UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

Audit Services
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Dr. James Melville
President & Chief Executive Officer
Technical Career Institutes, Inc.
320 West 31st Street
New York, NY 10001-2789

Dear Dr. Melville:

This **Final Audit Report**, entitled *Technical Career Institutes, Inc.'s Administration of the Federal Pell Grant and Federal Family Education Loan Programs*, presents the results of our audit. The purpose of the audit was to determine whether Technical Career Institutes, Inc. (TCI) administered the Pell Grant and Federal Family Education Loan (FFEL) programs in accordance with the Higher Education Act of 1965, as amended (HEA), and applicable Federal regulations. Specifically, we examined (1) institutional and program eligibility (excluding the 90/10 rule), (2) student eligibility, (3) award calculations and disbursements, and (4) return of Title IV funds. Our review covered the period from July 1, 2005, through June 30, 2006.

BACKGROUND

TCI, located at 320 West 31st Street in New York City, is a proprietary, single-campus college that provides higher education and technical education services. In 1909, TCI opened as the Marconi Institute. In 1974, the name of the college was changed to TCI. On June 30, 2005, TCI was acquired by EVCI Career Colleges Holding Corporation, which also owns Interboro Institute and Pennsylvania School of Business.

TCI is accredited by the Middle States Commission on Higher Education and currently offers associate degrees in the following areas: (1) Business and New Media Technology, (2) Computer and Electronics Technology, and (3) Climate Control Technology. TCI also offers certificates for shorter programs. Educational programs are provided on a standard-term calendar measured in semester credit hours. TCI's academic calendar consists of three 15-week semesters: fall, spring, and summer. The enrollment in each of the semesters is about 3,000 students.

TCI participates in the following Title IV, HEA, programs: Pell Grant, Federal Supplemental Educational Opportunity Grant, FFEL, William D. Ford Federal Direct Loan (Direct Loan), Federal Perkins Loan, and Federal Work-Study. During the period of July 1, 2005, through June 30, 2006, TCI received a total of $20,541,317 in Title IV funding, which included $10,572,764 in Pell Grants and $8,881,954 in FFEL.

AUDIT RESULTS

We determined that TCI met requirements in the HEA and regulations for institutional (excluding the 90/10 rule), program, and student eligibility and for award calculations. However, our review disclosed that (1) TCI improperly paid $440,487 to FFEL lenders to pay off its students' loans and prevent their default; and (2) TCI had internal control deficiencies in the administration of Title IV programs during the period under review.

In its comments on the draft report, TCI did not concur with our Finding No. 1 or its recommendations. TCI did not concur with most of Finding No. 2 and its recommendations: it concurred with two exceptions identified in the finding. TCI's comments are summarized at the end of each finding.

Except for personally identifiable information (that is, information protected under the Privacy Act of 1974, 5 U.S.C. § 552a), the entire narrative of TCI's comments is included as an Attachment to this report. Because of the voluminous nature of and the inclusion of personally identifiable information in the attachments to the College's comments, we have not included them with the Attachment. Copies of the attachments to TCI's comments, less the personally identifiable information, are available on request.

FINDING NO. 1 – TCI Improperly Paid Lenders to Reduce Its Cohort Default Rates.

TCI improperly paid $440,487 to FFEL lenders to pay off its students' loans and to prevent their default. TCI's FFEL and Direct Loan Programs Default Reduction Measures (default prevention policy), implemented at TCI as of October 2005, states that for—

> First term Title IV withdrawals with loans
> 1. A federal refund is calculated at the time of withdrawal
> 2. Timely refunds are made to federal programs in the order regulated by the Department of Education
> 3. If the student fails to return to school the following term, TCI fully refunds all FFELP/FDSLP [FFEL and Direct Loan programs] loan funds that remain on the student's account (spring withdrawals are reviewed in the fall)
> 4. Students with balances due on account are sent notification to complete payments plans with the school
> 5. Students not completing payment plans with the school are sent to an

> outside collection agency approximately 150 days from the end date of their last term

TCI paid the lenders $440,487 to pay off the FFEL loans received by 301 students who withdrew during their first semester at TCI.[1] For 5 of the 13 students in our random sample of withdrawn students, TCI paid the lenders $6,889 to pay off the FFEL amounts earned by these students.[2] TCI then attempted to collect the loan amounts from its students by entering into repayment plans scheduled to begin 150 days after the end of the students' last semester at TCI. None of the five students in our sample made payments within 150 days. TCI marked the students' accounts as delinquent and sent the debts to an outside collection agency.

Pursuant to 34 C.F.R. § 668.22(e)(2),[3] a borrower is entitled to the applicable percentage of loan funds earned prior to his or her withdrawal:

> The percentage of title IV grant or loan assistance that has been earned by the student is—
>
> (i) Equal to the percentage of the payment period or period of enrollment that the student completed . . . as of the student's withdrawal date, if this date occurs on or before completion of 60 percent of the . . . [p]ayment period or period of enrollment for a program that is measured in credit hours; or
>
> . . . . . .
>
> (ii) 100 percent, if the student's withdrawal date occurs after completion of 60 percent of the . . . [p]ayment period or period of enrollment for a program that is measured in credit hours . . . .

In addition to denying an entitlement to students, by making payments on loans to prevent students' defaults, TCI's default prevention policy results in loans that must be considered in default for purposes of calculating TCI's cohort default rate:

- Pursuant to Section 435(m)(2)(B) of the HEA, "A loan on which a payment is made by the school, such school's owner, agent, contractor, employee, or any other entity or individual affiliated with such school, in order to avoid default by the borrower, is considered as in default for purposes of this subsection."

- Pursuant to 34 C.F.R. § 668.183(c)(1)(iii), "[A] borrower in a cohort for a fiscal year is considered to be in default if . . . [b]efore the end of the following fiscal year, you or your owner, agent, contractor, employee, or any other affiliated entity or individual make a payment to prevent a borrower's default on a loan that is used to include the borrower in that cohort."

[1] We identified a total of 1,502 students who withdrew from TCI during the period under review.
[2] Our original sample for the return of Title IV funds included 30 withdrawn students: 13 students who had FFEL loans and/or other Title IV funding, and 17 students who did not have FFEL loans but had other Title IV funding.
[3] Unless otherwise specified, all C.F.R. citations are to the July 1, 2005, volume.

According to TCI officials, TCI implemented its default prevention policy because it had problems with its cohort default rates in prior years, and it wanted to reduce its cohort default rates to maintain its Title IV eligibility. For fiscal years (FYs) 1992 through 1995, TCI's cohort default rates exceeded 25 percent. Based on these rates, TCI would have lost its eligibility to participate in the FFEL and Direct Loan programs if it had not prevailed in its appeals. TCI instituted its default prevention policy in November 1994.[4]

As a result of TCI's payments on its student's loans, TCI's students were denied access to the FFEL loan funds to which they were entitled. This could have harmed the students by damaging their credit (when their outstanding balances were referred to outside collection agencies) and by denying the students access to the terms of FFEL Program loans, including grace periods, low-cost repayment plans, deferments, forbearances, cancellations, and other benefits.

TCI's payments on its students' loans may have made its cohort default rate calculations incorrect for all fiscal years after FY 1994, and TCI may have retained its eligibility for Title IV programs improperly. We found the calculation of TCI's FY 2005 official cohort default rate was incorrect, because the borrowers for whom TCI made loan payments to prevent defaults, as per 34 C.F.R. § 668.183 (c)(1)(iii), should have been considered to be in default for purposes of TCI's cohort default rates calculation. However, the student borrowers were not included in the numerator of TCI's cohort default rate calculation based on these loans, and only two of these borrowers were included in the denominator of the calculation.[5]

Recommendations

We recommend that the Acting Chief Operating Officer for Federal Student Aid (FSA) require TCI to—

1.1 Stop making payments to lenders on students' loans for the purpose of preventing their default;

1.2 Identify all of the students for whom it made such payments on or after July 1, 2005;

1.3 Rescind all collection agency referrals for the affected students;

1.4 Direct the collection agencies to retract any negative reports made to credit agencies concerning the affected students; and

1.5 Inform the affected students of its improper practice and of their rights and recourses under the HEA and all applicable consumer laws.

[4] For FY 1995, TCI's original cohort default rate was 33.4 percent, but after an appeal it was revised to 24.7 percent.
[5] The two students were included in TCI's cohort default rate calculation for FY 2005. However, both of the students began and ended their TCI attendance in FY 2006, and the dates their loans were made were consistent with dates for loans to students who were included in TCI's FY 2006 cohort default rate. Neither student should have been included in TCI's FY 2005 cohort default rate calculation. Instead, both students should have been included in the FY 2006 cohort default rate calculation.

We recommend that the Acting Chief Operating Officer for FSA—

1.6 Recalculate TCI's cohort default rate for FY 2005, including the borrowers for whom TCI made payments as defaulted for the purposes of the calculation, and take appropriate action under 34 C.F.R. Part 668, Subpart M;

1.7 In TCI's cohort default rate calculations for FYs 2006 and 2007, include as defaulted the borrowers for whom TCI made such payments; and

1.8 Consider limiting, suspending, or terminating TCI's participation in the Title IV, HEA programs, under 34 C.F.R. Part 668, Subpart G, based on TCI's practice of making payments on its students' FFEL Program loans.

TCI Comments

TCI did not concur with our finding or recommendations. TCI disagreed with our finding for the following reasons:

1. TCI's payments cannot be considered improper because they do not meet the criteria in 34 C.F.R. § 668.183(c)(1)(iii): they were not payments made "to prevent a borrower's default on a loan that is used to include the borrower in [a] cohort." For a loan to be included in a cohort, the loan must have entered repayment during the cohort year (34 C.F.R. § 668.183(b)(1)). A FFEL Stafford loan enters repayment on the date following the end of its grace period, which is never less than six months after the borrower stops attending (34 C.F.R. §§ 682.200(b) and 682.209(a)(3)(i)). All of TCI's payments were made less than six months after students stopped attending, so the loans did not enter repayment, and TCI's payments on the loans did not affect TCI's cohort default rate calculation.

2. TCI's students were not denied FFEL funds to which they were entitled. Disbursements of FFEL loans were made to the students before they withdrew, and as such, the disbursements complied with requirements in 34 C.F.R. § 668.22(e). Each student in the OIG sample "was disbursed the Title IV aid that he or she had earned during the period of enrollment and each student knowingly and voluntarily acknowledged and consented to TCI's default prevention policy."

3. TCI's default prevention practices were no more harmful to students than defaulting on a FFEL loan. For example, students are charged fixed or variable rates of interest on their FFEL loans, but TCI did not charge interest. TCI does refer delinquent accounts to a collection agency after 150 days have passed and in-house collection has not been productive, but the collection agencies used by TCI are "*not* authorized to send reports of any sort to credit reporting bureaus." The only time that a student might be subject to a negative credit report would be when a seriously delinquent account is referred to a third-party collection agency for litigation and a judgment is obtained. Such a referral does not cause more harm to the student than he or she would suffer after default on a FFEL loan, and "TCI does not believe that any such reports have been made since July 1, 2005." The report cites no evidence that any student suffered any harm, so its findings are purely speculative.

