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

In the Matter of

HELMA INSTITUTE OF MASSAGE THERAPY,

Respondent.

Docket No. 11-83-SP
Federal Student Aid
Proceeding
PRCN: 2007 3022 5954

Appearances: Ronald L. Holt, Esq., of Dunn & Davison, LLC, Kansas City, Missouri, for Helma Institute of Massage Therapy.

Denise Morelli, 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

Helma Institute of Massage Therapy (Helma), a proprietary, post-secondary educational institution, was a participant in the federal student aid programs authorized under 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.* The Office of Federal Student Aid (FSA) of the United States Department of Education (Department) administers these programs. On September 19, 2011, FSA issued Helma a Final Program Review Determination (FPRD) assessing a liability of $783,510.95 to the Department, and a liability of $1,233,940.92 to Federal Family Education Loan lenders for various program violations. Helma appealed this determination.

FSA conducted a program review at Helma from April 30 to May 10, 2007. During that review 70 student files from the 2004-2005, 2005-2006, and 2006-2007 award years were examined and multiple regulatory violations were discovered. FSA issued a program review report on December 31, 2008, which identified these violations. The list included failure to maintain current financial records, incorrect/untimely/unpaid refunds, incorrect calculations of Pell Grants, unsupported and conflicting information on the Free Application for Federal Student

Aid submissions, invalid Pell Grant awards, incomplete verification of student submissions, and incomplete academic program offerings. Helma was directed to conduct a full file review for many of these violations, but responded that it could not fully conduct such reviews because of student record unavailability. It explained it lost its Title IV eligibility in February 2008, ceased operation in May 2008, and the bulk of its student files were lost or inadvertently discarded in connection with its closure. For those student files it could locate and submit to FSA for review, the latter used these submissions for determining the liabilities for each finding. Helma has conceded that, without the necessary student files to rebut the FPRD findings, the reported violations occurred.

In proceedings such as this, the respondent institution has the burden of proving that it satisfied its role as a fiduciary for these federal student aid funds and that its disbursement of those funds was in accordance with statutory and regulatory guidelines. 34 C.F.R. §§ 668.14, 668.82(a) and (b), and 668.116(d). Helma's failure to meet this burden because of its inability to perform the required full file reviews or otherwise account for its receipt and disbursement of Title IV funds authorizes the Department to demand the return of those questioned funds. *See In the Matter of Classic Beauty Colleges*, Dkt. Nos. 96-147-SP, 97-33-SP, 97-58-SP, and 97-59-SP, U.S. Dep't of Educ. (Sept. 30, 1977). Accordingly, I find the Department has satisfied its obligation of presenting a *prima facie* case for its assessment of liabilities, and I affirm the findings and assessments found in the FPRD.[1]

In its appeal, since Helma was unable to provide satisfactory rebuttal evidence through comprehensive file reviews, it submits several theories for my consideration which, if adopted, would reduce the assessed liabilities. The first of these theories is that the assessment for the 2006-2007 award year should be set aside entirely because FSA had previously reviewed and approved those disbursements during that year when Helma was on the Heightened Cash Monitoring 2 (HCM2) payment method. As Helma explains, under this method it had to submit all student eligibility documentation to FSA prior to FSA's release of Title IV funds to the school. Helma asserts it could not have received any Title IV funds unless FSA was fully satisfied that it met all student eligibility requirements. FSA rebuts this argument by pointing out the fallacy of Helma's position. It notes that under the HCM2 process an institution must submit basic documentation to show a student's eligibility to receive Title IV aid. However, the institution only submits a hard copy documentation for a set number of students, not all of them, and only a sampling of those submissions are reviewed by FSA. FSA notes that as this is a much less extensive review of student files than would have been conducted pursuant to a full file review, Helma's argument that all funds it disbursed for the 2006-2007 award year had been previously approved by FSA must fall. FSA conceded that, although it was not required to do so, it reviewed the HCM2 documentation Helma submitted for some of its students for this award

[1] The FPRD recognizes that the liabilities associated with each finding may have been duplicated in other findings, and it notes that those duplicate liabilities were removed prior to calculating the final FPRD liability.

year. It found these submissions were not beneficial to the school because they lacked some additional documentation FSA needed to fully evaluate the disbursements.

