



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

Audit Services
New York Audit Region

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Dr. Bernard Lander
President
Touro College
President's Office
27-33 West 23rd Street
New York, NY 10010-4202

Dear Dr. Lander:

This **Final Audit Report**, entitled *Touro College's Title IV, Higher Education Act Programs, Institutional and Program Eligibility*, presents the results of our audit. The purpose of the audit was to determine if Touro College (Touro) complied with Title IV, Higher Education Act of 1965, as amended (HEA), programs (Title IV) institutional and program eligibility requirements. Our original review covered the period July 1, 2005, through June 30, 2006. Because our work indicated that deficiencies existed outside of the original audit period, we extended our review to include the period July 1, 2002, through June 30, 2005.

BACKGROUND

Touro was established in 1970 as a private, not-for-profit institution of higher and professional education located in New York, New York. Touro offers undergraduate programs leading to associate and bachelor degrees, and graduate programs leading to master degrees. It operates professional schools, including a Law School, a College of Health Sciences, a College of Osteopathic Medicine, a College of Pharmacy, and a College of Education. Touro is licensed to operate in the states of New York, California, Nevada, and Florida.¹ Touro operates 31 additional locations in New York, four additional locations in California and Nevada, one additional location in Florida, and four additional locations in Israel, Germany, and Russia.

The Middle States Commission on Higher Education (Middle States) accredited Touro and all of its instructional locations located in New York, California, Nevada, Germany, Israel, and Russia.

¹ The names of the respective state licensing agencies are the New York State Education Department and the University of the State of New York, the State of California Department of Consumer Affairs and the Bureau for Private Postsecondary and Vocational Education, the Nevada Commission on Postsecondary Education, and the Florida Department of Education Commission for Independent Education.

On June 25, 2004, Middle States informed Touro that Touro University International (TUI), Touro's online distance education program, established in 1998, and located in Cypress, CA,² and Touro University California (TUC), established in 1997, and located in Vallejo, CA, along with its Nevada branch located in Henderson, NV,³ were considered separately accreditable institutions, and directed Touro to seek accreditation for these locations from the Accrediting Commission for Senior Colleges and Universities of the Western Association of Schools and Colleges (WASC). On February 28, 2005, WASC became the accrediting agency for TUI and TUC, along with TUC's Nevada branch.⁴

On March 3, 1999, the U.S. Department of Education's (ED) Federal Student Aid (FSA) granted a provisional Program Participation Agreement (PPA) to Touro after an FSA program review found several deficiencies, including late refunds. When the provisional PPA expired on December 31, 2001, FSA placed Touro in a "month-to-month" extension of its provisional certification status, which was in effect until April 20, 2008. The total amount of Touro's Title IV awards increased from \$64,100,041 in the 2002-2003 award year to \$103,075,246 in the 2005-2006 award year (a 61 percent increase). During our audit period, while under a month-to-month extension of its provisional certification status, Touro was approved to award \$335,734,960 in Title IV funds to students as shown below.

<i>Award Year</i>	<i>Title IV Amounts</i>
2002-2003	\$ 64,100,041
2003-2004	78,968,330
2004-2005	89,591,343
2005-2006	103,075,246
Total	\$ 335,734,960

On September 28, 2007, FSA approved six of the nine ineligible additional locations cited in Finding 1 below, (Office of Postsecondary Education ID (OPE ID) Numbers 01014234, 01014239, 01014240, 01014241, 01014242, and 01014248)⁵ as additional locations eligible to participate in Title IV. In addition, on March 6, 2008, FSA approved one of the nine ineligible additional locations cited in Finding 1 (OPE ID Number 01014233) as an additional location eligible to participate in Title IV. Lastly, on July 11, 2008, FSA approved the last two of the nine ineligible additional locations cited in Finding 1 (OPE ID Numbers 01014243 and 01014245) as branch campuses eligible to participate in Title IV.

² On October 31, 2007, Touro sold TUI for \$190 million to Summit Partners, a private-equity firm located in Palo Alto, CA, and Boston, MA.

³ Touro and the Accrediting Commission for Senior Colleges and Universities of the Western Association of Schools considered the Henderson, NV, location to be a branch campus of TUC.

⁴ Touro College Los Angeles (TCLA) is Touro's other California location. TCLA opened in 2005 after the transfer of accreditation of TUI and TUC, and has always been accredited by WASC.

⁵ The OPE ID Numbers for the ineligible additional locations in this report reflect the numbers assigned on the Electronic Application for Approval to Participate in Federal Student Financial Aid Programs during the time of our audit. These numbers have changed since then; please see Attachment B for the new numbers.

AUDIT RESULTS

Touro did not fully comply with Title IV institutional and program eligibility requirements. Specifically, Touro disbursed approximately \$36,026,364 in Title IV funds to 4,310 students who attended nine ineligible additional locations that FSA had not approved as eligible to participate in the Title IV programs. Touro also disbursed \$17,825,406 to 1,927 students who attended TUI,⁶ which Touro reported to FSA as an additional location. However, Touro provided documentation dated March 29, 2000, that FSA did not consider TUI an additional location because its students did not physically attend classes at the address listed for TUI. Therefore, Touro did not need prior approval before disbursing Title IV funds to students attending TUI. Touro never applied to FSA for approval and participation of TUI as a separate institution or as a branch campus, even though Middle States informed Touro that it considered TUI to be a separate accreditable institution on June 25, 2004. FSA should have considered TUI as a branch campus or separate institution. Furthermore, for the award years 2002-2003 through 2004-2005, Touro did not keep adequate records to account for Title IV funds disbursements to only eligible additional locations.

We provided a draft of this report to Touro for review and comment on February 26, 2008. In Touro's comments to the draft report, dated May 20, 2008, Touro did not concur with the findings and recommendation 1.1. Based on Touro's comments, we modified Finding 1 and recommendation 1.1. Although Touro did not comment on the issue regarding TUI, we further clarified our position and modified recommendation 1.3. For the other recommendations, Touro did not specifically indicate concurrence or disagreement, but we updated recommendation 2.2 for clarification. Touro'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 Touro's comments is included as Attachment C to this report. All personally identifiable information mentioned in Touro's comments was replaced with bracketed text. Because of the voluminous nature of the exhibits attached to Touro's comments and the personally identifiable information within, we have not included them in Attachment C. Copies of the exhibits to Touro's comments, less the personally identifiable information, are available on request.

⁶ Certain students were counted more than once in the total because they were enrolled in multiple school years. All student totals in this report may include students who are counted more than once.

FINDING NO. 1 – Touro Disbursed Approximately \$36,026,364 in Title IV Funds to Students Who Attended Ineligible Additional Locations

Touro Disbursed Title IV Funds to Students in Nine Ineligible Additional Locations

Touro disbursed approximately \$36,026,364 in Title IV funds to 4,310 students who attended nine ineligible locations.⁷ Based on review of data from FSA’s Postsecondary Education Participants System (PEPS) and the Electronic Application for Approval to Participate in Federal Student Financial Aid Programs (EAPP), and interviews with FSA officials, we found that while on a month-to-month extension of its provisional certification status since 2002, Touro added 17 additional locations through the EAPP. Although Touro reported these locations on the EAPP, it did not provide any documentation to demonstrate the additional locations were approved by FSA as eligible additional locations to receive Title IV funds. Since Touro was under a month-to-month extension of its provisional certification status, Touro was not authorized to disburse any Title IV funds to students attending any new additional locations without express approval of the additional locations from FSA.

According to 34 C.F.R. § 600.20(c)⁸—

A currently designated eligible institution that wishes to expand the scope of its eligibility and certification and disburse title IV, HEA Program funds to students enrolled in that expanded scope must apply to the Secretary and wait for approval to—

(1) Add a location at which the institution offers or will offer 50 percent or more of an educational program if . . .⁹

(i) The institution participates in the title IV, HEA programs under a provisional certification

Pursuant to 34 C.F.R. § 600.21(a), an eligible institution must report to the Secretary of Education (Secretary) no later than 10 days after changing its establishment of an accredited and licensed additional location at which it offers, or will offer, 50 percent or more of an educational program if the institution wants to disburse Title IV funds to students enrolled at that location. In addition, 34 C.F.R. § 600.20(f)(3) provides that if an institution participates in the Title IV programs under a provisional certification and is required to apply for approval of a new location, that institution may not disburse Title IV funds to students at the new location before receiving approval from the Secretary.

⁷ Of the 4,310 students, 3,320 students also attended classes at approved additional locations. We identified 950 of these students who exclusively attended approved, eligible locations for at least one of the three semesters in the award years we reviewed.

