSCRs because monitoring and auditing procedures are contingent upon receipt of this information. It matters not that only eight days passed between the final warning issued by NSLDS and the notice of intent to fine. The fine followed on the heels of nearly seven months of repeated reminders and warning letters that finally culminated in a notice of intent to fine. Hollywood's contention that it submitted an SSCR on March 14 and received an acknowledgment on March 17 cannot be reconciled with SFAP's assertion that the SSCR never was received and was more than 31 weeks late as of May 6. This discrepancy, however, does not alter the final analysis in this decision because based on either time computation the SSCR was submitted months beyond the initial due date of September 30, 1997. Hollywood does not deny receiving correspondence during the preceding months, nor does it assert that attempts were made to notify the Department of the problems it was having with its previous servicer (EMC). While Hollywood states that it relied on the good faith of the Department to assist the school in overcoming the "reprehensible actions of a servicer who summarily ceased operations without properly advising the school," it does not indicate any initiative on the school's part to *seek* the advisement of the Department.

Title 34 C.F.R. § 668.82(b)(1) references the fiduciary responsibility in which the highest standard of care and diligence in administering the programs and in accounting to the Secretary of Education for the funds received is required. Hollywood was complacent in its monitoring of EMC. The school assumed that no response from EMC regarding compliance with NSLDS's latest report request was affirmation that the report had been submitted as required. Despite subsequent lack of communication with EMC and Mary Clare's evasiveness, Hollywood did not conduct proper follow-up with the servicer to ensure compliance, nor did the school notify the Department of its difficulties.

The mitigation Hollywood seeks in this case cannot stem from the unreasonableness of the Department's fine in general, but rather should originate from the size of the institution, the lack of intentional noncompliance, and the totality of the circumstances including a strong past record of compliance. Hollywood failed to submit the SSCR within the prescribed time of 30 days. As a result, the School violated 34 C.F.R. § 682.610(a) and 34 C.F.R. § 685.309(a) and (b). While several cases resemble the noncompliance in this case, *In re Pedigree Career Institute*⁵ See footnote 5⁵ is most closely linked and supports applying a fine to the current violation.

In addition to the above-mentioned mitigating factors, monetary gain and actual cost in interest to the Department may be assessed and used to compute the fine. See footnote 6⁶ There is no evidence of loss to the government in the form of improper interest payments. This does not, however, negate the gravity or importance of timely SSCR filings since other loan reporting and financing are relatedly at stake. The lack of evidence suggesting an actual loss, however, speaks to the expediency of imposing a fine of a lesser amount than the \$10,000 requested by SFAP.

Based on the facts of this case, a fine of \$5,000 appropriately promotes efforts on the part of institutions to both initiate contingency plans should a servicer fail in its duties, as well as to establish better communication networks so that noncompliance does not continue unabated for nearly seven months. Hollywood did not intentionally refuse to comply, nor did it demonstrate a wanton disregard for regulatory requirements. Hollywood exercised poor judgment when it did not contact the Department directly and when it allowed indications that something was amiss in EMC's performance to go unnoticed. In short, Hollywood must implement a better monitoring system of the actions of its servicers because the ultimate responsibility lies with it, and prompt submission of SSCRs has large scale funding ramifications for both students and the Department.

ORDER

On the basis of the foregoing findings and conclusions, it is hereby ORDERED that Hollywood School of Beauty Culture & Advanced Hair Design immediately and in the manner prescribed by law, pay a fine in the amount of \$5,000 to the United States Department of Education.

Judge Richard O'Hair

Dated: June 10, 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 Under 34 C.F.R. § 682.610(c) and § 685.309(b) institutions are specifically required to file SSCRs to NSLDS. The purpose of the SSCRs is to promote communication between the borrower and the lender and to assist in reducing loan defaults. In part, the information reported in the SSCRs helps the Department to determine when

borrowers are eligible for loan discharge or deferment. The identification of the student's enrollment status affects whether the Department will pay the lender interest, charge the student interest, or pay special allowances.

Footnote: 2 ²An institution is determined to be small if its funding level is below the median amount for the Title IV, HEA program in which it participates. See *In re Bnai Arugath Habosem*, Dkt. No. 92-131-ST, U.S. Dept. of Educ. (Aug. 24, 1993). For the 1995-96 award year Hollywood received \$322,096, which falls below the median funding level.

Footnote: 3 ³See *supra* note one. In addition, SFAP states that the SSCRs are used to support audit and program review planning. Related audit violations are considered to be serious violations because they hamper SFAP by increasing the costs of determining to what extent institutions may be indebted for awarded loans and possible inappropriate disbursement of funds. Strict adherence to regulation is demanded and only the size of the institution may be considered in reducing the fine from the maximum amount. See generally *In re Southern Institute of Business and Technology*, Dkt. No. 90-62-ST, U.S. Dept. of Educ. (May 3, 1991).

Footnote: 4 ⁴34 C.F.R. §§ 682.610 and 685.309(b) require that SSCRs be sent to NSLDS within 30 days of the date the report was sent to the school.

Footnote: 5 ⁵See generally *In re Matter of Pedigree Career Institute*, Dkt. No. 96-95-SF, U.S. Dept. of Educ. (Dec. 4, 1996), *aff'd in part* by the Secretary (Sept. 30, 1997) (enforcing a fine of \$10,000 when the college failed to submit Perkins Loan data to NSDLS after three notifications, although SFAP asked for a \$20,000 fine and the administrative judge approved a fine of \$1,000). The Pedigree case appears to differ from Hollywood in that the former lacked complete communication with the servicer during ownership transition while the latter conducted inadequate communication, thereby resulting in tardy SSCRs.

Footnote: 6 ⁶See generally *In re Wichita Area Vocational Technical School*, Dkt. No. 97-41-SF, U.S. Dept. of Educ. (Sept. 10, 1997).
