



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

Audit Services
Chicago/Kansas City Audit Region

August 1, 2007

Control Number
ED-OIG/A07G0012

Mr. Peter C. Mitchell
Chief Executive Officer
Vatterott College
10257 St. Charles Rock Road
St. Ann, MO 63074

Dear Mr. Mitchell:

This **Final Audit Report**, entitled *Vatterott College Omaha's Compliance with Selected Provisions of the Higher Education Act of 1965 and Corresponding Regulations*, presents the results of our audit. The objectives of the audit were to determine whether Vatterott College, Omaha, Nebraska (College), complied with the Higher Education Act of 1965, as amended (HEA), and regulations governing (1) institutional eligibility, (2) program eligibility, and (3) return of Title IV, HEA program funds. Our audit covered the period July 1, 2004, through June 30, 2005 (2004-2005 award year).

BACKGROUND

Vatterott College (Vatterott) operates 19 private career colleges in 9 states, including the college we audited, Vatterott College, in Omaha-Spring Valley, Nebraska. The corporate office is located in St. Ann, Missouri. Vatterott is accredited through the Accrediting Commission of Career Schools and Colleges of Technology (ACCSCCT).

Vatterott was founded in 1969 in St. Louis, Missouri, as Urban Technical Centers, Inc. The name was changed to Vatterott in 1989. Wellspring Capital Management LLC purchased Vatterott in January 2003.

According to the National Student Loan Data System (NSLDS), the College received funding from the Federal Pell Grant (Pell) and William D. Ford Federal Direct Loan (FDL) programs for the 2004-2005 award year as follows:

Pell	\$1,249,218	490 recipients
FDL	<u>3,516,658</u>	542 recipients
Total Funding	\$4,765,876	

The total number of unduplicated recipients of Title IV, HEA program funding during the 2004-2005 award year was 610.

AUDIT RESULTS

The College complied with the requirements governing institutional eligibility and program eligibility. However, the College did not comply with the requirements governing the return of Title IV, HEA program funds. As a result, the College returned to the Title IV, HEA programs \$37,964 less than it should have returned during the 2004-2005 award year.

In its comments to the draft report, the College concurred that it did not calculate the correct amount of Title IV, HEA program funds earned by students. However, the College did not concur with the liability we calculated, that it determined students' withdrawal dates in an untimely manner, or that it returned Title IV, HEA program funds in an untimely manner. After reviewing the College's comments, we revised the liability amount and revised the recommendations.

The College's comments are summarized at the end of the finding, and the text of the comments is included as an attachment to the report. Because the appendices to the College's comments were voluminous, we have not included them in the attachment (copies of the appendices are available on request).

FINDING - The College Did Not Comply with the Requirements Governing the Return of Title IV, HEA Program Funds

During the 2004-2005 award year, the College did not (1) calculate the correct amount of Title IV, HEA program funds that students earned, (2) determine students' withdrawal dates in a timely manner, and (3) return Title IV, HEA program funds in a timely manner.

Incorrect Calculation of the Amount to Return to the Title IV, HEA Programs

The College did not use the correct withdrawal date to determine the amount of Title IV, HEA program funds that students earned. We reviewed the records for all 222 students who the College identified as having dropped out during the 2004-2005 award year. The College did not use the correct withdrawal date for 105 of the 222 students.

The College is required to take attendance by the State of Nebraska.¹ According to 34 C.F.R. § 668.22(b)(3)(i),² “[a]n institution is required to take attendance if an outside entity . . . has a requirement, as determined by the entity, that the institution take attendance.” Under 34 C.F.R. § 668.22(b)(1), the withdrawal date for a student who withdraws from an institution that is required to take attendance “is the last date of academic attendance as determined by the institution from its attendance records.”

The College did not use the correct withdrawal date to determine the amount of Title IV, HEA program funds that students earned. Though the College did take attendance, school officials stated that they believed the College was not required to take attendance, and the College’s policy for determining the withdrawal date was based on the requirements for an institution that is not required to take attendance.

