



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

Audit Services
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Dr. Yoram Neumann
President and Chief Executive Officer
TUI University
5665 Plaza Drive, Third Floor
Cypress, CA 90630-5023

Dear Dr. Neumann:

This **Final Audit Report**, entitled *TUI University's Administration of Higher Education Act, Title IV Student Financial Assistance Programs*, presents the results of our audit. The purpose of the audit was to determine whether TUI University (TUIU) had policies and procedures to ensure that Title IV, Higher Education Act of 1965, as amended (HEA), programs were properly administered in accordance with applicable requirements of the HEA, Federal regulations, and U.S. Department of Education (Department) guidance. Our review was limited to student eligibility for Title IV funds at the time of disbursements, identification of withdrawn students, calculation of return to Title IV amounts, and timeliness of returns of Title IV funds to lenders and the Department. Our review covered TUIU's policies and procedures for the period October 16, 2007 (date TUIU became a stand-alone institution) through June 20, 2008 (scheduled end date for TUIU's Spring 2008 session).

BACKGROUND

TUIU is a proprietary school, located in Cypress, California, that is accredited by the Western Association of Schools and Colleges. TUIU, originally known as Touro University International, was established in 1998 by Touro College, a private, non-profit institution of higher education located in New York. TUIU was recognized by the Department as a stand-alone institution on October 16, 2007. On October 31, 2007, Summit Partners, a private-equity firm located in Palo Alto, California, and Boston, Massachusetts, purchased a majority interest in TUIU. Two affiliated Summit Partners' funds hold an ownership interest of 85 percent. The remaining ownership interest is held by TUIU's President/Chief Executive Officer

(10 percent) and Touro College (5 percent). The Department required TUIU to provide a letter of credit in the amount of \$2,750,142 since the new owners – Summit Partners – did not have two fiscal years of audited financial statements. TUIU has educational programs in business administration, health sciences, information systems, and education and offers bachelors, masters, and doctoral degrees. The educational programs are delivered using computers via the internet and fixed media such as CDROMs. In Spring 2008, TUIU had an enrollment of about 8,300 students. TUIU's records, as of June 3, 2008, showed that, since becoming a stand-alone institution, TUIU had disbursed about \$8.6 million in Title IV funds to a total of 963 students. The \$8.6 million comprised about \$8.2 million of Federal Family Education Loans (FFELs) and \$358,000 of Federal Pell Grants (Pell Grants).

AUDIT RESULTS

TUIU did not have adequate policies and procedures for ensuring student eligibility for Title IV funds at the time of disbursement and for identifying students who had withdrawn from the institution. We estimated that \$923,379 of the \$8.6 million in Title IV disbursements made to students for the Fall 2007, Winter 2008, and Spring 2008 sessions was either disbursed to ineligible students or not earned by students who withdrew from the institution.

TUIU had policies and procedures for performing return of Title IV calculations, but due to the low number of such calculations, we did not have sufficient evidence to conclude that the procedures were adequate to ensure calculations would be consistently performed in compliance with the requirements. Also, we did not have sufficient evidence to assess whether TUIU procedures were adequate to ensure that amounts identified in return of Title IV calculations would be consistently returned on time to lenders and the Department.

We identified other deficiencies in TUIU policies and procedures concerning academically related activity, length of an academic year, tuition discounts, loan periods, and training. Based on the collective deficiencies noted, we concluded that TUIU had not demonstrated the capability to adequately administer the Title IV programs.

A draft of this report was provided to TUIU for review and comment on March 2, 2009. We received TUIU's comments, along with additional documentation, on May 11, 2009. In its comments, TUIU disagreed with the findings and recommendations. We have summarized TUIU's comments at the end of each finding. We have also provided our response after the summary of TUIU's comments. Based on TUIU's comments and additional documentation provided, we revised parts of our original findings and recommendations.

Except for personally identifiable information (that is, information protected under the Privacy Act of 1974 (5 U.S.C. § 552 a)), the entire narrative of TUIU's comments is included as an Enclosure to this report. All personally identifiable information mentioned in TUIU's comments was replaced with bracketed text. Because of the voluminous nature of the exhibits to TUIU's comments and the personally identifiable information within, we have not included them in the Enclosure. Copies of the exhibits to the University's comments, less the personally identifiable information, are available on request.

FINDING NO. 1 – TUIU Did Not Have Adequate Policies and Procedures to Ensure Student Eligibility and Identify Students Who Had Withdrawn

TUIU had deficiencies in its policies and procedures that resulted in 1) improper disbursements of Title IV funds to students who did not become eligible for the payments until after the disbursements, 2) improper disbursements to students who had not begun attendance at the time of the disbursement, and 3) failure to return Title IV funds for students who ceased attendance (withdrew) without providing formal notice to the institution. TUIU improperly disbursed Title IV funds because it erroneously defined the academic calendar for its educational programs as term rather than nonterm and did not ensure that students were participating in academic activity at the time of the disbursement. TUIU failed to return Title IV funds to lenders and the Department for withdrawn students because it did not have a policy covering withdrawals of students who did not provide notice to the institution or procedures for identifying students who had withdrawn without notice. Based on our review of TUIU records for a random sample¹ of students, we estimated that \$923,379 of the \$8.6 million of Title IV disbursements made to the 963 students enrolled during TUIU's Fall 2007, Winter 2008, and Spring 2008 sessions was either disbursed to ineligible students² or not earned by students who withdrew from the institution.

TUIU Policies and Procedures Were Not Designed for Educational Programs with a Nonterm Academic Calendar

TUIU mistakenly concluded that it was delivering educational programs using a nonstandard term academic calendar. TUIU was, in fact, using a nonterm academic calendar for its educational programs since the institution allowed students to complete courses at their own pace and its academic schedule contained overlapping sessions.

¹ We reviewed TUIU records for a sample of 98 students who were randomly selected from the 963 students enrolled during the Fall 2007, Winter 2008, and Spring 2008 sessions and received Title IV disbursements for the period October 16, 2007 through June 20, 2008. The Objectives, Scope, and Methodology section of the report provides further information on the sampling universe and sample selection methodology.

² The estimate does not include Title IV funds disbursed to students who were ineligible at the time of the disbursement, but became eligible for the funds after the disbursement date.

For purposes of the Title IV programs, there are three basic types of academic calendars that an institution can use to offer educational programs: standard term, nonstandard term, and nonterm. The *2007-2008 Federal Student Aid Handbook (FSA Handbook)*, provides the following guidance on term calendars—

Generally, a term [standard or nonstandard] is a period in which all classes are scheduled to begin and end within a set time frame. However, if these periods overlap within a program, they may not be treated as a term-based program for Title IV purposes.

The *FSA Handbook* lists the characteristics of a nonterm calendar for institutions that measure academic progress in credit hours.

A program that measures progress in credit hours is considered to be using a nonterm calendar if it has:

- Courses that do not begin and end within a set period of time,
- Courses that overlap terms,
- Self-paced and independent study courses that overlap terms, or
- Sequential courses that do not begin and end within a term.

TUIU defined the academic year for its educational programs as 48 weeks of instruction³ during which full-time students earn 24 credit hours for undergraduate programs and 16 credit hours for graduate programs. The educational programs are delivered in sessions with scheduled beginning and end dates.

Table 1: TUIU Academic Session Dates (As posted on December 19, 2008)		
Session	First Day of Class	Last Day of Class
Fall 07	October 8, 2007	December 21, 2007
Winter 08	January 7, 2008	March 21, 2008
Spring 08	April 7, 2008	June 20, 2008
May 08	May 27, 2008	August 1, 2008
Summer 08	July 7, 2008	September 19, 2008
August 08	August 18, 2008	October 31, 2008
Fall 08	October 6, 2008	December 19, 2008
November 08	November 17, 2008	January 30, 2009
Winter 09	January 12, 2009	March 27, 2009
February 09	February 16, 2009	May 1, 2009

Students generally enrolled in one or two courses per session. Courses were designed with six modules; each was two weeks in length. Each of the first five two-week modules required submission of three assignments – a case assignment, a component of a “session long” project, and participation in a posted question (threaded discussion). Students submitted the completed “session long” project at the end of the course. The sixth two-week module was designed to

³ As discussed in Finding No. 2 of the report, TUIU improperly included weeks in its definition of the academic year that did not contain scheduled instruction or examination.

provide one week for students to complete and submit a course reflection discussion paper and one week for instructors to prepare the course grade. The reflection paper was not required or graded as part of the overall course grade.

TUIU's educational programs met the characteristics of a nonterm academic calendar described in the *FSA Handbook*. TUIU allowed students to enroll in courses almost every month and complete assignments at their own pace. TUIU did not require students to begin or end courses within the posted dates. TUIU allowed students to request an additional six weeks to complete the course. If the request occurred prior to the posted end dates of the course, the extension was automatically granted. After the initial six-week extension, additional extensions were granted based on individual student requests. Our review of academic records for the 98 sampled students found that the students completed about 59 percent of the sessions after the scheduled last day of class.⁴

In addition, as demonstrated by the session dates in Table 1, TUIU's educational programs were scheduled for delivery using overlapping sessions – one of the characteristics of a nonterm academic calendar. During our audit period, the scheduled May 2008 session overlapped the scheduled Spring 2008 and Summer 2008 sessions. The frequency of scheduled overlapping sessions increased after our audit period. Also, TUIU allowed students to start courses in the next session while completing the courses in the prior session. Thus, while TUIU had scheduled session start and end dates for most sessions that did not overlap, the sessions actually did overlap because students were taking courses in more than one session at a time.

Since TUIU's educational programs were nonterm, TUIU should have applied the Federal regulations and guidance applicable to nonterm educational programs when administering Title IV programs. The type of academic calendar used for an educational program is a key factor in determining the timing of payments made under Title IV programs as well as student eligibility for the payments.

- The type of academic calendar determines the payment periods in the academic year.⁵ Title 34 C.F.R. § 668.164(b)(1) requires Title IV program funds to be made available on a payment period basis and disbursed at least once each payment period. For an educational program offered under a term calendar (standard or nonstandard), Title 34 C.F.R. § 668.4(a) states that the payment period for scheduled disbursements is the academic term (i.e., semester, trimester, quarter, or nonstandard term). For an educational program offered under a nonterm calendar, 34 C.F.R. § 668.4(c) states that the payment period for scheduled disbursements varies depending on the length of the

⁴ TUIU's records showed that the 98 sampled students were enrolled in a total of 251 sessions for the Fall 2007, Winter 2008, and Spring 2008 sessions. At the time of our review, the students had earned a passing grade in at least one class for 167 of the 251 sessions (i.e., completed the session for Title IV purposes). The students completed the session after the last scheduled day of class for 98 of the 167 sessions (59 percent).

⁵ Title 34 C.F.R. § 668.32(a)(1)(i) states a student must be enrolled, or accepted for enrollment, in an eligible educational program to receive funds under Title IV programs. The *FSA Handbook*, states that each eligible educational program must have a defined academic year. Title 34 C.F.R. § 668.3 sets forth the minimum requirements for an academic year.

program and weeks of instructional time (i.e., academic year or less, multiple of a full academic year, etc.).

- The type of academic calendar also impacts a student's eligibility for disbursements under Title IV programs. The regulations defining payment period for educational programs at 34 C.F.R. § 668.4 also establishes the conditions that a student must meet to complete the first payment period in an academic year. For educational programs offered under a nonterm calendar, students must successfully complete both the weeks of instructional time and the credits in a payment period in order to progress to the next payment period and be eligible for additional Title IV disbursements. For educational programs offered under a term calendar, the student does not have to successfully complete the coursework to move to the next payment period.

Because TUIU improperly applied rules applicable to its educational programs using a nonstandard term academic calendar, it did not develop policies and procedures for nonterm educational programs requiring that students complete both the weeks of instructional time and the credits in a payment period prior to progressing to the next payment period. TUIU scheduled four disbursements of Title IV funds over the period of an academic year – one disbursement for each session. Thus, in an academic year with the minimum of two payment periods, students had two scheduled disbursements in the first payment period and two scheduled disbursements in the second payment period. TUIU's policy was to make disbursements 30 days after the scheduled start date for the session. TUIU did not have a policy or procedures requiring financial aid staff to confirm that the student had completed the required weeks of instructional time and credits prior to notifying the bursar⁶ to disburse payments in the second payment period. As a result, TUIU improperly disbursed Title IV funds to students for the second payment period before the student had completed the coursework (weeks of instructional time and credits) to be eligible to receive the funds.

TUIU's Procedures Did Not Ensure that Students Were Participating in Academic Activity at the Time of the Title IV Disbursements

TUIU did not have policies and procedures in place to confirm that students had begun attendance in the session prior to making Title IV disbursements. The *FSA Handbook* lists the student eligibility factors that an institution must determine and document before disbursing Title IV funds. One of these listed factors is that the institution must confirm "if the disbursement occurs on or after the first day of classes, that the student has begun attendance." As we noted earlier, TUIU disbursed Title IV funds 30 days after the scheduled start of the session. Thus, TUIU was required to confirm and document that the student receiving the disbursement had engaged in academically related activity for one or more of the courses enrolled in for the session prior to making the disbursement.

⁶ A bursar is a financial administrator in a school or university. The Bursar Office at TUIU is part of the Finance Department. The TUIU Finance Department is responsible for managing the financial resources of TUIU.

This requirement is specified for disbursements made under the FFEL Program at 34 C.F.R. § 682.604(b)(2)(i), which states—

[A] school may release the proceeds of any disbursement of a loan only to a student...if the school determines the student has continuously maintained eligibility in accordance with the provisions of § 682.201 from the beginning of the loan period for which the loan was intended.

