



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

In the Matter of

BARBER-SCOTIA COLLEGE,

Respondent.

Docket No. 12-44-SA

Federal Student Aid
Proceeding

ACN: 04-2004-42001

Appearances: Dr. David L. Olah, President, for Barber-Scotia College.

Sarah L. Wanner, 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

Barber-Scotia College (Barber-Scotia), a public, 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 June 25, 2012, FSA issued a Final Audit Determination (FAD) assessing a liability of \$4,906,498 against Baber-Scotia for its failure to submit the required annual compliance audits for the periods from July 1, 2002 to June 30, 2003, and July 1, 2003 to July 13, 2004.¹ This amount also includes a liability of \$68,662 for failure to properly account for or liquidate its Perkins Loan portfolio, and \$39,219 for closed school Title IV loan discharges the Department was required to grant. Barber-Scotia appealed this determination.

¹ Barber-Scotia lost its eligibility to participate in Title IV programs on July 13, 2004, as a result of its loss of accreditation.

When an institution signs a program participation agreement with the Department for the purpose of disbursing federal student financial aid, that institution agrees to comply with all Title IV program requirements and to act as a fiduciary over those funds. 34 C.F.R. §§ 668.82(a), (b)(1). One of the requirements a participating institution must fulfill is to have an independent certified public accountant (CPA) annually conduct a compliance attestation of the institution's administration of the Title IV programs, as well as an audit of the institution's financial statements. These compliance audits must be submitted no later than six months after the last day of the institution's fiscal year. 34 C.F.R. § 668.23(a). Further, these audits must be conducted in accordance with the general standards and the standards for compliance audits contained in the U.S. General Accounting Office's Government Auditing Standards, as well as guidelines contained in the Department's Office of Inspector General's audit guide. 34 C.F.R. §§ 668.23(b)(2)(i) and (ii).

The FAD relates that Barber-Scotia failed to submit an audited attestation of the institution's compliance with the Title IV programs for the 2002-2003 and 2003-2004 award years. The 2002-2003 audit should have been submitted by March 31, 2004, and March 31, 2005, was the due date for the close-out period ending July 13, 2004. These missing audits formed the basis for FSA's demand for Barber-Scotia to return all unaudited Title IV funds disbursed during the unaudited period. FSA relates that subsequent to the issuance of the FAD, Barber-Scotia submitted an acceptable financial statement and compliance audit for the 2002-2003 award year which justifies a net reduction of Barber-Scotia's liability by \$2,289,457.25.² This reduces the Department's demand to \$2,617,041.75.

On appeal, Barber-Scotia acknowledges the liability set out in the FAD, but asks the Department to forgive it of all repayment requests. Dr. Olah, who became president of Barber-Scotia in September 2008, says that when he accepted the position he was not aware the college had not submitted any compliance audits for award years beginning with 2002-2003. He reports that under his direction Barber-Scotia submitted the audits for 2002-2003, and for 2007-2008 and years forward, but the institution cannot locate the essential information needed to complete the 2003-2004 audit. Apparently the college's auditing firm completed the 2003-2004 audit, but did not submit it to the Department, for some reason, and it did not retain any copies of the underlying documents. Therefore, Barber-Scotia's cannot perform this audit. Dr. Olah asserts that the only evidence it can submit to prove Barber-Scotia properly disbursed funds during the 2003-2004 award year is a February 16, 2006, letter from FSA's Federal Direct Loan Program which informs the college its ending cash balance for the year is at an acceptable level and that the Department "considers your institution to have successfully completed processing for the 2003-2004 Direct Loan Program Year." With regard to its overall debt situation, Dr. Olah points out the college is pursuing efforts to eliminate all debt incurred before he was hired, either through direct payments or through forgiveness for these debts, and has achieved a large measure of success with respect to a number of obligations to other federal agencies.

² Barber-Scotia awarded \$2,290,957 during the 2002-2003 award year. However, the audit report questioned a disbursement of \$1500.75 which Barber-Scotia has neither repaid nor established as a warranted Title IV expenditure. Therefore, the Department seeks a return of this disbursement.

With regard to its obligation arising from past participation in the Perkins Loan Program, it explains that it last participated in this program in the mid-1990's, and the documentation relating to this program cannot be located. Accordingly, it cannot reconstruct a record of loan recipients and inform them of the college's desire to liquidate the loans.

Dr. Olah says that between 2004 and 2008 the college leadership struggled to continue its operation following the loss of accreditation, faculty, staff, and students. However, the college is now in the fifth year of a focused recovery, with an enrollment of 50 students for the 2011-2012 school year, and has been successful in reducing or eliminating many of its debts. He highlights that the need for Historical Black Colleges and Universities has never been more relevant to the needs of global society, as they "continue to address the high number of African American students pursuing academic success and long-term employment skills." Dr. Olah stresses that the Department's forgiveness of this debt would enable Barber-Scotia to continue its recovery and regain its accreditation.

A participating institution's submission of annual compliance audits pursuant to 34 C.F.R. § 668.82 comprises one of many elements which prove an institution's expenditure of Title IV funds was proper and that it complied with its role as a Title IV fund fiduciary. As such, the institution bears the burden of proving its expenditure of these federal funds was proper. 34 C.F.R. § 668.116(d). If an institution is unable to satisfy its burden of proof, it must return all Title IV funds it disbursed during any unaudited period. *See, In the Matter of Nightingale Medical Institute*, Dkt. No. 11-09-SA, U.S. Dep't of Educ. (July 18, 2011). In the case before me the respondent, Barber-Scotia, has not submitted an acceptable compliance audit for the 2003-2004 award year and, as such, has failed to meet its burden of proving it properly disbursed Title IV funds for that year.

The February 16, 2006, letter from FSA's Federal Direct Loan Program indicating it had successfully completed the 2003-2004 program year is not a suitable substitute for a compliance audit. This letter signifies only that the college's cash balance for the year had not changed since the college's request for a close-out of the program. It did not indicate that all funds went to eligible students, or that the college had complied with other program requirements. Additionally, it did not address liabilities derived from Barber-Scotia's participation in other Title IV programs.

Barber-Scotia has submitted no objection or defense to the obligation to repay closed school discharges, so that liability must stand. Additionally, the fact it cannot locate any of its Perkins Loan funds documentation does not provide a suitable defense to the assessment based on its inability to liquidate that loan fund's liability.

Barber-Scotia's primary argument is that it asks the tribunal to forgive, or excuse, its current liability. In doing so it describes the very determined efforts it has expended over the past five years to re-establish Barber-Scotia as a properly managed, accredited institution serving the needs of many qualified African American students. As well-meaning as this goal may be, unfortunately the tribunal does not have the authority to waive the applicable statutes and

regulations. 34 C.F.R. § 668.117(d).³ Accordingly, I must affirm the findings of the FAD in the amount of \$2,617,041.75.

ORDER

On the basis of the foregoing, it is hereby **ORDERED** that Barber-Scotia College pay \$2,617,041.75 to the U.S. Department of Education.

Judge Richard F. O'Hair

Dated: January 2, 2013

³ See *Howard Community College*, Dkt. No. 08-21-SP, U.S. Dep't of Educ. (Dec. 4, 2008). Under federal law, no executive, judicial, or legislative agency has the authority to waive claims over \$100,000. See 31 U.S.C. § 3711(a)(2).

SERVICE

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

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