4. According to Chapter 2.1 of the Department's *Cohort Default Rate Guide*, loans that are fully refunded or cancelled within 120 days of disbursement are not included in a school's cohort default rate calculation. Regardless of whether the loans meet the criteria 34 C.F.R. § 668.183(c)(1), loans for three of the five students in the report's sample were returned within 120 days and, as such, would not be included in TCI's cohort default rate calculation.

5. If the loans on which TCI made payments were included in its cohort default rates, the change to the rates would not cause a loss of eligibility. According to its calculations, TCI's cohort default rates for FYs 2002 through 2005 would not have exceeded the 25 percent threshold if those loans were included as defaulted, and TCI did not expect its cohort default rates for FYs 2006 or 2007 would exceed 25 percent.

6. TCI's default prevention plan was properly implemented, administered, and sanctioned by the Department and TCI's guaranty agency, New York Higher Education Services Corporation (HESC). During an April 1999 program review, the Department analyzed TCI's default prevention policy and did not communicate any concerns. HESC reviewed TCI's default prevention plan in 1996, 1998, and 1999, and consistently found that it complied with the Department's cohort default rate regulations.

TCI disagreed with our recommendations for this finding, but stated that it has suspended making payments to FFEL lenders as part of its default prevention policy and that it has ceased referring students' accounts to collection agencies or for litigation. TCI acted in "good faith and substantial reliance" on guidance provided by the Department and HESC, and stated that it would be inappropriate to take any adverse action against TCI, as provided in Recommendation 1.8.

OIG Response

We have considered TCI's comments, but have not revised our finding or recommendations. Our responses to each of TCI's comments are below:

1. For cohort default rate purposes, the definition of "repayment" cited by TCI is not applicable to loans that are repaid in full before the borrower would have otherwise entered repayment. Pursuant to 34 C.F.R. § 668.182(f)(3), the loans that TCI repaid in full are considered to have entered repayment on the dates that TCI made the payments for the borrowers:

   > For the purposes of this subpart, a loan is considered to enter repayment on the date that a borrower repays it in full, if the loan is paid in full before the loan enters repayment under paragraphs (f)(1) or (f)(2) of this section.

   As such, there is no exception to the requirements in Section 435(m)(2)(B) of the HEA or 34 C.F.R. § 668.183(c)(1)(iii), quoted in our finding, for schools that pay off a student's loan fully within 180 days of the student's last date of attendance.

2. TCI misses the point when it responds that it made initial FFEL disbursements to students during the term and that those funds were earned by students. TCI denied students FFEL funds when it revoked those disbursements by repaying the students' loans in full: its

students were not allowed to use funds that they had earned and to which they were entitled, under 34 C.F.R. § 668.22, to pay for their educational expenses. Pursuant to 34 C.F.R. § 682.101(b)—

> Institutions of higher education, including most colleges, universities, graduate and professional schools, and many vocational, technical schools may participate as schools, enabling an eligible student or his or her parents to obtain a loan to pay for the student's cost of education.

TCI compounded the denial when it employed collection agencies to collect charges from students that had previously been satisfied with FFEL funds.

TCI claims that its students "knowingly and voluntarily acknowledged and consented to TCI's default prevention policy," but TCI's comments provide no evidence that it allowed any student to receive a FFEL loan without authorizing TCI to return the loan funds. Our audit did not identify any such students. Further, the authorizations TCI's students were required to sign did not provide a method for students to refuse to authorize TCI's return of their loan funds, and TCI's written default reduction measures did not include any procedures for cases in which students refused to sign an authorization.

3. TCI's terms of repayment were not as generous as those for repayment of a FFEL loan. As the most substantive example, under TCI's terms of repayment, a borrower was considered to be in default if he or she did not begin making payments within 150 days after he or she ended attendance. It takes about 600 days for a borrower to default on a FFEL loan after the student ends attendance.[6] All of the students in our sample defaulted on their obligations under TCI's loan terms; it is much less likely that they would have defaulted under the terms for FFEL program loans.

   TCI's assertion that its collection agencies were not authorized to report to credit reporting bureaus until an account was referred for litigation and a judgment was obtained is not confirmed by the attachments it provides with its comments. Of the six agreements that TCI provided, only one limited reporting to a credit bureau in the manner described by TCI in its comments. Regardless, our Recommendation 1.4 would not require any action by TCI for borrowers who were not subject to negative credit reporting: if no borrowers were referred to credit bureaus, TCI would not need to take any action under that recommendation.

4. The Department's *Cohort Default Rate Guide* does not support TCI's assertion that the loans it repaid in full within 120 days of disbursement must be considered as cancelled and excluded from the cohort default rate calculation. The *Cohort Default Rate Guide* provides separate instructions for the treatment of loans that were repaid in full, without reference to the date that the loans were repaid (they are included in the calculation), and for loans that were cancelled within 120 days of the disbursement date (they are excluded from the

[6] For most borrowers, default occurs after 6 months in a grace period, then 60 days during which the lender schedules the first payment, then 270 days of delinquency on the loan by the borrower, and after that, an average of about 90 days for the default claim to be filed and paid (34 C.F.R. §§ 682.200(b), 682.209(a)(2) and (3), and 682.406(a)).

calculation). The agreement for repaying a FFEL loan (the promissory note) is an agreement between the borrower and the lender. Unless the school determines that its certification of the student's eligibility is incorrect (or a return to Title IV calculation is required under 34 C.F.R. § 668.22), it does not have any standing to cancel the loan: only the student or the lender can cancel the loan because they are the only parties to the agreement. Since TCI has provided no evidence that the students or lenders initiated cancellations of the loans, or that the borrowers were ineligible for the amounts they received, the repayment by the school must be considered payment in full of the loan, not a cancellation.

5. It is unclear whether TCI's recalculation of its cohort default rates excluded loans that TCI repaid within 120 days of the student's last date of attendance, considering them to be cancelled. If TCI excluded those loans, its recalculations are inaccurate (see our response to TCI's fourth comment). We cannot comment on other potential inaccuracies in TCI's recalculation because TCI did not provide support for the numbers it used.

   However, cohort default rate calculations must be accurate, regardless of their effect on a school's eligibility under 34 C.F.R. § 668.187, because cohort default rates are used for many other purposes. For example, if a school's three most recent cohort default rates are less than ten percent, the school may deliver loan proceeds in a single installment or choose not to delay the delivery of the first installment of a loan for first-time, first-year borrowers (34 C.F.R. § 682.604(c)(5)(i) and (c)(10)(i)), and if a school's most recent cohort default rate is less than five percent, an eligible home institution may deliver loan proceeds in a single installment to a student studying abroad (34 C.F.R. § 682.604(c)(10)(ii)). If TCI's recalculations of its cohort default rates were accurate, TCI's eligibility for these benefits would be affected.

6. The 1999 FSA program review report cannot be used as approval of TCI's practice. The report did not include any reference to TCI's default prevention policy and stated that "[t]he absence of statements in the report concerning the institution's specific practices must not be construed as acceptance, approval, or endorsement of those specific practices and procedures."

   The report of a 1998 compliance review by HESC, provided by TCI as an attachment to its comments, may appear to find that the default management plan was compliant. The report stated, "The following report does not identify any areas of regulatory non-compliance. TCI has implemented a complete default management program resulting in decreases in the cohort default rate." However, the report did not directly state that TCI's practice of repaying borrowers' loans was in compliance with regulations, and the report provided a disclaimer that stated—

   > Although the review was thorough, it cannot be assumed to be all-inclusive. Absence of statements in the report concerning TCI's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific practices and procedures.

> Regardless of guidance that TCI may or may not have received, HESC does not have the authority to issue policy interpretations for the Department. We must rely on the HEA and the Department's regulations as criteria for our audit.

As to TCI's comment that it would be inappropriate to take an adverse action as provided in Recommendation 1.8, the Acting Chief Operating Officer for FSA is responsible for determining whether such an action is appropriate.

FINDING NO. 2 – TCI's Administration of Title IV Programs Needs Improvement.

Our review disclosed internal control deficiencies in TCI's administration of Title IV programs during the July 1, 2005, through June 30, 2006, audit period. TCI had an Office Procedure Manual that consisted of memoranda dated October 18, 2001, through November 7, 2003. However, this manual lacked adequate written policies and procedures pertaining to the internal operations in the administration of Title IV programs, specifically for the calculation and timely return of Title IV funds, the proper disbursement of Pell Grant funds, and the accurate and timely updating of the Common Origination and Disbursement (COD) System.[7]

Pursuant to 34 C.F.R. § 668.16(b)(4), "The Secretary considers an institution to have . . . administrative capability if the institution . . . [h]as written procedures for or written information indicating the responsibilities of the various offices with respect to the approval, disbursement, and delivery of Title IV, HEA program assistance and the preparation and submission of reports to the Secretary . . . ."

TCI did not have adequate written policies and procedures because TCI did not believe it needed them. According to TCI officials, TCI's personnel had sufficient institutional knowledge and did not need formal written policies and procedures for the return of Title IV funds, Pell Grant disbursements, and updates to COD.

As a result of its inadequate internal controls over the administration of Title IV programs, TCI placed the $20,541,317 in Title IV funds that it received during July 1, 2005, through June 30, 2006, at risk of being misused.

TCI incorrectly calculated the return of Title IV

We reviewed files for 30 withdrawn students and found that TCI incorrectly determined the withdrawal date used in the return of Title IV calculations. We found that, for 15 of 30 randomly sampled students (50 percent), TCI did not return $5,445 of Title IV funds, due to incorrect withdrawal dates. TCI did not return $4,682 for 14 students who unofficially withdrew and $763 for one student who was terminated:[8]

[7] The Final Audit Report, ED-OIG/A09G0030, entitled *Technical Career Institutes' Verification of Applicant Information Submitted on the Free Application for Federal Student Aid* (FAFSA), determined that TCI had policies and procedures in place that ensured FAFSA information was verified in accordance with applicable laws and regulations. TCI's written policies and procedures, as included in its college catalog and internal memoranda, were adequate for its administration of its verification process, but were not adequate for the requirements reviewed during our audit or for TCI's general administration of the Title IV programs.

[8] The student was terminated due to incomplete immunization requirements.

- For the 14 students who unofficially withdrew, TCI—
  - Administratively withdrew, before the mid-point of the payment period, 4 students who were absent from all classes for three consecutive weeks. TCI incorrectly determined the withdrawal date for these students by using the processing dates for their withdrawals, which were one to four days after the actual withdrawal dates. As a result, TCI did not return $341 in Title IV funds.[9]
  - For 9 students, incorrectly determined the return of $3,538 in Title IV funds because it did not use the mid-point as the withdrawal date.
  - For 2 students, incorrectly determined the return of $803 in Title IV funds because it did not use the last date of attendance after the mid-point (which was less than 60 percent) as the withdrawal date. Instead, TCI used the last date of attendance, plus three weeks, per its policy.
- For the terminated student, TCI used the date that it processed the change of the student's status in its database, and not the date when the termination decision was signed by the school's official. As a result, TCI did not return $763 in Title IV funds.