Pursuant to 34 C.F.R. § 682.604(d)(3) and (4), if the student withdraws prior to the first day of class or if the institution is otherwise unable to document attendance during the period of enrollment, the institution must return loan proceeds to the lender. Also, the institution can only make a FFEL disbursement to a student that temporarily ceases to be enrolled if the institution documents that the student has resumed enrollment. Title 34 C.F.R. § 682.604(b)(2)(iv) states—

If, prior to the transmittal of the proceeds of a disbursement to the student, the student temporarily ceases to be enrolled on at least a half-time basis, the school may transmit the proceeds of that disbursement and any subsequent disbursement to the student if the school subsequently determines and documents in the student's file—

- (A) That **the student has resumed enrollment** on at least a half-time basis;
 - (B) The student's revised cost of attendance; and
 - (C) That the student continues to qualify for the entire amount of the loan, notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half-time basis.
- [Emphasis added.]

For programs other than the FFEL program, 34 C.F.R. § 668.21(a) provides for the treatment of Title IV grant and loan funds if the student does not begin attendance at the institution.⁷ When an institution has made a disbursement of Title IV funds to a student that did not begin attendance in the payment period, the institution must return the Title IV funds that were credited to the student's account for that payment period or period of enrollment at the institution.

TUIU did not have policies and procedures to adhere to the above requirements, which are applicable to both term and nonterm educational programs. TUIU used an in-house developed integrated software package called CourseNet Management Student System (CNSSS)⁸ to manage the following three areas:

- Student Services – Student records related to admissions, registration, transcripts, financial aid, and student accounts.
- CourseNet – Course delivery, including assignments and threaded discussion, grading,

⁷ On November 1, 2007, the Department amended this provision to apply to all Title IV loan programs, effective July 1, 2008, after the conclusion of our audit period.

⁸ Documents prepared by students on the case assignments and “session long” projects are maintained in a separate system.

and monitoring of academic activity.

- Course Development – Course creation and modification.

Prior to making a Title IV disbursement, TUIU's financial aid staff reviewed information in the CNSSS Student Services module to confirm that a student's status was shown as "enrolled." If the student was shown as enrolled in the session, the financial aid staff then instructed the bursar to disburse the Title IV funds. The financial aid staff did not review the academic activity in the CNSSS Course-Net module or contact the academic staff to determine if the student had begun academic activity in the scheduled course(s). The Course-Net module contains the information on students' ongoing academic activity that is needed to assess students' eligibility at the time of the Title IV disbursements (i.e., dates that the student submitted each two-week module assignment and participated in the discussion question, dates that the instructor graded the assignments, assignment grades, and course grades). Because TUIU financial aid staff did not confirm students' academic activity, TUIU disbursed Title IV funds to students who were not eligible (had not begun attendance) at the time of the disbursement.

TUIU Did Not Have Policies or Procedures for Identifying Students Who Had Withdrawn Without Providing Official Notification to the Institution

While TUIU officials contacted students who had ceased participation in their courses, TUIU had no policies to address circumstances when students ceased attendance without notifying the institution and no procedures to identify such students for purposes of performing return of Title IV calculations.⁹ Institutions are required to perform return of Title IV calculations when a student begins, but later withdraws, during the payment period or period of enrollment. Title 34 C.F.R. § 668.22(a)(1) states—

When a recipient of title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of title IV grant or loan assistance that the student earned as of the student's withdrawal date in accordance with paragraph (e) of this section.

Title 34 C.F.R. § 668.22(j)(2) requires that an institution have a mechanism in place for determining when a student withdraws without notice.

An institution must determine the withdrawal date for a student who withdraws without providing notification to the institution no later than 30 days after the end of the earlier of the—

- (i) Payment period or period of enrollment, as appropriate, in accordance with paragraph (e)(5) of this section;
- (ii) Academic year in which the student withdrew; or
- (iii) Educational program from which the student withdrew.

⁹ TUIU had policies and procedures in place for students to provide official notification of their withdrawal from the institution. TUIU also had procedures for performing return of Title IV calculations and returning Title IV funds for students who had provided official notice of their withdrawal.

Institutions are not required to use a specific procedure for making the determination. However, the Department did provide guidance in Dear Colleague Letter (DCL) GEN-04-03, issued February 2004 (revised November 2004). The guidance is reiterated in the *FSA Handbook*.

An institution must have a procedure for determining whether a Title IV recipient who began attendance during a period completed the period or should be treated as a withdrawal. We do not require that an institution use a specific procedure for making this determination.

If a student earns a passing grade in one or more of his or her classes offered over an entire period, for that class, an institution may presume that the student completed the course and thus completed the period. If a student who began attendance and has not officially withdrawn fails to earn a passing grade in at least one course offered over an entire period, the institution must assume, for Title IV purposes, that the student has unofficially withdrawn, unless the institution can document that the student completed the period.

In the absence of evidence of a last day of attendance at an academically related activity, a school must consider a student who failed to earn a passing grade to be an unofficial withdrawal.

The *FSA Handbook* reiterates the guidance on determining the withdrawal date for schools that are not required to take attendance.

For these withdrawals, commonly known as dropouts, the withdrawal date is the midpoint of the payment period or period of enrollment, as applicable, or the last date of an academically related activity that the student participated in.

Our review found evidence confirming that TUIU contacted students who had ceased participation in their courses. The Vice President of Academic Affairs explained that instructors periodically sent a list of non-participating students to the Dean of the School. The Dean of the School submitted the list to the Vice President of Academic Affairs. The Vice President of Academic Affairs either contacted the students or instructed the Academic Advisor to contact the students to discuss why they were not participating and encourage them to continue participation. TUIU did not have written procedures for this process. TUIU also did not have procedures to identify those students who did not resume their academic activity as students who had withdrawn without notice to the institution.

TUIU's Policies and Procedures Resulted in Improper Disbursements and Failure to Return Title IV Funds for Withdrawn Students

As a result of its deficient policies and procedures, TUIU improperly disbursed Title IV funds to students who did not become eligible for disbursements for the second payment period until after the disbursements were made, improperly disbursed Title IV funds to students who had not begun attendance at the time of the disbursement, and failed to return Title IV funds for students who ceased attendance without providing formal notice to the institution.

We reviewed TUIU's records for the 98 students sampled from the universe of 963 students who were shown on the TUIU-provided data as having received about \$8.6 million of Title IV disbursements for the Fall 2007, Winter 2008, and Spring 2008 sessions. (The data included student information for the period from October 16, 2007 through June 20, 2008.)

The 98 students received \$980,113 of the \$8.6 million of Title IV disbursements. For each sampled student, we reviewed CNSSS information for the Fall 2007, Winter 2008, and Spring 2008 sessions to obtain the following: 1) date the student began academic activity, 2) dates the student participated in academic activity, 3) dates of the Title IV disbursements, 4) grades received for the courses in each session, and 5) date of the notice of withdrawal, if one had been provided by the student to TUIU. From this information, we concluded—

- Sampled students were ineligible for Title IV disbursements when the CNSSS information showed the students had no academic activity for the session. TUIU is required to return the Title IV funds for these disbursements to lenders and the Department, as appropriate.
- Sampled students were ineligible for Title IV disbursements when the CNSSS information showed no academic activity for the session prior to the date of the disbursement. However, in such cases, the CNSSS information showed that these students engaged in academic activity after the disbursement. Thus, the students subsequently became eligible for the disbursement. No Title IV funds need to be returned for these improper early disbursements.
- Sampled students were ineligible for Title IV disbursements when the CNSSS information showed students had not completed half of the credits and half of the weeks of instruction in the academic year prior to the date of disbursements for the second payment period. The CNSSS information also showed that these students engaged in academic activity after the disbursement date and completed the credits and weeks of instruction sufficient to qualify for a second disbursement. Thus, these students also subsequently became eligible for the disbursement and no Title IV funds need to be returned for these improper early disbursements.
- Sampled students were identified as withdrawn from the institution when the CNSSS information showed that the students had failed all the courses in the session and the students ceased academic activity. TUIU was required to perform a return of Title IV calculation for these students to determine the amount of Title IV funds that the student had not earned and return amounts to lenders and the Department, as determined by the

calculation. To calculate the unearned Title IV funds for withdrawn students, we applied the guidance provided in DCL GEN-04-03 for students who withdraw from a nonterm program where the completion date of the period is dependent on individual student progress.

Table 2 provides the results of our review of TUIU's records for the sampled students. Of the 98 students in our sample, 73 students (74 percent) had improper disbursement(s) and/or lacked a return of Title IV calculation for the Fall 2007, Winter 2008, and/or Spring 2008 sessions.

Table 2: Results of Student Sample				
Student Sample		Number of Students in Sample	Title IV Funds Disbursed to Students in Sample	
Totals for Sample		98	\$980,113	
Type of Error		Number of Students in Sample Identified with the Type of Error in One or More Sessions	Title IV Funds Disbursed to Identified Students for Sessions with the Type of Error	Title IV Funds to Be Returned
A	Ineligible for disbursement—Student did not attend in session	27	\$142,669	\$142,669(b)
B	Return of Title IV—Student withdrew without providing official notification	30	\$194,892	\$161,852 (c)
Totals (a)		50	\$337,561	\$304,521
C	Early disbursement—Student not eligible until after the date of the disbursement	42	\$254,397(d)	
Totals (a)		73	\$557,632	
<p>(a) Unduplicated number of students and amounts of Title IV funds. A student may have different types of errors (A, B, or C) in different sessions (Fall 2007, Winter 2008, and Spring 2008). Also, a student could have both an early disbursement error (Type C) and return of Title IV error (Type B) in the same session.</p> <p>(b) The \$142,669 consists of \$7,259 in Pell Grant funds and \$135,410 in FFEL disbursements that TUIU is required to return to the Department and lenders, respectively.</p> <p>(c) The \$161,852 consists of \$3,704 in Pell Grant funds and \$158,148 in FFEL disbursements. TUIU is required to return \$647 of the Pell Grant funds to the Department and advise students of the amounts they owe to the Department for the remaining \$3,057 of Pell Grant funds. TUIU is required to return \$49,224 of the \$158,148 of FFEL disbursement to lenders. The balance of the FFEL disbursements (\$108,924) would be repaid by students under the terms of their promissory notes.</p> <p>(d) The funds consist of \$179,074 for students who did not engage in academic activity until after the disbursement and \$75,323 for students who had not successfully completed the previous payment period at the time of the disbursement. The student subsequently became eligible for the disbursement.</p>				

Based upon our review of TUIU records for the random sample of 98 students, we estimate that about \$923,379 of the \$8.6 million of Title IV disbursements made to the 963 students for the Fall 2007, Winter 2008, and Spring 2008 sessions was either disbursed to ineligible students or

not earned by students who withdrew from the institution. We project, with a 90 percent confidence level, that the actual amount is at least \$757,427 and as much as \$1,089,332.

**TUIU's Inadequate Policies and Procedures
Impacted Title IV Funds Disbursed to Students
Before TUIU Separated from Touro College**

TUIU's Vice President of Academic Affairs and its Director of Student Financial Aid both advised us that TUIU's policies and procedures for administering Title IV programs did not change when TUIU separated from Touro College and Summit Partners purchased the majority interest in the institution. Thus, additional amounts of Title IV funds may need to be returned to lenders and the Department for periods prior to October 16, 2007 (date TUIU became a stand-alone institution).

When TUIU entered into its program participation agreement with the Department, TUIU acknowledged that it was liable for improper disbursements and returns of Title IV funds for withdrawn students. Title 34 C.F.R. § 668.14(b) states—

By entering into a program participation agreement, an institution agrees that—

* * * * *

(25) It is liable for all—

- (i) Improperly spent or unspent funds received under the Title IV, HEA programs, including any funds administered by a third-party servicer; and
- (ii) Returns of title IV, HEA program funds that the institution or its servicer may be required to make.

New owners are liable for amounts due for the former owner's improper administration of Title IV programs. The *FSA Handbook* states —

If new owners acquire a school or if a school is the result of the merger of two or more schools that formerly were operating separately, the new owner is liable for any debts that accrued from the former owner's FSA [Federal Student Aid] program administration. A new owner accepts liability for any federal funds that were given to the school but that were improperly spent before the date the change in ownership structure, or governance became effective.

Thus, TUIU is liable for Title IV amounts that were improperly disbursed or not returned for withdrawn students for periods prior to October 16, 2007.¹⁰

¹⁰ Touro College may also be held liable for the Title IV amounts to be returned for periods prior to October 16, 2007. Touro College (former owner) has maintained its program participation agreement with the Department, which now covers the campuses for which it retained ownership.

Recommendations

We recommend that the Chief Operating Officer for Federal Student Aid require TUIU to—

- 1.1 Develop and implement policies and procedures that comply with the requirements for administering Title IV programs for educational programs using a nonterm academic year.
- 1.2 Develop and implement policies and procedures to appropriately confirm students' eligibility at the time of Title IV disbursements.
- 1.3 Develop and implement policies and procedures for identifying students who withdraw without providing notification and for performing return of Title IV calculations for such students.
- 1.4 Return to the Department the \$7,906 (\$7,259 + \$647) in Pell Grant funds that we identified in our student sample as due for improper disbursements and withdrawn students.
- 1.5 Return to lenders the \$184,634 (\$135,410 + \$49,224) in FFEL disbursements (plus interest and special allowances incurred by the Department on the related FFELs) that we identified in our student sample as due for improper disbursements and withdrawn students.
- 1.6 Notify the TUIU students, which we identified in our student sample as having not earned the \$3,057 of Pell Grant funds at the time of their withdrawal, of the amounts they need to repay to the Department.
- 1.7 Conduct a 100 percent review of students who received Title IV disbursements on or after October 16, 2007, to identify other amounts to be returned to lenders and the Department for disbursements to ineligible students and withdrawn students and return those amounts (plus the interest and special allowances incurred by the Department on the related FFELs). For the 963 students in our sampling universe, we estimated that \$923,379 of the \$8.6 million of Title IV funds disbursed to students should be returned to lenders and the Department for disbursements made to TUIU students during the period October 16, 2007 through June 3, 2008 (creation date of TUIU-provided file).¹¹
- 1.8 Determine the amount of Title IV funds that were improperly disbursed or not returned for withdrawn students for periods prior to October 16, 2007 (TUIU's separation from Touro College), and take action to recover the Title IV funds or other administrative actions, as appropriate.