⁸ Unless otherwise specified, all C.F.R. citations are to the July 1, 2002 volume.

⁹ “Will offer 50 percent or more of an educational program” refers to the intention to offer, in the future, 50 percent of a legally authorized postsecondary program of organized instruction or study that leads to an academic, professional, or vocational degree, certificate, or other recognized educational credential.

Of the 17 additional locations Touro reported through the EAPP, nine were ineligible because they offered, or intended to offer, 50 percent of an educational program, and received Title IV funds.¹⁰ Based on our analysis of student data, we identified 4,310 students who attended the nine ineligible additional locations. Touro disbursed a total of \$40,728,507 in Title IV funds to these 4,310 students. Of the \$40,728,507 disbursed to students at the nine ineligible locations, we conservatively estimated that \$4,702,143 could have been disbursed to 950 students who exclusively attended only eligible locations for at least one of three semesters that we assumed each student attended in each of the award years.¹¹ As a result, we conservatively estimated the improper disbursement amount to students attending the nine ineligible locations to be approximately \$36,026,364. See Attachment A for the results of our analysis of ineligible Title IV amounts by award year.

Of the nine ineligible additional locations, the location where students were disbursed the most Title IV funds was Touro University College of Osteopathic Medicine which opened in 2004 in Henderson, Nevada. We found 381 students who attended this location for whom Touro disbursed a total of \$13,501,642 in Title IV funds (over 37 percent of our estimated total disbursement of \$36,026,364). See Attachment B for a list of all nine ineligible locations.

Touro officials made a management decision to continue disbursing Title IV funds to students at these nine ineligible additional locations, even though they were not approved by FSA as eligible additional locations. As a result, Touro improperly disbursed an estimated \$36,026,364 in Title IV funds for students attending nine ineligible additional locations that were neither approved nor authorized by FSA to receive Title IV funds.

Touro Never Applied to FSA for Approval and Participation of TUI as a Separate Institution or as a Branch Campus

TUI was 1 of the 17 additional locations that Touro reported through the EAPP. Even though Touro reported TUI as an additional location through the EAPP, Touro provided documentation from FSA, dated March 29, 2000, that FSA did not consider TUI an additional location since TUI offered only online distance education programs and students did not physically attend classes at TUI's address. As a result, FSA did not require TUI to obtain prior approval from FSA before disbursing Title IV funds to students.

ED's definition of a "branch campus" is similar to Middle States'. According to 34 C.F.R. § 600.2, a branch campus is—

A location of an institution that is geographically apart and independent of the main campus of the institution. The Secretary considers a location of an institution to be independent of the main campus if the location—

(1) Is permanent in nature;

¹⁰ Of the eight remaining additional locations added through the EAPP, seven did not offer, or intend to offer, 50 percent of an education program, and one was TUI, an online distance education program.

¹¹ We assumed that these 950 students attended two of the three semesters in the award years we reviewed and were eligible for two-thirds of the annual award.

- (2) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential;
- (3) Has its own faculty and administrative or supervisory organization; and
- (4) Has its own budgetary and hiring authority.

TUI was an independent location of Touro College which administered the Title IV funds for its students, used its own accounting system for tracking its Title IV disbursements, had its own administrative and faculty staff, and its degrees were approved by the State of California. In 2005, Middle States determined TUI to be a separate accreditable institution and a branch campus of Touro that should be accredited by WASC, not an additional location.¹² Middle States defines a branch campus as a location of an institution that is geographically apart and independent of the main campus of the institution. The location is independent if the location is permanent in nature; offers courses in educational programs leading to a degree, certificate, or other recognized educational credential; has its own faculty and administrative or supervisory organization; and has its own budgetary and hiring authority. Under ED's definition, TUI should have been considered a branch campus or separate institution because TUI was independent. However, Touro never applied to FSA for approval and participation of TUI as a separate institution or branch campus. Touro disbursed a total of \$17,825,406 in Title IV funds to 1,927 students enrolled at TUI.

Recommendations

We recommend the Acting Chief Operating Officer (COO) for FSA require Touro to—

- 1.1 Determine the exact amount of Title IV funds disbursed to students attending ineligible locations, and return the amount improperly awarded (which we estimated to be \$36,026,364) to ED and the lenders, as appropriate. For Federal Family Education Loans Program loans, pay to the appropriate lenders the amount of interest that accrued on the borrowers' loans and pay to ED the amount of interest benefits and special allowance payments. FSA should verify Touro's calculations.
- 1.2 Develop written procedures to ensure additional locations are approved by FSA to receive Title IV funds before drawing down and disbursing Title IV funds to students.

We also recommend the Acting COO for FSA—

- 1.3 Determine if Touro should have applied for approval and participation of TUI as a separate institution as a result of Middle States' decision to consider TUI a separately accreditable institution, and take actions as appropriate.

¹² Despite the determination that TUI should not be accredited by Middle States, Middle States also stated that TUI was "within the scope" of Middle States accreditation of Touro College prior to TUI's receipt of accreditation from WASC.

Touro Comments

Touro did not concur with our finding and recommendation 1.1. It did not comment on our other recommendations. Touro did not agree that any of the nine additional locations were ineligible and provided specific information intended to support the eligibility of six of the nine locations (OPE ID Numbers 01014233, 01014234, 01014239, 01014240, 01014241, and 01014242). In its comments, Touro stated that—

1. Four of the locations the report identifies as ineligible (OPE ID Numbers 01014234, 01014240, 01014241, and 01014242) were each “part of a campus constituting a duly approved eligible location.” NYSED and Middle States recognized each of these four locations as components of a geographic grouping of classroom facilities functioning as single operational units. This treatment is consistent with ED’s handling of other urban universities. Touro over-reported by including one of these locations on its EAPP, and “the OIG has taken a prospective, precautionary prediction and converted it into a current statement of fact”
2. “The Department’s regulation concerning approval of sites turns on whether the location offers 50% or more of an educational program.” Two of the locations the report identifies as ineligible (OPE ID Numbers 01014233, and 01014239) did not offer more than 50 percent of a program. For location OPE ID Number 01014233, the EAPP stated that Touro’s intention was to offer more than 50 percent of a program at this location in the future. For location OPE ID Number 01014239, additional information was provided indicating this location did not offer 50 percent of a program for the 2003-2004 through 2005-2006 years.
3. It reasonably believed that the additional locations were approved by ED. Touro’s ability to utilize the ordinary processes of reporting changes was entirely disrupted by its extended month-to-month provisional certification status and issues with ED’s electronic application system. Based on its contact with ED’s New York Case Team, it very reasonably understood that the reported changes, including new locations, were in fact approved. Further, Touro was never advised that any new locations were considered to be ineligible, nor was it ever advised to stop disbursing Title IV funds to these new locations. ED’s “continuing pattern of conduct over the course of nearly seven years appeared to clearly confirm . . . [that] the Department’s own conduct could be relied upon as de facto approval of Touro’s new locations.”
4. Even if the locations were ineligible, the asserted liability “is incorrectly calculated and grossly overstates the amount of Title IV assistance disbursed for coursework at the Challenged Locations.” To calculate the liability, the OIG identified all students who took any courses at any one of the nine challenged locations and then totaled all the Title IV assistance awarded to those students for the entire award year. The OIG “fails to distinguish between students who took one course during a single semester, one course during multiple semesters, or multiple courses during multiple semesters at any of the Challenged Locations [T]here is no basis whatsoever to take the position that the Asserted Liability can include Title IV assistance earned as a result of instruction at *other indisputably eligible locations*.” (emphasis in original.) The asserted liability included disbursements to students for

attendance at eligible, undergraduate locations who then, later in an award year, attended graduate programs at locations questioned by OIG; some of these students received no Title IV assistance for attendance at the questioned locations.