TCI's institutional policy regarding unofficial withdrawals states, "If a student is absent from all classes for three consecutive weeks, the College administratively withdraws the student from the institution. . . . For federal Title IV refund purposes, the withdrawal date of an unofficial withdrawal is the date the College administratively withdraws the student from classes." Though this policy indicates that TCI administratively withdraws a student on the date that is three weeks after the student last attended class, in practice TCI uses the date that the withdrawal is processed weekly in its database. Since TCI's policy to determine a student's withdrawal date conflicts with its practice, it is not in compliance with regulatory requirements.

According to 34 C.F.R. § 668.22(c)(1)—

> [F]or a student who ceases attendance at an institution that is not required to take attendance, the student's withdrawal date is —
>
> (i) The date, as determined by the institution, that the student began the withdrawal process prescribed by the institution;
>
> (ii) The date, as determined by the institution, that the student otherwise provided official notification to the institution, in writing or orally, of his or her intent to withdraw;
>
> (iii) If the student ceases attendance without providing official notification to the institution of his or her withdrawal . . . the mid-point of the payment period (or period of enrollment, if applicable) . . . ."

Volume 5 of the *2005-2006 Federal Student Aid Handbook (FSA Handbook)* states—

> If a school administratively withdraws a student (e.g., expels, suspends, or cancels the student's registration) who has not notified the school of his or her intent to withdraw, the last possible date of withdrawal for the student is the date the

[9] One student was counted twice in our calculation of students for whom TCI did not return Title IV funds due to incorrect withdrawal dates. This student withdrew from two semesters during our review period, and TCI miscalculated the return of Title IV twice.

> school terminates the student's enrollment. However, an institution may not *artificially* create a withdrawal date for such a student that is beyond the midpoint of the period by simply choosing to withdraw the student after the midpoint. Of course, if the school can document that the student continued his or her attendance past the midpoint, the school may use a later date.

Under 34 C.F.R. § 668.22(c)(3), "[A]n institution that is not required to take attendance may use as the student's withdrawal date a student's last date of attendance at an academically related activity provided that the institution documents that the activity is academically related and documents the student's attendance at the activity."

For circumstances beyond the student's control, 34 C.F.R. § 668.22(c)(1)(iv) provides that the student's withdrawal date is—

> If the institution determines that a student did not begin the institution's withdrawal process or otherwise provide official notification (including notice from an individual acting on the student's behalf) to the institution of his or her intent to withdraw because of illness, accident, grievous personal loss, or other such circumstances beyond the student's control, the date that the institution determines is related to that circumstance.

Return of unearned Title IV funds was untimely

TCI did not always return Title IV funds timely for students who withdrew. For 2 of 30 sampled students who withdrew, unearned Title IV funds were not returned within the required timeframe. These returns were 1 and 118 days late.[10]

Pursuant to 34 C.F.R. § 668.22(j)(1), "An institution must return the amount of title IV funds for which it is responsible . . . as soon as possible but no later than 30 days after the date of the institution's determination that the student withdrew . . . ."

Incorrectly Disbursed Pell Grant Funds

TCI did not verify student enrollment status before making a second disbursement of a Pell Grant for 1 of the 30 students in the sample we used to test compliance with eligibility and disbursement requirements. This student's second Pell Grant disbursement for the 2005-2006 Award Year was calculated based on full-time enrollment. It should have been based on half-time enrollment because (1) the student was enrolled in a noncredit or reduced credit remedial course leading to a high school diploma or the recognized equivalent as part of his full-time course load, and (2) the student registered for an additional class not required in his program of study.[11]

[10] TCI miscalculated the return of Title IV funds for one of the two untimely returns.

[11] New York State High School Equivalency Diploma and TCI degree requirements for Ability-to-Benefit students entering Fall 2004 state that for a student majoring in Industrial Electronics Technology (IETC), HIS-103 American History I was not a degree courses but it counted as a noncredit or reduced credit remedial course leading to a high school diploma or the recognized equivalent. COM204, Intro to Java Programming, was not an approved course for

Pursuant to 34 C.F.R. § 668.20(c)(1)—

> In determining a student's enrollment status under the Title IV, HEA programs . . . an institution may not take into account any noncredit or reduced credit remedial course if . . . [t]hat course is part of a program of instruction leading to a high school diploma or the recognized equivalent of a high school diploma, even if the course is necessary to enable the student to complete a degree or certificate program . . . .

Pursuant to 34 C.F.R. § 690.80(b)(1)—

> If the student's enrollment status changes from one academic term to another term within the same award year, the institution shall recalculate the Federal Pell Grant award for the new payment period taking into account any changes in the cost of attendance.

TCI should have reduced the student's scheduled Pell Grant disbursements from $2,025 to $1,012, to reflect the student's half-time, six credits, eligibility for Title IV. As a result, TCI over-awarded the Pell Grant for 1 of 30 students in our sample by $1,013.

Pell Grant Data Reported Incorrectly to COD

TCI incorrectly reported $8,368 in Pell Grant data to COD for 12 of 4,083 Pell Grant recipients. When we compared the Pell Grant disbursement information provided to us by TCI to information in COD, we found that data did not match for 12 students. This occurred because TCI did not capture and reconcile the errors identified by EDExpress, which rejected or adjusted some transactions.[12] Eleven of the twelve students' Pell Grants were rejected (totalling $8,268) and one student's Pell Grant was adjusted by $100 due to a data entry error. These changes were not reported to COD timely, and as a result, subsequent Title IV funds may have been inappropriately awarded.

Pursuant to 34 C.F.R. § 690.83(b)(1)—

> An institution shall report to the Secretary any change in enrollment status, cost of attendance, or other event or condition that causes a change in the amount of a Federal Pell Grant for which a student qualifies by submitting to the Secretary the student's Payment Data that discloses the basis and result of the change in award for each student.

the IETC degree program, and it was not a noncredit or reduced credit remedial course leading to a high school diploma or the recognized equivalent.

[12] EDExpress is the financial aid management software provided free of charge by ED, which TCI used to administer its Pell Grant funds.

The Department provided reporting deadline dates for the 2005-2006 award year in its notice published in the Federal Register on June 7, 2005 (70 FR 33134):

> [A]n institution is required to submit disbursement information no later than the earlier of:
> (a) 30 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data; or
> (b) October 2, 2006.

As of November 27, 2007, after discussion with TCI officials, the COD data for 8 of the 12 students had been updated. Data for the four remaining students had not been adjusted.

Recommendations

We recommend that the Acting Chief Operating Officer for FSA require TCI to—

2.1 Develop, implement, and ensure that its personnel adhere to written policies and procedures for the administration of Title IV programs;

2.2 Return to the Department $6,458 ($5,445 in Title IV funds and $1,013 in Pell Grant funds) and applicable interest;

2.3 Identify all students for whom TCI used an incorrect withdrawal date during the period July 1, 2004, to the present, recalculate the return of Title IV funds for those students in accordance with applicable regulations, and return any Title IV funds due to the Department or FFEL lenders, with all applicable interest;

2.4 Identify all students to whom TCI disbursed Pell Grants for attendance in any noncredit or reduced credit remedial course that reduced enrollment from full-time status during the period July 1, 2004, to the present, recalculate Pell Grant disbursements for those students in accordance with applicable regulations, and return any Title IV funds due to the Department with all applicable interest; and

2.5 Verify that data is reported correctly to COD.

TCI Comments

TCI did not concur with most of our finding. TCI concurred with Recommendations 2.4 and 2.5, did not concur with Recommendation 2.3, and did not concur with parts of Recommendations 2.1 and 2.2. TCI's comments on the finding are summarized below:

1. TCI did maintain written office procedures which explained its policies and procedures, and those written procedures were distributed to its staff. The OIG misinterpreted the comment provided in its report: TCI did not intend to imply that its staff was too knowledgeable and experienced to require written policies and procedures.

2. TCI calculated the return of Title IV funds correctly. Though TCI's catalog mistakenly described its policy as an "unofficial" withdrawal policy, TCI's policy was to administratively disenroll students if they did not attend for 21 days. Under 34 C.F.R. § 668.22(c)(1)(iv), these administrative withdrawals are considered "circumstances beyond the student's control" and are treated as official withdrawals. TCI is required to use the date that it took action as the withdrawal date, rather than the 21st day the student was absent or the midpoint of the payment period, because 34 C.F.R. § 668.22(c)(1)(iv) specifies that the withdrawal date is "the date that the institution determines is related to that circumstance."

   This rule is further supported by the quotation from the *FSA Handbook* provided in the OIG finding, which specifies that "the last possible date of withdrawal for the student is the date the school terminates the student's enrollment." The qualification provided in the quotation (that the "institution may not *artificially* create a withdrawal date . . . beyond the midpoint of the period by simply choosing to withdraw the student after the midpoint" [emphasis in original]) is not applicable. TCI did not use an "artificial" withdrawal date because "it implemented and observed a standard policy for all students throughout each payment period."

   Since 2001, TCI has confirmed the compliance of its policy, verbally and in writing, with Department officials on at least three occasions. An official with the Department's Office of Postsecondary Education confirmed the compliance of TCI's policy by writing—

   > If, as in your example, an institution has a policy that a student is considered to be withdrawn after he or she is absent for 21 consecutive days and the institution applies the policy consistently throughout the period to all students, an administrative withdrawal made in accordance with the policy that occurs after the midpoint would not be viewed as circumventing the use of the midpoint as the withdrawal date for an unofficial withdrawal.

3. The untimely returns of Title IV funds identified in the finding were within the Department's compliance thresholds. Pursuant to 34 C.F.R. § 668.173(c)(2), "[t]he Secretary does not consider an institution to be out of compliance . . . if the institution is cited in any audit or review report because it did not return unearned funds in a timely manner for one or two students."

4. TCI agreed that it made a Pell Grant overpayment of $1,013 and has returned that amount. After reviewing its policies and procedures, and performing an internal file review of 30 additional students, TCI determined that the overpayment was an isolated incident due to a single instance of human error.

5. Except for supplemental data for one student, TCI has updated COD with accurate data for the 12 Pell Grant recipients identified in the finding. However, the error rate for this deficiency is 0.3 percent (12 / 4,083 = 0.3 percent), which is well within the 5 percent compliance threshold provided in 34 C.F.R. § 668.173(c)(2). TCI has implemented additional policies and procedures to verify that Pell Grant data is reported timely and accurately.

For the reasons described above, TCI concurred with Recommendations 2.2 (for the return of $1,013 only), 2.4, and 2.5, and did not concur with Recommendations 2.2 (for the return of $5,445 only) and 2.3. In its comments on Recommendation 2.1, TCI stated that it will continue to revise and add to its written office procedures, without concurring that its current written policies and procedures are inadequate.

OIG Response

We have considered TCI's comments, but have not revised our finding or recommendations. Our responses to TCI's comments on the findings and recommendations are provided below:

1. TCI did not provide any additional written policies or procedures to support its assertion that its written policies and procedures are adequate. We reported the statements of TCI's officials as they were made to us. As such, we have no basis for revising our finding or recommendation for this issue.