¹¹ The \$923,379 includes the amounts that are to be returned under Recommendation 1.4, 1.5, and 1.6.

TUIU Comments and OIG Responses

TUIU disagreed with our finding and recommendations and provided comments to each section of our finding.

TUIU Policies and Procedures Were Not Designed for Educational Programs with a Nonterm Academic Calendar

- *TUIU Comment.* TUIU stated that the Office of Inspector General (OIG) conclusion that TUIU was delivering educational programs using a nonterm academic calendar is not supported by the applicable law and evidences a misunderstanding of the facts and actual operations of its programs. TUIU asserted that it correctly disbursed Title IV funds consistent with the regulations and guidance for educational programs using a nonstandard academic calendar, for all but a trivial few.

TUIU provided information as a basis for concluding that during the Fall 2007, Winter 2008, and Spring 2008 it offered its educational programs on a nonstandard term academic calendar. In addition, TUIU provided information regarding its current practice for treating certain versions of its programs as nonterm programs. TUIU's disagreement focused on four discussion areas that are summarized below.

- *OIG Response.* We have made some minor revisions to our report, for clarify, but we have not made the substantive revisions requested in TUIU's comments. We do not agree that TUIU's practices were adequate to ensure student eligibility and identify students who had withdrawn.

1. Department three-day site visit.

- *TUIU Comment.* TUIU stated that during the pre-certification site visit that occurred in October 2007, the Department reviewed individual student files and evaluated the treatment of its educational programs as nonstandard term without comment or concern.
- *OIG Response.* The correspondence submitted by TUIU with its comments did not support TUIU's contention that the Department had evaluated the treatment of its educational programs as nonstandard term and had no concerns.

2. TUIU has clearly posted beginning and ending dates and the standard practice for institutions of higher education to establish policies granting incompletes and extensions does not turn nonstandard term programs into nonterm programs.

- *TUIU Comment.* TUIU stated that the OIG assertion that TUIU did not require students to begin or end courses with the posted dates ignores both the institution's published calendar and its actual operations. During the Fall 2007, Winter 2008, and Spring 2008 terms, TUIU offered its educational programs on a nonstandard term academic calendar consistent with the definition as described in the 2007-2008 Federal Student Aid Handbook. TUIU included the following from the Handbook:

Nonstandard terms are terms (where all coursework is expected to begin and end within a set period of time) that are not semester, trimester, or quarter terms. In some cases, the terms may be of unequal length, though it is also possible with terms of equal length to be considered nonstandard. For instance, a school could offer a program with six consecutive 5-week modules, with each module counting as a nonstandard term.

TUIU stated that its students enroll based on the academic calendar published on the TUIU website. TUIU's academic calendar has clearly delineated sessions which are fully defined in student disclosures and in the course outlines provided to students. TUIU students are unable to access the CNSSS/CourseNet learning environment until the published first day of class. If a TUIU student does not request and receive an incomplete, the student's work product is graded and final grades are submitted consistent with the published academic calendar.

TUIU stated that its policy of granting certain nonstandard term students an incomplete grade and allowing those students to finish their coursework on an extended basis does not convert nonstandard term programs into nonterm programs. The incomplete grade affords the student the opportunity to complete the required course work within a reasonable period of time, as defined by the institution, in order to receive credit for the course. TUIU stated that when the timeframe of an extension coincides with a student's subsequent enrollment in another course, an overlap in sessions is created, since the student is also attending courses for the current term.

TUIU provided examples of three Universities that allowed students time to complete coursework when a student has been assigned an incomplete. The decision to grant an incomplete, and the terms under which a student can convert the incomplete to a final grade, are exclusively within the academic discretion of the institution. TUIU stated that the OIG incorrectly asserted that TUIU allowed students to start courses in the next session while completing the courses in the prior session. TUIU stated that Department guidance does not limit the number of incompletes an institution can grant.

TUIU stated that it serves a substantial number of U.S. military service members, with a significant proportion of those deployed outside the continental United States. Under these circumstances it is understandable that TUIU will have students who reasonably require an incomplete grade. TUI stated that there is nothing in the Department's requirements that limit the number of incompletes an institution can grant. An institution that serves a large number of men and women whose studies may necessarily be secondary to their military obligations will necessarily be freer in making that allowance. TUI asserted that the decision to grant an incomplete, and the terms under which a student can convert the incomplete to a final grade, are exclusively within the academic discretion of the institution.

TUIU stated that the OIG's interpretation violates the law and imposes an unwarranted hardship on TUIUs large number of military students and that such a conclusion is not

supported by any Title IV requirement and constitutes a clear violation of the General Education Provisions Act (“GEPA”). TUI avowed that the GEPA prohibits all agencies of the Federal government, most notably the U.S. Department of Education, from dictating curricular choices or otherwise interfering with an institution’s pedagogical decisions based on federal education laws or programs. TUIU provided the following excerpt from 20 U.S.C. Section 1232a which states:

No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution. . . .

TUIU asserted that the OIG is violating the GEPA and interfering with pedagogical decisions by telling institutions when it is or is not appropriate to grant an incomplete grade.

- *OIG Response.* The section of the FSA handbook that TUIU quoted in its response applies solely to term programs, that is standard or nonstandard term programs, and does not apply to nonterm programs. The FSA Handbook states that generally, a term (standard or nonstandard) is a period in which all classes are scheduled to begin and end within a set time frame. However, if these periods overlap within a program, they may not be treated as a term-based program for Title IV purposes. In other words, if the term program does not fall into a standard term definition such as the traditional semester, trimester, or quarter, then that term program may fall under the nonstandard term program definition. However, as we discussed in our audit report, for purposes of the administration of Title IV funds, there are three basic types of academic calendars: term calendars that are either standard term or nonstandard term, and nonterm.

TUIU had published start and end dates for all sessions and until TUIU added the May 2008 session, the published session dates did not overlap. However, even before TUIU added the May 2008 session, TUIU students were enrolled in overlapping sessions. TUIU students that were in the process of completing a session after the posted end date, military or otherwise, and continued to attend courses in the following session, were enrolled in overlapping sessions. We found that TUIU did not require its students to complete the sessions within the published dates.

We obtained electronic data from TUIU in June 2008, which contained the students who had received Title IV disbursements. We limited our sample selection and review to the Fall 2007, Winter 2008, and Spring 2008 sessions because the May 2008 session had not ended at the time we obtained the data. Our review of academic records for 98 students found that the students completed about 59 percent of the sessions after the scheduled last day of class. Thus, as stated in our report, while the scheduled session start and end dates did not overlap until the May 2008 session, the sessions actually did overlap because students were taking courses in more than one session at a time.

Given the extent that TUIU used extensions and incompletes in its academic programs as a standard practice rather than on the exception basis, we concluded that the academic

programs did not have real established ending dates. TUIU had established a program structure that allowed a high percentage of its students, military and other students, flexible timeframes for completing courses and sessions and allowed students to attend overlapping sessions. TUIU used extensions and incompletes to manage this flexibility even though it posted session beginning and ending dates. TUIU's structure illustrated that there are no real ending dates and its students overlap sessions therefore TUIU programs meet the Department definition of a nonterm academic calendar as described in the TUIU response and in our Audit Report.

The Department considers a program that measures progress in credit hours to be nonterm if the program has:

- Courses that do not begin and end within a set period of time
- Courses that overlap terms,
- Self-paced and independent study courses that overlap terms, or
- Sequential courses that do not begin and end within a term.

The flexibility that TUIU provides its military and other students to attend college along with other life priorities is admirable. However, the extent of flexibility provided students who do not complete courses within a set period of time confirms that TUIU is in fact operating its programs on a nonterm basis, thereby triggering the obligation to administer Title IV funds in accordance with the requirements applicable to nonterm programs. Those requirements provide the flexibility TUIU states it desires as under those rules Title IV aid is packaged and disbursed according to the circumstances and academic progress of individual students.

TUIU stated that the OIG's interpretations impose an unwarranted hardship on TUIU's large number of military students; however, TUIU did not explain or provide details of the hardship that was being imposed.

The OIG is not interfering with pedagogical decisions by its audit conclusion that TUIU did not administer Title IV funds in compliance with the laws, regulations, or Department guidance. TUIU is free to structure and implement its academic programs in any way that it chooses. TUIU, however, must comply with the Title IV requirements that apply to the academic structure that TUIU has chosen or implemented. The OIG conclusion is specific to TUIU's administration of Title IV funds and is unrelated to pedagogical decisions.

The OIG recommendations do not require TUIU to change its programs, curricular choices, or pedagogical decisions. OIG is recommending that TUIU administer Title IV funds in accordance with the Title IV laws, regulations, and guidelines. We based our audit conclusions on the following: 1) about 59 percent of student's sessions in our sample were not completed within a set period of time, 2) students in our sample were attending sessions that overlapped, 3) TUIU students in our sample completed courses at their own pace, and 4) TUIU added scheduled overlapping sessions starting in May 2008.

The information provided by TUIU on policies at other institutions did not affect our conclusion that TUIU's implementation of its own policy requires TUIU to administer Title IV funds on a nonterm basis.

TUIU stated that students are unable to access the CNSSS system until the published first day of class. However, we found students in our sample that did not begin the session until after the posted end date of the session. Therefore, this information did not change our conclusion that TUIU did not require students to begin or end courses within the posted dates.

3. Flexibility is the hallmark of online learning and TUIU programs were not self-paced or independent study.

- *TUIU Comment.* TUIU programs are not and were not self-paced or independent study. The OIG erroneously asserted that TUIU allowed students to enroll in courses almost every month and complete assignments at their own pace. The TUIU Course Guidelines and course syllabi articulate the expectations for the students and each module has specific due dates. Students are expected to submit assignments and/or participate in threaded discussions in every module within the timeframes established for the module and course.
- *OIG Response.* TUIU accommodates its students with its flexible approach to the timeframe for submitting assignments and completing courses. Based on the information presented in our report we concluded that this flexibility is self-paced and confirms that TUIU in fact operates a nonterm academic calendar.

4. The Department provided guidance and interpretations regarding the use of both a nonstandard term and a nonterm academic calendar that TUIU has a right to rely upon.

- *TUIU Comment.* TUIU stated that it did not utilize overlapping terms prior to May of 2008. Beginning in May of 2008 TUIU introduced session start dates in the months of May, August, and November that did cause certain versions of its programs to meet the definition of nonterm programs. TUIU acknowledged that some students were enrolled in overlapping terms, which took place in May, August, and November 2008, and those students were appropriately treated as nonterm students. TUIU stated that the session dates in Table 1 of the OIG Draft Report make it clear that TUIU offered programs on both a nonstandard term basis and a nonterm basis starting with May 2008.

TUIU asserted that it served two populations of students: nonstandard term students who started instruction at the beginning of any term and continued sequential sessions of enrollment through the academic year one term at a time and nonterm students who enrolled in overlapping terms. TUIU stated that the OIG auditors were aware of the Department's position in this regard. TUIU stated that this change did not cause the University's nonstandard term programs to be transformed into nonterm programs. Rather, TUIU professed that it applied a different academic calendar for different versions of its programs.

TUIU further explained that other than the initiation of limited overlapping sessions in May of 2008, its students did not enroll in overlapping sessions. TUIU clarified that to the extent students were enrolled in overlapping sessions (May 2008, August 2008 and November 2008) that TUIU treated those students as nonterm students but stated that all other students were appropriately treated as nonstandard term students. TUIU believed that this treatment

was consistent with both the Department's requirements and its direct advice to TUIU when TUIU asked for clarification on this issue.

TUIU defended its use of both nonstandard term and nonterm academic calendars because it was vetted by the Department during a conference call meeting involving TUIU's legal counsel and Department representatives with clear authority and seniority within the Department. TUIU provided as an attachment to its response to the draft report, a one page e-mail dated July 23, 2008, from its legal counsel to Department representatives that summarized the conversation. The e-mail included a brief description of the term program and the nonterm program that TUIU planned to implement. TUIU asserted that the auditors were well aware of the Department's position related to the TUIU plan to implement the use of both a nonstandard term and a nonterm academic calendar. TUIU stated that it has the right to rely on such guidance and provided the following in support: Associated Technical College, Docket No. 91-112-SP, at p. 27 (Initial Decision Feb. 3, 1993), affirmed by the Secretary (July 23, 1993).

TUIU asserted that its treatment is consistent with the regulations and guidance of the Department which specifically allow institutions to apply different academic calendars for two versions of the same program. TUIU reviewed the OIG student sample and found that, at most, only four of the 98 students in the OIG sample were enrolled on a nonterm basis.

- *OIG Response.* TUIU is correct that Department guidance allows a school to have different academic years for different programs. As stated in our audit report, our review covered TUIU's policies and procedures from the date TUIU became a stand-alone institution on October 16, 2007, through June 20, 2009. During that time period, TUIU had not established two versions of the same academic program as two separate programs nor was it administering Title IV funds based on a nonterm calendar for any of its students. However, TUIU had implemented the May 2008 session with a posted start date of May 27, 2008, and posted end date of August 1, 2008. As illustrated in Table 1, the May 2008 session overlapped the Spring 2008 and the Summer 2008 sessions.

TUIU was offering programs on a nonterm basis prior to the implementation of the May, August, and November 2008 sessions as supported by our audit report. Our conclusion that TUIU was delivering educational programs using a nonterm academic calendar for its education programs would not have been different if TUIU had not added the May 2008, August 2008, or November 2008 sessions. However, by adding the May, August, and November 2008 sessions, TUIU increased the frequency of session start dates and expanded its practice of allowing students to enroll in overlapping sessions. TUIU stated that, at most, the OIG sample included only four students that were enrolled on a nonterm basis but TUIU did not identify the students or provide additional information about the four students.