According to the College’s policy, the withdrawal date was (1) the date of the student’s written notification; (2) the date related to circumstance beyond the student’s control; (3) the midpoint of the payment period; or (4) the student’s last date of attendance. We were told by the College’s Regional Financial Aid Director that, for unofficial withdrawals, the College used the midpoint to calculate a student’s refund if the student left before the midpoint, and that the College used the student’s actual last date of attendance if the student left after the midpoint. The Regional Financial Aid Director also said that, for official withdrawals, the College used the date of the student’s notification. Our audit testing confirmed the policy described by the Regional Financial Aid Director.

As a result of using incorrect withdrawal dates, the College incorrectly calculated the amount of Title IV, HEA program funds that students earned. Of the 105 students for whom the College used incorrect withdrawal dates, the College incorrectly calculated the amount of Title IV, HEA program funds that 86 students earned and returned \$37,964 less than it should have returned for those students.

Untimely Determination that Students Withdrew

The College did not determine that students withdrew within 14 days of the students’ last dates of academic attendance. The College exceeded the 14-day period for 45 of the 67 students for whom Title IV, HEA program funds were returned. For 3 students, the College determined the student’s withdrawal date more than 24 days after the student’s last date of attendance.

Dear Colleague Letter GEN-04-03 Revised (November 2004) states

Except in unusual instances, at an institution that is required to take attendance, [the Department of Education] would expect that the date of the institution’s determination that the student withdrew would be no later than 14 days after the student’s withdrawal date—the last date of academic attendance as determined by the institution from its attendance records.

¹ Title 92 of the Nebraska Administrative Code, Chapter 41, 004.14F1, states, “The school shall maintain accurate records of attendance to assist in establishing the last day of attendance of any student enrolled at the school.”

² C.F.R. citations in this report are from the July 1, 2004, edition.

The College's Campus Director stated that the College did not make timely determinations because its policy was based on the understanding that it was not required to take attendance.

Untimely Return of Title IV, HEA Program Funds

The College did not meet the 30-day requirement for the return of Title IV, HEA program funds. The College returned funds by depositing them in a bank account, but exceeded the 30-day limit for 11 of 67 students for whom Title IV, HEA program funds were returned. For 7 students, the College returned the funds more than 40 days after the College made its determination that the student had withdrawn.

According to 34 C.F.R. § 668.22(j)(1), “[a]n institution must return the amount of title IV funds for which it is responsible . . . no later than 30 days after the date of the institution’s determination that the student withdrew” Pursuant to 34 C.F.R. § 668.173(b)(1), “an institution returns unearned title IV, HEA funds timely if . . . [t]he institution deposits or transfers the funds into the bank account it maintains under §668.163 no later than 30 days after the date it determines that the student withdrew”

To be compliant with refund reserve standards provided in 34 C.F.R. § 668.173(a)(3), the College must return funds in a timely manner. Under 34 C.F.R. § 668.173(c)

An institution does not comply with the reserve standard under §668.173(a)(3) if, in a compliance audit conducted . . . by the Office of the Inspector General . . . the auditor or reviewer finds . . . [i]n the sample of student records audited or reviewed that the institution did not return unearned title IV, HEA program funds within the timeframes described in paragraph (b) of this section for 5% or more of the students in the sample.

If an institution does not meet this compliance threshold for either of its two most recently completed fiscal years, it must submit an irrevocable letter of credit to the Department of Education (Department) as described in 34 C.F.R. § 668.173(d). Because the College exceeded the 30-day limit for 11 of 67 of students (16.4 percent) during the award year (July 1, 2004, through June 30, 2005), the College also might have exceeded the compliance threshold for its corresponding fiscal year (January 1, 2005, through December 31, 2005).

The College's Campus Director stated that the untimely return of Title IV, HEA program funds resulted from human oversight. As a result of the College's not returning \$9,177 in Title IV, HEA program funds in a timely manner, the Department incurred unnecessary interest and special allowance costs.³

³ We did not estimate the actual loss to the Department for the 11 returns of Title IV, HEA program funds that the College failed to make in a timely manner.