2. Though TCI did provide documentation of written and verbal guidance received from Department officials that appears to support its policy, TCI's practice did not comply with regulatory requirements for return to Title IV calculations in 34 C.F.R. § 668.22. In essence, TCI is asserting that, since its policy was to administratively withdraw students after they were absent for 21 days, the requirements in 34 C.F.R. § 668.22(c)(1)(iv) are applicable, and those in 34 C.F.R. § 668.22(c)(1)(iii) are not. Both paragraphs are included in this quotation:

> [F]or a student who ceases attendance at an institution that is not required to take attendance, the student's withdrawal date is—
>
> . . . . . .
>
> (iii) If the student ceases attendance without providing official notification to the institution of his or her withdrawal in accordance with paragraph (c)(1)(i) or (c)(1)(ii) of this section, the mid-point of the payment period (or period of enrollment, if applicable);
>
> (iv) If the institution determines that a student did not begin the institution's withdrawal process or otherwise provide official notification (including notice from an individual acting on the student's behalf) to the institution of his or her intent to withdraw because of illness, accident, grievous personal loss, or other such circumstances beyond the student's control, the date that the institution determines is related to that circumstance . . . .

TCI relied on the requirements in 34 C.F.R. § 668.22(c)(1)(iv) as criteria for its policy, but the requirements in that paragraph are limited to "illness, accident, grievous personal loss, or other such circumstances beyond the student's control." By itself, a student's cessation of attendance or decision to withdraw without notifying TCI is not a circumstance "beyond the student's control," and TCI has not documented that any of the withdrawals in question were the result of any "such circumstance" similar to those listed in the regulations. Since the requirements in 34 C.F.R. § 668.22(c)(1)(iii) are clearly intended for the unofficial withdrawals we identified, we used those requirements to evaluate TCI's compliance.

Contrary to its assertion, TCI is not required to use as the withdrawal date the date that TCI took action to administratively withdraw a student. Neither of the citations provided by TCI limit its determination to the date it took action: 34 C.F.R. § 668.22(c)(1)(iv) specifies only that the date must be "related" to the circumstance (not necessarily the date the action was taken) and the *FSA Handbook* provides requirements for "the last possible date" (not the only possible date). Under 34 C.F.R. § 668.22(k), TCI is required to provide information to its students about its return to Title IV calculations. TCI's catalog stated, ". . . if a student is absent from all classes for three consecutive weeks, the College administratively withdraws the student from the institution." This statement does not describe any intervening period between the three-week absence and the student's withdrawal date.

TCI asserts that its practice did not "*artificially* create a withdrawal date," as that phrase is used in the *FSA Handbook*, because TCI has "implemented and observed a standard policy for all students throughout each payment period." Our finding does not depend on the "artificial" language in the *FSA Handbook*. The regulations at 34 C.F.R. § 668.22(c)(3) do not allow the school to use an unofficial withdrawal date later than the midpoint of the payment period unless it can show that the date is "the student's last date of attendance at an academically-related activity." A school may use a date after the midpoint only if the date is a day that the student actually attended, not a date chosen by the school.

3. The requirements that TCI cites from 34 C.F.R. § 668.173(c)(2) do not provide that, unless more than two exceptions are identified, a school is in compliance with requirements for the timely returns of Title IV funds. The criteria in 34 C.F.R. § 668.173(c)(2) are applicable only to compliance with requirements for refund reserve standards, not timeliness of returns. Our report does not find that TCI failed to comply with refund reserve standards.

4. TCI did not provide documentation to support its return of the $1,013 Pell Grant overpayment, so we have not changed our recommendation. If the Department can verify from its records that TCI has returned the $1,013, it will not need to require an additional payment.

As we discussed in our response to TCI's third comment, the thresholds provided in 34 C.F.R. § 668.173 are only used to determine compliance with refund reserve standards. They cannot be used to determine compliance with COD reporting requirements.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our audit objective was to determine whether TCI administered the Pell Grant and FFEL programs in accordance with the HEA and applicable Federal regulations. Specifically, we examined (1) institutional and program eligibility (excluding the 90/10 rule), (2) student eligibility, (3) award calculations and disbursements, and (4) return of Title IV funds. Our review covered the period from July 1, 2005, through June 30, 2006.

To accomplish our audit objective, we—

- Obtained an understanding of applicable Federal laws and regulations.
- Reviewed TCI's Compliance Audit Reports prepared by its Independent Public Accountant for the years ended September 30, 2005, and December 31, 2005; a program review report issued by FSA, dated April 3, 2000; and correspondence from TCI's accrediting agency.
- Reviewed TCI's policies and procedures included in its college catalog; TCI's Office Procedure Manual that included memoranda dated October 18, 2001, through November 7, 2003; and various forms used by TCI's Student Financial Services, Registrar, and Student Affairs Offices, applicable to its financial aid processes and gained an understanding of processes used to administer Title IV funds.
- Interviewed TCI's Vice President and Assistant Vice President for Student Financial Services, Director of Student Financial Services, Registrar and Assistant Registrar, Financial Aid Advisors, and other officials from TCI's offices of Student Financial Services, Credentials and Testing, and Admissions.
- Examined approvals and correspondence from the school's accrediting and state oversight agencies.
- Observed classes while in session and toured the institution's facilities.
- Gained an understanding of TCI's accounting system for students enrolled in Title IV eligible programs.
- Contacted and obtained information from TCI's Independent Public Accountant and FSA officials from New York and Boston offices.

We relied upon computerized student Title IV data provided by TCI officials and computerized information obtained from COD and NSLDS to select our student eligibility and disbursement sample and our return of Title IV samples. We were able to match all Pell Grant recipients' disbursement information provided by TCI with information obtained from COD, with the exception of 12 students for whom we determined that TCI did not update COD records in a timely manner.

FFEL information from NSLDS does not include any field to identify a loan with a specific loan year or period. We could not perform a direct overall NSLDS loan match to the TCI supplied Title IV loan information. However, based on the overall comparison between the NSLDS data and the TCI loan information, the TCI listing appeared reasonably complete. As a result, we used TCI's supplied data for both Pell Grant and FFEL recipients.

We tested the accuracy of TCI's supplied student data by comparing selected source records to the TCI Pell Grant and FFEL recipient student files. We tested the completeness of the TCI Pell Grant information by matching it to the information obtained from COD, with the exception of the 12 students. We tested the TCI loan list completeness by comparing it to the NSLDS loan listing. Based on the comparison, we concluded that the TCI Title IV listing was sufficiently reliable for the purpose of our audit.

To evaluate TCI's compliance with Title IV student eligibility, disbursement, and award calculation requirements, we randomly selected 30 students from the universe of 4,559 students who were awarded a total of $20,541,317 in Title IV funding. This included $10,572,764 in Pell

Grants, $8,881,954 in FFEL, $1,032,532 in Federal Supplemental Educational Opportunity Grants, and $54,067 in Federal Perkins Loans. We reviewed academic, financial aid, and accounting files for the 30 students in our sample.

To evaluate TCI's compliance with return of Title IV requirements, we reviewed files for a sample of 30 withdrawn students. Twenty of the sampled students were randomly selected from a universe of 710 students who withdrew and had a Title IV refund paid. The remaining 10 sampled students were randomly selected from a universe of 792 students that TCI identified from its electronic database as students who withdrew from the institution during our audit period but had no returns of Title IV funds paid.

We performed our fieldwork at TCI's location in New York, New York. We held an exit conference with TCI officials on November 14, 2007. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

ADMINISTRATIVE MATTERS

Statements that managerial practices need improvements, as well as other conclusions and recommendations in this report, represent the opinions of the Office of Inspector General. Determinations of corrective action to be taken, including the recovery of funds, will be made by the appropriate Department of Education officials in accordance with the General Education Provisions Act.

If you have any additional comments or information that you believe may have a bearing on the resolution of this audit, you should send them directly to the following Education Department official, who will consider them before taking final Departmental action on this audit:

Lawrence A. Warder
Acting Chief Operating Officer
Federal Student Aid
U. S. Department of Education
Union Center Plaza
830 First Street, NE, Room 112G1
Washington, DC 20202

It is the policy if the U. S. Department of Education to expedite the resolution of audits by initiating timely action on the findings and recommendations contained therein. Therefore, receipt of your comments within 30 days would be appreciated.

In accordance with the Freedom of Information Act (5 U.S.C. § 552), reports issued by the Office of Inspector General are available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

Sincerely,

/s/
Daniel P. Schultz
Regional Inspector General
for Audit

Attachment

Attachment: TCI Comments

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March 12, 2008

VIA ELECTRONIC MAIL (daniel.schultz@ed.gov)

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United States Department of Education
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Re: Draft Audit Report *Technical Career Institutes, Inc.'s (TCI's) Administration of the Federal Pell Grant and Federal Family Education Loan (FFEL) Programs, Control Number ED-OIG/A02H0007*

Dear Mr. Schultz:

This Firm, as you know, represents Technical Career Institutes, Inc. ("TCI") and is providing the following response to the above referenced Draft Audit Report on TCI's behalf. TCI appreciates your courtesy and that of your team in the handling of this matter, including the extension provided to TCI to file this response.

OIG DRAFT FINDING NO. 1 – TCI IMPROPERLY PAID LENDERS TO REDUCE ITS COHORT DEFAULT RATES.

1.1 OIG Draft Finding: TCI's Payments to FFEL Lenders Should Cause the Loans to Be Deemed in Default for the Purposes of the Default Rate Calculation.

TCI RESPONSE: TCI DID NOT IMPROPERLY PAY LENDERS TO REDUCE ITS COHORT DEFAULT RATES.

TCI's payments to FFEL lenders do not constitute "a payment to prevent a borrower's default on a loan that is *used to include the borrower in that cohort*" for the purposes of calculating TCI's cohort default rate. A borrower in a cohort for a particular fiscal year is considered to be in default if, "[b]efore the end of the following fiscal year [the fiscal year subsequent to the year in which the borrower entered repayment], [an institution or an institution's] owner, agent, contractor, employee, or any other affiliated entity or individual make a payment to prevent a borrower's default on a loan *that is used to include the borrower in that cohort*." 34 C.F.R. § 668.183(c)(1)(iii) (emphasis added).

The specific type of loan(s) a student borrower obtains determines whether that particular borrower must be included as part of a particular cohort. 34 C.F.R. § 668.183(b)(1). This regulation provides that a student becomes part of a cohort if he or she obtains any Federal Stafford loan, Federal SLS loan, Direct Subsidized loan, Federal Consolidation loan, or Federal Direct Consolidation loan *that enters repayment during the fiscal year in question.* Id. (emphasis added). Therefore, in order to be included in a particular cohort the borrower must have: (a) taken out one of the loans identified in 34 C.F.R. § 668.183(b)(1) and (b) have that loan enter repayment during a particular fiscal year that corresponds to the cohort in question.

