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

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In the Matter of

ALFRED ADLER GRADUATE SCHOOL,

Respondent.

Docket No. 02-92-SP

Federal Student Aid Proceeding

PRCN: 200240520364

Appearances: Dennis Rislove, Ph.D, President, and Leanne Flaherty, Business Manager, Alfred Adler Graduate School, Hopkins, MN, for Respondent.

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

Before: Richard I. Slippen, Administrative Judge

DECISION

Alfred Adler Graduate School (Adler) operates as a graduate institution of higher education, in Hopkins, MN. Adler participates in the federal student aid 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. § 2752 *et seq*. Adler appealed the U.S. Department of Education (Department), office of Federal Student Aid's (FSA) Final Program Review Determination (FPRD) dated September 5, 2002. The FPRD charged that Adler disbursed a Federal Family Education Loan (FFEL) to one student in excess of the maximum loan amount allowed and that Adler assessed and paid finance charges (late fees) out of Title IV recipients' FFEL loan funds. Liability for these two findings amounted to $6,049, and $1,656, respectively.

An institution is required to determine a student's eligibility for Title IV FFEL loan funds in accordance with their enrollment and educational objectives. 34 C.F.R. §§ 668.32, 682.102(a), and 682.201. A student must not obtain loan amounts that exceed annual or aggregate loan limits made under any Title IV loan program. 34 C.F.R. § 668.32(g)(2). A student may be considered a graduate student if he or she is enrolled in a program of instruction above the baccalaureate level at an institution of higher education, has completed at least three years of full-time academic study at an institution of higher education, and is not receiving Title IV assistance as an undergraduate student. 34 C.F.R. § 682.200. For the time period at issue, the maximum aggregate Title IV loan amount for a graduate or professional student could not exceed $138,500. 34 C.F.R. § 682.204(e)(2). An institution is required to make a determination on the level of funding a student is eligible to receive given the maximum loan amount set by regulation. 34 C.F.R. § 685.203(e)(3).

FSA asserts that Adler allegedly disbursed $9,869 in FFEL funds to a student who had already borrowed $178,989. FSA argues that the student's institutional student information report (ISIR) dated March 21, 2000, indicated that the student had already borrowed the maximum amount allowed for graduate and professional students. FSA states the student was previously enrolled in the Health Education Assistance Loan (HEAL) program, which allowed the student to borrow in excess of $138,500. At Adler, the student was not enrolled in a program exempted from the maximum loan amount of $138,500. FSA states the student switched educational programs, dropping the maximum borrowing amount to $138,500. FSA argues that the student's ISIR dated March 21, 2000, indicated that the student had already borrowed the maximum amount allowed for graduate and professional students. FSA further argues that Adler had this ISIR in its possession as of March 23, 2000, before it disbursed the FFEL loan funds to the student on April 13, 2000. Finally, FSA asserts that Adler acknowledged that this loan was ineligible by returning $3,850 to the student's lender on July 22, 2000. FSA contends that the entire amount of the $9,869 disbursement was ineligible.

Adler argues that it based its certification of the student's loan on a June 11, 1999, ISIR. The June 11, 1999, ISIR showed a total outstanding loan balance of $121,136, below the maximum aggregate borrowing amount. Once the institution received the March 21, 2000, ISIR, Adler stated that it contacted the student. According to Adler, the student stated that the outstanding loan balance was incorrect and that some loans on the ISIR were duplicates. Adler argues that the student's ISIR was confusing and that it did not seem reasonable that the loan balance would increase $44,603 in such a short period of time. Adler states that once the student's financial aid transcript was received from the student's previous institution, and it determined that she was over the maximum allowable loan limit, Adler returned all tuition and fees received for that student to the lender. Adler next argues that it should not have to repay the money the student personally received and is currently paying back. Finally, Adler argues that it acted in good faith on the basis of the earlier ISIR and the student's assurance that she was still eligible to receive Title IV loan funds. For these reasons, Adler requests it be relieved of the liability for this student.

Adler concedes it disbursed Title IV funds in excess of the aggregate maximum loan amount allowed of $138,500, in violation of 34 C.F.R. § 682.204(b). Adler's assertion of its "good faith" is not relevant to my determination in this recovery of funds proceeding. My determination in this case only goes to whether the school violated Title IV regulations and if Title IV funds were misspent. *See In re The University of Birmingham, The Shakespeare Institute*, Docket No. 99-83-SP, U.S. Dep't of Educ. (March 30, 2001) (University of Birmingham).

Adler did not comply with its regulatory obligations. Adler used an out-dated ISIR to determine whether a student had already exceeded the maximum loan amounts. Although Adler attempted to comply with its regulatory requirements, its failure to examine an ISIR in its possession before Title IV loan funds were disbursed violated its fiduciary obligation to ensure that the student was eligible to receive Title IV loan funds. *See In re The University of Birmingham, supra*; *See In re Eugenio Maria de Hostos*, Docket No. 96-126-SP, U.S. Dep't of Educ. (February 19, 1998). Further, Adler's argument that it relied on the student's assertion that she was still eligible to receive Title IV loan funds is rejected. If Adler's assertion of its lack of responsibility were correct, it would void the fiduciary role institutions play as participants in the Title IV programs. Adler was required to use the student's ISIR to determine the student's eligibility, and the institution had the ISIR in its possession before the funds were disbursed. The institution should have known that the student was no longer eligible to receive additional Title IV loan funds. *See In re Eugenio Maria de Hostos*, Docket No. 95-128-ST, U.S. Dep't of Educ. (January 21, 1995).