The information TUIU provided regarding discussions with Department representatives concerning treating two versions of the same program as separate programs (one as a term program and one as a nonterm program), did not alter our conclusion. None of the information indicated that Department representatives agreed that TUIU properly administered any version of its program on a nonstandard term basis.

During our audit period, TUIU administered all Title IV funds using a nonstandard term academic calendar. Given that we are not questioning or making recommendations in our audit report regarding whether TUIU has the right to implement two versions of the same academic program as separate programs, the discussions shared with the OIG auditors, the TUIU representative conference call discussions with Department representatives, the e-mail TUIU referenced, and the Associated Technical College case are irrelevant to our audit findings and recommendations.

TUIU's Procedures Did Not Ensure that Students
Were Participating in Academic Activity at the
Time of the Title IV Disbursements

- *TUIU Comment.* TUIU stated that its initial Title IV disbursements were appropriate. TUIU stated that four of the students that OIG had concluded were ineligible for Title IV funds attended during the session or were granted an incomplete grade consistent with institutional policy and submitted coursework following that incomplete. TUIU provided a schedule identifying the four students and the dates of their academic activity.

TUIU stated its learning model was specifically adopted to accommodate the time-challenged demands of service members, and TUIU allowed for some flexibility as to when a student submitted assigned coursework after the start date of the course. TUIU stated that even assuming that the assertion of liability for this issue is legally defensible, the amounts are significantly overstated. TUIU asserted that the OIG had failed to apply the "Actual Loss Formula,"¹² which is required by the Department's policy and practice and would significantly reduce the liability.

TUIU stated that even though it believed that its procedures were consistent with the Title IV requirements and the nature of its programs, it had implemented various procedures to improve the documentation of student eligibility at the time of the Title IV disbursement. The revised procedures include confirming that a student had engaged in an academically related activity prior to disbursing Title IV funds. TUIU personnel have been reminded about the importance of counseling students regarding academic engagement throughout the course and the importance of timely updates to student records.

- *OIG Response.* TUIU did not provide documentation to support the scheduled dates of academic activity for the four students it identified as eligible for Title IV funds. We noted that many of the dates in the schedule that TUIU provided were after the completion of our audit work. TUIU can submit evidence during the audit resolution process to: 1) verify whether the 4 students were eligible for Title IV funds, and 2) demonstrate if the procedures that TUIU has implemented are adequate to appropriately confirm student eligibility at the

¹² FSA commonly uses an estimated actual loss formula for this type of finding in the audit resolution process to determine the amount of FFEL funds to be returned. When audits have identified loans that were made to ineligible students, the lender and guaranty agency may continue to receive payments on the ineligible loans. The formula takes into account a school's default rate and the amount of the ineligible disbursements to calculate an amount that includes the estimated actual loss to the government for which the school is liable.

time of Title IV disbursements. The audit resolution process will determine the final liability, including any application of the estimated actual loss formula.

TUIU Did Not Have Policies or Procedures for
Identifying Students That Had Withdrawn Without Providing
Official Notification to the Institution

- *TUIU Comment.* TUIU stated that the Department did not raise issues with respect to the policies in place covering unofficial student withdrawals or the operation of those policies during its review of relevant policies and procedures prior to granting its free-standing status. TUIU asserted that actual instances of unofficial withdrawal errors were substantially lower than those asserted by the OIG because the OIG selected significantly higher percentages of students with “F” and “incompletes” than in the population as a whole. Instances of unofficial withdrawals are uncommon, which is consistent with TUIU’s low overall withdrawal rate and its procedures for outreach to non-participating students. TUIU has revised and implemented its unofficial withdrawal policy in an effort to address the OIG’s concerns.
- *OIG Response.* Our report did not estimate the possible instances of unofficial withdrawal errors to the universe of Title IV students. The 74 percent included in page 10 of the draft report does not state it was related to TUIU’s withdrawal rate nor was it intended as an estimate of the withdrawal rate of the universe of Title IV students. The draft report clearly states that of the 98 students in our sample 73 students had improper disbursements and/or lacked a return of Title IV calculation for the Fall 2007, Winter 2008, and/or Spring 2008 sessions. The 74 percent is a simple calculation of 73 out of the 98 students in our sample.

The OIG did not review or confirm the rate of withdrawal calculated by TUIU. However, we concluded that during our audit period TUIU did not have policies to address circumstances when students ceased attendance without notifying the institution and no procedures to identify such students for purposes of performing return of Title IV calculations. Therefore, TUIU’s withdrawal rate may not include all students that should have been withdrawn from TUIU.

TUIU’s Deficient Policies and Procedures Resulted in
Improper Disbursements and Failure to Return
Title IV Funds for Withdrawn Students

- *TUIU Comment.* TUIU asserted that the OIG analysis fails to take into account applicable law and TUIU’s operations and therefore does not support the findings. TUIU purported that except for four students in the sample, the application of nonterm requirements by the OIG was inappropriate. TUIU reviewed the records of students included in the OIG calculation of liability and recalculated the errors using the rules for nonstandard term programs. TUIU provided a schedule showing the results of its review and recalculations.

- *OIG Response.* We did not review the schedule provided by TUIU using nonstandard term guidance because we concluded that TUIU should be administering Title IV funds using nonterm guidance.

TUIU's Inadequate Policies and Procedures
Impacted Title IV Funds Disbursed to Students
Before TUIU Separated from Touro College

- *TUIU Comment.* TUIU asserted that its operations were in substantial compliance with Title IV requirements throughout the Audit Period and that there is no material liability to be asserted for the period prior to October 16, 2007.
- *OIG Response.* TUIU's comments did not demonstrate that its operations were in substantial compliance with Title IV requirements throughout the Audit Period or that there is no material liability for the period prior to October 16, 2007.

Recommendations

- *TUIU Comment.* TUIU asserted that the OIG recommendations are based on faulty analysis. TUIU's response to each recommendation in the Draft Report follow—
 - 1.1 TUIU was not required by Department of Education regulations to establish policies and procedures for using a nonterm academic year for enrollment periods prior to May 2008. The institution does have and has had policies and procedures to address the small number of students who actually enroll in its nonterm academic programs.
 - 1.2 TUIU's existing procedures were compliant with Title IV requirements, but TUIU has moved to improve these policies as noted in this response.
 - 1.3 TUIU's existing procedures were compliant with Title IV requirements, but TUIU has moved to improve these policies.
 - 1.4 TUIU has returned to the Department \$7,906 in Federal Pell Grants funds consistent with this recommendation solely in order to close this finding.
 - 1.5 The liability of \$184,634 (135,410 + 49,224) determined by the OIG is significantly overstated both because of the methodology and because the OIG failed to apply the Actual Loss Formula to its assertions of liability.
 - 1.6 Based on TUIU's recalculations, the Federal Pell Grant funds in the amount of \$3,057 are not due back from the students.
 - 1.7 The Draft Report includes errors; therefore, the 100 percent review of students that received Title IV disbursements on or after October 16, 2007 should be unnecessary. However, the Department has requested a similar file review covering the period

- October 16, 2007, through June 30, 2008, based on TUIU's compliance audit. The results of this file review will be provided to the Department shortly and will make this recommendation moot.
- 1.8 TUIU operations were in substantial compliance with the Title IV requirements; there is no material liability to be asserted for the period prior to October 16, 2007.
- *OIG Response.* We have made minor revisions to our recommendations, for clarity, but we have not made the substantive changes requested in TUIU's comments.
- 1.1 Recommendation was not revised because we concluded that TUIU was using a nonterm academic calendar for its educational programs.
- 1.2 Recommendation was not revised because TUIU did not provide additional information to support that it had policies and procedures to appropriately confirm student eligibility at the time of Title IV disbursements.
- 1.3 Recommendation was not revised because TUIU did not provide information to support that it had policies and procedures in place for identifying students who withdrew without providing notification and performing return of Title IV calculations for such students.
- 1.4 Recommendation was not revised. If the Department can verify from its records that TUIU has returned the \$7,906, it will not need to require an additional payment.
- 1.5 Recommendation was not revised. Determination of the actual liability will be addressed by FSA in the audit resolution process.
- 1.6 Recommendation was not revised because TUIU did not provide support that it had notified the students we identified in our sample of the amounts they need to repay to the Department.
- 1.7 Recommendation was not revised. The 100 percent review of students that received Title IV disbursements on or after October 16, 2007 remains necessary. The Department will determine the actual liability during the audit resolution process.
- 1.8 We did not eliminate the recommendation as suggested by TUIU. We clarified the recommendation to include the participation of TUIU in determining any liability for the prior period. Without a file review for that period, TUIU's assertion that there is no material liability is unsubstantiated.

FINDING NO. 2 – TUIU Has Not Demonstrated the Ability to Adequately Administer Title IV Programs

During the course of the audit, other deficiencies in TUIU policies and procedures came to our attention concerning academically related activity, length of the academic year, tuition discounts, loan periods, and training. Based on the deficiencies noted in Finding No. 1 and this finding, we concluded that TUIU had not demonstrated the capability to adequately administer the Title IV programs.

TUIU Did Not Have an Adequate Policy on Academically Related Activities for Purposes of Administering Title IV Programs

TUIU did not have a written policy on what constituted academically related activities, but TUIU officials and staff did provide us with verbal explanations of the activities that they considered as academically related activities when making determinations in its administration of Title IV programs. The explanations included activities that do not meet the definition of an academically related activity.

The definition of academically related activity is found at 34 C.F.R. § 668.22(c)(3)(ii) —

An “academically-related activity” includes, but is not limited to, an exam, a tutorial, computer-assisted instruction, academic counseling, academic advisement, turning in a class assignment or attending a study group that is assigned by the institution.

TUIU officials and staff stated that TUIU considered all course activities and communications between academic advisors/staff and students to be academically related activities. The communications that TUIU considered to be academic activity included interactions about the students’ inactivity in the course, personal problems, a student’s intentions to complete course work, and requests for additional time to complete course assignments. Such communications do not meet the above definition of academically related activity.

The activities that constitute academically related activity impact an institution’s decisions when 1) identifying students who have withdrawn without providing formal notification to the institution and 2) performing return of Title IV calculations for students who withdraw (with or without notice to the institution). Title 34 C.F.R. § 668.22(c)(3)(i) explains how an institution uses academically related activity to determine the student’s withdrawal date.

[A]n institution that is not required to take attendance may use as the student's withdrawal date a student's last date of attendance at an academically-related activity provided that the institution documents that the activity is academically related and documents the student's attendance at the activity.

The withdrawal date determines the percentage of Title IV funds earned by the student for return of Title IV calculations.

TUIU Did Not Properly Determine the Number of Weeks of Instruction in Its Academic Year

TUIU defined the academic year for its educational programs as 48 weeks in length. However, the 48 weeks included weeks during which there was no scheduled instruction or examinations. Title 34 C.F.R. § 668.3(a)(1)(i) requires that an academic year for an educational program offered in credit hours have a minimum of 30 weeks of instructional time. The definitions provided in 34 C.F.R. § 668.3(b) are used to determine the number of weeks.

Definitions. For purposes of paragraph (a) of this section—

- (1) A week is a consecutive seven-day period;
- (2) A week of instructional time is any week in which at least one day of regularly scheduled instruction or examinations occurs or, after the last scheduled day of classes for a term or payment period, at least one day of study for final examinations occurs; and
- (3) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

As we noted earlier in the report, the 48 weeks contained four sessions – each session was 12 weeks in length. The first ten weeks were composed of the five two-week modules of coursework. The following week was for students to complete and submit a course reflection discussion paper and the last week was for instructors to assign course grades for the session. The reflection paper was not required or graded as part of the overall course grade. The last two weeks of each session did not include at least one day of instruction or examinations. Thus, the length of the academic year for TUIU’s educational programs was 40 weeks rather than 48 weeks. An academic year of 40 weeks in length still exceeds the required minimum of 30 weeks. However, TUIU’s improper determination of the length is another example of a lack of understanding of the requirements for administration of Title IV programs.

TUIU Did Not Have Procedures for Applying Tuition Discounts When Determining a Student’s Cost of Attendance

TUIU offered tuition discounts to government employees and all residents of California, but did not apply the discounts when determining a student’s cost of attendance. The cost of attendance is an estimate of a student’s educational expenses for the period of enrollment and is used to establish the student’s financial need. Financial need is used in determining the amount of Title IV funds that a student is eligible to receive in an academic year. The components of the costs of attendance, which include tuition, are specified in Section 472 of the HEA.

Since cost of attendance is an estimate, the average expenses for students at the institution may be used rather than actual expenses. The *FSA Handbook* provides the following guidance—

For example, for the tuition and fees component, you can use the same average amount for all full-time students, instead of figuring the actual tuition and fees for each individual student. You can have different standard costs for different categories of students, such as a cost of attendance for out of state students (who have higher tuition) and a lower cost of attendance for in state students.

However, tuition not charged to the student should not be included in the cost of education. The *FSA Handbook* states—

When a specific component of a student's cost of attendance is waived or explicitly paid by another source, special treatment may be necessary.

* * * * *

If the student is never charged for tuition and fees, then the cost of attendance wouldn't include the tuition and fees component.

TUIU developed standard budgets that its financial aid staff used to determine students' cost of attendance. TUIU did not have procedures for adjusting amounts in the standard budgets when students were given a tuition discount. For example, TUIU's cost of attendance budget for a student taking two courses per session who was enrolled in an educational program offering a bachelors' degree was \$24,974, which included \$8,000 for tuition (8 courses times \$1,000 per course). The discounted tuition for a similar student would be \$6,000 (8 courses times \$750 per course), or \$2,000 less. The discounted tuition should have been used to calculate the student's cost of attendance. While this is another instance of noncompliance that demonstrates TUIU officials' and staff's lack of understanding of Title IV requirements, the overstated costs of attendance likely did not impact the Title IV awards made to students (i.e., adjusted cost of attendance would still exceed expected family contribution and available Title IV awards.)

