

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

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In the Matter of

**HUSTON-TILLOTSON COLLEGE,**

Respondent.

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**Docket No. 99-2-SP**

Student Financial  
Assistance Proceeding

PRCN: 199830614914

Appearances: Todd S. George, Esq., George & Donaldson, L.L.P., Austin, TX, for Respondent.

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

Before: Richard I. Slippen, Administrative Judge

**DECISION**

Huston-Tillotson College (HTC) is an institution participating in the student financial aid programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV), 20 U.S.C. §§ 1070 *et seq.*, 1088 *et seq.*, and its implementing regulations. On November 12, 1998, the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (Department) issued a final program review determination (FPRD) finding that HTC improperly certified and disbursed Federal Family Education Loans (FFEL). In the FPRD, SFAP determined that HTC should return \$132,673.00 to the FFEL lenders and also assessed \$15,656.00 in liability for the interest and special allowances the Department paid on these ineligible loans.

The following facts are not in dispute. The Department's Office of Inspector General (OIG) initiated an investigation of HTC's financial aid programs after receiving information from the Texas Guaranteed Student Loan Corporation. The OIG investigation revealed that four institutional officials along with some students of HTC fraudulently certified and/or obtained FFEL program loans. A report prepared by HTC's Director of Safety and Security, Mr. Edward Harris, Jr., delineated a scheme by which these individuals used false identities, social security numbers, and enrollment statuses to obtain these loans. Students participating in the scheme received a portion of the fraudulently obtained FFEL loans. The four institutional officials were criminally convicted for their participation in this illegal scheme in the U.S. District Court for the Western District of Texas, Austin Division. In accordance with the District Court's judgment, these four individuals have paid a total of \$2100.00 in restitution, leaving a balance of \$191,617.51.[\[1\]](#)

HTC argues that it is not responsible for repaying the ineligible FFEL loans because these loan applications were certified by an employee that was acting beyond the scope of her employment with HTC and in furtherance of a criminal conspiracy. HTC asserts that it was also a victim, along with the FFEL lenders and the Department, of the illegal scheme. HTC argues that it did not negligently or willfully certify the fraudulent FFEL loan applications. Citing *In re National Training Service, Inc.*, Docket No. 92-101-SP, U.S. Dep't of Educ. (October 6, 1995) (*National Training*), HTC next argues that if it is required to repay the FFEL loans at issue, the lenders will receive a double payment to which they are not entitled. HTC bases its argument on the fact the convicted individuals were ordered to

pay restitution as part of their sentence. The individuals have been making payments ranging from \$50.00 to \$150.00, totaling \$2100.00.<sup>[2]</sup> HTC therefore requests that the Department receive nothing by this proceeding.

SFAP argues that HTC is liable for all Title IV funds received because it entered into a program participation agreement with the Department. As HTC stands as a fiduciary with the Department, it is required to use the highest standard of care and diligence in administering the Title IV programs. Although HTC argues that its “rogue” employees acted beyond the scope of their employment by fraudulently obtaining FFEL loans, SFAP asserts that the institution remains liable for the actions of its agents. SFAP argues that it is well recognized that a principal is liable for loss caused to another by the other’s reliance upon a fraudulent misrepresentation by an agent, if the representation is one that the agent is authorized or apparently authorized to make. *See American Society of Mechanical Engineers v. Hydrolevel Corp.*, 456 U.S. 556, 566 (1982); Restatement (Second) of Agency § 257. To that end, SFAP states that it is clear that certifying student loan applications was an essential part of the Financial Aid Director’s job.<sup>[3]</sup> SFAP further argues that it is HTC’s own negligent administration of its Title IV programs that allowed this fraud to occur. According to SFAP, the embezzlement scheme at HTC flourished because it did not separate the functions performed by its financial aid office in violation of 20 U.S.C. § 1099c(d) and 34 C.F.R. § 668.16(c).

An institution participating in the Title IV financial aid programs is required to act as a fiduciary, and, therefore, owes the Department the highest standard of care and diligence in administering the programs. *See* 34 C.F.R. § 668.82(b). An institution enters a program participation agreement with the Department that conditions the institution’s eligibility and continued participation upon compliance with all Title IV statutes and regulations. 34 C.F.R. § 668.14. As a fiduciary, the institution is required to establish and maintain administrative and fiscal procedures necessary to ensure the proper and efficient administration of Title IV funds. To be considered administratively capable of adequately administering the Title IV programs, an institution must, among other things, divide the functions of authorizing payments and disbursing or delivering funds so that no office has responsibility for both functions with respect to any individual student. 34 C.F.R. § 668.16(c)(2).

