



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

In the Matter of

Docket No. 10-29-SA

AMERICAN INSTITUTE of BUSINESS,

Federal Student Aid
Proceeding

Respondent.

ACN: 07-2009-03164
FAC CAN: 07-2009-09064

Appearances: Frank D. Smith, Esq. and Amy R. Teas, Esq., Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, Iowa, for American Institute of Business.

Steven Z. Finley, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Office of Federal Student Aid.

Before: Richard F. O'Hair, Administrative Judge

DECISION

On May 14, 2010, the Office of Federal Student Aid (FSA) of the U.S. Department of Education (Department) issued a Final Audit Determination (FAD) to American Institute of Business (Respondent), an independent, non-profit college of business located in Des Moines, Iowa. This FAD concluded that for the award year covering the period September 1, 2008, through August 31, 2009, Respondent awarded Academic Competitive Grant (ACG) funds totaling \$31,933.00 to 38 ineligible students. FSA is seeking the return of these funds, plus interest of \$1349.00. Respondent has exercised its appeal rights found in 34 C.F.R., Part 668, Subpart H. In its appeal, Respondent concedes it erroneously awarded ACG funds to 38 of its students during the 2008-2009 award year, but argues that because it has corrected the administrative error responsible for the overpayment of ACG funds, its liability for the return of Title IV funds has been eliminated as well. The administration of the federal student aid programs, including this appellate proceeding, is governed by Title IV of the Higher Education Act of 1965 (Title IV), 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.*

ACG funds may be awarded to students who are eligible for a Federal Pell Grant, and who have completed a recognized rigorous secondary school program of study. 34 C.F.R. §§ 691.15, 691.16. Respondent became aware it had improperly awarded ACG funds when, upon the completion of its annual certification audit, the auditor informed its president that six of its students from a sample of 15, were ineligible for these grants. The auditor explained that errors were committed during the process for verification that the applicant had completed a rigorous program of study. When informed of this, Respondent's president ordered an internal comprehensive review of all the files of students who received these grant funds, and a review of the federal student aid award procedures. From this review, the president found there were 38 students who improperly received these grant funds. Further investigation disclosed that Respondent's Vice President of Enrollment was solely responsible for the verification and approval process during a portion of the award year in question, and he made it his practice not to verify the courses listed on Iowa students' transcripts. It was his belief that Iowa had such a rigorous curriculum that the regulation's rigorous program of study requirement was satisfied by virtue of a student's graduation from an Iowa high school.

Following this revelation, Respondent explained that the president reorganized the Admissions Department, to include eliminating the position of Vice President of Enrollment and transferring the responsibility for verifying the ACG student transcripts to the Associate Registrar. The new verification process requires that each student file be reviewed individually to ensure that verification and approval comply with the appropriate grant requirements. The president also ordered a cessation of giving any further ACG funds to the ineligible students, making up the difference with institutional grant funds. Not only did she immediately report the error to FSA by letter, but she also made a personal visit to Washington to visit with senior Department of Education officials to explain the error and outline the changes implemented to correct the mistake.

Respondent's argument on appeal is that it should be absolved of all liability under the FAD because of the corrective actions it took subsequent to the discovery of the error. It readily acknowledges that pursuant to 34 C.F.R. § 668.116(d) it has the burden of proving that the expenditures questioned or disallowed were proper, and that it complied with program requirements. However, it wishes to invoke the procedures detailed in 34 C.F.R. § 668.113(d) to have its liability completely forgiven. That section provides:

§ 668.113(d)(1) If an institution's violation that resulted in the final audit determination or final program review determination in paragraph (a) of this section results from an administrative, accounting, or recordkeeping error, and that error was not part of a pattern of error, and there is no evidence of fraud or misconduct related to the error, the Secretary permits the institution to correct or cure the error.

(2) If the institution is charged with a liability as a result of an

error described in paragraph (d)(1) of this section, the institution cures or corrects that error with regard to that liability if the cure or correction eliminates the basis for the liability.