The five (5) students identified in the Draft Audit Report with respect to this finding took out Stafford loans. For Stafford loans, a borrower enters repayment on the date following the end of the grace period for the loan. 34 C.F.R. § 682.200(3)(b). Although the grace period for a Stafford loan may vary depending upon the loan's rate of interest, it is never less than six (6) months (180 days) from the date the borrower ceases his or her enrollment on at least a half-time basis. 34 C.F.R. § 682.209(a)(3)(i).

In this case, payments made by TCI to the students' FFEL lender(s) occurred earlier than 180 days from the withdrawal date of each of the five identified students. Therefore, none of the loans associated with these students had entered repayment at the time TCI transferred funds to the lender(s). Because none of the loans had entered repayment at the time TCI returned these funds, the loans involved are not loans "used to include the borrower in that cohort." The OIG draft finding, in reliance upon 34 C.F.R. § 668.183(c)(1)(iii), is in error and without merit. TCI's actions were lawful. The legal effect of TCI's repayment of the loans of the five (5) identified students is that these loans should not be deemed in default and factored into TCI's cohort default rate. The practical effect is that these loans should be treated as if they had not existed for purposes of the cohort default rate calculation.

1.2 OIG Draft Finding: As a Result of TCI's Payments on Its Student's Loans, TCI's Students Were Denied Access to the FFEL Loan Funds to Which They Were Entitled.

TCI RESPONSE: TCI STUDENTS WERE NOT DENIED FFEL FUNDS TO WHICH THEY WERE ENTITLED.

The Draft Audit Report cites to portions of 34 C.F.R. § 668.22(e)(2) in support of the assertion that TCI denied students access to FFEL funds to which they were entitled. In citing this regulation, the OIG appears to assert that TCI students who participated in the institution's default prevention policy did not receive FFEL funds that they had actually earned. The OIG, however, offers no factual support for this allegation.

The ledger cards for the five (5) students identified in the Draft Audit Report demonstrate conclusively that FFEL disbursements were made to the students prior to their withdrawal from the institution. *See,* Exhibit 1.1. Therefore, such disbursements complied with the regulatory requirements found at 34 C.F.R. § 668.22(e).

In the case of each of the five (5) identified students, TCI determined – based upon its calculation of the withdrawal date – that each student had earned one-hundred percent (100%) of his or her applicable Title IV funds for the payment period in question. (In the case of student [redacted], TCI disbursed one-hundred and one percent (101%) of the subsidized and unsubsidized Stafford loan funds, slightly more than the student had actually earned.)[1] In the case of students [redacted], [redacted], [redacted], and [redacted], TCI disbursed the maximum amount of Title IV aid for the payment period. Accordingly, none of the students cited by the Audit Team failed to receive disbursements of Title IV funds for which they had applied.[2]

In addition, each of the five (5) students signed a disclosure evidencing that the students understood and acknowledged TCI's institutional policy, which is to return FFEL loan funds to each student's lender(s) in the event the student withdraws during the first semester of enrollment or does not return for the next term. *See,* Exhibit 1.2. As such, this document reflects the students' knowing and voluntary waiver of any further disbursements and of their consent to not continue their loan obligations to FFEL lenders under such circumstances. Id. No basis exists to support the conclusory allegation made in the Draft Audit Report that TCI's default prevention policy had the effect of denying students an entitlement. Each student was disbursed the Title IV aid that he or she had earned during the period of enrollment and each student knowingly and voluntarily acknowledged and consented to TCI's default prevention policy. Therefore, TCI did not deny any student access to an entitlement.

1.3 OIG Draft Finding: TCI's Default Prevention Could Have Harmed Students.

TCI RESPONSE: TCI'S DEFAULT PREVENTION PRACTICES WERE NO MORE HARMFUL TO A STUDENTS THAN DEFAULTING ON A FFEL LOAN.

OIG also suggests that TCI students were harmed by the default prevention plan because it denied them favorable terms and conditions that are available to FFEL program borrowers. However, many of the same payment provisions utilized by FFEL

[1] An administrative error resulted in the disbursement of more than one-hundred percent (100%) of Title IV funds in this instance. Moreover, TCI refunded the unearned overage for that student to the Department as instructed by 34 C.F.R. § 668.22(e)(4).

[2] In addition, none of these students were entitled to a post-withdrawal disbursement. In the event an institution disburses more Title IV funds than a withdrawn student has earned, the institution must return the excess funds disbursed. 34 C.F.R. § 668.22(a)(3). Conversely, a student may also be entitled to a post-withdrawal disbursement if that student earned, prior to his or her withdrawal, more Title IV funds than the institution had actually disbursed. 34 C.F.R. § 668.22(a)(4).

lenders and guaranty agencies under agreement with the Department also apply to those students who received assistance under TCI's default prevention plan. In fact, those terms required under TCI's default prevention plan placed each student on similar footing or in a better position than other, similarly-situated FFEL student-borrowers. A side-by-side comparison of the key terms of FFEL program loans and TCI' default prevention plan is presented below:

FFEL Program Terms and Conditions	TCI Default Prevention Program Terms and Conditions
Grace Period: 6 months following the date borrower is no longer enrolled as at least a part time student. 34 C.F.R. § 682.209(a)(3)(i).	Grace Period: 150 days from the ending date of a student's last term.
Interest: Fixed or variable rates of interest may be charged according to 34 C.F.R. § 682.202(a).	Interest: TCI did not charge interest.
Minimum annual payment: $600.	Minimum annual payment: $600 (12 installments of $50.00).
Deferment available to students who qualify under 34 C.F.R. § 682.210.	Loans can be deferred at TCI's discretion.
Forbearance available to students who qualify under 34 C.F.R. § 682.211.	Loans can be forgiven at TCI's discretion.
Acceleration upon default. *See,* Terms of Master Promissory Note, Exhibit 1.3.	No acceleration clause.
Late charges and Collection Charges as applicable in 34 C.F.R. § 682.202(f) and Master Promissory Note. *See,* Exhibit 1.3.	Late charges and collection-related charges only applicable if debt is forwarded for collection by third a party agent.
Lenders may garnish wages and federal tax returns (up to 15% of income) per 20 U.S.C. § 1095a	TCI has no power to garnish wages or tax returns.
Most student loans are not dischargeable in bankruptcy per 11 U.S.C. § 523(a)(8).	TCI is an unsecured creditor and student's debt is fully dischargeable in bankruptcy.
Student in default may be ineligible for future Title IV student aid (34 C.F.R. § 668.35).	Default on TCI obligation does not make student ineligible for future Title IV aid.

The comparison above demonstrates how favorable TCI's terms and conditions were for students who would have otherwise been subject to the terms and conditions of the FFEL program. Specifically, the default prevention plan establishes a grace period of 150 days from the ending date of a student's term. Because the policy applies to students who withdrew from TCI in their first enrollment period or did not return for their second enrollment period, TCI's policy creates the distinct possibility that the

student's grace period will exceed the 180 day period available under the FFEL program. For example, in the case of student [redacted], whose date of withdrawal fell on the 70th day of an enrollment period lasting 101 days, the grace period as per TCI's policy would have been 181 days. Furthermore, given the manner in which TCI sought to collect debts under the default prevention plan there would have been significant lags in time before a borrower received notice of a default on his or her loan because additional periods of time would pass while the school attempted to make contact with delinquent students through its internal processes.

TCI did *not* charge students any interest on the student loans it held, unlike FFEL lenders which charge either a fixed or variable rate of interest to student borrowers depending on applicable law. TCI offered a low monthly payment plan option for students assisted under its default management policy. Similar to payment plan options offered by some FFEL lenders, TCI's policy guarantees that a student may opt to take advantage of the same $600.00 minimum annual payment that is also available to FFEL borrowers.

Certain FFEL borrowers are eligible for deferment or forbearance if they meet specific criteria detailed in 34 C.F.R. § 682.210 and 34 C.F.R. § 682.211. Under these regulations, a borrower is eligible for a deferment if he or she is enrolled in school at least half-time, has demonstrated an inability to find full-time employment, and faces economic hardship or is suffering from a disability. Certain types of public service may also qualify a student for deferment, such as service in the military or Peace Corps. The eligibility for each of these categories of deferment is strictly defined by regulation.

For example, in order to qualify for an unemployment deferment, a student must first register with an employment agency and document at least six (6) diligent attempts to obtain employment within the six (6) month period preceding the application for deferment. *See generally,* 34 C.F.R. § 682.210. Similarly, in order to obtain forbearance, the borrower must first qualify and receive a deferment and then must also be unable to make scheduled loan payments due to health problems or "some other acceptable reason." *See,* 34 C.F.R. § 682.211(a)(2)(i). Although there is no provision expressly providing for FFEL-style deferments or forbearances under TCI's default prevention plan, the School does reserve the right to exercise its discretion on a case-by-case basis. Furthermore, TCI provides very flexible payment terms and does not charge interest on student debts. Finally, TCI only resorts to when skip-tracing methods indicate that a borrower has significant assets amounting to at least $1,000.00.

The Master Promissory Note signed by TCI students provides for acceleration and late charges resulting from default on a loan obligation. The TCI default prevention plan does not provide for an acceleration of student debt and a student would only be

subject to late charges in the event the account was forwarded to a third party collection agent.

Under its policy, TCI cannot garnish a student's federal tax refund or wages to satisfy student balances and the debt owed to TCI is fully dischargeable in bankruptcy. In contrast, FFEL lenders have the authority to garnish federal tax refunds and to garnish wages up to fifteen percent (15%) of an individual's income to satisfy student loan obligations. Moreover, a borrower's obligations to FFEL lenders are *not* dischargeable in bankruptcy.

Finally, a student who enters TCI's default prevention plan and who subsequently defaults on his or her obligation to the institution, does not have his or her ability to access Title IV funds in the future adversely impacted in any way. In contrast, students who default on outstanding obligations to FFEL lenders may *not* access additional Title IV aid to which they are otherwise entitled. Taken as a whole, the payment provisions offered under TCI's default prevention policy are very generous and lenient, and in some aspects the benefits accruing to students participating in TCI's default prevention plan exceed those benefits students may obtain under payment provisions and policies offered by FFEL lenders.

The OIG alleges that a student "might" suffer damage to his/her credit worthiness because TCI referred delinquent students to third party agents for collection. Draft Audit report at 3-4. As suggested by the Draft Report's use of qualifying language, the Audit Team did not adduce any factual evidence in support of its allegation that student's may suffer some hypothetical and abstract harm as a result of TCI's default prevention policy.

TCI does refer delinquent accounts to a collection agency following the expiration of the required grace period and after in-house collection efforts proved unavailing. However, those third party collection agencies used by TCI in this capacity are *not* authorized to send reports of any sort to credit reporting bureaus. *See,* Declaration of [redacted] at ¶ 7; Exhibit 1.4. The only time when a former TCI student might be subject to a negative credit report occurs when seriously delinquent accounts are referred to a third party collection agency for litigation. In such instances, and *only* in the event a judgment is obtained against a student, is a report forwarded to the credit reporting bureaus. *See,* Declaration of [redacted] at ¶ 7. While a student in such a scenario might, theoretically, be damaged as a result of a negative report issuing to a credit reporting bureau, the exposure to the student is obviously no greater than that faced by students who default on their FFEL loans.

