

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

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In the Matter of

**Docket No. 99-26-SA**

**BARBER-SCOTIA COLLEGE,**

Student Financial  
Assistance Proceeding  
ACN: 04-1997-88284

Respondent.

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Appearances: William A. Blakey, Esq., Dean, Blakey & Moskowitz, Washington, D.C., for Barber-Scotia College.

Denise Morelli, 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**

Barber-Scotia College, the respondent in this proceeding, participates in the various student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV). 20 U.S.C. ' 1070 *et seq.* and 42 U.S.C. ' 2751 *et seq.* One of the many administrative requirements of this participation is that the institution must submit to the office of Student Financial Assistance Programs (SFAP), U.S. Department of Education (Department), periodic compliance audits of its administration of the Title IV programs. SFAP examined Respondent=s compliance audit for the 1997 award year and discovered three regulatory violations. These violations were delineated in a March 1, 1999, Final Audit Determination (FAD) which assessed a financial liability against Respondent for \$181,349. Respondent submitted documentation which satisfied a portion of this liability and it appeals the remaining liability of \$84,928 pursuant to procedures outlined in 34 C.F.R. ' 668.113.

Of the three findings of non-compliance with Title IV regulations, the only one which assessed a monetary liability and is addressed in this proceeding is Respondent=s failure to have on file all required documentation, including promissory notes, for all outstanding Federal Perkins Loan program funds. SFAP noted that Respondent=s failure to follow these record retention procedures prohibits the school from turning over these loans to the Department for acceptance or to a collection agency. This recovery effort would be necessary only if the student borrowers have defaulted on these loans. Although the file is not clear on this issue, it is presumed that all of these loans are in default because of evidence in the file that Respondent was unable to collect on certain identified loans and it was attempting to assign them to the Department. If these loans are in a default status, and Respondent cannot locate the required documentation, this forever precludes the recovery of these federal student loan funds.

Respondent's brief on appeal addresses all three findings contained in the FAD, including the single issue before me.\* With respect to its Federal Perkins Loan program record retention deficiency, Respondent points out that the documentation the Department is seeking involves primarily pre-1980 loan files and it admits it is unable to locate this documentation because of the previous absence of appropriate record-keeping procedures. It argues that it has diligently sought to locate or reconstruct these loan files, and for some of them its efforts have been successful. In that way it was able to reduce its liability from \$181,349 to \$84,928. In its June 28, 1999, brief, it surmised that if it were given an additional 60 days to continue its search of its records that it might be able to locate or reconstruct the missing documentation and further reduce its liability to the Department. I note that Respondent has had more than the time it requested to conduct such an inquiry and I am unaware of any further submissions from Respondent which would reduce its liability on this issue. Respondent concedes in the conclusion of its brief that if it is unable to locate the missing promissory notes, it will recognize a liability to the Department of \$84,928.

The rules governing the administration of the Federal Perkins Loan program, found at 34 C.F.R. ' 674.19(e), require that an institution shall retain all loan records, including the original promissory notes, for at least three years from the date the loan is assigned to the Department, canceled, or repaid. Respondent admits it has not complied with this requirement. Not only does this failure prevent Respondent from accounting for the proper disbursement of these Title IV funds, but it also prevents recovery of any defaulted loans by the Department or a collection agency. *See In re Mary Holmes College*, Docket Nos. 94-82-SA, 94-90-SA, U.S. Dept. of Educ. (May 3, 1995). Accordingly, its liability remains at \$84,928, as finally assessed by SFAP.

#### ORDER

On the basis of the foregoing, it is hereby ORDERED that Barber-Scotia College shall remit \$84,928 to the United States Department of Education.

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Judge Richard F. O'Hair

Dated: December 7, 1999

#### SERVICE

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

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\* In 34 C.F.R., Part 668, Subpart H proceedings, I only have jurisdiction over findings which assess a monetary liability against the institution.