TUIU's President advised us that TUIU had implemented procedures for adjusting amounts in the standard budgets to reflect tuition discounts provided to TUIU students.

TUIU Improperly Certified New FFELs for Continuing Students When TUIU Became a Stand-Alone Institution

After separating from Touro College, TUIU cancelled students' existing FFELs that had not yet been fully disbursed and obtained new loans for the students. TUIU's Director of Financial Aid advised us that TUIU did not properly certify the new FFELs and was taking steps to correct the loans. The Director explained that TUIU had used a loan period that encompassed the Fall 2007 session through Spring 2008 session and had calculated the loan amounts based on the student's cost of attendance and expected family contribution for a full academic year. TUIU did not consider the loan period or amounts already disbursed under the cancelled loans.

The *FSA Handbook* describes the process for students who transfer from one school to another school when there is an overlap in academic years. An overlap in academic years exists if the academic year at the new school begins before the calendar end date of the academic year at the prior school. If a student enrolls in a nonterm or nonstandard term program after already having

taken out a loan at another school with an overlapping academic year, the student is restricted to the original annual loan limit until the completion of the first academic year at the new school.

TUIU's Chief Financial Officer (CFO) advised us that TUIU is continuing to review the student files to confirm that the applicable FFELs were the correct loan amount and loan type and that TUIU will return Title IV funds to lenders, when required.

TUIU Must Demonstrate Administrative Capability for Continued Participation in Title IV Programs

Based on the collective deficiencies noted in our audit, we concluded that, at this time, TUIU has not demonstrated it is capable of adequately administering the Title IV programs. To continue participation in a Title IV program, 34 C.F.R. § 668.16 requires an institution to demonstrate that it "is capable of adequately administering that program under each of the standards established in this section." The standards include, among other requirements, that an institution—

Administers the Title IV, HEA programs in accordance with all statutory provisions of or applicable to Title IV of the HEA, [and] all applicable regulatory provisions prescribed under that statutory authority.... [34 C.F.R. § 668.16(a)]

Administers the Title IV, HEA programs with adequate checks and balances in its system of internal controls.... [34 C.F.R. § 668.16(c)(1)]

Shows no evidence of significant problems that affect, as determined by the Secretary, the institution's ability to administer a Title IV, HEA program.... [34 C.F.R. § 668.16(j)]

Does not otherwise appear to lack the ability to administer the Title IV, HEA programs competently.... [34 C.F.R. § 668.16(n)]

TUIU's Director of Financial Aid, with three financial aid advisors, performed the activities related to the administration of the Title IV programs. TUIU developed a Financial Aid Manual that provides an overview of the administration of Title IV programs. The manual was designed to be used in conjunction with guidance issued by the Department. Our review found that TUIU had organized financial aid records and academic records that were easily accessible and contained a detailed record of academic activity. However, as demonstrated by our audit findings, there were numerous areas where TUIU's policies and procedures did not comply with requirements for Title IV programs.

Recommendations

We recommend that the Chief Operating Officer for Federal Student Aid—

- 2.1 Confirm that TUIU has demonstrated that it is capable of adequately administering Title IV prior to removing the provisional aspect of its Program Participation Agreement certification that ends on December 31, 2009.

- 2.2 Consider taking action, as appropriate, under 34 C.F.R. § 668, Subpart G to fine, limit, suspend or terminate the participation of TUIU.
- 2.3 Require TUIU to develop and implement a written policy on the definition of academically related activity that complies with 34 C.F.R. § 668.22(c)(3)(ii).
- 2.4 Require TUIU to establish the length of its academic year using the definition in 34 C.F.R. § 668.3(b).
- 2.5 Confirm that TUIU has developed and implemented procedures for adjusting its standard budget for the cost of attendance when students receive tuition discounts.
- 2.6 Confirm that TUIU has completed the necessary actions to correct the FFELs that were not properly certified for students who were attending TUIU when it became a stand-alone institution.

TUIU Comments and OIG Responses

TUIU disagreed with our finding and recommendations and provided comments to each section of our finding.

TUIU Did Not Have an Adequate Policy on Academically related Activities for Purposes of Administering Title IV Programs

- *TUIU Comment.* TUIU disagreed with the OIG assertion that TUIU did not have a written policy on what constituted academically related activities. TUIU stated that students did have written notice of the academic activity requirement in the course syllabi and in the Course Guidelines. TUIU asserted that the explanation TUIU provided to the OIG of what constituted academically related activity was fully within the regulatory definition. TUIU asserted that the list of academically related activity at 34 C.F.R. § 668.22(c)(3)(ii) cannot be exclusive and must include the “but is not limited to” language because anything else would impermissibly interfere with an institution’s pedagogical decisions under the GEPA provision. TUIU stated that the regulation specifically includes academic counseling and advisement along with substantive coursework as academically related activity.
- *OIG Response.* TUIU did not present additional information or demonstrate that it had a written policy on the definition of academically related activity that complied with 34 C.F.R. § 668.22(c)(3)(ii). TUIU is correct that the regulation does not limit the academically related activity definition to the list provided. However, every contact with a student by TUIU cannot be considered academically related for the purpose of the administration of Title IV funds.

TUIU Did Not Properly Determine the Number of Weeks of Instruction in Its Academic Year

- *TUIU Comment.* TUIU stated that significant academic activity did take place in the weeks questioned by the OIG in the OIG sample of students. TUIU stated that its academic year was still significantly longer than the required minimum and that there were no adverse Title IV implications. TUIU reviewed the structure of its educational programs and revised the structure of the sixth module to clarify what is required by the student in such modules and made revisions to its academic year definition consistent with applicable regulatory requirements.
- *OIG Response.* TUIU's assertion that a review of the sampled students revealed that significant academic activity did take place in the weeks questioned is irrelevant to the definition of a week of instructional time. An institution's definition of an academic year for a program of study must include a minimum of 30 weeks of instructional time. The definition of a week of instructional time does not include a students' academic activity or timing of the academic activity during the program.

As discussed in our report, the regulation defines a week of instructional time as any week in which the institution has at least one day of regularly scheduled instruction or examination, and does not include any vacation periods, homework, or periods of orientation or counseling.

In our draft report, we acknowledged that TUIU's actual weeks in its academic year exceeded the required minimum of 30 weeks.

TUIU Did Not Have Procedures for Applying Tuition Discounts When Determining a Student's Cost of Attendance

- *TUIU Comment.* TUIU asserted that there is nothing in the statutory definition that requires an adjustment in the cost of attendance for Tuition discounts. TUIU stated that California residents and government employees are a very small percentage of TUIU's student population. TUIU asserted that the cost of attendance as utilized by TUIU was consistent with the Title IV requirements. TUIU explained that it has revised its practices to use an adjusted cost of attendance for California residents and government employees.
- *OIG Response.* As discussed in the draft report, the Department guidance states that tuition not charged to the student should not be included in the cost of education. We continue to recommend that the Department confirm TUIU's development and implementation of procedures for adjusting its standard budget for the cost of attendance when students receive tuition discounts.

TUIU Improperly Certified New FFELs for
Continuing Students When TUIU
Became a Stand-Alone Institution

- *TUIU Comment.* TUIU stated it is continuing to review the student files to confirm that no students were over awarded or received the incorrect loan type or amount and will return any loan funds or make any adjustments, as necessary.
- *OIG Response.* During the exit conference the Chief Financial Officer had advised us that the review had been complete. We revised the report to reflect the information provided in TUIU's response. We continue to recommend that FSA confirm that TUIU has completed the necessary actions to correct the FFELs that were not properly certified for students who were attending TUIU when it became a separate institution.

TUIU Officials Were Unaware of
Requirement for Title IV Programs Training

- *TUIU Comment.* TUIU stated that the Chief Financial Officer was not the chief administrator designated to attend the training and was under no obligation to undertake the training. TUIU asserted that the Chief Executive Officer and the Director of Financial Aid were always fully aware of the training requirements and had one-year from the change of ownership to have appropriate personnel attend the training.
- *OIG Response.* We removed this section of Finding 2 and the related Recommendation because TUIU provided supporting documentation showing that the designated staff had completed the required training. We suggest TUIU ensure personnel involved with the administration of Title IV receive adequate and ongoing training.

Recommendations

- *TUIU Comment.* TUIU's response to each recommendation in the Draft Report follow—
 - 2.1 TUIU has fully established that it has the administrative capability necessary to administer the Title IV programs.
 - 2.2 The Draft Report seriously overstates any non-compliance by TUIU. To the extent there were any compliance issues; the University has taken significant steps to rectify those issues.
 - 2.3 TUIU's definition of academically related activity was fully compliant with applicable Title IV program requirements but the University has revised its definition consistent with the OIG's position
 - 2.4 TUIU's definition of its academic year was fully compliant with the Title IV requirements. Nonetheless, TUIU has revised its definition consistent with the OIG's position and the provisions of 34 C.F.R. § 668.3(b).

- 2.5 TUIU's cost of attendance fully complied with the Title IV requirements. Nonetheless, TUIU has developed and implemented procedures for adjusting its standard budget cost of attendance when students receive Tuition discounts consistent with the OIG's directives.
- 2.6 TUIU is reviewing its records and will make any necessary adjustments or repayments with respect to Federal Family Education Loan program loans that it determines were not properly certified for students who were attending TUIU when it became a stand-alone institution, if any.
- *OIG Response.* The Department may consider additional information provided by TUIU when determining the corrective action for this finding. We removed the recommendation to the Department to confirm that TUIU's President, Director of Financial Aid, and other staff complete appropriate training on the administration of Title IV programs.
 - 2.1 Recommendation was not revised. TUIU's response did not convince us that it has the administrative capability necessary to administer the Title IV programs.
 - 2.2 Recommendation was not revised. TUIU did not provide additional information to support a change in our recommendation.
 - 2.3 Recommendation was not revised. TUIU did not provide additional information to support a change in our recommendation.
 - 2.4 Recommendation was not revised. TUIU did not provide additional information to support a change in our recommendation.
 - 2.5 Recommendation was not revised. TUIU did not provide additional information to support a change in our recommendation.
 - 2.6 Recommendation was not revised. TUIU stated it is continuing to review the student files for the FFELs that were not properly certified.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of our audit was to determine whether TUIU had policies and procedures to ensure the Title IV programs were properly administered in accordance with applicable requirements of the HEA, Federal regulations, and Department guidance. Our review was limited to the following areas:

- Student eligibility for Title IV funds at the time of disbursement (i.e., policies and procedures to ensure the student is enrolled in the program, had begun attending/participating in the courses scheduled for the term for the initial disbursement, and is attending/participating at the time of subsequent disbursements);
- Identification of withdrawn students;
- Return of Title IV calculations; and
- Timeliness of the return of Title IV funds for withdrawn students.

Our review covered TUIU's policies and procedures for the period October 16, 2007 through June 20, 2008.

To obtain background information on TUIU and its operations, we reviewed the institution's history and other organizational information that was available on TUIU's website and interviewed Department, accrediting agency, and state oversight agency officials and the documentation provided by them. We reviewed financial statement audit reports on Touro University International (a division of Touro University, a California not-for-profit organization) as of June 30, 2006 and 2005, and as of June 30, 2005 and 2004. We also reviewed the audit reports covering the balance sheet and other financial information (as of December 31, 2006) for the Summit Partners funds and the related statements of operations, changes in partners' capital, and cash flows for the period from February 9, 2006 (inception) to December 31, 2006.

To evaluate TUIU's policies and procedures related to the administration of Title IV programs, we—

- Gained an understanding of selected provisions of the HEA, regulations, and Department guidance applicable to areas being reviewed under our audit objective.
- Reviewed TUIU's written policies and procedures and interviewed TUIU officials.
- Obtained an understanding of CNSSS and the information available in CNSSS.
- Evaluated CNSSS information for a random sample of TUIU students. For each sampled student, we reviewed academic, financial aid and accounting records for the Fall 2007, Winter 2008, and Spring 2008 sessions.

To select the random sample of TUIU students, we obtained electronic data from TUIU of the students who had received Title IV disbursements for the Fall 2007, Winter 2008, and Spring 2008 sessions. The data contained information on 963 students who received a total of \$8,577,699 in Title IV disbursements for the Fall 2007, Winter 2008, and Spring 2008 sessions. We compared the information in the TUIU-provided data to information in the Department's National Student Loan Data System to confirm that all students who received Title IV funds since TUIU became a stand-alone institution were included in the data. We concluded that the information in the TUIU-provided data was sufficiently reliable to be used in selecting the sample.

From the data, we selected a random sample of 98 students. The data showed that the 98 students had received Title IV disbursements totaling \$980,113. Our sample selection process, which used stratification of the sampling universe, is described in Table 3.