Indeed, under the circumstances, a student who defaults on his or her obligations to an FFEL lender is more likely to suffer harm to his or her credit than a student who

defaults on payment obligations under TCI's default prevention policy. For example, a report regarding a delinquent account for a TCI student who defaults under the institutions' default prevention policy only issues to a credit bureau *after*: (a) the grace period expires, (b) initial in-house collection efforts fail, (c) initial third-party collection efforts fail, (d) final third party collection efforts fail and, (e) that final third party collection agency obtains a judgment in court. TCI thereby affords its student a much longer and more exhaustive opportunity to rehabilitate his or her defaulted loan obligation before a report is made to a credit reporting bureau. In contrast, a similarly-situated borrower working with an FFEL lender may face the prospect of a negative credit report issuing after the grace period expires and a student misses a single payment.

More importantly, however, under either scenario the potential harm to any student(s) remains purely conjectural. The OIG cites no evidence indicating that any student(s) suffered any harm as a result of TCI's implementation and administration of its default prevention policy. As such, the Audit Teams' findings on this issue remain purely speculative.

1.4 OIG Draft Finding: TCI's Payments on Its Students' Loans May Have Made Its Cohort Default Rate Calculations Incorrect for All Fiscal Years After FY 1994 and TCI May Have Retained Its Eligibility for Title IV Programs Improperly.

TCI RESPONSE: WERE TCI'S PAYMENTS IMPROPER, ITS COHORT DEFAULT RATES WOULD NEVERTHELESS HAVE BEEN TOO LOW TO CAUSE A LOSS OF ELIGIBILITY.

As addressed above, TCI's actions were in accordance with law and regulation. Notwithstanding, TCI recalculated its cohort default rates to reflect the addition of students the OIG would deem to be in default due to the operation of TCI's default prevention plan.[3] The import of this analysis is that institutions whose cohort default rates exceed 25% for three consecutive fiscal years lose their eligibility to participate in Title IV programs. 34 C.F.R. § 668.187(a)(2). This recalculation demonstrates that TCI

[3] Even if 34 C.F.R. § 668.183(c)(1)(iii) could be applied to the five loans in the sample, three of the five would not be deemed to be "in default" nor counted toward TCI's cohort default rate because they were cancelled and/or fully refunded within 120 days of disbursement. The financial aid files for TCI students [redacted], [redacted], and [redacted] indicate that TCI returned FFEL funds for these students to the lender(s) within 120 days of disbursement. Loans that are fully refunded or cancelled within 120 days of disbursement should *not* be included in the cohort default rate calculation. *See,* Cohort Default Rate Guide at 2.1-11. Student [redacted]'s funds were returned within 117 days of disbursement; student [redacted] funds were returned within 57 days of disbursement; and student [redacted] funds were returned within 57 days of disbursement.

did not exceed the twenty-five percent (25%) threshold in any of the Institution's fiscal years from 2002 to 2005. *See,* Exhibit 1.5 Therefore, even if the OIG were correct in its assertion, TCI's recalculated cohort default rates would not have caused the College to lose its eligibility to participate in Title IV programs pursuant to 34 C.F.R. § 668.187(a)(2)

1.5 OIG Draft Finding: TCI's Default Prevention Policy Was Improper As Implemented and Administered.

TCI RESPONSE: TCI'S DEFAULT PREVENTION PLAN WAS PROPERLY IMPLEMENTED, ADMINISTERED AND SANCTIONED BY DOE AND HESC.

As noted by [redacted], TCI's former Director of Financial Aid and Vice President for Student Financial Services, TCI developed the subject default prevention policy in the 1990s to combat high default rates. *See,* Declaration of [redacted] at ¶ 5. TCI's default prevention policy was reviewed by both the Department and its guaranty agency, the New York Higher Education Services Corporation ("HESC").

In particular, the Department's program reviewers analyzed TCI default prevention policy in the course of a program review that occurred in April 1999. *See,* Exhibit 1.6. In fact, TCI received an express request from the Department for a copy of its default rate plan materials and [redacted] provided this plan to [redacted], an experienced member at the time of the New York Area Case Management Team. *See, See,* Declaration of [redacted] at ¶ 8. At no time during the course of or subsequent to the program review did the Department communicate any finding, concern, or even raise a question regarding the default prevention policy let alone suggest that the policy was in violation of the Higher Education Act or any implementing regulation.

In addition, TCI disclosed and presented the policy to [redacted], the Assistant Secretary for Postsecondary Education at the time. [redacted] in fact, met with TCI's then president, [redacted], to discuss, among other things, the manner in which TCI implemented its default prevention plan. The Department's reaction to the plan was positive. *See,* Declaration of [redacted] at ¶¶ 9-10.

TCI's default prevention policy was also the subject of multiple reviews by HESC and was considered by HESC to be a model plan. As a guaranty agency in the FFEL program, HESC is required to review FFELP participating institutions located in New York and to "take such measures and establish such controls as are necessary to ensure its vigorous enforcement of all Federal, State, and guaranty agency requirements..." 34 C.F.R. § 682.410(c)). This express delegation of enforcement powers specifically addresses enforcement of cohort default rate rules. HESC, as a guaranty agency, is charged by the Department with the task of "[c]onducting comprehensive biennial on-site program reviews" of institutions that have high cohort default rates. 34 C.F.R. § 682.410(c)(1)(C). HESC reviewed TCI's default prevention plan in 1996, 1998, and 1999. HESC consistently found TCI's policy to be compliant

with the Department's cohort default rate regulations and to be an effective plan. *See,* Exhibit 1.7. HESC's on-site compliance review states that TCI "has a *comprehensive* default rate management plan to reduce the default rate in the future" and "has implemented a complete default management program resulting in decreases in the cohort default rate." Id. (emphasis added). In addition to the final compliance review report dated November 25, 1998, HESC continued to praise TCI's default management policy in numerous email exchanges with the Institution's Director of Financial Aid from 1999 through 2004. Exhibit 1.8.

During this time, HESC issued a press release stating, "[w]ith assistance from HESC's Advocate Unit, TCI has one of the most successful default management programs in the nation." *See,* Exhibit 1.9. Finally, at the request of HESC, [redacted] presented TCI's default prevention policy as a model program at HESC's administrative workshop in New York City in December 2000. Exhibit 1.9. TCI distributed its plan to all attendees at this conference. *See, See,* Declaration of [redacted] at ¶¶ 10-13.

1.6 OIG Recommendations

OIG's recommendation 1.1 states that TCI should stop making payments to lenders on students loans for default prevention purposes. TCI suspended this aspect of its default management policy on or about September 2007 until such time as a final decision on this matter is made.

OIG's recommendation 1.2 requests that TCI identify all students for whom it made payments to lenders on or after July 1, 2005. TCI compiled this information and has already provided it to the OIG.

Recommendation 1.3 calls for TCI to rescind all collection agency referrals for the affected students. TCI maintains that its payments to lenders were proper and that its collection processes are not abusive or unfair to students. TCI ceased making agency referrals with the students enrolled at TCI in the Fall of 2006.

Recommendation 1.4 calls for TCI to instruct collection agencies to retract any negative reports made to credit bureaus regarding affected students. As detailed in section 1.3 above, credit bureau reporting would only occur as a consequence of litigation. TCI does not believe that any such reports have been made since July 1, 2005TCI ceased forwarding student accounts for litigation with the students enrolled at TCI in the Fall of 2006.

OIG's recommendation 1.5 calls for TCI to communicate with affected students to discuss any possible remedies they may have under the HEA and consumer laws. TCI maintains that its policy was not in violation of the HEA and no such disclosure relating to the HEA is warranted.

Recommendation 1.8 calls for the Acting Chief Financial Officer of FSA "to consider limiting, suspending, or terminating TCI's participation in Title IV, HEA student

aid programs". OIG's recommendation that FSA consider taking such adverse action against TCI is wholly inappropriate given the law as well as the facts and circumstances described herein and surrounding the development and implementation of TCI's default prevention plan. In developing and implementing its plan, TCI acted in good faith and substantial reliance on substantive guidance provided by the Department and HESC including the active encouragement of both agencies.

The OIG's claim that students were harmed is speculative at best. There are no grounds to justify the limitation, suspension, or termination of TCI's eligibility to participate in Title IV, HEA student aid programs.

OIG DRAFT FINDING NO. 2 – TCI'S ADMINISTRATION OF TITLE IV PROGRAMS NEEDS IMPROVEMENT

TCI RESPONSE: TCI'S ADMINISTRATION OF TITLE IV PROGRAMS IS COMPLIANT UNDER THE APPLICABLE REGULATIONS

The OIG's position is that TCI had "internal control deficiencies" with regard to its administration of the Title IV program during the audit period. The OIG alleges that TCI lacked adequate written policies and procedures with regard to "the calculation and timely return of Title IV funds, the proper disbursement of Pell Grant funds, and the accurate and timely updating of the [COD] system." Moreover, the OIG makes much of an apparent verbal exchange between unnamed "TCI officials" and a member(s) of the Audit Team. Apparently, this conversation led the Audit Team to conclude that TCI did not have written policies and procedures because the institution believed that its staff "did not believe it needed [such policies and procedures]." *See,* Declaration of [redacted] at ¶¶ 21-22.

As the Audit Team itself confirmed, however, TCI does maintain written office procedures that contain explanations of TCI's policies and procedures and which are distributed to staff members in the Student Financial Services division and, when appropriate, to other administrative offices of the College. Declaration of [redacted] at ¶ 21. These written office procedures are continually evolving and TCI revises and updates its procedures with additional relevant information and detail as necessary.[4]

[4] With regard to the conversation which appears to have significantly influenced the Audit Team's conclusions, TCI submits the remarks were taken out of context and were never intended to give the impression that TCI somehow viewed itself and its staff as too knowledgeable and/or experienced to require any written documentation whatsoever. Declaration of [redacted] at ¶¶ 21-22 . [redacted] makes it clear that such comments were instead intended only to inform the Audit Team that TCI had staff members with significant knowledge of and experience in the administration of Title IV programs. Furthermore, such staff members remained cognizant of changes to both federal and state regulatory requirements as well as TCI's policies and procedures as they evolved over time. TCI actively consulted such staff members and involved them in TCI's decision-making process as its policies and procedures developed over time and in response to the ever-changing regulatory regime.

2.1 OIG Draft Finding: TCI Incorrectly Calculated the Return of Title IV FUNDS.

TCI RESPONSE: TCI CORRECTLY CALCULATED THE RETURN OF TITLE IV FUNDS.

The OIG's position is that TCI incorrectly determined the withdrawal date of fifteen (15) students because it did not utilize, as the withdrawal date for Return to Title IV ("R2T4") calculations, the date upon which each student accrued his or her twenty-first (21st) consecutive day of absence. The Audit Team therefore concluded that TCI: (a) incorrectly used its "processing date" (instead of the alleged "actual withdrawal date") as the withdrawal date for four (4) students; (b) did not appropriately use the mid-point as the withdrawal date for nine (9) students; and (c) did not use the last date of attendance after the midpoint as the withdrawal date for two (2) students. The Audit Team also appeared to place particular emphasis upon its erroneous conclusion that each of the fourteen (14) students cited "unofficially withdrew" from TCI.