Recommendations

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

- 1.1 Return \$37,964 to the Department;
- 1.2 Review records for all students who dropped out during the 2002-2003, 2003-2004, and 2005-2006 award years; use the last date of academic attendance as the withdrawal date and recalculate the amounts of Title IV, HEA program funds that students earned; and return the unearned amounts to the Department;
- 1.3 Revise its policy for returning Title IV, HEA program funds to ensure it uses the correct withdrawal date in determining the amount of Title IV, HEA program funds that students earned;
- 1.4 Develop and implement policies and procedures that provide reasonable assurance that it makes a withdrawal determination within 14 days of the student's last date of attendance;
- 1.5 Develop and implement policies and procedures that provide reasonable assurance that it will return Title IV, HEA program funds within 45 days after the date it determines that the student withdrew;
- 1.6 Require the College to either submit a letter of credit, as required under 34 C.F.R. § 668.173(d), or provide documentation showing that, for each of the two most recent fiscal years, it returned unearned Title IV, HEA program funds within the timeframes described in 34 C.F.R. § 668.173(b) for more than 95 percent of its students eligible for such a return of funds; and
- 1.7 Have its independent public accountant, as part of the next scheduled audit, confirm that the College's performance of Recommendations 1.2 through 1.5 is in compliance with applicable requirements in the HEA and regulations.

College's Comments

The College concurred that it did not use the correct withdrawal date to calculate the amount of Title IV, HEA program funds earned by students and said that it has revised its policy for returning Title IV, HEA program funds. However, the College

1. Disagreed with the liability amount we calculated and reported in the draft of this report. It estimated its liability as \$32,179, stating that
 - Some of our calculations did not include "funds that could have been disbursed,"
 - Some of our calculations did not use the correct number of days,
 - Two calculations did not use the correct institutional costs amount,
 - One calculation did not use the correct last date of attendance, and

- Our calculations did not consider Title IV, HEA program funds already returned.
- 2. Asked us to identify cases in which it provided refunds to students in excess of our recalculated amount and to net those over-refunds against its under-refunds, reducing the amount of the College's repayment liability.
- 3. Disagreed that the records for the 2002-2003 award year should be reviewed, because more than three years have passed, and the record retention requirements for those records have expired.
- 4. Disagreed that it is required to determine that students withdrew within 14 days of the students' last date of academic attendance. The College stated

The College believes that the "expectation" referenced in the Dear Colleague Letter is not the correct time period to apply, because it is inconsistent with the applicable Department of Education regulation, and the regulation is the controlling legal authority. The regulation, found at 34 C.F.R. 668.22(j)(2), states that an institution may take until 30 days after the earliest of the following dates to determine a student's withdrawal date: (1) the end of the payment period or period of enrollment, as appropriate, (2) the end of the academic year in which the student withdrew, or (3) the end of the educational program from which the student withdrew.

- 5. Disagreed that it made untimely refunds because, in most cases, the 30-day timeframe for returning funds begins 30 days after the end of the payment period. Using this timeframe as its criteria, the College determined it returned Title IV, HEA program funds late for only one student.
- 6. Asked us to revise Recommendation 1.5 from 30 days to 45 days, to reflect the timeframe established by the Higher Education Reconciliation Act of 2005 (HERA), which was effective July 1, 2006.
- 7. Advised us that our recommendation to request a letter of credit based on requirements in 34 C.F.R. § 668.173(d) was not necessary because the College already has a letter of credit with the Department that is adequate to meet this requirement.
- 8. Disagreed with our recommendation that FSA consider fine proceedings against the College, stating that only a portion of its students received incorrect refunds and that its incorrect refunds were the result of a single mistake.