OIG Response

We considered Touro's response to our finding and recommendation 1.1, and modified Finding 1 and recommendation 1.1. Our responses to each of Touro's comments are provided below:

1. Federal requirements differ from NYSED and Middle States requirements. According to 34 C.F.R. § 600.10(b)(3), when ED determines eligibility, "[e]ligibility does not extend to *any* location that an institution establishes after it receives its eligibility designation if the institution provides at least 50 percent of an educational program at that location . . ." (emphasis added). The regulations do not provide an exception for locations that are close to other locations; they are based on the percentage of an educational program provided at the location. Similarly, 34 C.F.R. § 600.20(c) provides requirements for an "institution that wishes to expand the scope of its eligibility and certification and disburse title IV, HEA Program funds to students enrolled in that expanded scope . . ." Though Touro claims that its inclusion of the location on its EAPP was over-reporting, that inclusion did indicate that, at the time the EAPP was completed, Touro considered it to be a "new location." Filing the application also triggered a clear obligation to not disburse funds until approval had been received.
2. As stated in our finding, 34 C.F.R. § 600.20(c)(1) requires an institution to apply for approval to "[a]dd a location at which the institution offers *or will offer* 50 percent or more of an educational program . . ." (emphasis added.) For one location (OPE ID Number: 01014233), Touro stated on the EAPP that its intention was to offer more than 50 percent of a program at this location in the future. The regulations do not include any provision for a location's gaining eligibility if, in subsequent years, the percentage of a program offered at the location decreases to less than 50 percent, or if an institution does not follow through with the originally stated intention to offer more than 50 percent of a program. Therefore, in light of Touro's stated intent, we could not conclude that the first location (OPE ID Number: 01014233) was eligible, or that Touro was authorized to disburse funds in the absence of written authorization from FSA. We questioned the second location (OPE ID Number: 01014239) because Middle States data indicated that Touro provided at least 50 percent of a program there; Touro's EAPP for this location did not include a statement that more than 50 percent was offered or that Touro intended to offer more than 50 percent. Touro provided additional information indicating this location did not offer 50 percent of a program for the 2003-2004 through 2005-2006 years (Middle States had attributed off-site clinical education to this location). However, Touro did not provide documentation for the 2002-2003 year. Therefore, we could not conclude that this location was eligible or if disbursements were authorized.
3. Under 34 C.F.R. § 600.20(f)(3), an "institution may not disburse title IV, HEA program funds to students attending the subject location, program, or branch until the institution receives the Secretary's notification that the location, program, or branch is eligible to

participate in the title IV, HEA programs.” Touro did not receive approval for its new locations. ED’s awareness of the locations, or Touro’s difficulties with its provisional certification status or ED’s electronic application system cannot authorize the disbursement of Title IV funds contrary to the regulatory requirements. See *In the Matter of Cannella Schools of Hair Design*, Dkt. Nos. 98-72-SA & 98-73-SA, ED (Decision of the Secretary, December 12, 2000) (“Estoppel cannot prevent the application of the correct meaning of governing regulations . . .”); and *In the Matter of Academia La Danza Artes Del Hogar*, Dkt. No. 90-31-SP, ED (May 19, 1992) (erroneous or negligent designation of eligibility by ED does not prevent recovery of funds disbursed contrary to law).

4. We modified our calculation in Finding 1 of the Title IV funds disbursed to students attending the nine ineligible locations. We also revised recommendation 1.1 for Touro to calculate the exact amount of Title IV funds disbursed to students attending the nine ineligible locations.

In the draft report we questioned the entire annual Title IV award and disbursement for any student who attended any of the nine ineligible locations during an award year. We have modified our methodology to identify and exclude any student who attended only eligible locations during any single semester of an award year. Of the 4,310 students who attended ineligible locations, we determined that 950 students attended only eligible locations during at least one semester of an award year. However, we could not determine the exact amount of funds disbursed to these students for each semester because Touro provided Title IV amounts for students only for the whole award year, not individual semesters. Using the National Student Loan Data System (NSLDS) data, we made a conservative estimation that \$4,702,143 could have been disbursed to the 950 students who attended only eligible locations for two of three semesters in each of the award years. As a result, we estimated the Title IV disbursement to students attending the nine ineligible locations to be approximately \$36,026,364.

The modified recommendation that Touro review and determine, subject to ED’s verification, the actual amount improperly disbursed to each student also addresses Touro’s comment that our calculation overstated the liability for students that did not attend an ineligible location for an entire award year. This recommendation is consistent with Touro’s obligation under 34 C.F.R. § 668.82(b)(1) to account for Title IV funds received.

Touro provided no basis to conclude that liability should be reduced if a student simultaneously attends eligible and ineligible locations. The regulation at 34 C.F.R. § 600.20(f)(3) categorically states that an institution may not disburse Title IV funds to a student at a new location prior to receiving notice of eligibility from the ED. In addition, Title IV awards are based on a student’s entire cost of attendance and are not awarded or apportioned on a course-by-course basis.

Although Touro did not comment on the issue regarding TUI, we further clarified our position and modified recommendation 1.4.

FINDING NO. 2 – Touro Did Not Have Adequate Records to Ensure That Title IV Funds Disbursements Were Made Only to Students Attending Eligible Additional Locations for the Award Years 2002-2003 through 2004-2005

Touro did not keep adequate records to account for Title IV funds disbursements to students who attended only eligible additional locations for the 2002-2003 through 2004-2005 award years. According to the Dean of Enrollment Management and Institutional Research and Review (Dean), Touro did not maintain a database of Title IV funds disbursed to students by location attended.¹³ The student database from Jenzabar did not contain the location where students attended classes.¹⁴ Instead, the database tracked students by instructor. The Touro location data resided on the faculty database, which was separate from the student database. The Dean informed us that in order to add the locations to each student file, the Information Technology staff needed to compare the student database and faculty database, and then go into the student database and manually add the locations for each student.

Since Touro did not track students by location attended, Touro did not have adequate records to ensure that Title IV disbursements were made only to students attending eligible locations.

According to 34 C.F.R. § 668.16(a), for an institution to meet the standards of administrative capability, the institution must administer—

. . . the Title IV, HEA programs in accordance with all statutory provisions of or applicable to Title IV, of the HEA, all applicable regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA.

In addition, 34 C.F.R. § 668.16(d) states that, to be administratively capable, an institution must establish and maintain “records required under this part and the individual Title IV, HEA program regulations.”

According to 34 C.F.R. § 668.24—

(a) An institution shall establish and maintain, on a current basis, any application for title IV, HEA program funds and program records that document—

(3) Its administration of the title IV, HEA programs in accordance with all applicable requirements; . . .

(6) Its disbursement and delivery of title IV, HEA program funds . . .

¹³ Touro did not begin maintaining a database of Title IV funds disbursed to students by location until the 2005-2006 award year. At our request, Touro compiled the student and location information for award years 2002-2003 through 2004-2005.

¹⁴ Jenzabar is a higher education administrative system which Touro used to manage its admissions, registrar, bursar, financial aid, advisement, and development data.

(d) *General.* (1) An institution shall maintain required records in a systematically organized manner.

Touro did not fully utilize the features in its database system for the 2002-2003 through 2004-2005 award years to track students who received Title IV funds by location.

Recommendations

We recommend the Acting COO for FSA require Touro to—

- 2.1 Review its databases to determine if Touro disbursed Title IV funds to students attending other ineligible additional locations during the 2002-2003 award year through present.
- 2.2 Maintain adequate records on a current basis to ensure that Title IV disbursements are made only to students attending eligible locations.

Touro Comments

Touro did not concur with the finding and stated that it complied with the record retention requirements of 34 C.F.R. § 668.24 and the administrative capability requirements of 34 C.F.R. § 668.16. According to 34 C.F.R. § 668.24, “an institution shall maintain required records in a systematically organized manner and an institution shall make its records readily available for review.” The regulations do not require an institution to maintain its records in any particular format, and the OIG’s report does not argue that Touro failed to provide the student data that was requested.

The Dean, as cited in Touro’s comments, “never advised auditors that ‘Touro did not maintain a database of Title IV funds disbursed to students by location attended.’ Rather, the Dean advised the OIG that Touro did not maintain a database of Title IV disbursements *in the specific format requested by the auditors.*” Touro’s internal processes “limit the amount of coursework students could earn at the locations for which Touro did not understand ED to have provided the required approvals.” Touro is not required to maintain its records in the format requested by the auditors, and there is no evidence in the report that Touro failed to provide all of the relevant information requested by the OIG.

OIG Response

We considered Touro’s response to Finding 2; however, our position remains unchanged. Touro’s records were not “systematically organized” because they were not maintained in a manner consistent with its obligations to administer the Title IV programs in compliance with all requirements. As explained in FSA’s *The Blue Book*—

[A] school’s operations must be administered in a way that ensures all the information the school receives that might affect a student’s FSA eligibility is communicated to the coordinating official and to the financial aid office.

While it is true that records were sufficient after the fact, and after much analysis, to conclude that most Title IV funds were disbursed at eligible locations, Touro could not provide the required eligibility information on a current basis to the financial aid office to use in combination with other student eligibility data prior to award year 2005-2006. Contrary to Touro's assertion, we are not disagreeing with the format of its data, rather we have concluded Touro did not make necessary data currently available to its financial aid office.