As an initial matter, the Audit Team did not identify its findings on a student-by-student basis. Thus, TCI is left to speculate as to which of those students reviewed belonged in each particular "category" identified by the Audit Team. This obviously precluded the institution from fully vetting and assessing the OIG's position with regard to each specific student. Nevertheless, the school looked to the law and its overall policy regarding R2T4 and withdrawal dates as the basis upon which to respond to the allegations contained in the Draft Audit Report.

Under TCI's withdrawal policy, any student who violated the school's attendance policy by failing to attend any classes for twenty-one (21) consecutive days was processed and administratively withdrawn in a similar manner as a student who provided the school with notification of his or her intent to withdraw. Specifically, an absentee report is run on a weekly basis that provides a list of those students who have accumulated twenty-one consecutive days' worth of absences for all classes. A staff member in the Registrar's Office then reviews the absentee report and changes each such student's status from "Active" to "Withdrawn" within TCI's database system. [5]

[5] The student may return to class at any time during that twenty-one (21) day period and continue taking classes without having his or her enrollment terminated. Additionally, a student may return to class even after his or her status has been changed from "Active" to "Withdrawn" provided that student receives written permission from his or her instructor(s), Student Affairs representative and Student Financial Services representative. TCI actively encourages absentee students to return to class and continue their education and intends for its institutional policy to provide a window of opportunity during which the institution can "re-capture" non-attending students and encourage them to return to the classroom. On many occasions, TCI staff members reached out to non-attending students via telephone calls and letters encouraging students to return to TCI and complete their educational programs.

Subsequently, when a TCI staff member performs the R2T4 calculation, he or she used the date that the School took action to disenroll the student as the withdrawal date. Similarly, if a student provided written notification of withdrawal to TCI, a staff member would also change that student's status from "Active" to "Withdrawn" in the database system and the earliest date of notice to TCI was used as the withdrawal date. Thus, as a practical matter, TCI ceased to differentiate between "official" and "unofficial" withdrawals because, in either instance, the School itself took affirmative action to disenroll a specific student and thus each and every withdrawal was an "official withdrawal."

TCI's catalog mistakenly describes its policy as an "unofficial" withdrawal policy. However, under both the law and the facts, TCI actually had an administrative withdrawal policy. Moreover, the catalog specifically states that "[a] student who stops attending all classes . . . shall be *administratively withdrawn*." 2006-07 TCI Course Catalog at 19 (emphasis added). TCI adopted a lawful administrative withdrawal policy as recognized by the Department and described herein.

The Department's regulations provide that an institution must take attendance "if an outside entity . . . has a requirement . . . that the institution take attendance." 34 C.F.R. § 668.22(b)(3)(i). Thus, those institutions not required to take attendance by an outside entity are considered non-attendance-taking institutions under the regulatory regime. Id.; *see also,* 2008-09 Handbook at 5-42. TCI is not required to take attendance by any outside entity and is, therefore, a non-attendance-taking institution for Title IV purposes.

Based upon the regulations, sub-regulatory guidance, and input from Department representatives, TCI determined that the Department viewed instances wherein an institution took action to administratively withdraw a student as an "official withdrawal." Therefore, TCI determined that it had to use the date it took action to terminate a student's enrollment as the withdrawal date for R2T4 calculation purposes. *See,* 34 C.F.R. § 668.22(c)(1)(iv); 2006-07 FSA *Handbook* at 5-65. Thus, TCI's catalog states that "[f]or Federal Title IV refund purposes, the withdrawal date of an unofficial withdrawal is the date [TCI] administratively withdraws the student from classes." 2006-07 TCI Course Catalog at 19.

The Department provided specific guidance relevant to TCI's development and implementation of its policy beginning with the 2002-03 FSA *Handbook*. That *Handbook* instructs,

> "If an institution expels, suspends, or otherwise disenrolls a student during a period, the institution is officially withdrawing the student and *the withdrawal date is the date the institution terminated the student's enrollment for the*

> *period*." 2002-03 FSA *Handbook* at 2-114 (emphasis added).

Under this guidance, a school that observed TCI's policy and administratively withdrew students based upon a period of non-attendance was both obligated and *required* to utilize the specific date that the school took action to terminate a student's enrollment as the withdrawal date. Furthermore, the 2002-03 FSA *Handbook* provides the above-referenced admonition in a section with the sub-heading, "Withdrawal without student notification due to circumstances beyond the student's control." Id. Under the circumstances, it is therefore appropriate for a school to treat as an official withdrawal those instances when the school itself takes action to terminate or disenroll a student.

TCI's policy to treat administrative withdrawals as official withdrawals is proper and justified based upon the plain language of the FSA *Handbook*. The *Handbook* instructed TCI that, because the institution itself had taken action to terminate the student's enrollment, it had to utilize the date it terminated the student's enrollment as the withdrawal date. TCI did precisely that when it utilized the date it changed the student's status from "Active" to "Withdrawn" as the withdrawal date for R2T4 calculation purposes. As such, TCI's implementation of its policy was fully compliant with the Department's regulations and guidance on this issue.

Subsequent FSA *Handbooks* contain substantially similar language as that found in the 2002-03 *Handbook*. For example, the 2003-04 *Handbook* contains the following statement under the sub-heading "Withdrawal without student notification due to circumstances beyond the student's control,"

> "If an institution expels, suspends, or otherwise disenrolls a student . . . the institution is officially withdrawing the student and the withdrawal date is the date the institution terminated the student's enrollment." 2003-04 FSA *Handbook* at 2-124.

Identical language is also found in the 2004-05 FSA *Handbook* at 5-56.

The 2005-06, 2006-07 and 2007-08 FSA *Handbooks* also make the Department's position – that an administrative withdrawal constitutes an "official withdrawal" – even more plain when they state, yet again under the sub-heading, "Withdrawal without student notification due to circumstances beyond the student's control,"

> "If a school *administratively withdraws* a student . . . who has not notified the school of his or her intent to withdraw, the last possible date of withdrawal . . . *is the date the school terminates the*

> *student's enrollment.*" However, an institution may not artificially create a withdrawal date for such a student that is beyond the midpoint of the period by simply choosing to withdraw the student after the midpoint." 2005-06 FSA *Handbook* at 5-60; 2006-07 FSA *Handbook* at 5-59; 2007-08 FSA *Handbook* at 5-65 (emphasis added).

TCI did not "artificially" create a withdrawal date because it implemented and observed a standard policy for all students throughout each payment period. *See,* Exhibit 2.3. Thus, based upon its pre-defined policy, TCI terminated a student's enrollment after a staff member received a weekly report documenting those students with twenty-one consecutive days of absences from all classes and changed the student's status from "Active" to "Withdrawn." This process generally occurred within twenty-one (21) to twenty-eight (28) days after the student's last day of attendance at all classes.

The 2008-09 FSA *Handbook* includes identical language as found in the 2005-06, 2006-07 and 2007-08 *Handbooks*. However, perhaps because the Department recognizes that a number of institutions observe administrative withdrawal policies similar to that of TCI, the most recent FSA *Handbook* included an additional sidebar under the sub-heading "Withdrawal without student notification due to circumstances beyond the student's control," entitled "Withdrawal date for administrative withdrawals." The sidebar states that,

> "If . . . a school . . . has a uniform policy of withdrawing of students [sic] after a specified (and reasonable) number of absences that applies throughout the payment period . . . then the date that the student exceeded that number of absences would be the date that the school would normally use as the withdrawal date." 2008-09 FSA Handbook at 5-70.

This language is contrary to and a clear departure from prior *Handbooks* as well as Departmental opinions and guidance. As such, it can only be viewed as a new interpretation by the Department. As described in this Response, TCI's policy and practice has been fully consistent with the law as promulgated as well as with previous Departmental interpretations of the regulations for the periods at issue. Of course, TCI will fully comply with the new interpretative language noted in the 2008-09 FSA *Handbook* and adapt and/or modify its policies to the extent necessary for them to remain compliant with Departmental guidance.

During the period surrounding the inception of the R2T4 regulations, TCI consulted [redacted], a well-known and respected consultant in the higher

education industry. [redacted] provided TCI with significant guidance related to the newly-instituted R2T4 regulations, including guidance related to the school's formulation of its withdrawal policies. *See,* Declaration of [redacted] at ¶¶ 16-17.

In 2001, [redacted] described an administrative withdrawal policy for institutions not required to take attendance (such as TCI) to [redacted], a high level Departmental official who is widely recognized as extremely knowledgeable with respect to Department policies and regulations. [redacted] reviewed the policy and confirmed that the Department "would view the school's termination of enrollment (sometimes called 'exclusion,' 'disenrollment,' etc.) to be an *official* withdrawal." Exhibit 2.1 at 2. [redacted] further confirmed that in such instances, "[t]he date of withdrawal (where a school terminated a student at a school not required to take attendance) would be the date that the school expelled or removed or disenrolled the student..." Id.

Based upon this information, TCI created a policy that defined the Title IV withdrawal date for administrative withdrawals for an institution not required to take attendance in conformance with [redacted] s guidance to [redacted]. *See,* Declaration of [redacted] at ¶ 17. Although TCI continued to label such withdrawals as "unofficial," the College correctly determined withdrawal dates for administrative withdrawals and correctly calculated R2T4 determinations using the guidance provided by [redacted]. In fact, TCI treated each student withdrawn under the school's administrative withdrawal policy as an "official withdrawal" based upon [redacted]'s input and analysis. TCI has observed the policy described herein in all subsequent instances, including with regard to its treatment of those students cited by the Audit Team.

In September 2003, [redacted] dispatched an email to [redacted], a Senior Analyst in the Office of Postsecondary Education ("OPE"), the office responsible for setting and interpreting Departmental policy. [redacted] is a well known and well-respected Department official within OPE. [redacted] provided [redacted] with a specific description of an administrative withdrawal policy such as TCI's, including several hypothetical examples to more fully illustrate how the policy is applied in particular cases. *See,* Exhibit 2.2; *see also,* Declaration of [redacted] at ¶ 18. With the proviso that the school "applies its policy consistently throughout the period to all students," [redacted] stated that an administrative withdrawal occurring after the midpoint would neither violate nor circumvent the regulatory requirements prescribing use of the midpoint of the payment period as the withdrawal date for an "unofficial withdrawal." Exhibit 2.2 at 1. [redacted]' analysis further confirmed the Department's view that, under TCI's policy, the calculation of the withdrawal date for an administrative withdrawal must be treated as the equivalent of an official withdrawal.

As part of its ongoing review to maintain compliance with R2T4 regulations and guidance, TCI's independent auditor of the Student Financial Assistance Programs, [redacted], sent a detailed memorandum to [redacted], currently a Team Leader in the New York Area Case Management Team. *See,* Declaration of [redacted] at ¶¶

19-20. This email fully explained TCI's policy and again provided hypothetical examples to provide a more thoroughgoing basis for [redacted] to assess how a school would practically implement the referenced policy. Exhibit 2.3. The hypothetical examples reviewed by [redacted] and Department staff members demonstrate that [redacted] made it clear that the institution's policy would result in the calculation of withdrawal dates that occurred *more than* twenty-one (21) days after a student's first day of non-attendance. Id. at 4-5.