Respondent believes this section unequivocally applies to its circumstance because the liability is based on an administrative error committed by its former Vice President of Enrollment and there is no evidence of any fraud or misconduct related to the error. Respondent further emphasizes it has corrected this error by eliminating the position of Vice President of Enrollment and has implemented a student applicant process which ensures that all subsequent awards of ACG funds are not made until the completion of a proper, thorough review of the student's qualifications. As such, Respondent believes that because it has cured or corrected the error, the cure or correction eliminates the basis for the liability.

I believe Respondent's reliance upon 34 C.F.R. § 668.113(d) for relief is misplaced because that section is not applicable to this tribunal. 34 C.F.R. Part 668, Subpart H, of which § 668.113 is a subsection, covers appeal procedures for audit determinations and program review determinations. Under the heading: "§ 668.113 Request for review," § 668.113(a) addresses an institution's request for review of a final audit determination or a final program review determination and instructs the institution to submit its appeal to the designated department official, which in this instance is the Director of the Administrative Actions and Appeals Division in the Office of Federal Student Aid. Sections 113(b) and (c) advise on the timeliness and contents of the appeal, and §§ 113(d)(1) and (2), the final paragraphs of §113, contain the language quoted above which provides that the institution cures or corrects the error if the cure or correction eliminates the basis for the liability.

The next section, § 668.114, informs the institution that the designated department official makes arrangement for a hearing before a hearing official; § 668.115 discusses the possibility of a prehearing conference; and § 668.116 addresses the hearing process, to include the provision imposing the burden of proof on the respondent. Sections 668.117 and 118 address the responsibilities of the hearing official and that person's written decision. From this examination, it is clear that §§ 668.113 and 668.114 apply only to the designated department official, and not the hearing official. The only authority granted to the hearing official is found in §§ 668.115 through 668.118, and none of these contain any language similar to §113(d) which would permit the hearing official to eliminate the basis for a liability if it finds the institution cures or corrects the error. For these reasons, I believe Respondent's only opportunity to avail itself of the forgiveness of liability found in §668.113(d) remains with the Director of the Administrative Actions and Appeals Division of FSA, the designated department official who referred this appeal to the Office of Hearings and Appeals for appointment of a hearing official.

FSA takes the position that Respondent has not cured or corrected the error by simply altering its grant approval procedures so as to prevent the reoccurrence of this error. FSA argues that the basis for the liability is not the faulty procedures, rather it was the amount of the

improper grant awards. From this analysis, FSA says that only the repayment of the improper grant disbursements will cure or correct the error.

As explained above, I do not believe I have the authority to make a determination of whether Respondent's purported cure or correction of the error eliminated the basis for the liability under § 668.113(d). However, if I did have that authority, I would agree with FSA that Respondent has not cured or corrected the error, and, therefore, should not be relieved of liability. The error, as I view it, was Respondent's award of ACG funds to 38 students who could not show they had completed a rigorous program of study. Making procedural changes to ensure improper awards do not happen in the future does not cure or correct the error cited in the FAD. This error can only be cured or corrected by producing evidence that these 38 students had completed a rigorous program of study. Apparently this is not possible, so this error can never be cured or corrected, and Respondent will not be able to avail itself of the relief sought under § 668.113(d).

As an alternative to its argument that its liability should be eliminated because it has corrected the administrative error responsible for the erroneously awarded ACG funds, it asks for debt forgiveness. It explains that the repayment of these funds would create a financial hardship for the college. Unfortunately, there is ample authority for the position that this tribunal does not have the discretion to provide it with any debt relief. *See* 34 C.F.R. § 668.117(d); *In the Matter of Philander Smith College*, Dkt. No. 09-28-SA, U.S. Dep't of Educ. (Nov. 16, 2009); *In the Matter of Howard Community College*, Dkt. No. 08-21-SP, U.S. Dep't of Educ. (Dec. 4, 2008). Respondent, however, is to be commended for the aggressive action it took to determine the cause of the improper payments and the prompt efforts it pursued to prevent a recurrence of this issue. Accordingly, I find the final audit determination is supportable in whole and affirm the liability assessed against Respondent.

ORDER

On the basis of the foregoing, it is hereby **ORDERED** that American Institute of Business pay to the U.S. Department of Education \$31,933.00 for improperly disbursed grant funds, plus \$1349.00 in interest.

Judge Richard F. O'Hair

Dated: December 14, 2010

SERVICE

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

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