OIG's Response

We have made revisions to the draft report we provided to the College. Our responses to each of the College's comments are provided below:

1. We reviewed our calculations that the College did not agree with the amount required to return to the Title IV, HEA programs, and, in some cases, we have revised the liability amount included in our recommendation. We agree with the College that
 - In some cases, our calculations did not include funds that could have been disbursed: we agreed if the origination record provided had a dollar amount for the line "Loan Amount Approved," but we did not agree if the origination record provided had zero for this line.
 - In all cases noted by the College, our calculations did not include the correct number of days. Most of the differences occurred because we did not exclude the Thanksgiving break, which is a scheduled break of 5 consecutive days.
 - In both cases noted by the College, our calculations used the incorrect institutional costs.
 - In one case noted by the College, our calculation used the incorrect last date of attendance.
 - In all cases noted by the College, the liability associated with individual students should be offset by Title IV, HEA program funds already returned. The College performed two refund calculations when students withdrew, the Department's and its own. The College returned Title IV, HEA program funds under both calculations. The College's reference to "Title IV funds already returned" are Title IV funds returned under the College's refund policy.
2. Our recalculations showed that the College over-refunded \$15.75 for one student. We do not agree that over-refunds can be netted against under-refunds, and we have not reduced our recommendation by this amount. Both over- and under-refunds are considered improper payments, and a return of funds for one student does not affect the need to return funds to the account of another student.
3. We do not agree that the requirement for the College to maintain records for the 2002-2003 award year has expired. Our letter announcing this audit to the College, dated March 13, 2006, stated our intent to audit the College's "administration of Title IV funds for the 2002-2003, 2003-2004, and 2004-2005 award years." Under 34 C.F.R. § 668.24(e)(3), the College is required to maintain records for the 2002-2003 award year until our audit is resolved:

An institution shall keep all records involved in any loan, claim, or expenditure questioned by a title IV, HEA program audit, program review, investigation, or other review until the later of—

 - (i) The resolution of that questioned loan, claim, or expenditure; or
 - (ii) The end of the retention period applicable to the record.
4. We do not agree with the College's interpretation of the regulatory requirement, and we have not changed our finding. Because the College is required to take attendance, it must use that

information when determining a student has withdrawn under the requirements of 34 C.F.R. § 668.22(1)(3):

The “date of the institution's determination that the student withdrew” is . . . [f]or a student who did not provide notification of his or her withdrawal to the institution, the date that the institution becomes aware that the student ceased attendance

The preamble in the Notice of Proposed Rulemaking for these regulations, published on August, 6, 1999 (64 FR 43036), reflects that the 30-day timeframe was only intended for schools that are not required to take attendance, to provide a reasonable timeframe for an institution that “may not know about drop-outs until the institution checks its records at the end of an academic period.”

Because the College is required to take attendance, it knows when a student has stopped attending class, unlike an institution that is not required to take attendance. It would be unreasonable for the College to ignore its attendance records for the purpose of delaying its return of Title IV, HEA program funds. Dear Colleague Letter GEN-04-03 allows the date of the College's determination that a student has withdrawn to be up to 14 days after the student's withdrawal date, unless there are “unusual circumstances.” The College has not documented any unusual circumstances that would support its need to make a determination after this 14-day period.

5. We do not agree that the College made refunds in a timely manner, and we have not changed our recommendation. Under 34 C.F.R. § 668.22(j)(1), “[a]n institution must return the amount of title IV funds for which it is responsible . . . no later than 30 days after the date of the institution’s determination that the student withdrew” The 30-day timeframe does not begin at the end of the payment period, as the College asserts; it begins on the date of the College’s determination that the student withdrew. Our calculation of the timeliness of the College’s refunds is based on a 30-day timeframe that begins on the actual date the College determined the student withdrew.
6. We agree that the HERA changed the timeframe for return of funds from 30 days to 45 days, and we have revised our recommendation.
7. We have not revised our recommendation. We have confirmed with the Department that Vatterott already has a letter of credit that currently is sufficient to meet this requirement; however, this letter of credit expires on October 31, 2007, and will not be sufficient to meet the requirement after that date.
8. We agree that, for the most part, the findings in this report were the result of a single error, specifically, the College's failure to use regulations appropriate for an institution required to take attendance. Based on this and our recalculation of the liability amount, we have removed from the report our recommendation that a fine be considered.