Table 3: Sampling Universe, Strata Description, and Number of Student Files Reviewed			
Strata	Number of Students in Strata	Number of Students in Sample	Description of Strata
1 – Withdrawal	3	3	Student received a W in a course in the Fall 2007 or Winter 2008 sessions, and did not receive a C- or higher in these sessions in other courses, if any.
2 – Grade F	50	20	Of the remaining pool of students, student received an F in a course in the Fall 2007 or Winter 2008 sessions and did not receive a C- or higher in these sessions in other courses, if any.
3 – Grade D	20	5	Of the remaining pool of students, student received a D, D-, D+ in a course in the Fall 2007 or Winter 2008 sessions, and did not receive a C- or higher in these sessions in other courses, if any.
4 – Incomplete	109	35	Of the remaining pool of students, student received an I in a course in the Fall 2007 or Winter 2008 sessions, and did not receive a C- or higher in these sessions in other courses, if any.
5 – Good Grades	676	20	Of the remaining pool of students, student received a C- or higher in at least one course if grade(s) were present in the data in the Fall 2007 session AND student received a C- or higher in at least one course if grade(s) were present in the data in the Winter 2008 session.
6 – No Grades	105	15	The remaining students did not receive any grades during the Fall 2007 session nor the Winter 2008 session (i.e., grades were not present in the data for these students).
Totals	963	98	

We performed our audit work at TUIU located in Cypress, California, between June 2, 2008, and October 30, 2008. We held an exit briefing with TUIU officials on January 21, 2009.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

ADMINISTRATIVE MATTERS

Statements that managerial practices need improvement, 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 Department of Education official, who will consider them before taking final Departmental action on this audit:

William J. Taggart
Chief Operating Officer, Federal Student Aid
U.S. Department of Education
830 First Street, NE, Room 112E1
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,

/s/

Raymond Hendren
Regional Inspector General for Audit

Enclosure

Acronyms/Abbreviations Used in this Report

CFO	Chief Financial Officer
CNSSS	CourseNet Management Student System
DCL	Dear Colleague Letter
Department	U.S. Department of Education
FFEL	Federal Family Education Loans
FSA	U.S. Department of Education, Federal Student Aid
FSA Handbook	Federal Student Aid Handbook
GEPA	General Education Provisions Act
HEA	Title IV, Higher Education Act of 1965, as amended
OIG	Office of Inspector General
Pell Grant	Federal Pell Grant Program
TUIU	TUI University

ENCLOSURE

TUIU's Comments

TUIU provided several exhibits with its letter. All personally identifiable information mentioned in the University's comments was replaced with bracketed text. Because of the voluminous nature of the exhibits to the University's comments and the personally identifiable information within, we have not included them in the enclosure. Copies of the exhibits to the University's comments, less the personally identifiable information, are available on request.



TUI University, LLC
TUI Learning, LLC

May 11, 2009

Ms. Beverly A. Dalman
Acting Regional Inspector General for Audit
U.S. Department of Education
Office of Inspector General
501 I Street, Suite 9-200
Sacramento, CA 95814-2559

TUI University
Control Number ED-OIG/A09I0009

Dear Ms. Dalman:

This is the response of TUI University (“TUIU” or “University”) to the Office of Inspector General (“OIG”) Draft Audit Report (Control Number ED-OIG/A09I0009), dated March 2, 2009 (“Report”).

**Finding No. 1: TUIU Did Not Have Adequate Policies and Procedures to Ensure
Student Eligibility and Identify Students Who Had Withdrawn**

A. TUIU Policies and Procedures Were Not Designed for
Educational Programs with a Nonterm Academic Calendar

The Report asserts that TUIU “mistakenly concluded that it was delivering educational programs using a nonstandard term academic calendar” and that TUIU improperly disbursed Title IV funds on the basis of such mistaken conclusion. (Report, at p. 3). This assertion by the OIG, which underpins many of the findings in the Report, is not supported by the applicable law and evidences a misunderstanding of the facts. Further, the Report’s assertion in this regard ignores the interpretations of the U.S. Department of Education (the “Department”) as specifically provided to the University. (See Exhibit 1)¹. As such, there is no basis for this assertion and the Report must be revised accordingly.

¹ The University’s use of both a nonstandard term and nonterm academic calendar was vetted by the Department following consultation with and a conference call meeting involving TUIU legal counsel and Department representatives with clear authority and seniority within the Department. (See Exhibit 1, at p. 1-2, Email from Counsel for TUIU concerning conference call with [Department Officials Names Deleted]). The institution has the absolute right to rely on such guidance. In re Associated Technical College, Docket No. 91-112-SP, at p. 27 (Initial Decision Feb. 3, 1993), affirmed by the Secretary (July 23, 1993).

During the Fall 2007, Winter 2008, and Spring 2008 terms, TUIU offered its educational programs on a nonstandard term academic calendar. The characteristics of a nonstandard term program are described in the 2007-2008 *Federal Student Aid Handbook*, as follows:

Nonstandard terms are terms (where all coursework is expected to begin and end within a set period of time) that are not semester, trimester, or quarter terms. In some cases, the terms may be of unequal length, though it is also possible with terms of equal length to be considered nonstandard. For instance, a school could offer a program with six consecutive 5-week modules, with each module counting as a nonstandard term.

(*Federal Student Aid Handbook*, 2007-2008, pp. 3-3 to 3-4.² See also *Federal Student Aid Handbook*, 2008-2009, p. 3-6). During the referenced terms, the University offered all of its programs consistent with this definition. The University's calendar consisted of four 12-week sessions in which all the courses in each session began and ended on the same date. (See Report, at p. 4, Table 1). Each course consisted of six modules two weeks in length with the same start and end date. There is no question that during this period the University offered its programs on a nonstandard term calendar. In fact, the Department reviewed the University's operations during a three-day site visit conducted by program review staff that occurred in October of 2007, in advance of the issuance of a Program Participation Agreement to Touro University International as a free-standing entity. As part of that site visit, the Department reviewed, among other things, individual student files. (Exhibit 2, at pp. 2-2 and 2-4). Therefore, at that time, the University's treatment of its educational programs as nonstandard term was evaluated by the Department. The Department completed its review without comment or concern about such treatment.

In arriving at its conclusions, the Report failed to understand the University's actual operations and, in doing so, erroneously determined that the University should have used a nonterm calendar for all of its programs. The Department's guidance defines a nonterm program as follows:

A program that measures progress in credit hours is considered to be using a nonterm calendar if it has:

- courses that do not begin and end within a set period of time,
- courses that overlap terms,
- self-paced and independent study courses that overlap terms, or
- sequential courses that do not begin and end within a term.

(*Federal Student Aid Handbook*, 2007-2008, p. 3-5. See also *Federal Student Aid Handbook*, 2008-2009, p. 3-6). We will respond with respect to each factor in turn.

² The Department's description goes on to say that "the length of the term is not necessarily associated with the type of credit hours awarded. Some nonstandard terms are the length of a semester (14-17 weeks) but award quarter credits. Others are the length of a quarter (10-12 weeks) but award semester credits". This describes precisely how TUIU offered its programs.

Beginning and End Dates

As support for its conclusions, the Report asserts that TUIU “did not require students to begin or end courses within the posted dates”. (Report, at p. 4). However, this assertion inexplicably ignores both the institution’s published calendar and its actual operations. The Report includes at Table 1 on page 4 a copy of the University’s academic session dates calendar for the Fall 2007 through February 2009 sessions. The calendar clearly identifies the beginning and ending dates for all sessions at TUIU. Under the University’s learning model, TUIU students enroll based on the academic calendar published on the TUIU website. As shown in the Table, the academic calendar has clearly delineated sessions which are fully defined in student disclosures and in the course outlines provided to students. Indeed, the University’s students are unable to access the CNSSS/CourseNet learning environment until the published first day of class. Further, if a student does not request and receive an incomplete from the University, the student’s work product is graded and final grades are submitted consistent with the published academic calendar. It should be obvious that TUIU’s terms did have a clear beginning and ending date, and its operations were fully consistent with the definition of a nonstandard term program and not a nonterm program.

Overlapping Terms

As will be further discussed below, the University acknowledges that some students were enrolled in overlapping terms, which took place in May, August and November 2008, and those students were appropriately treated as nonterm students. (See Report, at p. 4, Table 1). Such treatment of these students as enrolled in nonterm programs while the remaining students were treated as enrolled in nonstandard term programs is fully consistent with Department requirements. The University did not utilize overlapping terms prior to May of 2008.

Self-Paced and Independent Study

The Report erroneously asserts that TUIU “allowed students to enroll in courses almost every month and complete assignments at their own pace.” (Report, at p. 4). In this assertion, the Report is clearly confusing flexibility, which is the hallmark of online learning, with a learning environment that is self-paced. TUIU’s learning model includes a highly structured pedagogy. Programs and courses are based on clearly defined goals and objectives. Information in the TUIU Course Guidelines (Exhibit 3, at pp. 3-3 to 3-5) and course syllabi (Exhibit 4, at pp. 4-5 to 4-8, 4-13 to 4-15 and 4-21 to 4-24) clearly articulates the expectations for the student. Each module has specific due dates. (See e.g., Exhibit 5, at p. 5-3). Students are expected to submit written assignments and/or participate in threaded discussions with their classmates in every module in every course so as to achieve the specific learning objectives related to the overall course objectives within the timeframes established for the module and course. (Exhibit 3, at pp. 3-3 to 3-5; Exhibit 4, at pp. 4-8, 4-15 and 4-23). The University’s programs clearly are not and were not self-paced or independent study.

Sequential Courses That Do Not Begin and End Within a Term

The Report asserts that TUIU “allowed students to start courses in the next session while completing the courses in the prior session.” (Report, at p. 4). This is an incorrect characterization based on a lack of understanding of the asynchronous pedagogical model of

TUIU. Other than the initiation of limited overlapping sessions in May of 2008, students did not enroll in overlapping sessions. While the University agrees that to the extent students were enrolled in overlapping sessions (*i.e.*, sessions in May 2008, August 2008 and November 2008) those students should be treated as nonterm students, all other students were appropriately treated as nonstandard term students, as more fully discussed below and as consistent with both the Department's requirements and its direct advice to TUIU when asked by TUIU for advice on this issue.

Beginning in May of 2008, TUIU did introduce session start dates in the months of May, August, and November and, as such, beginning on that date, did have certain versions of its programs that met the definition of nonterm program. However, this change did not *ipso facto* cause the University's nonstandard term programs to be transformed into nonterm programs. Rather, the University applied a different academic calendar, as it was entitled to do, for different cohorts of students, appropriately treating some students as enrolled in the nonstandard term versions of its programs and others in the nonterm versions. TUIU's treatment of its students is consistent with the regulations and guidance of the Department which specifically allow institutions to apply different academic calendars to two versions of the same program. This is most succinctly and clearly stated as follows:

A school may treat two versions of the same academic program (day and night, for example) as separate programs and define different academic years for each version. If your school establishes separate versions of a program, with different academic years, but allows individual students to take courses from both versions, your school must be able to demonstrate which program the student is actually enrolled in.

(*Federal Student Aid Handbook*, 2007-2008, p. 3-1. See also *Federal Student Aid Handbook*, 2008-2009, p. 3-1). As demonstrated by the session dates in Table 1 on page 4 of the Report, it is clear that TUIU offered programs of study on both a nonstandard term basis and a nonterm basis starting with May 2008. Stated another way, to accommodate differing needs and circumstances, TUIU served two populations of students: nonstandard term students who started instruction at the beginning of any term and continued sequential sessions of enrollment throughout the academic year one term at a time and nonterm students who enrolled in overlapping terms. In operating in this fashion, the University was in full compliance with applicable law and guidance.

As previously noted in footnote 1, the University's use of both a nonstandard term and nonterm academic calendar was vetted by the Department following consultation with and a conference call meeting involving TUIU legal counsel and Department representatives with clear authority and seniority within the Department. (See Exhibit 1, at p. 1-2– Email from Counsel for TUIU concerning conference call with Department Officials Names Deleted). The institution has the absolute right to rely on such guidance.³ The auditors who conducted the audit site work resulting in the Report were well aware of the Department's position in this regard and, yet, inexplicably have chosen to disregard it in the Report. Under the Department's own

³ In re Associated Technical College, Docket No. 91-112-SP, at p. 27 (Initial Decision Feb. 3, 1993), affirmed by the Secretary (July 23, 1993).

interpretation of its requirements, the University is and was entitled to consider students enrolled in sequential sessions as nonstandard term and students enrolled in overlapping sessions as nonterm. A review of the student sample reviewed by the OIG reveals that, at most, only four of the 98 students in the sample were in fact enrolled on a nonterm basis. (See Exhibit 6, at p. 6-2). Nonetheless, the Report inexplicably treats all of the University's programs as nonterm. As such, the basic underpinning of the Report is in error, which, in turn, negates numerous other assertions in the Report.

A review of the Report reveals that the OIG's case relies in substantial part on its conclusion that the University's policy of granting certain nonstandard term students an incomplete grade and allowing those students to finish their coursework on an extended basis somehow converts nonstandard term programs into nonterm programs. However, such a conclusion is not supported by any Title IV requirement and constitutes a clear violation of the General Education Provisions Act ("GEPA"). GEPA prohibits all agencies of the Federal government, most notably the U.S. Department of Education, from dictating curricular choices or otherwise interfering with an institution's pedagogical decisions based on federal education laws or programs. Specifically, Section 1232a provides:

No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

20 U.S.C. § 1232a (emphasis added). Under the Report's analysis, the OIG, an agency of the federal government, is telling institutions when it is appropriate or not appropriate to grant an incomplete grade. There could not be any more obvious instance of the federal government involving itself in an institution's pedagogical decisions.

Furthermore, it is standard practice for an institution of higher education to establish a policy of granting incompletes to a student when, in the opinion of the instructor, the student's circumstances warrant such an extension. This is indeed the purpose of the "Incomplete" grade. In and of itself, an "Incomplete" is not a "punitive" grade: it affords the student the opportunity to complete the required course work within a reasonable period of time as defined by the institution in order to receive credit for the course. When that timeframe coincides with a student's subsequent enrollment in another course, there may be created an overlap, since the student is also attending courses for the current term. A good example is the University of California, Berkeley, which allows students nearly a full year (well into the next term or terms) to complete coursework when a student has been assigned an incomplete. (Exhibit 7, at pp. 7-2 and 7-3). Similarly, at Murray State University, students are allowed until the last day of classes in the student's next term of enrollment to replace a grade of "Incomplete" for the student's previous term of enrollment. (Exhibit 8, at pp. 8-4). At George Mason University, students have

until well into the fall term to submit coursework for spring term incompletes. (Exhibit 9, at p. 9-3). Under the Report's interpretation, any institution, such as those identified, that grants incomplete grades and allows students to complete coursework on a date that is in a subsequent term could be retroactively turned into nonterm institutions. This certainly cannot be a correct or intended application of the law.