Since Touro did not provide any explanation or supporting documentation for its statement that it had internal processes for limiting the amount of coursework students could earn at the ineligible locations, we cannot respond to its comment. We modified recommendation 2.2 to emphasize the requirement to maintain records on a current basis.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our audit objective was to determine if Touro complied with the Title IV institutional and program eligibility requirements. Our original review covered the period July 1, 2005, through June 30, 2006. Because our work indicated deficiencies existed outside the original audit period, we extended our review to include the period July 1, 2002, through June 30, 2005.

To accomplish our audit objective, we—

- Reviewed Touro's 2003, 2004, 2005, and 2006 audit reports conducted under U.S. Office of Management and Budget Circular A-133 and the workpapers of Touro's independent public accountant (IPA);
- Gained an understanding of the pertinent Title IV regulations;
- Interviewed management officials from Touro, FSA, and Touro's IPA;
- Reviewed Touro's written policies and procedures applicable to its Title IV administration for institutional and program eligibility;
- Examined approvals and correspondence from Touro's accrediting agencies, Middle States and WASC, and respective state licensing agencies;
- Gained an understanding of Touro's use of automated systems to manage Title IV funds;
- Obtained and reviewed Touro's data from its Jenzabar system and from ED's NSLDS, PEPS, EAPP,¹⁵ Eligibility and Certification Approval Report, and Grant Administration and Payment System;
- Extracted data from the PEPS and the EAPP to identify the eligibility of Touro's additional locations; and
- Identified an ineligible student population for each year of our audit period by extracting students from our universes who attended the ineligible locations identified.

We assessed the system of internal controls, policies, procedures, and practices applicable to Touro's institutional and program eligibility for the Title IV programs. Because of inherent limitations, a study and evaluation made for this limited purpose would not disclose all material

¹⁵ EAPP data as of April 24, 2007, was used for our review.

weaknesses in the internal controls. However, our assessment disclosed significant internal control weaknesses in the institutional and program eligibility area. These weaknesses and their effects are fully discussed in the AUDIT RESULTS section of this report.

We relied, in part, on a computer generated universe of students from the NSLDS database and on Touro's Jenzabar system. For the 2005-2006 award year, we constructed a universe of 11,127 Title IV students by comparing NSLDS and Touro's Jenzabar data and reconciling discrepancies of 250 students between the two systems. For the 2002-2003 through 2004-2005 award years, we compared NSLDS and Touro's Jenzabar data. We randomly sampled 30 students from discrepancies of 1,697 students between the two systems. Based on the results of our sample, we constructed universes for each year of our expanded audit period totaling 27,667 Title IV students. Based on the assessments we conclude that the data are sufficiently reliable to be used in meeting the audit objectives.

We performed our fieldwork at Touro's main location located in New York, New York, between March 13, 2007, and August 22, 2007.

On August 10, 2007, we issued an Interim Audit Memorandum (IAM) to FSA regarding the significant amount of Title IV funds disbursed to Touro students attending ineligible additional locations and Touro's not maintaining a database of Title IV disbursements to students by location. The IAM recommended FSA to take immediate steps to ensure no further Title IV funds were disbursed to students who attended ineligible additional locations, require Touro to return the Title IV funds disbursed to students attending ineligible additional locations, notify Touro that it was not in compliance with Title IV requirements, take action regarding Touro's not maintaining a database of Title IV disbursements to students by location, and take immediate action to make a determination regarding Touro's 17 unapproved additional locations. In its September 5, 2007, response to the IAM, FSA stated that it will complete the recertification review of Touro by September 30, 2007, and make a final determination concerning the funds disbursed to students at the ineligible locations during the completion of the recertification process. As of July 11, 2008, FSA had subsequently approved the nine cited additional locations. See the BACKGROUND section for specific details. As of October 29, 2008, FSA had not made a final determination concerning the funds disbursed to students at Touro's ineligible locations.

We conducted the audit in accordance with generally accepted government auditing standards appropriate to the limited 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, 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 Department of Education official, who will consider them before taking final Departmental action on this audit:

James Manning
Acting Chief Operating Officer
Federal Student Aid
U.S. Department of Education
Union Center Plaza
830 First Street, NE, Room 112E1
Washington, DC 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,

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

Attachments

Touro College
Ineligible Title IV Amounts by Award Year
July 1, 2002 through June 30, 2006

AWARD YEAR	NUMBER OF STUDENTS	TITLE IV PROGRAMS ¹							AWARD YEAR TOTALS (A)	STUDENTS ATTENDING ONLY ELIGIBLE LOCATIONS FOR AT LEAST ONE SEMESTER DURING THE AWARD YEAR ² (B)	TITLE IV FUNDS DISBURSED TO STUDENTS IN COLUMN B DURING THE AWARD YEAR (C)	ESTIMATED ELIGIBLE TITLE IV ASSOCIATED WITH STUDENTS FROM COLUMN B ³ (D) = (C) x 2/3	ESTIMATED TITLE IV DISBURSEMENTS TO STUDENTS ATTENDING INELIGIBLE LOCATIONS (A - D)
		PELL GRANT	FSEOG	PERKINS LOAN	FWS	FFEL STAFF SUB	FFEL STAFF UNSUB	PLUS LOAN					
2002-2003	496	\$1,163,919	\$73,735	\$6,000	\$96,870	\$596,616	\$497,941	\$0	\$2,435,081	119	\$639,090	\$426,060	\$2,009,021
2003-2004	580	1,599,429	121,816	0	141,700	575,314	480,545	0	2,918,804	150	838,023	558,682	2,360,122
2004-2005	1,497	2,083,281	116,134	39,750	214,453	5,841,340	5,546,299	39,520	13,880,777	381	3,192,452	2,128,301	11,752,476
2005-2006	1,737	1,955,345	189,907	89,750	212,214	8,402,605	10,595,301	48,723	21,493,845	300	2,383,650	1,589,100	19,904,745
Title IV Totals	4,310	\$6,801,974	\$501,592	\$135,500	\$665,237	\$15,415,875	\$17,120,086	\$88,243					
TOTALS									\$40,728,507	950	\$7,053,215	\$4,702,143	\$36,026,364

¹**Legend**

PELL GRANT - Federal Pell Grant Program

FSEOG - Federal Supplemental Educational Opportunity Grant Program

PERKINS LOAN - Federal Perkins Loan Program

FWS - Federal Work Study Program

FFEL STAFF SUB - Federal Family Education Loan Program, Subsidized Stafford Loan

FFEL STAFF UNSUB - Federal Family Education Loan Program, Unsubsidized Stafford Loan

PLUS LOAN - Federal Family Education Loan Program, PLUS Loan

² We assumed students attended three semesters in an award year.

³ These Title IV amounts were based on disbursement data from the National Student Loan Data System (NSLDS). We calculated these amounts based on the assumption that these students attended eligible locations for two of three semesters in a year.

Touro College
Ineligible Additional Locations
July 1, 2002 through June 30, 2006

	OPE ID Number During Audit Period	New OPE ID Number	School Location
1	01014233	01014242	Touro College - Brownsville 250 Blake Avenue Brooklyn, NY 11212
2	01014234	01014233	Touro College - Boro Park Center 5323 18th Avenue Brooklyn, NY 11204
3	01014239	01014235	Touro College - Winthrop University Hospital 286 Old Country Road Mineola, NY 11501
4	01014240	01014236	Touro College - Starrett Classroom and Admin Site 1390 Pennsylvania Avenue Brooklyn, NY 11239-2103
5	01014241	01014237	Touro College - Speech and Hearing Center 1610-20 East 19th Street Brooklyn, NY 11229-1302
6	01014242	01014238	Touro College - Graduate Center 950 Kings Highway Brooklyn, NY 11223-2338
7	01014243	01014239	Touro College - Touro University College of Osteopathic Medicine 874 American Pacific Drive Henderson, NV 89014-8800
8	01014245	01014241	Touro College - Los Angeles 1317 North Crescent Heights West Hollywood, CA 90046
9	01014248	01014244	Touro College - Touro College South 1703 Washington Avenue Miami Beach, FL 33139-7541

Touro's Comments on the Draft Report



TOURO COLLEGE

*Office of the Senior Vice President
and Chief Financial Officer*

*27-33 West 23rd Street
New York, N.Y. 10010-4202
Tel (212) 463-0400, Ext. 715
Fax (212) 627-9049*

May 20, 2008

Mr. Daniel P. Schultz
Regional Inspector General for Audit
U.S. Department of Education
Office of Inspector General
32 Old Slip, 26th Floor
Financial Square
New York, New York 10005

Re: Touro College Draft Audit Report
Control Number ED-OIG/A02H0008

Dear Mr. Schultz:

On behalf of Touro College, I am writing to provide supplemental comments respecting the above-referenced Draft Audit Report. These comments incorporate the separate initial remarks related to the liability calculation methodology provided to you yesterday and therefore provide a complete set of all of Touro's current comments to the Draft Audit Report.