OBJECTIVES, SCOPE, AND METHODOLOGY

The initial objectives of our audit were to determine, for the period July 1, 2004, through June 30, 2005, whether the College complied with the law and regulations governing (1) institutional eligibility; (2) program eligibility; (3) return of Title IV, HEA program funds; (4) FSEOG, FDL, and Pell disbursements; and (5) student eligibility. After performing preliminary fieldwork, we refined the audit objectives to focus on (1) institutional eligibility, (2) program eligibility, and (3) return of Title IV, HEA program funds.

To achieve our objectives, we

1. Reviewed selected provisions of the HEA, regulations, and FSA guidance applicable to the audit objectives;
2. Identified the amount of Title IV, HEA program funds (\$4,765,876) the College received on behalf of 610 students during the 2004-2005 award year;
3. Reviewed the College's history, organization, and catalogs;
4. Reviewed *Vatterott College, Compliance Attestation Examination of the Title IV Student Financial Assistance Programs at Omaha, Nebraska* for the years ended December 31, 2003 and 2004, prepared by Almich & Associates, Certified Public Accountants, Irvine, California;
5. Obtained and reviewed evidence, including state authorization, institutional accreditation, and Department certification, supporting the College's institutional eligibility;
6. Obtained and reviewed evidence, including program participation agreements, program descriptions in catalogs and applications, and program approval by a recognized accrediting agency, supporting the eligibility of the College's programs;
7. Reviewed written policies and procedures and interviewed College officials to gain an understanding of the College's internal control structure, policies, procedures, and practices applicable to the administration of its Title IV, HEA programs;
8. Reviewed student files (academic and financial aid) and attendance records for 222 students the College identified as having dropped out during the 2004-2005 award year to determine whether it used the correct withdrawal date; and
9. Reviewed the records for 67 students for whom the College returned Title IV, HEA program funds to determine if it (a) met the timeframe for the return of Title IV, HEA program funds and (b) made the withdrawal determination no later than 14 days after the student's withdrawal date.

We also relied, in part, on data provided to us by the College from its computer system. We assessed whether the data were reliable by comparing the data with the names, social security numbers, enrollment data, withdrawal dates (if applicable), and other information on paper documents contained in the students' financial aid files. Based on these comparisons, we concluded that the College-provided data were sufficiently reliable for the purposes of our audit.

We performed our audit work at the College's office in Omaha, Nebraska, and our Chicago/Kansas City offices from March 2006 through October 2006. We discussed the results

of our audit with College officials on October 30, 2006, and provided them with a draft of this report on December 28, 2006. Our audit was performed in accordance with generally accepted government auditing standards appropriate to the scope of the audit described above.

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 will be made by the appropriate Department of Education Officials.

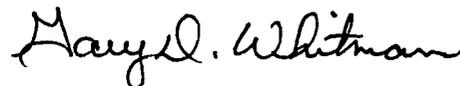
If you have any additional comments or information that you believe may have a bearing on the resolution of this audit, you should send them directly to the following Education Department official, who will consider them before taking final Departmental action on this audit:

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

It is the policy of 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,



Gary D. Whitman
Acting Regional Inspector General
for Audit

Attachment

Attachment: Vatterott College Comments to Draft Report



CORPORATE OFFICE
10257 St. Charles Rock Rd. • St. Ann, MO U.S.A. 63074
(314) 427-1333 • Fax: (314) 427-1337
www.vatterott-college.edu

January 29, 2007

Mr. Richard J. Dowd
Regional Inspector General for Audit
U. S. Department of Education
Office of Inspector General
500 West Madison Street, Suite 1414
Chicago, IL 60661

Re: Audit Control Number ED-OIG/A07G0012

Dear Mr. Dowd:

This is in response to the Draft Audit Report issued by your office for Vatterott College – Omaha Campus, dated December 28, 2006 (Draft Report). The Draft Report was provided to the institution in advance of the final version to seek written comments regarding the finding and recommendations. As directed by the Draft Report, in the section entitled *Administrative Matters*, this response will address each finding and recommendation contained in the Draft Report, stating our concurrence or disagreement with each item and the corresponding corrective action planned or alternative corrective action proposed.