It is important to understand certain key characteristics of the University's student population. TUIU serves a substantial number of U.S. military servicemembers, with a significant proportion of those deployed outside the continental United States. Under these circumstances it is understandable – indeed inescapable – that TUIU will have students who reasonably require an incomplete grade. There is nothing in the Department's requirements that in any way could be construed to limit the number of incompletes an institution can grant. An institution may do so when the circumstances warrant, and an institution that serves a large number of men and women whose studies may necessarily be secondary to their military obligations – including significant numbers in combat deployments – will necessarily be more free in making that allowance. The decision to grant an incomplete, and the terms under which a student can convert the incomplete to a final grade, are exclusively within the academic discretion of the institution. The OIG's interpretation not only violates the specific prohibitions set forth in GEPA but would impose an unwarranted hardship on the men and women who have forsaken the comfort of a classroom to serve and protect the nation. Therefore, there is no basis for the Report's conclusions in this regard.

The misapplication of the relevant law and guidance and misunderstanding of the nature of TUIU's operations inevitably led the OIG to erroneously conclude that all TUIU programs are nonterm. That, in turn, provides the basis for the OIG's mistaken finding that the University misapplied the Title IV requirements concerning the timing of and student eligibility for disbursements of Title IV funds, incorrectly substituting nonterm requirements for the correct requirements applicable to nonstandard terms. Contrary to the Report's assertion, TUIU did not incorrectly classify its programs as nonstandard term and therefore improperly disburse Title IV funds to its students.⁴ For all but a trivial few, the University correctly disbursed Title IV funds consistent with the regulations and guidance for educational programs using a nonstandard term academic calendar.⁵ Any assertion to the contrary is not supported by either the facts or the law.

⁴ As discussed more fully above, at most, four students in the Audit Period were actually enrolled in a nonterm program (which overlapped the conduct of nonstandard term programs for the vast majority of students). Therefore, the maximum error rate is approximately 4%, well below the Department's standard of materiality. (Exhibit 6, at p. 6-2).

⁵ Specifically, Title IV funds were scheduled and disbursed pursuant to 34 C.F.R. § 668.4(a) which states that the payment period for the scheduled disbursements is the academic term (*i.e.*, semester, trimester, quarter, or nonstandard term). TUI scheduled four disbursements of Title IV funds over the period of an academic year, one disbursement for each session. TUI's academic year consisted of two payment periods, two disbursements per payment period. Pursuant to 34 C.F.R. § 668.4, TUI was not required to measure the progress of its students in the successful completion of credit hours and instructional weeks before making any subsequent disbursement for students enrolled in its nonstandard term programs.

B. TUIU's Procedures Did Not Ensure That Students Were Participating in Academic Activity at the Time of the Title IV Disbursements

The Report asserts that the University “did not have policies and procedures in place to confirm that students had begun attendance in the session prior to making Title IV disbursements.” (Report, at p. 6). Based on this assertion, the Report directs the University to repay \$7,259 in Federal Pell Grant funds and \$135,410 in Federal Family Education Loan program funds. The University does not agree that its initial Title IV disbursements were inappropriate. TUIU students are prepared to commence each course session on a specific schedule; indeed, as noted above, students are unable even to access the online component of the course prior to that commencement date. The University’s asynchronous learning model, specifically adopted to accommodate the time-challenged demands of servicemembers, does allow for some flexibility as to when a student submits assigned coursework after the system is opened at the start date of the course. The University reviewed the files of the students included in the OIG’s assertion of this repayment liability using standards consistent with those utilized by the OIG in its review. Four of these students established eligibility for the Title IV funds disbursed based on attendance during the session or were granted an incomplete grade consistent with institutional policy and submitted coursework following that “incomplete”. (See Exhibit 10, at p. 10-2). In any event, TUIU’s high completion rate, which, for example, approaches 99% for students on active duty with the Navy, calls into doubt both the relevance of this finding and the validity of the OIG’s sampling methodology, which appears to have significantly exaggerated the significance of this issue. Even assuming for the sake of argument that the assertion of liability for this issue is legally defensible, the amounts are significantly overstated. Notably, the OIG has failed to apply the required “Actual Loss Formula,” the application of which to the liabilities asserted with respect to this finding is required by the Department’s policy and practice, and which would result in a significantly reduced assertion of liability.

Even though TUIU believes its procedures were consistent with the Title IV requirements and the nature of its programs, TUIU has implemented various procedures to improve the documentation of student eligibility at the time of disbursement of Title IV funds, which includes revised procedures for confirming the engagement of a student in an academically-related activity prior to disbursing Title IV funds. TUIU has added a new feature, Financial Aid (FA) Activity, to the CourseNet module in its integrated learning management software package, CourseNetManagement. “FA Activity” allows real time review of enrollment data for students flagged as anticipating the receipt of Title IV program funds in any particular session. The display shows the first and last dates of academic activity. Under the University’s revised disbursement procedures, at the end of the first two weeks of each session, TUIU’s financial aid staff reviews the student’s activity status in the CourseNet System as well as other eligibility criteria in the CNSSS Student Services module. If this review establishes that the student has met the appropriate eligibility criteria, including academic activity, the Director of Financial Aid directs the Bursar to disburse the student’s Title IV funds. If the eligibility check shows that the student has not engaged in expected academic activity or has failed to meet other eligibility criteria, Title IV funds are not applied to the student’s account and are returned to the appropriate Title IV programs. This eligibility check is done at the time of release of Title IV funds, at the time of receipt of Title IV funds in the University’s bank account and prior to the disbursement of Title IV funds to the student’s account if more than two business days has passed since the University last conducted an eligibility check.

University personnel have also been reminded during internal training and at staff meetings with all applicable personnel (Academics Affairs, Financial Services, Finance, Information Technology, and Student Resources) of the importance of counseling students regarding academic engagement throughout the course and the importance of the diligent and timely updates of student records. The University believes this training will assist it in ensuring that its policies are consistently applied.

C. TUIU Did Not Have Policies or Procedures for Identifying Students That Had Withdrawn Without Providing Official Notification to the Institution

The Report asserts that TUIU “had no policies to address circumstances when students ceased attendance without notifying the institution and no procedures to identify such students for purposes of performing return of Title IV calculations.” (Report, at p. 7).

First, as previously noted, the Department reviewed the University’s operations prior to granting its predecessor free-standing status. That review included a review of student files as well as a review of relevant policies such as the University’s Return to Title IV policies. (See Exhibit 2, at pp. 2-2 and 2-4). There were no issues raised with respect to the policies then in place covering unofficial student withdrawals or the operation of those policies.⁶

As noted in the Report itself, the University employed detailed procedures to ensure that the University contacted students who had ceased participating. Indeed, as discussed below, the actual instances of such errors were substantially lower than those asserted in the Report.⁷ Instances of unofficial withdrawals are, in fact, uncommon, which is consistent with the University’s low overall withdrawal rate and its procedures for outreach to non-participating students. Nonetheless, during the OIG site visit, in an effort to address the OIG’s concerns, TUIU further revised its unofficial withdrawal policy. That policy, as described in Exhibit 11, at p. 11-2, has been fully implemented.

In addition, TUIU’s Academic Affairs division will continue its proactive outreach to apparently non-participating students, an effort which significantly reduces both total withdrawals and, specifically, unofficial withdrawals. The University’s Academic Affairs Retention Unit has formalized and recorded its procedures and practices for managing students who are having difficulty sustaining consistent participation in assigned coursework. A summary of those procedures is attached as Exhibit 12, at p. 12-2.

⁶ We would note that the OIG relies in large part on Dear Colleague Letter, GEN 04-03 Revised (February 2004, as revised November 2004) for this finding. Although U.S. Department of Education guidance can provide a “safe harbor” for institutions, such guidance does not have the force and effect of law. In re Waukegan School of Hair Design, Docket No. 96-66-SP, at pp. 5-7 (Initial Decision Aug. 23, 1996), affirmed by the Secretary (Sept. 8, 1997). As such, it cannot provide a basis for assessment of liability against an institution.

⁷ The OIG selected significantly higher percentages of students with “F”s and “incompletes” than in the population as a whole and a significantly lower percentage of students with good grades compared to the population as a whole. We believe this overstates the significance of any asserted errors with respect to this finding.

D. TUIU's Deficient Policies and Procedures Resulted in
Improper Disbursements and Failure to Return Title IV
Funds for Withdrawn Students

The Report asserts that as a result of TUIU's "deficient" policies and procedures, TUIU "improperly disbursed Title IV funds to students who did not become eligible for disbursements for the second payment period until after the disbursements were made, improperly disbursed Title IV funds to students who had not begun attendance at the time of disbursement, and failed to return Title IV funds for students who ceased attendance without providing formal notice to the institution." (Report, at p. 9). As has been discussed, above, the Report's analysis fails to take into account applicable law and TUIU's operations and therefore does not support the findings in this Report. Most importantly, as previously discussed, for all but four students in the sample, amounting to 4% of the universe, the application of nonterm requirements by the OIG was inappropriate.

The University has reviewed each of the institutional records of students included in the calculation of liability in Table 2 (Report, at p. 10), utilizing the standards of the OIG in the Report, although applying the rules for nonstandard term programs rather than the OIG's erroneously applied nonterm rules. This response will address each category of error in turn.

Category A: Ineligible for Disbursement – Student Did Not Attend Session

TUIU's review of the students⁸ within this category has determined that four of the 27 students cited actually established eligibility for the Title IV funds disbursed. This would decrease the asserted liability under this category by \$16,625. (See Exhibit 13, at p. 13-2 for liability analysis).

Category B: Return of Title IV: Student Withdrew Without Providing
Official Notification

TUIU's review of the sample students establishes that only nine of the 30 students cited in the Report as liabilities under this category actually required a return of Title IV calculation for one or more of the terms for which the OIG considered them a liability. The asserted liability must therefore be reduced by a total of \$116,151. (See Exhibit 14, at pp. 14-2 to 14-3 for the analysis of the liability reduction). In undertaking its review, TUIU used the academic grade report in CNSSS to determine whether a student who did not receive at least one grade with attendant quality points nevertheless completed the period. TUIU's academic grade report shows the grade received for each course, the credits earned for each course, the quality points earned for each course and the grade point average for the session. For purposes of its analysis, TUIU assumed that a student who earned no quality points unofficially withdrew unless TUIU was able to establish that the failing grade (*i.e.*, a grade with zero quality points) was earned, consistent with the provisions of Dear Colleague Letter, GEN 04-03 Revised (February 2004, as revised November 2004). In addition, TUIU reviewed the files of students who completed 60% or more of the payment period to ensure that 100% of the scheduled funds were earned by the student. TUIU also reviewed the files of students who were Ph.D. candidates to confirm the

⁸ TUIU's review utilized the same basis and standards utilized by the OIG for this category of student.

students were making progress toward the completion of their dissertation or coursework and confirmed that no return of Title IV calculation was required.

Category C: Early Disbursement

With respect to this category, we note that the Report indicates that 42 students out of the sample received early disbursements (with no related liability). (Report, at p. 10). However, had the OIG utilized the proper standards for each student with respect to nonterm versus nonstandard term, there would be no instances of error in this category.

E. TUIU's Inadequate Policies and Procedures Impacted Title IV Funds Disbursed to Students Before TUIU Separated from Touro College

As noted throughout this response, the University's operations were in substantial compliance with the Title IV requirements throughout the Audit Period. As such, there is no material liability to be asserted for the period prior to October 16, 2007.

F. Recommendations

Based on the OIG's faulty analysis, the Report make various recommendations which we address individually as presented in the Report.

- 1.1 Develop and implement policies and procedures that comply with the requirements for administering Title IV programs for educational programs using a nonterm academic year.

As explained in the above response, TUIU was not required by Department of Education regulations to establish policies and procedures for using a nonterm academic year for enrollment periods prior to May 2008. The institution does have and has had policies and procedures to address the small number of students who actually enroll in its nonterm academic programs. (See Exhibit 15, at pp. 15-2 to 15-6).

- 1.2 Develop and implement policies and procedures to appropriately confirm student eligibility at the time of Title IV disbursements.

As noted above, the University believes that its existing procedures were compliant with Title IV requirements but has moved to improve these policies as noted in this response.

- 1.3 Develop and implement policies and procedures for identifying students who withdraw without providing notification and performing return of Title IV calculations for such students.

As noted above, the University believes that its existing procedures were compliant with Title IV requirements but has moved to improve these policies as noted in this response.

- 1.4 Return to the Department the \$7,906 (\$7,259 + \$647) in Pell Grant funds that we identified in our student sample as due for improper disbursements and withdrawn students.

TUIU has returned to the Department \$7,906 in Federal Pell Grants funds consistent with this recommendation solely in order to close this finding.

- 1.5 Return to lenders the \$184,634 (\$135,410 + \$49,224) in FFEL disbursements (plus interest and special allowances incurred by the Department on the related FFELs) that we identified in our student sample as due for improper disbursements and withdrawn students.

As noted above, the asserted liability is significantly overstated both because of the OIG's methodology and because the OIG failed to apply the Actual Loss Formula to its assertions of liability.

- 1.6 Notify the TUIU students, which we identified in our student sample as having not earned the \$3,057 of Pell Grant funds at the time of their withdrawal, of the amounts they need to repay to the Department.

Based on TUIU's recalculations, these Federal Pell Grant funds are not due back from the students.