We appreciate the continued cooperation your office has extended to Touro during the audit process. We hope that Touro's comments to the Draft Audit Report will further the completion of an accurate and comprehensive final audit report.

Please call if you have any questions about the attached.

Sincerely,

Melvin M. Ness
Senior Vice President and
Chief Financial Officer
Touro College

Attachments

cc: Dr. Bernard Lander, President

SchultzlrusdeptedII

**Response of Touro College to Draft Report
ED-OIG/A02H0008
May 20, 2008**

We are in receipt of the Draft Audit Report, dated February 26, 2008, entitled “*Touro College’s Title IV, Higher Education Act Program Institutional and Program Eligibility*” (“Draft Report”) which presents the initial comments of the Office of Inspector General (“OIG”) concerning the compliance of Touro College (“Touro” or the “College”) with the institutional and program eligibility requirements of Title IV of the Higher Education Act of 1965, as amended, and its implementing regulations (“Title IV”). The College offers the following response.

Finding No. 1 – Touro Disbursed \$40,728,507 in Title IV Funds to Students Who Attended Ineligible Additional Locations

The Draft Report identifies nine Touro addresses as “ineligible additional locations” and asserts that Touro should repay \$40,728,507 in Title IV funds (the “Asserted Liability”) as improperly disbursed at these locations. For several reasons, Touro does not agree that any of the nine addresses at issue (the “Challenged Locations”) fail to qualify as eligible additional locations pursuant to 34 C.F.R. § 600.21.¹

¹ Further, as the College has established in its submission of May 19, 2008, even if any of the Challenged Locations are ultimately deemed to be “ineligible additional locations,” the calculation methodology used to calculate a repayment amount for these locations grossly overstates the amount of Title IV assistance actually associated with coursework at these locations. For the convenience of the OIG, we have repeated in full in this document the response submitted on May 19, 2008 as Section IV of this document.

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I. TOURO OPERATES LOCATIONS ON A CAMPUS BASIS

As is the case with most larger universities, the physical address of each of Touro's classrooms is not a standalone location. Rather, with the approval of both state licensing agencies and accreditors, geographic groupings of classroom facilities function as single operational units. The Draft Report includes four such classroom facilities among its Challenged Locations. For the reasons discussed below, each such facility is part of a campus constituting a duly approved eligible location (hereafter identified as "Campus Facilities").

The College's main campus, headquartered at 27-33 West 23rd Street, includes multiple instructional locations in the surrounding neighborhood. The College also operates multiple locations in Brooklyn in the neighborhoods of Boro Park, Starrett City and Flatbush, each as a campus. While the specific classroom addresses of the four Challenged Locations were not listed on the College's Eligibility and Certification Approval Report ("ECAR"), each of these was operated as an integral part of a campus in connection with instructional addresses that were listed on the College's ECAR. It should be noted that the concept of a "campus" subsuming a material geographic area is nothing new. Based on our understanding of the U.S. Department of Education's ("Department") practice, Touro's treatment of these locations as part of a larger campus that does not require separate reporting on the ECAR is consistent with the Department's handling of other urban universities such as New York University.

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The College's treatment of certain location groups as Campus Facilities is consistent not only with Title IV requirements and Department practices, the treatment is also consistent with the requirements of the College's other regulators. It has long been the practice of the New York State Education Department ("NYSED") to recognize separate facilities that function together as single operating units. For example, NYSED identifies the facilities at 1301 45th Street and 1273 53rd Street, located several blocks apart, as constituting a single Boro Park Extension Center. (Exhibit A). NYSED looks to operational status rather than relying on any specific distance limitations on the recognition of campuses. Indeed, as early as 1993, NYSED recognized that a location in Nassau County was properly part of the branch campus with the main address across the county line in Suffolk County because of the operational configuration of the locations. (See Exhibit B).

Similarly, the Middle States Commission on Higher Education ("MSCHE") recognizes single operating units which are a combination of individual classroom locations. Notably, MSCHE has done so after originally identifying individual addresses on Touro's Statement of Accreditation Status ("SAS"). Compare the SAS dated November 1998 (attached as Exhibit C), which identifies three separate Kings Highway facilities, to the current SAS (attached as Exhibit D) which recognizes a single Kings Highway operating unit which subsumes the individual facilities under one location.

Following are specific analyses of the Campus Facilities identified in the Draft Report as Challenged Locations.

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A. Boro Park

Touro currently operates three Campus Facilities in the New York City Borough of Brooklyn as the Boro Park Extension Center: 1301 45th Street (identified as K1301 and K1305, OPEID 01014230), 1273 53rd Street (identified as K1273, OPEID 01014221) and 5323 18th Avenue (identified as K5323, one of the Challenged Locations). From the time the K5323 facility opened, NYSED recognized the K5323 facility as being included within the scope of the approval of the Extension Center campus. (See Exhibit E) The MSCHE “Institutional Profile 2004-2005,” which is part of the OIG’s work papers as Exhibit HC: I-100, identifies at page 13 a single Boro Park location that includes headcount information for a single, combined unit, **inclusive of K5323**. (See Exhibit F) Since the Boro Park Extension Center is unquestionably an eligible additional location on Touro’s ECAR, it is improper to consider any of the related Campus Facilities included in such Center as ineligible locations.

It appears that the OIG included K5323 as a Challenged Location on the basis of an erroneous reading of Touro’s own disclosure in Question 69 of the Department’s electronic application as submitted in 2001 and included in the OIG work papers as Exhibit HC: F-5-b. The application states:

Touro College is requesting approval of three new locations ... 5323 18th Avenue, Brooklyn, New York, 11204. At the present time, we will be offering **less than** 50% of an educational programat [sic] these locations. We have included the locations in this application based on our intention

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to offer more than 50% of a program at these locations *in the future* and would like the locations certified on that basis. (Emphasis supplied)

As a result of the very significant delay in the Department's recertification process, as discussed more fully below, Touro generally considered it appropriate to *over-report* information to the Department. In this instance the OIG has taken a prospective, precautionary prediction and converted it into a current statement of fact, and in doing so declared a facility to be ineligible. The fact that in an excess of caution Touro reported the K5323 facility to the Department, despite its status as part of the Boro Park Extension Center, is an improper basis for the Draft Report's conclusion that this Campus Facility is an ineligible additional location. (See Exhibit G) This is a classic Catch-22 situation. While it is correct that two of the Boro Park facilities, both integral parts of the Boro Park Extension Center unit, were previously separately reported to the Department, the OIG appears to take the curious position that Touro should be penalized for reporting *more* information than is necessary under the Department's regulations. Indeed, it is important to recognize that the College's electronic application was in a locked status *for nearly seven years* pending recertification, as will be discussed further in Section III below. As a result, the College was not allowed ready access to the typical routine self-update functions available to other institutions.

B. Starrett City

Starrett City is a single very large apartment complex located in the Canarsie neighborhood of the Borough of Brooklyn, constituting 20,000 people living in 46 apartment buildings spread over 153 acres reclaimed from marshland in the 1960s.

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Starrett City is universally recognized as a single neighborhood, and consistent with this fact MSCHE recognizes all of the College's Starrett City Campus Facilities at 1461 Geneva Loop (KS146, OPEID 01014223), 1540 Van Sicklen Avenue (KS154), 1430 Freeport Loop (KS143), 1426 Freeport Loop (KS142), and 1390 Pennsylvania Avenue (Challenged Location KS139) as constituting a single Starrett City campus. See the Starrett City approved MSCHE additional location on the current SAS at Exhibit D. NYSED has also consistently recognized the Starrett City campus as a single unit. In 2001, Touro submitted an application for expansion of the Starrett City Extension Center to include the new space at 1390 Pennsylvania Avenue (Challenged Location KS139). See the application attached as Exhibit H.

Since Starrett City is an eligible additional location on Touro's ECAR (the primary location at KS146 was listed on the ECAR during the audit period), and since each Campus Facility located within Starrett City is integral to that campus unit, all separate Campus Facilities, including KSD139, are appropriately recognized components of an eligible location.