FINDING – The College Did Not Comply with the Requirements Governing the Return of Title IV, HEA Program Funds

The Draft Report states: “During the 2004-2005 award year, the College did not (1) calculate the correct amount of Title IV, HEA program funds that students earned, (2) determine students’ withdrawal dates in a timely manner, and (3) return Title IV, HEA program funds in a timely manner.”

Finding (1) – Incorrect Calculation of the Amount to Return to the Title IV, HEA Programs

The College concurs that it used the incorrect withdrawal date to calculate the amount of Title IV funds earned by students who withdrew from the institution. As stated in the Draft Report, this error occurred due to the requirement found in the Nebraska Administrative Code that requires schools to take attendance. Based on this provision in state law, the Title IV regulations require the College to calculate refunds of Title IV funds as a school that is “required to take attendance.”

School Locations

Joplin, MO • Kansas City, MO • O’Fallon, MO • St. Ann, MO • St. Joseph, MO • Springfield, MO • Sunset Hills, MO
Quincy, IL • Des Moines, IA • Omaha, NE • Oklahoma City, OK • Tulsa, OK • Wichita, KS • Cleveland, OH • Memphis, TN
Austin Business College • L’École Culinaire • Court Reporting Institute of Dallas

- 2 -

As such, the College agrees that it should have used the student's actual Last Date of Attendance (LDA), rather than the 50% point of the term, to calculate the amount of Title IV program funds that the student earned.

However, the College disagrees with the Draft Report's summary of the results and the amount of Title IV program funds to be returned for the 86 students whose calculations were cited. The College has carefully reviewed the Return to Title IV calculation for those 86 students, and has identified 21 instances where it disagrees with the revised calculations performed by the audit team during the audit and reflected in the Draft Report.

The following is a summary of the reasons the College disagrees with the calculation for the 21 students in question (some students had more than one of these reasons).

1. There are 11 students whose loans were originated prior to their LDA. In the 2004-2005 award year, if the loan was originated prior to the LDA, the loan funds could be included in the R2T4 calculation as "funds that could have been disbursed." It appears the audit team did not include these amounts because there was not a signed promissory note in the student's file. However, during the year being audited, there was no requirement that there be a signed promissory note in the student's file. See the attached excerpt from Dear Colleague Letter GEN-05-16, which clearly explains the effective date for the requirement of needing a signed promissory note as October 27, 2005, attached as Appendix A to this response.
2. There are 9 students where the incorrect number of days was used by the audit team in calculating the amount of Title IV aid earned. Most of these errors occurred as a result of not excluding the Thanksgiving holiday period from the number of days in the payment period. Because the Thanksgiving break was a scheduled break of 5 consecutive days in length (Wednesday through Sunday), it can be excluded from the total number of days in the payment period, under ED's regulations at 34 C.F.R. 668.22 (f)(2)(i). For other students, it appears the audit team used an incorrect date for the start date of the term. The result in each of these cases is an increase in the amount of Title IV aid earned by the student.
3. There are 2 students for whom the audit team used the incorrect institutional costs (tuition and fees) in the R2T4 calculation.
4. There is 1 student where the audit team used an incorrect LDA, based on the College's attendance records.

The spreadsheet included with this response (Appendix B) identifies with a yellow highlight each student where the school's recalculation of the amount of Title IV funds to be returned differs from the audit team's calculation of the R2T4 amount. In the next column of the spreadsheet (Reason) is a code linking each of those 21 students to one or more of the reasons described above, using the following legend:

- 3 -

L – Loan origination before LDA

D – Incorrect number of days used for payment period

C – Incorrect institutional charges used

A – Incorrect LDA used

Supporting documentation for each of these 21 students is included as Appendix C.