Adler's assertion that this was an isolated occurrence is also not relevant to my determination that the institution's disbursement of Title IV funds was improper. Additionally, although the remaining portion of the improperly awarded loan funds was disbursed to the student, this does not mitigate the institution's liability. The requirements for certifying Title IV loan applications are specified in the regulations. It is beyond my authority to waive these requirements or the resulting liability. The liability for the loan is based on the amounts improperly certified not whether the school is in actual receipt of the entirety of these funds. *See In re The University of Birmingham* at 3. A Title IV loan can be used for expenses other than those charged by the institution, such as the student's living expenses; therefore, the institution's disbursement to the student, cannot vitiate the requirement that the loan be properly certified. *Id.*; *In re Ivy Tech State College*, Docket No. 95-101-SP, U.S. Dep't of Educ. (August 6, 1996). Finally, Adler's assertion that the student in question is paying back the loan does not make the assessment of liability inappropriate.

Although the Department's loss may be minimal, the Department should not have to bear any further risk of loss. *See In re University of Birmingham* at 4. Therefore, Adler remains liable for $6,049 balance of the improper loan.

Title IV funds may only be used for fees that are part of the student's cost of attendance such as supplies, books, or equipment that is required of all students participating in the same program of study. 20 U.S.C. § 1087ll(1). Under 34 C.F.R. § 668.164(d)(1), an institution should only credit Title IV funds to satisfy tuition and fees, and room and board, if applicable. An institution may credit Title IV funds to a student's account for other charges incurred for educationally related activities if the institution has written authorization from the student. 34 C.F.R. § 668.164(d)(2).

In the FPRD, FSA alleged that Adler used Title IV funds to assess finance charges against the accounts of Title IV recipients during the 2001-2002 award year. FSA states that the FPRD sets forth liabilities not for the institution's assessment of finance charges, but because Adler used Title IV funds to pay these finance charges. The FPRD states that the finance charges were assessed despite the fact that FFEL loans were being processed that would eliminate all obligations associated with the students' cost of attendance and provide the students' with a credit balance payable directly to the student. According to the FPRD, the finance charges were later deducted from the incoming Title IV loan proceeds. According to FSA, the institution's assessment of a finance charge to Title IV recipients, whose total cost of attendance will be met with federal student aid, deprives those students of the use of that financial assistance.

Adler argues that there is no prohibition against assessing a finance charge. Adler states that it imposed finance charges only after the students' Title IV funds paid for the other permissible charges in their entirety. Adler also states that finance charges are assessed to students whom the institution does not yet have the information to process Title IV loans. The institution states that tuition is due at the time of registration, but finance charges are only assessed on accounts with a past due balance 30 days after the quarter starts. Registration begins 60 days before the start of the quarter, and students who have not completed their financial aid paperwork are notified. The deadline for registration is 45 days before the start of the quarter, which Adler argues is ample time for a student to apply for and complete an application for financial aid. Adler contends that the majority of the Title IV loan checks are received 10 days prior to the start of the quarter and these students are never assessed finance charges.

According to Adler, its policy is to waive finance charges for first-time students. Adler argues that it only assesses finance charges against students who have not completed the Free Application for Federal Student Aid (FAFSA) and for whom the institution has no ISIR to process 30 days after the quarter starts and each month thereafter. Adler argues that not all students necessarily have a credit balance after Title IV loan checks are received. In those cases, the students may still have a tuition balance due that would incur finance charges. The institution also asserts that because some students add credits after loan proceeds have been received, these students would be subject to a finance charge if they did not pay the tuition for the additional credits by the end of the month. Adler asserts that its one percent finance charges are minimal. Adler also contends that it would be time consuming and burdensome to return the small amounts of collection charges to each individual student.

An institution may only charge fees that are part of the student's cost of attending that institution. Finance charges are not part of a student's cost of attendance. See 20 U.S.C.
§ 1087-ll (1); 34 C.F.R. § 668.164(d)(1). Therefore, finance charges are not an appropriate use of Title IV funds. Although there is no prohibition against an institution assessing finance charges on unpaid tuition amounts, this does not mean that it is a permissible use of Title IV funds.

Adler's argument that the finance charges were paid out of the students' personal funds might be persuasive if the institution had submitted proof to the tribunal that the finance charges were not paid with Title IV funds. Adler did not, however, specify which students paid the finance charges out of their personal funds, or submit any other documentation that would demonstrate that non-Title IV funds were used to pay these finance charges. The FPRD states that Adler itself produced the list of Title IV recipients who were assessed finance charges. According to FSA, many of these students received Title IV aid that covered their entire cost of attendance. Without any documentation to support Adler's assertions that it properly utilized the Title IV loan funds at issue, I am unable to determine whether Adler used non-Title IV funds to cover its finance charges. Therefore, I find that Adler failed to carry its burden of proof in this proceeding. *See* 34 C.F.R. 668.116(d).

Adler's argument that it would be too burdensome to return the money to the Title IV recipients is also rejected. Adler cannot be permitted to benefit from its improper retention of these Title IV funds. The students at issue are entitled to receive this additional, albeit small, amount of their Title IV loan funds. Consequently, Adler remains liable for the $1,656, as assessed in the FPRD.

ORDER

On the basis of the foregoing, it is hereby ORDERED that Alfred Adler Graduate School return to the appropriate FFEL loan holder the sum of $6,049, and refund the finance charges of $1,656 in the manner specified in the FPRD.

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Judge Richard I. Slippen

Dated: June 13, 2003

SERVICE

A copy of the attached document was sent to the following:

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