C. Flatbush Neighborhood

Touro operates seven separate Campus Facilities as part of the single campus located in the Flatbush neighborhood of Brooklyn. The main campus address is 1602 Avenue J (K16AJ, OPEID 01014206). All of the facilities making up this campus are within walking distance of each other, with only 200 feet separating some. Consistent with this, NYSED recognizes the Challenged Locations K1901 and K946 as part of the

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Flatbush campus, along with 1103 Kings Highway (K1103, OPEID 01014208) and 1726 Kings Highway (K1726, OPEID 01014207). See NYSED correspondence at Exhibit I.

Like NYSED, MSCHE also considers the Flatbush facilities a single operational unit. See MSCHE correspondence at Exhibit J from 1996, before the establishment of K1901 and K946, clearly identifying the facilities as a campus unit.

Since the Flatbush branch campus is an eligible additional location on Touro's ECAR (indeed in this instance three separate facility addresses were on Touro's ECAR during the audit period), all of the related Campus Facilities, including K1901 (located around the corner from 1726 Kings Highway) and K946 (located diagonally across the street from 1103 Kings Highway), are similarly eligible as recognized components of that eligible location.

II. NOT ALL CHALLENGED LOCATIONS PROVIDED 50 PERCENT OR MORE OF AN EDUCATIONAL PROGRAM

Touro did not offer 50% of a program at two of the Challenged Locations identified in the Draft Report: 250 Blake Avenue (K250) or 286 Old Country Road (LMINE). Accordingly, these Challenged Locations are not ineligible locations pursuant to the Department's regulations.

A. 250 Blake Avenue

The College did not offer 50% of a program at 250 Blake Avenue in Brooklyn, NY. Yet, the Draft Report cites the K250 classroom site as an "ineligible location." Exhibit E.3.2 of the OIG work papers clearly demonstrates that the OIG's determination

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as to the eligibility of the K520 classroom site is based on its application of the 50% rule. In support of the applicability of the 50% rule for the K250 location, the OIG work papers reference Question 69 of a 2001 update to the Department's electronic application (Work paper Exhibit HC: F-5-b), the MSCHE 2004-2005 Institutional Profile (Work paper Exhibit HC: I-100), the MSCHE 2003-2004 Institutional Profile (Work paper Exhibit HC: I-99), and the MSCHE 2002-2003 Institutional Profile (Work paper Exhibit HC: I-98). As demonstrated below, none of these Exhibits to the OIG's work papers contradict Touro's statement that it did **not** offer 50% of a program at the K250 classroom site.

When Touro submitted an application update to the Department in 2001, it advised that it was **not** currently offering 50% of an educational program at 250 Blake Avenue:

Touro College is requesting approval of three new locations... 250 Blake Avenue, Brooklyn, New York 11212... At the present time, we will be offering **less than** 50% of an educational programat [sic] these locations. We have included the locations in this application based on our intention to offer more than 50% of a program at these locations **in the future** and would like the locations certified on that basis. (Emphasis supplied).

See Work paper Exhibit HC: F-5-b, relevant page included here as Exhibit G.

The MSCHE Institutional Profile requires institutions to report extended learning sites under three classifications: Branch Campus, Additional Location or Other Instructional Site. By MSCHE definition, the terms "Branch Campus" or "Additional Location" are applied to sites that may offer 50% or more of a program. An "Other

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Instructional Site” is defined as “a location, other than a Branch Campus or Additional Location, at which the institution offers one or more courses for credit.” See the definitions listed on the MSCHE SAS at Exhibit D. Touro properly reported the 250 Blake location on the MSCHE Institutional Profiles for 2002-2003, 2003-2004, and 2004-2005 under the “Other Instructional Sites” category of facilities since it has not offered 50% or more of a program at that location.

Consistent with this, Touro’s disclosure of 250 Blake Avenue to the Department on the electronic application in 2001 clearly stated that less than 50% of an educational program was provided at the time of the disclosure, and this was in fact the case. As demonstrated in the attached report, which lists each student who earned credits for coursework at the K250 site during the audit period, as well as the total number of credits each student earned from July 1, 2002 to the current semester, Touro’s records document that no student was enrolled for 50% or more of an academic program at 250 Blake Avenue. See Exhibit K. As it is clear that Touro offers less than 50% of any educational program at the K250 site, this location is incorrectly identified as an ineligible location in the Draft Report.

B. 286 Old Country Road

Touro never offered 50% of a program at the Winthrop Extension Center at 286 Old Country Road site in Mineola, NY (Challenged Location LMINE). As part of the physician assistant curriculum offered at the LMINE location, students at the Mineola site earn significant credit for work at clinical locations as well as for coursework taught at the Bay Shore location (LLBAYS).

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The Touro School of Health Sciences offers a bachelors of science in physician assistant studies through its Bay Shore (LLBAYS) and Winthrop Extension Center (LMINE) locations. As demonstrated at Exhibit L, which describes the entrance requirements, program curriculum, and list of clinical education centers affiliated with the Physician Assistant Studies Program, students entering the Physician Assistant Studies Program must have previously completed 60 transferable semester credits in general liberal arts and sciences at an accredited college or university, and must then complete an additional 52 credits of classroom instruction² and 45 credits of clinical instruction, for a total of no less than 157 credits for the award of the degree. Less than a third of the total number of credits required for the Physician Assistant Studies Program are taught at the Winthrop Extension Center and significantly less than half of the 97 non-transfer credits are obtainable at that site. The facts clearly demonstrate that a student cannot enroll in courses leading to more than 50% of his or her degree program at the Winthrop Extension Center.

Exhibit E.3.2 of the OIG work papers documents the OIG's application of the 50% rule for the Challenged Locations. The OIG references the MSCHE 2005-2006 Institutional Profile (Work paper Exhibit HC: F-25a), the MSCHE 2004-2005 Institutional Profile (Work paper Exhibit HC: I-100), and the MSCHE 2002-2003 Institutional Profile (Work paper Exhibit HC: I-98) in support of its assertion that the Winthrop Extension Center violates the 50% rule. Yet, MSCHE's reporting structure

² Several of the 52 classroom credits are earned at the Bay Shore site. (See the 2006 classroom course schedule attached at Exhibit M illustrating that Human Anatomy, Clinical Procedures and Diagnostic Modalities, Pharmacology and Medicine II, a total of 13 credits, were taught at the LLBAYS location.)

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does not alter the reality of what percentage of a program is actually offered at the Winthrop Extension Center. Consistent with MSCHE's practices, Touro completes the annual Institutional Profiles to report that students can earn a bachelor's degree at the Winthrop University Hospital & Medical Center. For MSCHE's own classification purposes, clinical coursework is attributed to the Winthrop Extension Center, which is designated an MSCHE "Additional Location" so that each individual clinical education affiliation center is not required to be separately listed on the Institutional Profile. The Department's regulation concerning approval of sites turns on whether the location offers 50% or more of an educational program. Accordingly, since the record is clear that Touro offers less than 50% of the Physician Assistant Studies Program at the LMINE site, this location is incorrectly identified as an ineligible location in the Draft Report.

III. TOURO REASONABLY UNDERSTOOD THE DEPARTMENT TO HAVE APPROVED ITS ADDITIONAL LOCATIONS AND OTHER CHANGES

Touro College was first approved to participate in the Title IV programs in 1971, and has been a continuous participant since that time. On December 31, 2001, Touro's then current Program Participation Agreement expired. Despite having properly filed its application for continued participation, Touro was not issued a new Program Participation Agreement until 2008, so that for nearly seven years the Department continued the College's participation under a month-to-month certification. During this extraordinarily long (and to the knowledge of Touro, unprecedented) period, Touro's ability to utilize the ordinary processes of reporting changes was entirely disrupted. Instead, Touro maintained regular contact with the Department's New York Case Team

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for the purpose of apprising the Case Team of changes in the institution, notably its growth in the medicine and health related fields, as well as other developments necessary to maintain curricula, meet new state licensing requirements and serve Touro's dynamic and diverse student population. Based upon its regular contact with the Case Team, Touro very reasonably understood that the reported changes, including new locations, were in fact approved. Indeed, over the course of nearly seven years, there was never even a suggestion that there was a concern on the part of the Department about allegedly ineligible locations; the first inkling that there was such a question came during the OIG's review.