I find unpersuasive Helma's argument that FSA, through the HCM2 process, had previously approved its disbursements for the 2006-2007 award year. A similar argument was thoroughly addressed in the series of opinions involving Harrison Career Institute.[2] Although those cases addressed whether the HCM2 process could serve as a substitute for a mandatory closeout audit, rather than a direction to complete a full file review, I think the true merit of the HCM2 process in both scenarios is identical whenever an institution is called upon to justify the validity of the entirety of its Title IV aid disbursements during an award year. The process is no substitute for either a close-out audit or a full file review. The HCM2 process was designed to require an institution to submit a sampling of student documents to FSA to determine if the students in question generally appear to be eligible for student aid. It is not the comprehensive review of many types of documents required of either a close-out audit or a full file review. Thus, it cannot give full assurances that the bulk of Title IV funds were appropriately disbursed. In my decision upon remand in *Harrison,* I concluded that "the HCM2 process does not fully account for the lawful disbursement of Title IV funds. My position on this subject remains unchanged.

Helma next challenges FSA's refusal to apply the estimated actual loss formula to the assessed liability of $1,558,843 attributable to Finding #2 which addresses incorrect, late, and unpaid refunds of loans to students who withdrew from the institution. Helma maintains that this formula, which is based upon the institution's applicable cohort default rate and then multiplied by the amount of the liability for a given award year, is intended to determine the estimated loss to the Department as a result of ineligible loans. Helma argues that requiring it to repay all loans would result in a windfall to the Department, applicable lenders, and the students. It further points out that the Department used this formula for seven other findings in this FPRD, but unreasonably refuses to do so for Finding #2. FSA responds that it has long been the Department's policy that the estimated actual loss formula should not be applied to loan refund liabilities. The reason for this is that the funds in question here are refunds of unearned loans for time periods after a student has withdrawn from school; they were not ineligible loans. I agree with FSA that it would be inappropriate to use the estimated actual loss formula for determining the liability for Finding #2. These refunds are student specific and not amenable to a formula based on a cohort default rate because there is no correlation between the rate at which students default on their student loans and the amount of refunds an institution owes because a student dropped out of the program after securing a Title IV loan. *See In the Matter of William Tyndale College*, Dkt. No. 03-58-SP, U.S. Dep't of Educ. (Apr. 7, 2004); *In the Matter of Christian Brothers University*; Dkt. No. 96-4-SP, U.S. Dep't of Educ. (January 8, 1997). Accordingly, I affirm FSA's decision to order Helma to purchase all loans identified in Finding #2.

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[2] *In the Matter of Harrison Career Institute,* Dkt. Nos. 07-55-SA and 07-63-SA, U.S. Dep't of Educ. (Dec. 8, 2009)(Decision Upon Remand); *In the Matter of Harrison Career Institute*, Dkt. Nos. 05-60-ST, 07-18-ST, 07-55-SA, 07-63-SA, U.S. Dep't of Educ. (Mar. 18, 2009) (Decision of the Secretary); *In the Matter of Harrison Career Institute,* Dkt. No. 07-55-SA, U.S. Dep't of Educ. (May 15, 2008)(Initial Decision).

Helma's final request is that it is entitled to have the liability under the FPRD be offset by funds to which it is entitled, by virtue of its pending submissions under the HCM2 process, and by the amount of the "teach-out" credit to which it is entitled under 34 C.F.R. § 668.26. This credit provision permits a closed institution, assuming it meets certain listed requirements, to use, or request, Pell Grant funds which were previously approved by FSA for students to complete their classwork for the interrupted payment period. A similar provision permits the institution to credit a student's account with loan funds to be used for completing the payment period. Helma points out that although it lost its eligibility on February 28, 2008, it continued to provide instruction to its eligible students until it closed on May 31, 2008. Therefore, it believes it is entitled to receive the funds earned during this final phase of operation, as well as the amount of payments it sought pursuant to the HCM2 process.

My authority in these program review cases is limited to determining whether the FPRD is supportable and should be affirmed. I do not have any authority to offset any monies the Department may otherwise legitimately owe to the institution. *See* 34 C.F.R. § 668.118; *In the Matter of Modern Beauty School*, Dkt. No. 98-109-SP, U.S. Dep't of Educ. (Mar. 14, 2001); Certified by the Secretary (Oct. 11, 2001). Accordingly, I cannot first adjudicate the dispute between Helma and the Department and then order the Department to reduce Helma's liability by the amount of the HCM2 funds it believes it is owed, or any "teach-out" funds to which it may be entitled. FSA has assured the tribunal that, following Helma's submission of adequate documentation to establish funds were actually earned, "consistent with standard procedure, it will make appropriate offsets once final liabilities have been determined."

ORDER

On the basis of the foregoing, it is hereby **ORDERED** that Helma Institute of Massage Therapy pay $783,510.95 to the U.S. Department of Education and $1,233,940.92 to the Federal Family Education lenders.

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Judge Richard F. O'Hair

Dated: March 21, 2013

SERVICE

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

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