- 1.7 Conduct 100 percent review of students who received Title IV disbursements on or after October 16, 2007 to identify other amounts to be returned to lenders and the Department for disbursements to ineligible students and withdrawn students and return those amounts (plus the interest and special allowances incurred by the Department on the related FFELs). For the 963 students in our sampling universe, we estimated that \$923,379 of the \$8.6 million of Title IV funds disbursed should be returned to lenders and the Department for disbursements made to TUIU students during the period October 16, 2007 through June 3, 2008 (creation date of TUI-provided file).

Given the errors in the Report, TUIU feels this review should be unnecessary. However, in the interim, the Department has requested a similar file review covering the period October 16, 2007 through June 30, 2008 based on TUIU's compliance audit. The results of this file review will be provided to the Department shortly and will make this recommendation moot.

- 1.8 We recommend that the Acting Chief Operating Officer for Federal Student Aid determine the amount of Title IV funds that were improperly disbursed or not returned for withdrawn students for periods prior to October 16, 2007, and take action to recover the Title IV funds or other administrative actions, as appropriate.

As noted above, because the University's operations were in substantial compliance with the Title IV requirements, there is no material liability to be asserted for the period prior to October 16, 2007.

Finding No. 2: TUIU Has Not Demonstrated the Ability to Adequately Administer Title IV Programs

A. TUIU Did Not Have an Adequate Policy on Academically-Related Activities for Purposes of Administering Title IV Programs.

The Report asserts that TUIU “did not have a written policy on what constituted academically-related activities” during the Audit Period. (Report, at p. 13). This is simply incorrect: students did have written notice of the academic activity requirements in the course syllabi presented on the CD-ROMs provided students as well as in the online version of the courses. (Exhibit 4, at pp. 4-7 to 4-8, 4-14 to 4-15 and 4-22 to 4-23). In addition, the requirements and protocols are set forth on the Course Guidelines page to which every student is directed via a link in the course syllabi. (Exhibit 3, at pp. 3-3 to 3-4).

The Report states that TUIU’s explanation of what constituted academically-related activity was not consistent with the applicable regulation, suggesting in particular that certain academic counseling activities between faculty and students did not constitute academically-related activities. The applicable regulation, 34 C.F.R. § 668.22(c)(3)(ii), provides:

An “academically-related activity” includes, but is not limited to, an exam, a tutorial, computer-assisted instruction, academic counseling, academic advisement, turning in a class assignment or attending a study group that is assigned by the institution.

By its terms, the list in the definition is not exclusive. In fact, it cannot be exclusive and must include the “but is not limited to” language because anything else would impermissibly interfere with an institution’s pedagogical decisions under the previously discussed GEPA provisions. Furthermore, the regulation specifically includes academic counseling and advisement along with substantive coursework as academically-related activity. The University’s definition of academically-related activity was fully within the regulatory definition contrary to the assertions in the Report.

B. TUIU Did Not Properly Determine the Number of Weeks of Instruction in Its Academic Year

The Report asserts that TUIU’s defined academic year included weeks in which no instructional activity occurred and therefore that the actual academic year was 40 weeks rather than 48 weeks. A review of the sampled students shows that significant academic activity did take place in the weeks questioned by the OIG. Furthermore, even assuming the OIG is correct, the University’s academic year was still significantly longer than the required minimum. As such, there is no adverse Title IV implication. Indeed, the University has been significantly more protective and conservative in its use of Title IV funds than necessary under the Department’s regulations.

Nonetheless, TUIU has reviewed the structure of its educational programs and revised the structure of the sixth module to clarify what is required by the student in such modules and made revisions in its academic year definition consistent with applicable regulatory requirements.

C. TUIU Did Not Have Procedures for Applying Tuition Discounts
When Determining a Student's Cost of Attendance

The Report asserts that TUIU did not revise its cost of attendance for government employees and residents of California who are provided with a tuition discount. First of all, there is nothing in the statutory definition that requires such an adjustment. California residents and government employees are a very small percentage of the University's student population. The cost of attendance is specifically intended to be an average of expenses for students at an institution rather than actual expenses, as recognized by the OIG in the Report. Therefore, the cost of attendance as utilized by the University is consistent with the Title IV requirements. Furthermore, even assuming the OIG's argument is correct, the budget adjustment for discounts would not have impacted any student's Title IV eligibility as stated in the Report. Nonetheless, TUIU has revised its practices to use an adjusted cost of attendance for California residents and government employees. (See Exhibit 16, at pp. 16-2 to 16-3).

D. TUIU Improperly Certified New FFELs for Continuing Students
When TUIU Became a Stand-Alone Institution

The Report asserts that TUIU failed to consider the loan period or loan period amounts disbursed during the transition to a stand-alone institution. The University notes that TUIU handled these loan certifications consistent with instructions received from the Department in order to ensure that TUIU's students were not over awarded during the transition due to overlapping loan periods. TUIU is continuing to review the student files to confirm that no students were over awarded or received the incorrect loan type or amount and will return any loan funds or make any adjustments, as necessary.

E. TUIU Officials Were Unaware of Requirements for
Title IV Programs Training

The Report asserts that TUIU's "Director of Financial Aid and the CFO were not aware of the Title IV training requirements" until advised of those requirements by the OIG audit staff. (Report, at p. 16). The applicable requirement is that training be completed "no later than 12 months after the institution executes its program participation agreement" by the institution's Title IV administrator and its chief administrator or his or her designee. 34 C.F.R. § 668.13(a)(2). The University believes that the auditors misunderstood the role of the Chief Financial Officer as that role was defined during their initial meeting in May of 2008. [Name Deleted], Chief Financial Officer, was designated only as the "audit liaison" for the initial meetings with the OIG beginning in May, 2008. [Name Deleted] was not the chief administrator designated at that time to attend the necessary training. As such, the CFO was under no obligation to undertake the training requirements in May of 2008. The Report's assertion with regard to the CFO does not implicate TUIU's administrative capability in any way.

Furthermore, the University's Chief Executive Officer, [Name Deleted], and TUIU's Director of Financial Aid, [Name Deleted], were always fully aware of the training requirements. The University had one-year from the change of ownership, until October of 2008, to have appropriate personnel attend the "Fundamentals of Title IV Administration" or other compliant training. During the transition to free-standing status, [Name Deleted] from the Department worked with the University staff on developing a plan to attend the required training. In December of 2007, well before the OIG's site visit, the Director of Financial Aid at that time, [Name Deleted], attended the EAC Conference in San Diego. This was the first step taken to begin financial aid training under TUI University. By agreement with [Name Deleted], [Name Deleted] also completed additional on-line training via SFA Coach. [Department Official Name Deleted] was notified of [Former Director of Financial Aid Name Deleted] completion of such training before October of 2008.

In addition, subsequent to the decision to move the Financial Aid Department under the auspices of the Chief Financial Officer, the CFO registered for and completed the Title IV training in September 2008, and provided his completion certificate to [Department Official Name Deleted]. (Exhibit 17, at p. 17-2). The Associate Vice President for Academic Affairs, [Name Deleted], also attended the Fundamentals of Title IV Training in February 2009 (Exhibit 17, at p. 17-6) as did the current Director of Financial Aid, [Name Deleted]. (Exhibit 17, at p. 17-4). In addition, both the Chief Financial Officer and the current Director of Financial Aid undertook additional training with the California Association of Student Financial Aid Administrators in December of 2008. (Exhibit 17, at pp. 17-3 and 17-5).

Since the site visit, TUIU has taken significant steps to add to its resources in the financial aid arena. TUIU has hired a new Director of Financial Aid, [Name Deleted]. [Director of Financial Aid Name Deleted] has more than 20 years experience in the financial aid field covering a broad range of responsibilities, including as a financial aid director, a financial aid auditor and a financial aid accountant. In addition, TUIU has contracted the services of The Higher Education Assistance Group, Inc., a third-party servicer with twenty years in the business, to assist the University in its delivery of Title IV funds to students. The third-party servicer has been contracted to determine student eligibility, award funds per the student's determined eligibility, package students per the University's packaging guidelines and assist with

eligibility checks in the disbursement of funds. TUIU will continue to develop, evaluate, and implement policies and procedures for the administration of the Title IV programs to ensure that it remains compliant with the federal regulations governing the administration of such programs. The University is also developing programs and options in its CourseNet system that will automate more of the required tasks that an institution must complete when awarding and disbursing Title IV funds.

F. Recommendations

Based on the OIG's faulty analysis, the Report makes various recommendations which we will address individually as presented in the Report.

- 2.1 Take appropriate action under 34 C.F.R. § 668, Subpart G to fine, limit, suspend or terminate the participation of TUIU. [Renumbered in Final Report to 2.2]

As noted throughout this response, the Report seriously overstates any non-compliance by the University. As such, no further action is warranted or appropriate. To the extent there were any compliance issues, the University has taken significant steps to rectify those issues. The University only achieved stand-alone status in October 2007 and the OIG investigation began in May 2008. At the time of the OIG investigation, the institution was already fully in the process of reviewing policies and procedures, obtaining the required financial aid training as recommended by [Department Official Name Deleted], reviewing its financial aid operations with consultants and actively seeking legal advice, as necessary, in the area of Title IV administration. The University takes and will continue to take seriously the need for full compliance with all Title IV program requirements.

- 2.2 Require TUIU to develop and implement a written policy on the definition of academically-related activity that complies with 34 C.F.R. § 668.22(c)(3)(ii). [Renumbered in Final Report to 2.3]

As noted above, TUI's definition of academically-related activity was fully compliant with applicable Title IV program requirements but the University has revised its definition consistent with the OIG's position.

- 2.3 Require TUIU to establish the length of its academic year using the definition in 34 C.F.R. § 668.3(b). [Renumbered in Final Report to 2.4]

As noted above, TUI's definition of its academic year was fully compliant with the Title IV requirements. Nonetheless, TUIU has revised its definition consistent with the OIG's position and the provisions of 34 C.F.R. § 668.3(b).

- 2.4 Confirm that TUIU has developed and implemented procedures for adjusting its standard budget for the cost of attendance when students receive tuition discounts. [Renumbered in Final Report to 2.5]

As noted above, TUIU's cost of attendance fully complied with the Title IV requirements. Nonetheless, TUIU has developed and implemented procedures for adjusting its

standard budget cost of attendance when students receive tuition discounts consistent with the OIG's directives. (See Exhibit 16, at pp. 16-2 to 16-3).

- 2.5 Confirm that TUIU has completed the necessary actions to correct the FFELs that were not properly certified for students who were attending TUIU when it became a stand-alone institution. [Renumbered in Final Report to 2.6]

TUIU is reviewing its records and will make any necessary adjustments or repayments with respect to Federal Family Education Loan program loans that it determines were not properly certified for students who were attending TUIU when it became a stand-alone institution, if any.

- 2.6 Confirm that TUIU's President, Director of Financial Aid, and other staff complete appropriate training on the administration of Title IV programs. [Removed from Final Report]

As noted above, the University was fully compliant with the Title IV training requirements. In fact, along with the personnel required to take the training, the University's Associate Vice President of Academic Affairs also completed the training. (See Exhibit 17, at p. 17-6).

- 2.7 Confirm that TUIU has demonstrated that it is capable of adequately administering Title IV prior to removing the provisional aspect of the Program Participation Agreement certification that ends on December 31, 2009. [Renumbered in Final Report to 2.1]

In this response, the University has fully established that it has the administrative capability necessary to administer the Title IV programs.

If you have any questions or need any additional information, please do not hesitate to call.

Sincerely,

/s/

Robert Tormey
Chief Financial Officer

Enclosures

EXHIBIT INDEX

#	EXHIBIT TITLE	EXHIBIT PAGE #'s
1	Email dated July 23, 2008, from [Name Deleted], Dickstein Shapiro LLP, Counsel to TUIU, to [Name Deleted], U.S. Department of Education, and [Name Deleted], U.S. Department of Education.	p. 1-2
2	Email dated August 28, 2007, from [Name Deleted], Institutional Review Specialist, U.S. Department of Education, to [Name Deleted] Touro University International, and [Name Deleted], Dow Lohnes PLLC, re on-site pre-certification site visit.	pp. 2-2 to 2-3
2	Email dated September 14, 2007, from [Name Deleted], Dow Lohnes PLLC, to [Name Deleted] Institutional Review Specialist, U.S. Department of Education, and [Name Deleted] transmitting Touro University International documentation and information requested by U.S. Department of Education for site visit.	p. 2-4
3	Course Guidelines	pp. 3-2 to 3-11
4	TUI University: Syllabus Home Page, ORG602, Organizational Studies II, [Name Deleted]	pp. 4-5 to 4-12
4	TUI University: Syllabus Home Page, BHE302, Introduction to Health Education, [Name Deleted]	pp. 4-13 to 4-20
4	TUI University: Syllabus Home Page, MAE506, Law and Ethics in Education, [Name Deleted]	pp. 4-21 to 4-26
5	Assignment Due Dates: Winter 2009	pp. 5-2 to 5-3
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9	George Mason University, Office of the Registrar, Fall 2009 Academic Calendar	pp. 9-2 to 9-3
10	Chart of Exceptions to Non-Participating Student Liability	p. 10-2
11	TUIU Withdrawal Policy	p. 11-2
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16	Procedures: 2008/2009 Student Budget	pp. 16-2 to 16-3
17	Certificate for Successful Completion of Fundamentals of Title IV Administration awarded by the U.S. Department of Education to [Name Deleted], September 15-19, 2008	p. 17-2
17	Certificate of Completion awarded by the California Association of Student Financial Aid Administrators to [Name Deleted], December 6-7, 2008	p. 17-3
17	Certificate for Successful Completion of Fundamentals of Title IV Administration awarded by the U.S. Department of Education to [Name Deleted], February 2-6, 2009	p. 17-4
17	Certificate of Completion awarded by the California Association of Student Financial Aid Administrators to [Name deleted], December 6-7, 2008	p. 17-5
17	Certificate for Successful Completion of Fundamentals of Title IV Administration awarded by the U.S. Department of Education to [Name Deleted], February 2-6, 2009	p. 17-6