To the extent possible given the limitations of the system, Touro entered new information into the Department's electronic application ("E-App"), which is intended to provide the data base from which the Department generates an ECAR, which is in turn intended to describe in detail all of the elements of an institution's Title IV eligibility. However, the E-App is well known to be an imperfect instrument. Most significantly, it can only handle one open institutional application at a time. When Touro submitted its recertification application in 2001, the system erected a barrier to any other applications related to additional changes. Thus, during the nearly seven years that the Department maintained the recertification application in a pending status, the Department itself was unable to issue typical eligibility updates such as approval letters and an ECAR for new Touro locations, because all of that information is tied up on the E-App.

As a matter of technological impossibility, Touro could not report new facilities through the use of the standard electronic process. Every time a Touro official wanted to

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revise application information, he or she had to directly bring the matter to the attention of a member of the Case Team staff, a contact which in turn was dependent on the availability of Case Team personnel at any given moment in time. Even after this communication did take place, the College still had to wait for the Case Team to manually enable access to the electronic application. Only after this process was complete could the College access the application for a narrow window of time to enter a routine update, after which the virtual window would slam shut until the next request. As a result, the College was not allowed to engage in the typical self-update functions available to other institutions.

Touro was never provided with any reason for maintaining the pending status of the recertification application for such an unconscionable period, and Touro never had any reason to understand that this was intended as an unprecedented de facto growth limitation. Furthermore, during this time, and while it was regularly apprising the Case Team of institutional changes including new locations, Touro was never advised that any new locations were considered to be ineligible, nor was Touro ever advised to stop disbursing Title IV funding for new locations. At various points in this lengthy span, the College was advised by members of the Case Team that it was “days away” from issuing a recertification and a new ECAR. Case Team representatives even initiated contact with Touro to request that any additional updates be provided so that the recertification could be finalized.

Touro reasonably believed, and the Department’s continuing pattern of conduct over the course of nearly seven years appeared to clearly confirm, that in light of the

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technical limitations of the E-App that prevented issuance of standard new approval letters and an updated ECAR, the Department's own conduct could be relied upon as de facto approval of Touro's new locations. Over so long a period of time, Touro had no reason **not** to so rely and every reason to do so.

IV. ASSUMING ARGUENDO THAT ANY OF THE CHALLENGED LOCATIONS ARE ACTUALLY INELIGIBLE, THE LIABILITY CALCULATION IS FATALY FLAWED

Specifically, the Draft Report, as noted above, identifies a grand total of \$40,728,507 in Title IV funds disbursed to 4,310 students who attended classes at the Challenged Locations. During its review of the auditor work papers, the College was provided with hard copy print-outs of spreadsheets numbered E.3.3, E.3.5, E.3.7 and E.3.9 (the "Work Paper Spreadsheets"). These Work Paper Spreadsheets provided the basis for the Asserted Liability, as identified on Attachments A through D of the Draft Report. The College has reconstructed the process used to calculate the Asserted Liability, and, in doing so, has identified several categories of error. Based on the College's analysis, the College has determined that the Asserted Liability is incorrectly calculated and grossly overstates the amount of Title IV assistance disbursed for coursework at the Challenged Locations. As such, the Asserted Liability cannot be relied upon in issuing the final audit report.

Because the College was only supplied work paper information in hard copy, non-electronic, format and has had the Work Paper Spreadsheets in its possession for a limited time, it has not been able to analyze every student record identified in the Draft Report as a liability. However, as the errors the College has identified at this point are

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generic in character, the College can provide examples of several categories of error, as described more fully below, which conclusively establish that the Asserted Liability is not reliable and cannot be used even as an estimate of potential liability.

The OIG used the student data provided by Touro to identify *all* students who took *any* courses at any one of the nine Challenged Locations. The OIG then associated this list of student names with the *total Title IV assistance awarded to those students for the relevant award year*, resulting in the Asserted Liability. However, this process is based on several fundamentally flawed assumptions, and therefore grossly and improperly overstates the amount of Title IV assistance disbursed at the Challenged Locations.

The most basic error arises from the fact that the amounts listed on the Work Paper Spreadsheets as representing an Asserted Liability include all Title IV assistance disbursed to a student in an award year during which the student took *any* credits at any Challenged Location. The Report therefore fails to distinguish between students who took one course during a single semester, one course during multiple semesters, or multiple courses during multiple semesters at any of the Challenged Locations. Thus, based on the methodology used by the OIG, if a full-time student took *one course* during an award year at a Challenged Location, the *entire amount* of Title IV assistance disbursed to that student during the award year was considered assistance disbursed at that Challenged Location. This is simply factually unsupportable: it is inappropriate to assume that *all* Title IV assistance disbursed to a student during a given award year was related to course work at the Challenged Location.

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Touro understands that the OIG has taken the position that a repayment liability may be asserted with respect to Title IV assistance that was earned by a student on the basis of instruction at the Challenged Locations (assuming for the sake of argument that any such Challenged Locations are appropriately determined to be ineligible locations). However, there is no basis whatsoever to take the position that the Asserted Liability can include Title IV assistance earned as a result of instruction at *other indisputably eligible locations*. Put another way, the process utilized by the OIG to arrive at the Asserted Liability includes Title IV funds properly disbursed to students with respect to attendance at indisputably eligible locations. As such, the calculation of the Asserted Liability is grossly inadequate, significantly overestimating the amount of questioned costs related to the finding, and cannot provide the basis for any assertion of repayment liability against the College.

The following examples explain categories of error in which students attended both eligible locations and Challenged Locations during the same award year. However, as noted above, based upon the limited amount of time afforded the College to analyze the applicable work papers, especially given the format of those work papers, these examples may not be exhaustive of all of the categories which have given rise to the OIG's overstatement of the Asserted Liability. Further, the College is only providing an example student for each category explained below. Due to the limited time available for the review, the College is not able to present an exhaustive list of all of the students associated with each category cited. The College's review does establish without any doubt whatsoever that these errors in the methodology used in the calculation of the

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Asserted Liability appear with respect to most if not all of the Challenged Locations and, if corrected, would significantly reduce the estimate of potential liability related to this finding.³

Category 1: Touro Undergraduates Who Subsequently Enrolled as Graduate Students at Challenged Locations

It is the nature of Touro that a significant number of its undergraduate students continue at Touro in pursuit of a graduate degree. Two of the Challenged Locations, K946 and K1901, are graduate locations and do not serve undergraduate students. While the types of aid and eligibility requirements may vary, both undergraduate and graduate students are eligible for Title IV assistance. However, it is also clearly true that certain students who qualified for and accepted Title IV aid while pursuing undergraduate work did not seek Title IV assistance for graduate work. Each of these circumstances needs to be considered in calculating the assessment of liability with respect to the audit of Touro.

A. Aid During Both Undergraduate and Graduate Education

To illustrate this category of error, we have attached and analyzed the applicable documentation related to [STUDENT A], who graduated from Touro with a bachelor of science degree in the Fall of the 2005-2006 academic year. See Exhibit N. The entirety of [STUDENT A's] undergraduate instruction was at an indisputably eligible location.

³ Please note that the course listings provided as exhibits to this section are print-outs of filtered results from the excel spreadsheet of student information originally provided to the OIG during the audit process ("Course Listing"). The OIG has this identical information in its work papers and used this information to compile the flawed Work Paper Spreadsheets and, consequently, to arrive at the grossly overstated Asserted Liability.

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[STUDENT A] continued his studies as a graduate student in the Spring of the 2005-2006 academic year, with some of his graduate studies at a Challenged Location, K946. The Work Paper Spreadsheets identify a liability associated with the K946 Challenged Location of \$1914 in Pell Grant and \$8500 in Stafford Subsidized Loans.

First, it is obvious that the asserted Pell Grant liability is factually impossible: a graduate student is ineligible for a Pell Grant, and there is no assertion whatsoever that [STUDENT A] received Pell Grant funds other than as an undergraduate. Indeed, [STUDENT A] properly received the entire \$1914 of Pell Grant funds during the Summer and Fall semesters while he was an undergraduate student attending an indisputably eligible undergraduate location. Therefore, only the \$8500 in Stafford Loan funds could in any way be associated with the K946 Challenged Location. Further, as discussed below, asserting the ineligibility of the totality of [STUDENT A's] Stafford Loan is in error.

The Course Listing for [STUDENT A] clearly demonstrates that [STUDENT A] attended classes in buildings K1726 and M2733 during Summer 2005 (Term AA), K532 and K1726 during Fall 2005 (Term CC) and K946 and M2733 during Spring 2006 (Term EE). All of the buildings at which [STUDENT A] took classes, other than K946, are indisputably eligible locations. The Stafford Loan is shown to have been disbursed in the Spring 2006 semester, during which time one of the three classes in which [STUDENT A] was enrolled was offered at an indisputably eligible location. Therefore, even if the Challenged Location is ultimately determined to be ineligible, only a portion of the \$8500 Stafford Loan can be included in any asserted repayment liability.