An institution that violates any Title IV regulation may be held liable for any improperly spent Title IV funds. 34 C.F.R. § 668.14(b). This tribunal has always held that an institution is subject to liability arising from the criminal conduct of its employees in administering the Title IV programs. *See In re Hi-Tech Institute of Hair Design*, Docket No. 92-129-SA, U.S. Dep’t of Educ. (July 14, 1994) (*Hi-Tech*); *In re Yorktowne Business Institute*, Docket No. 92-33-ST, U.S. Dep’t of Educ. (March 10, 1993); *In re Warnborough College*, Docket No. 95-164-ST, U.S. Dep’t of Educ. (August 9, 1996). In *Hi-Tech*, a number of the institution’s financial aid officers collected Title IV funds for students who were not enrolled, or not attending classes, or for whom the institution had no records. These financial aid officers then either kept the funds, or disbursed the monies to their family and friends, as part of a criminal scheme. Still, this tribunal held *Hi-Tech* liable for funds procured through the misconduct of its employees.

Here, as in *Hi-Tech*, the individuals involved were employed by HTC to administer its financial aid programs. As part of their job duties, these individuals had the authority to certify and disburse FFEL loans. Clearly, it was within their job duties to certify and disburse the FFEL loans at issue. It should be emphasized that the fact that four of its employees were convicted of criminal violations does not excuse HTC’s civil liability for its violations of Title IV regulations. HTC violated Title IV regulations in its administration of its financial aid programs, and allowed an embezzlement scheme to go undetected for almost four years. HTC’s mismanagement of its Title IV programs cannot be ignored simply because the funds were criminally misappropriated by its employees when its own mismanagement allowed for this misappropriation. Consequently, HTC remains liable because of its violations of regulations and statutes in administering the Title IV programs.

HTC’s use of *National Training* is also not persuasive. In *National Training*, the loans at issue were in repayment status by the students who had received them. As the institution was either unwilling or unable to calculate its exact liability, SFAP proposed a now accepted and long-standing method of calculating liability, the estimated actual loss formula, to more closely calculate the Department’s loss when some of the loans at issue are in repayment status. In the instant case, all of the identified loans will not be repaid by a student borrower. These are embezzled funds, albeit funds for which the District Court has ordered the convicted parties to reimburse the lenders. However, in this proceeding, the Department has every right to pursue HTC civilly for its violations of Title IV regulations and order repayment of the misspent Title IV monies.

I am also unconvinced that finding HTC financially liable for these FFEL loans will result in a double payment of these loans. The criminal proceeding against the convicted individuals is distinct from this recovery of funds proceeding. The convicted individuals are required to pay a substantial amount to the payees, and have only been making small payments to the payees. The criminal restitution ordered by the District Court does not give the injured parties what is rightfully theirs -- full recovery of their loss. Criminal restitution is intended to punish the defendants, not compensate their victims. In fact, future payments based on the convicted individuals' ability to pay would not fully compensate victims in present value terms.[\[4\]](#) Further, to the extent that there is any double payment, SFAP has agreed that the excess amount will be returned. HTC may also seek recovery of any monies paid as a result of this decision once criminal restitution is made.

### **FINDINGS**

1. HTC violated Title IV regulations by improperly certifying and disbursing fraudulent FFEL loans.
2. HTC remains liable for the criminal misappropriation of Title IV monies by its employees.

### **ORDER**

On the basis of the foregoing, it is hereby ORDERED that Huston-Tillotson College return \$132,673 to the appropriate FFEL lenders and pay to the U.S. Department of Education \$15,656.00.

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Judge Richard I. Slippen

Dated: February 10, 2000

### **SERVICE**

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

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[1] The amount owed is the Court's independent determination of what restitution is owed to the victims and does not reflect the liability sought in this proceeding.

[2] See ED Exhibit 5.

[3] The Financial Aid Director is the alleged architect of the embezzlement scheme.

[4] *Teachers Insurance and Annuity Association v. Green*, 636 F.Supp. 415 (1986) (Embezzlement victims brought civil action for complete and immediate restitution of unpaid monies from former employee convicted of violating the mail fraud statute. Court held that a criminal defendant ordered to pay criminal restitution could also be pursued for civil liability).