In addition, the Draft Report did not take into consideration Title IV funds already returned by the College for 30 students. Copies of these students' ledger cards are also included in Appendix C. These amounts that have already been returned are identified on the Appendix B spreadsheet and highlighted in green (green highlighted figure includes Title IV funds returned as a result of the original R2T4 calculation, plus these additional Title IV funds returned).

Taking into consideration the corrected amount of Title IV funds earned on the 21 students described above, and the additional amounts already returned to the Title IV programs for the 30 students described above, the College believes that the total liability figure stated in the Draft Report is overstated by \$21,184, and should be reduced to \$32,179.

Note: The revised amount to be returned by the College for each student, as recalculated by the College, is the last column on the Appendix B spreadsheet and is highlighted in purple. There was one student identified during the College's review where the error we found increased the amount of Title IV funds to be returned (due to the audit team using an incorrect LDA for the student). The corrected amount for that student is highlighted in red in the last column of the Appendix B spreadsheet.

The College would also like to ask the audit team whether they identified any students during their audit work for whom the College OVER-refunded Title IV funds when students withdrew. If there were any such over-refunds, the College requests that this be stated explicitly in the final audit report, and that those amounts be netted against the under-refunds, to reduce the College's repayment liability.

Finding (2) – Untimely Determination that Students Withdrew

The College disagrees with the finding in the Draft Report that the College did not timely determine the date of withdrawal for 45 of the 67 students for whom Title IV program funds were returned. The Draft Report bases its finding on Dear Colleague Letter GEN-04-03 Revised (November 2004), in which the Department expressed an "expectation" that an institution that is required to take attendance would determine a student's withdrawal date no later than 14 days of the student's last date of academic attendance.

The College believes that the "expectation" referenced in the Dear Colleague Letter is not the correct time period to apply, because it is inconsistent with the applicable Department of Education regulation, and the regulation is the controlling legal authority. The regulation, found at 34 C.F.R. 668.22(j)(2), states that an institution may take until 30 days after the earliest of the

- 4 -

following dates to determine a student's withdrawal date: (1) the end of the payment period or period of enrollment, as appropriate, (2) the end of the academic year in which the student withdrew, or (3) the end of the educational program from which the student withdrew. In most cases, the earliest of these dates will be the end of the payment period/period of enrollment, and in some cases the earliest date will be the end of the academic year. We believe this is the appropriate time period by which the audit team should measure the timeliness of the College's determination of students' withdrawal dates.

The College has reviewed the files of each of the 45 students for which the Draft Report indicates the institution was late in determining the student's withdrawal date, and has applied the correct time period from the regulations. In doing so, we have determined that for 44 of the 45 students, the College did determine the student's withdrawal date in a timely manner. Attached as Appendix D is a listing of each of these 45 students, the date of the time period used (e.g., end of payment period, end of academic year, etc.), and the date of the College's determination that the student had withdrawn. In only one case did the College not determine the student's last date of attendance by the deadline specified in the regulations.

Finding (3) – Untimely Return of Title IV, HEA Program Funds

The College disagrees with the finding that Title IV program funds were returned after the 30-day timeframe for 11 students. As noted above, the 30-day timeframe for returning funds begins with the date of determination of the student's withdrawal, and the time period allowed to make that determination is specified in the regulation cited above. Based on the College's actual date of determination for each student, as permitted by the regulations, and counting 30 days from that date of determination, the College returned Title IV funds late for only 1 student. Attached as Appendix E is a listing of the 11 students cited by the audit team, the date of determination of each student's withdrawal, the 30 day deadline based on that date of determination, and the date the funds were returned.

Recommendations

1.1 Return \$53,363 to the Department.

The College disagrees with the amount to be returned to the Department based on the facts set forth in response to Finding (1). The recommendation should be modified to state the amount to be returned as \$32,179.

1.2 Review records for all students who dropped out during the 2002-2003, 2003-2004, and 2005-2006 award years; using the last date of academic attendance as the withdrawal date, recalculate the amounts of Title IV, HEA program funds that students earned; and return the unearned amounts to the Department.