[redacted], along with "other specialists in [his] office, and the training officer," reviewed the policy, reached certain conclusions, and subsequently provided a written response to [redacted]. Id. at 1. [redacted] said that, after he and his team considered the manner in which the institution intended to apply its policy, they reached the conclusion that, "the process . . . described does not constitute 'artificially creating' a withdrawal date."[6] Id. Thus, TCI's policy, as implemented, did not (and does not) violate the regulatory requirements or guidance contained in the FSA Handbook through 2007-08, including the use of the processing date as the withdrawal date and the use of this date in lieu of the mid-point.

The following example demonstrates the manner in which TCI applies its policy and processes students who are administratively withdrawn prior to the mid-point of the payment period. A student named [redacted] enrolled in the Fall 2005 semester, which began on September 7, 2005. [redacted] began attending classes and continued his attendance until September 19, 2005, at which point, he ceased attending classes. [redacted]'s twenty-first (21st) consecutive day of non-attendance at all classes occurred on October 10, 2005. A scant three days later, on October 13, 2005, a TCI attendance report indicated that [redacted] had twenty-one (21) consecutive days of non-attendance, which required that the school administratively withdraw him.

Therefore, on the very same day, a staff member in the Registrar's Office administratively withdrew [redacted] by changing his status from "Active" to "Withdrawn" in the school's database, thus terminating his enrollment. Staff members subsequently used October 13, 2005, the twenty-ninth (29th) day of the payment period and the day that TCI terminated his enrollment, as the withdrawal date for R2T4 calculation purposes and determined that the student had earned $1,170.68, or 36.3% (29/102), of his Title IV aid.

Had TCI not instituted an administrative withdrawal policy and applied it consistently for all students, the College could have utilized "the mid-point of the payment period" as the student's withdrawal date because the student "cease[d]

[6] [redacted] and his Team also provided his guidance with a similar proviso as that of Specifically, in both instances, the institutional policy must be "defined, established, and applied throughout the course of the term." Exhibit 2.3 at 1; *see also,* Exhibit 2.2 at 1.

attendance without providing official notification to the institution." 34 C.F.R. § 668.22(c)(iii). This regulation would allow TCI to keep fifty-percent (50%) of [redacted]' Title IV aid for the payment period, or $1,612.50. However, because the school applies its pre-defined institutional policy regarding administrative withdrawals consistently, TCI instead relied upon the date it took action to administratively withdraw the student as the most fiscally responsible and accurate withdrawal date for R2T4 calculation purposes.

2.2 OIG Draft Finding: The Return Of Unearned Title IV Funds Was Untimely.

TCI RESPONSE: THE UNTIMELY RETURNS WERE WITHIN THE DEPARTMENT'S COMPLIANCE THRESHOLDS.

The OIG's claim is that the school violated the regulations because it did not return unearned Title IV monies for which it was responsible "no later than 30 days after the date of the institution's determination that the student withdrew." 34 C.F.R. § 668.2(j)(1). The Audit Team alleges that TCI returned unearned Title IV funds thirty-one (31) and one-hundred and forty-eight (148) days after the school determined that two students withdrew. Again, the Audit Team did not identify the student's in question, making a more certain assessment of the exact circumstances of each student and payment difficult to determine.

The regulations instruct that, "[t]he Secretary does not consider an institution to be out of compliance . . . if the institution is cited in any audit or review report because it did not return unearned funds in a timely manner for *one or two students*." 34 C.F.R. § 668.173(c)(2) (emphasis added). Here, the Audit Team cites two (2) instances out of a sample of thirty (30) wherein TCI allegedly failed to make a timely return of funds. While the OIG's factual analysis with respect to these two students may be accurate, TCI was in material compliance with the Department's timely return of Title IV funds requirement as evidenced by the *de minimis* number of late payments in the sample.

2.3 OIG Draft Finding: TCI Incorrectly Disbursed Pell Grant Funds.

TCI RESPONSE: THE IDENTIFIED ERROR WAS AN ISOLATED INCIDENT.

Immediately after the Audit Team identified this exception, TCI supervisors discussed the finding with key senior personnel in the Registrar's Office. TCI then undertook efforts to isolate and identify the source of the alleged deficiency and determine whether it was widespread and might affect additional students. Following a thorough review of institutional documentation related to this finding, TCI determined that the problem resulted from a single instance of human error. Accordingly, TCI returned $1,013.00 to its Federal Pell Grant fund account for the student cited by the Audit Team. In addition, staff members in the Registrar's Office reviewed institutional policies and procedures in order to make certain that this problem did not recur.

Further, TCI undertook an internal file review of an additional thirty (30) student files to determine if the error could be replicated. TCI personnel were unable to

replicate the error and did not identify any similar error in any of the additional files reviewed. As a result, TCI concluded that the alleged deficiency identified by the Audit Team was truly an isolated incident and not a widespread or systemic problem. Moreover, TCI promptly took corrective action to further review policies and procedures with staff members and insure that such an error will not recur.

2.4 OIG Draft Finding: Pell Grant Data Reported Incorrectly to COD.

TCI RESPONSE: TCI HAS UPDATED COD WITH ACCURATE DATA AND IMPLEMENTED ADDITIONAL POLICIES AND PROCEDURES TO VERIFY THAT DATA IS REPORTED TIMELY AND ACCURATELY.

The OIG's position is that TCI made incorrect reports to COD for twelve (12) of 4,083 Pell Grant recipients. TCI allegedly did so because it failed to reconcile errors identified by ED Express and thus failed to update COD in a timely manner.

As an initial matter, upon learning that it had allegedly provided incorrect data to COD, TCI undertook almost immediate action to update COD with correct data. On March 19, 2007, a member of the Audit Team provided information to [redacted], TCI's current Direct of Student Financial Services, identifying nine (9) of the twelve (12) errors cited in the Draft Report. [redacted] made corrections to COD for five (5) of those student by March 26, 2007. [redacted] subsequently corrected information in COD for an additional four (4) students by March 29, 2007. Of the remaining three (3) students in question, [redacted] provided updated information to COD in December 2007. Thus, prior to the end of 2007, TCI had already updated and corrected erroneous data reported to COD and cited by the Audit Team. In addition, supplemental data needs to be updated to COD for one (1) remaining student. [redacted] has already made arrangements with the Department to resolve the issue and TCI expects to update COD data for that final student as soon as practicable. *See,* Exhibit 2.4.

Furthermore, the error rate for this particular deficiency, according to the Audit Team's own findings, is 0.3%, which falls well within Departmental compliance thresholds. *See,* 34 C.F.R. § 668.173(c)(2). The *de minimis* nature of this error rate demonstrates TCI's substantial and material compliance with the requirements as well as the fact that TCI possesses the administrative capability necessary to provide accurate and timely reports, data and updates to COD. Moreover, those errors identified by the Audit Team did not result in any overdraw(s) of federal funds because TCI relies upon its internal fiscal and student records to determine the amount of Pell funds to which an eligible student is entitled.

Nevertheless, TCI recognizes the importance of improving its internal controls and has already enhanced its capability in this area by overlaying an additional check and balance onto its systems. Under this additional procedure, TCI's Disbursement Office and TCI personnel responsible for reporting payment activity to COD periodically reconciles award year activity for consistency, accuracy and timeliness.

The Disbursement Office generates computerized payment reports based upon a date-range methodology approach that captures all upward or downward adjustment activity throughout the current and prior award years. That office then submits these reports to TCI's Director of Student Financial Services ("DSFS"), who has responsibility for reviewing, monitoring, and reconciling any discrepancies between TCI's in-house computerized payment system and COD. Consequently, if the DSFS identifies any errors or discrepancies, he or she can initiate immediate action to address the problem and correct any errors. Moreover, the DSFS is now in a better position to monitor and identify mistakes and to determine whether additional professional training related to the electronic transmission of payment data may be necessary for TCI personnel.

To date, TCI's implementation of this additional procedural check on its financial aid processes has already reaped substantial benefits. The institution achieved overwhelming success in reconciling its underlying fiscal books and records with the Department's payment and disbursement system(s) (e.g., COD) for the 2005-06 and 2006-07 fiscal award years. TCI does not anticipate any further discrepancies arising with regard to its financial reporting and reconciliation responsibilities.

2.5 OIG Recommendations.

OIG's recommendation 2.1 states that TCI should "[d]evelop, implement, and ensure that its personnel adhere to written policies and procedures for the administration of Title IV programs." TCI will continue to revise and add to its written office procedures, particularly with regard to those sections related to the administration of Title IV programs. TCI will continue to review these additions with its personnel at staff meetings convened for that purpose.

OIG's recommendation 2.2 calls for TCI to return $1,013.00 in Pell Grant funds along with applicable interest. TCI has already refunded that amount to the Department. Recommendation 2.2 also calls for the return of $5,445.00 in FFEL funds. TCI will continue to review its records and consult with the OIG and/or Departmental officials as to the refund of FFEL funds.

Recommendation 2.3 calls for TCI to identify all students for whom "TCI used an incorrect withdrawal date during the period July 1, 2004 to the present" and to perform various calculations to determine whether additional Title IV refunds are due to the Department. TCI has demonstrated that it did not use incorrect withdrawal dates because it calculated such withdrawal dates based upon its institutional policy which is compliant and which was reviewed and approved by the Department on three separate occasions.

Recommendation 2.4 calls for TCI to identify all students to whom "TCI disbursed Pell Grants for attendance in any noncredit or reduced credit remedial course . . . during the period July 1, 2004 to the present." The OIG bases its recommendation on the fact that Audit Team identified one (1) single student who improperly received Pell Grant funds based upon attendance at a non-qualifying course. As discussed in Section 2.3,

above, TCI has identified the problem as stemming from a single instance of human error, instructed staff on preventing such errors, and determined via subsequent file review that no other such errors occurred.

Recommendation 2.5 calls for TCI to verify that data is reported correctly to COD. As discussed in Section 2.4, *above*, TCI has already implemented additional policies and procedures to make certain that the institution makes timely and accurate reports to COD.

CONCLUSION

For all the reasons discussed above, TCI submits,

- that its default prevention policy:
  - did not violate the HEA or implementing regulations;
  - was reviewed by the Department on more than one occasion without any indication of concern;
  - was touted to the education community as a model plan by HESC, the agency with principal responsibility for ensuring institutional compliance with Department rules and regulations governing cohort default rates;
  - served the public interest and was more beneficial to students; and
- that its administrative withdrawal policy:
  - was consistent with law and the Department's guidance at applicable times as reflected in the FSA Handbook; and
  - was consistent with interpretations obtained from three sets of Department officials over an extended period of time.

Mr. Daniel P. Schultz
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March 12, 2008
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TCI appreciates your consideration of these comments and the opportunity to respond to this Draft Audit Report. Please feel free to contact TCI or me if you have any questions.

Sincerely yours,

Peter S. Leyton

Attachments.

cc: W. Felski
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