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B. Aid Only During Undergraduate Education

As an example of this situation, we offer the case of [STUDENT B], attached as Exhibit O, who graduated from Touro with a bachelor of arts degree in the Summer of the 2004-2005 academic year. [STUDENT B] continued her studies as a graduate student in the Fall of the 2004-2005 academic year. The OIG identifies a liability of \$380 in Pell Grant funds which it associates with [STUDENT B's] attendance at the K946 Challenged Location. However, [STUDENT B] actually received such Pell funds for *undergraduate* coursework during Summer 2004 (Term AA) while attending the M2733 and K16AJ eligible locations. [STUDENT B] did not receive *any* Title IV funds while enrolled at the K946 Challenged Location and obviously could not have received Pell Grant funds for her graduate studies. As such, the \$380 in Pell Grant funds disbursed to this student cannot be included in any computation of liability.

Category 2: Students who Completed only Non-Credit Coursework at a Challenged Location

Touro provides non-credit seminars at various college locations. As described in Exhibit P which reproduces a relevant page from the 2005-2007 catalog of the Lander College of Arts and Sciences, these seminars are required for teacher licensing in New York state and elsewhere. One such seminar is EDU-513, a school violence seminar offered at the K946 Challenged Location. A significant number of students who attend non-credit seminars do not take any other courses at Challenged Locations. Since non-credit courses alone do not qualify students for Title IV eligibility and since these

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students took full-time course loads at eligible locations, all of their Title IV assistance arose from their enrollment at the eligible locations. Therefore, it is improper to include any Title IV assistance disbursed to students in this category in any calculation of repayment liabilities.

Another example is that of [STUDENT C], who attended Touro for the Fall and Spring semester during the 2004-2005 academic year. As demonstrated by the Course Listing attached as Exhibit Q, during Spring 2005 (Term EE), [STUDENT C] enrolled in 11 total courses. One such course was the *non-credit* seminar EDU-513 taught at the K946 Challenged Location, which was the *only* course in which [STUDENT C] was enrolled at that location. [STUDENT C's] eligibility for Title IV assistance was based entirely on enrollment in his credit-bearing courses, *all of which* he took at indisputably eligible locations. Accordingly, *none* of the \$3100 in Pell, \$3500 in Stafford Subsidized Loan or \$4000 in Stafford Unsubsidized Loan funds identified as liabilities on the Work Paper Spreadsheets can be included in any computation of repayment liability.

**Category 3: Students Who Completed Courses At Challenged Locations Only
During Some Semesters Of An Award Year**

As is not unusual for large, multipurpose universities, Touro allows students the opportunity to enroll in courses offered at various locations. Students who attended courses offered solely at eligible locations in one semester may have attended courses offered at a Challenged Location during a later semester. It is improper to include in any

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computation of repayment liability any Title IV assistance disbursed in semesters where a student completed coursework only at indisputably eligible locations.

As demonstrated in the Course Listing attached as Exhibit R, [STUDENT D] attended Touro during the Fall and Spring semesters of the 2005-2006 academic year. During the Fall (Term CC), [STUDENT D] attended the K250 Challenged location. During the Spring (Term EE), [STUDENT D] attended the main campus, location M2733. Accordingly, of the \$5200 in total Title IV assistance listed as a repayment liability on the Work Paper Spreadsheets with respect to this student, \$1200 in Federal Pell Grant, and \$2800 in Federal Work Study assistance cannot be included in any computation of repayment liability since the student earned these Title IV funds solely while attending an eligible location.

Similarly, as the Course Listing attached as Exhibit S clearly demonstrates, during the Fall (Term CC) of the 2005-2006 academic year, [STUDENT E] attended Touro at the LBAYS eligible location. During Spring (Term EE), [STUDENT E] attended the LMINE Challenged Location. Accordingly, of the \$9550 in Title IV funds identified as a repayment liability on the Work Paper Spreadsheets for this student, \$2025 in Pell, \$500 in SEOG, and \$1750 in Stafford Subsidized Loan funds arose from [STUDENT E's] enrollment at the indisputably eligible LBAYS location and therefore cannot be included in any computation of repayment liability arising from enrollment at an allegedly ineligible location.

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Category 4: Students who took credit-bearing courses at eligible locations and Challenged locations during the same semester

As noted above, it is common for Touro students to take courses at more than one location during a single semester. Title IV amounts representing credits earned at indisputably eligible locations cannot be attributed to liabilities asserted for enrollment in allegedly *ineligible* locations.

For example, as shown in the Course Listing attached as Exhibit T, during the 2005-2006 academic year, [STUDENT F] completed credit-bearing courses at both the K1726 eligible location and the KS139 Challenged Location. Accordingly, of the \$3880 in Title IV assistance listed as a repayment liability on the Work Paper Spreadsheets with respect to this student, only that part attributed to the allegedly ineligible locations can be included in any computation of a purported repayment liability.

As such, the calculations underlying the proposed liability arising from the alleged ineligible locations are so completely flawed in methodology that they cannot provide the basis for any assertion of liability whatsoever.

Finding No. 2 - Touro Did Not Keep Adequate Records to Account for Title IV Funds Disbursements to Only Eligible Additional Locations for the School Years 2002-2003 through 2004-2005

Touro does not believe anything in the Draft Report, and particularly anything relative to the OIG's use of the data supplied from Touro's computer system, demonstrates a lack of administrative capability. As noted previously, Touro has had no reason to consider any of the nine Challenged Locations to be "ineligible additional

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locations” for purposes of Title IV disbursements. Touro had internal processes to limit the amount of coursework students could earn at the locations for which Touro did not understand ED to have provided the required approvals. Touro strenuously argues that it is in compliance with the record maintenance requirements of 34 C.F.R. § 668.24 and accordingly the administrative capability requirements of 34 C.F.R. § 668.16.

The Department’s regulation relative to record maintenance, set forth at 34 C.F.R. § 668.24, states that: “an institution shall maintain required records in a systematically organized matter” and “an institution shall make its records readily available for review.” The regulation does not require institutions to maintain those records in any particular form or format provided that the form and format of choice is “readily available for review” and “systematically organized.”

Touro maintains its student records in a manner that provides the necessary access to school officials to ensure the proper administration of the Title IV programs. Touro financial aid staff use the student data to ensure student eligibility for financial aid awards. Title IV disbursements are appropriately documented by student and term. Academic advisors access course location information to advise students respecting the availability of appropriate courses, including where limitations exist on the work that may be completed at a particular site, taking into account state, accreditor, and federal approvals. Indeed the Draft Report acknowledges that Touro’s admissions, registrar, bursar, financial aid, advisement and development data is managed through a well-known administrative computer system commonly used among colleges and universities. During the five months of the audit fieldwork, Touro fully cooperated in making all

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student data available for review, including making Touro officials available to assist the reviewers in accessing and using Touro's record management system.

There is no argument that Touro provided the OIG the requested student data reports with significant assistance from the College's Office of Information Technology. However, it is incomprehensible that the Draft Report would allege that providing such expert assistance, from within its own resources, reflected Touro's failure to maintain adequate records respecting student eligibility for Title IV disbursements. Rather, the need for such involvement reflected the nature of the auditor's requests, which were materially different from the operational uses for which the system was very properly designed.

The Draft Report misconstrues communication from the Dean of Enrollment Management and Institutional Research and Review's communication to the auditors. The Dean never advised auditors that "Touro did not maintain a database of Title IV funds disbursed to students by location attended." Rather, the Dean advised the OIG that Touro did not maintain a database of Title IV disbursements *in the specific format requested by the auditors*. The auditors requested student data in a report format that differed from any of Touro's standard reports. Therefore, Information Technology staff created a process to retrieve the underlying data and College staff manually added certain information to format a new report in accordance with the auditors' requests. The data requested by the auditors was in the College's database and was provided in the specific format requested by the auditors. Stated another way, the College put significant resources and time into preparing the information in the format requested by the auditors,

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despite the fact that its systems were not required to maintain the information in the format requested by the auditors.

Touro appreciates the OIG's observations regarding potentially enhanced capabilities of its data system, and notes that professional advice is always welcome. However, there is not a scintilla of evidence of any inadequacy of the data management system or the ability of the College to make available for review all of the relevant information requested by the OIG. There is neither a factual nor a legal basis for this finding, which should be eliminated from the final audit report.