The College disagrees with this recommendation. The recommendation includes a recommendation that the College review records for the 2002-2003 award year, but the

- 5 -

Department's record retention requirement for Title IV records has now expired for that year. The College requests that this recommendation be modified to recommend the College only review records for students who withdrew during the 2003-2004 and 2005-2006 award years.

1.3 Revise its policy for returning Title IV, HEA program funds to ensure it uses the correct withdrawal date in determining the amount of Title IV, HEA program funds that students earned.

The College concurs with this recommendation and enacted new procedures on July 13, 2006. The new procedures are based on the understanding that according to the Nebraska Administrative Code, the College is required to record attendance on all students. The College now uses the actual last date of attendance for the withdrawal date in all instances.

1.4 Develop and implement policies and procedures that provide reasonable assurance that it makes a withdrawal determination within 14 days of the student's last date of attendance.

The College disagrees with this recommendation because it is contrary to the time period allowed by the regulations for making the determination of a student's withdrawal, as discussed in response to Finding (2) above.

1.5 Development and implement policies and procedures that provide reasonable assurance that it will return Title IV, HEA program funds within 30 days after the date it determines that the student withdrew.

The College concurs with the recommendation that refunds be made in accordance with the timeframe specified in the Higher Education Act and the Department of Education's regulations. However, in February 2006, as part of the Higher Education Reconciliation Act, the timeframe by which Title IV funds must be returned for a student who withdraws was changed from 30 days to 45 days from the Date of Determination. This change was effective July 1, 2006. The College suggests the recommendation be modified to reflect the current requirement of 45 days instead of 30 days.

1.6 Submit a letter of credit, as required under 34 C.F.R. § 668.173(d), or provide documentation showing that, for each of the two most recent fiscal years, it returned unearned Title IV, HEA program funds within the timeframes described in 34 C.F.R. § 668.173(b), for 5 percent or more of its students eligible for such a return of funds.

The 2004-2005 award year reviewed during this audit overlaps the most recent annual audit performed by the College's CPA. Late refunds were a finding in that audit and the requirement to submit a letter of credit due to late refunds was also recommended. However, due to the parent company's composite score under the Department's financial responsibility standards, the College's parent company has already posted a letter of credit in the amount of \$8,236,310.00, covering all of its colleges. In the Final Audit Determination Letter on that compliance audit, the Department stated that the current letter

- 6 -

of credit satisfies any requirement for a letter of credit due to late refunds. Therefore, the College believes this recommendation is not necessary, and requests that it be removed and replaced with an acknowledgement that a larger letter of credit is already in place.

In addition, we note that the recommendation as stated in the Draft Report inverted the percentage stated. Since the recommendation is for the college to substantiate the number of refunds returned within the required timeframe, rather than those "not returned timely," the percentage stated should be "at least 95 percent" rather than "5 percent or more."

Finally, the Draft Report states on page 5 that the OIG will recommend to the Chief Operating Officer for FSA that she consider fine proceedings against the College due to the College's failure to return the correct amount of Title IV funds "for all students who withdrew" from the institution. First of all, it is not correct that the College failed to return the correct amount of funds for all students who withdrew. Only a portion of the students received incorrect refunds, and this sentence implies that refunds were calculated wrong for all students. More importantly, however, the College requests that the fine recommendation be removed entirely from the final audit report. The College made a single mistake, namely not understanding that Nebraska state law made the College a school that was "required to take attendance" under the Title IV regulations. The College did not have any other problems with calculating refunds correctly, and the audit team did not identify any other problems with calculating refunds. Since there were no other problems identified with the College's calculation of refunds, the College does not believe that its one mistake should give rise to any fine by the Department. Moreover, the College cooperated fully with the audit team throughout the lengthy audit process and provided all information requested by the audit team, so the College does not believe there is anything related to its conduct during the audit that should give rise to a fine. The College thus requests that this additional recommendation be removed when the final audit report is issued.

This concludes the College's response to the Draft Report. If you have any questions about anything in this response or the attached appendices, please contact our Corporate Director of Financial Aid, Mark Fowler.

Sincerely,



Peter C. Mitchell
Chief Executive Officer