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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

August 10, 2006

Mr. Richard P. Mills
Commissioner
State Education Department
Education Building
Albany, NY 12234

Mr. James C. Ross
President
Higher Education Services Corporation
99 Washington Avenue
Albany, NY 12255

Re: American Center for Career Training
Report 2004-T-5

Dear Messrs. Mills and Ross:

According to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, Article II, Section 8 of the State Finance Law, and a Memorandum of Agreement dated December 1, 1989, involving the State Comptroller, the Commissioner of Education, the President of the Higher Education Services Corporation (HESC), and the Director of the Budget, we audited the records and procedures used in administering the Tuition Assistance Program (TAP) at the American Center for Career Training (ACCT) for the 2001-2002 through 2003-2004 academic years.

Summary Conclusions

In accordance with Article 14, Section 665(3)(b) of the New York State Education Law (Law), we determined that ACCT was overpaid \$1,773,192 because school officials incorrectly certified 33 students as eligible for 43 TAP awards. We tested the accuracy of the 1,303 TAP certifications the school awarded for the three-year period that ended on June 30, 2004, by reviewing and evaluating the results using a statistical sample of 50 randomly-selected awards. From our statistical sample, we disallowed 35 awards totaling \$79,963. A projection of these audit disallowances to the entire population, using a 95-percent single-sided confidence level, results in an audit disallowance of \$1,755,272. We also disallowed eight awards totaling \$17,920 based on our review of awards from outside the statistical sample period. These were not projected to the population. Therefore, we recommend that HESC recover a total of \$1,773,192 (\$1,755,272 and \$17,920), plus applicable interest, from ACCT.

Background

ACCT, a not-for-profit registered business school located in Manhattan, New York, began operations in spring 1997 when the school purchased the Travel Institute. ACCT offered four programs which were registered with the New York State Education Department (SED): Medical Office Assistant, Computer Office Specialist, Travel and Tourism, and Legal Secretary. These TAP-eligible programs were 1,500 hours long and offered over four-fifteen week terms, with the last term offered as an internship. A typical student's program consists of 25 hours of instruction per week.

In 2001, ACCT lost accreditation for federal student aid (Pell Grants). In October of 2004, ACCT ceased operations and its owner opened another school. The two different corporations had the same President and the same Financial Aid Officer, as well as other administrative staff. The new school, Roberts Business Institute, was never eligible for federal aid, but had programs that were TAP-eligible.

TAP is the largest of the various student grant and scholarship programs administered by HESC. It is an entitlement program designed to provide tuition aid to eligible full-time students who are enrolled in a variety of eligible programs.

We provided draft copies of the report to HESC, SED, and ACCT officials for their review and comments. ACCT officials did not respond to this report. SED and HESC agree with the conclusions in this report.

Audit Scope, Objective, and Methodology

The objective of our performance audit was to determine whether ACCT's management complied with the Law and the Commissioner of Education's Rules and Regulations, Title 8, NYCRR (Regulations), for certifying students as eligible for TAP awards. Our audit did not include a review of the process HESC follows in determining the amount of such awards.

According to HESC records, ACCT officials certified 1,303 TAP awards totaling \$2.9 million that were paid on behalf of 630 students during the three academic years that ended on June 30, 2004. We reviewed a sample of 50 randomly-selected TAP awards totaling \$112,672 that were made to 46 students during that period and evaluated the results using statistical sampling methodologies. We also reviewed other awards that came to our attention during the audit.

As is our practice, we notify school officials at the start of each audit that we will be requesting a representation letter in which school management provides assurances, to the best of their knowledge, concerning the relevancy, accuracy and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. In the representation letter, school officials assert that, to the best of their knowledge, all records and related data supporting the eligibility of students for TAP awards have been provided to the auditors. Also, the officials assert that these records are original, complete, and unaltered; and were prepared during the appropriate periods during the students' attendance at ACCT. School officials further

affirm either that the school has complied with all required procedures established by HESC and SED to ensure that students are properly certified for TAP awards, or that any exceptions have been disclosed to the auditors.

However, an ACCT official has informed us that he is awaiting advice from his legal counsel before signing the representation letter we provided to him in connection with this audit. As a result, we lack assurances from school officials that all relevant information was provided during the audit.

We conducted our audit according to generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations of ACCT that are included within our audit scope. These standards also require that we review and report on ACCT's internal control system and its compliance with those laws, rules, and regulations that are relevant to ACCT's operations and are included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records, and applying such other auditing procedures as we consider necessary. An audit also includes assessing the estimates, judgments, and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions, and recommendations.

In planning and performing our audit of ACCT, we reviewed management's internal control system. Our audit was limited to a preliminary review of this system to obtain an understanding of the environment and the flow of transactions through the accounting system and other systems that would support claims for student financial aid.

ACCT's management is responsible for complying with the Law and the Regulations. In connection with our audit, we performed tests of ACCT's compliance with certain provisions of the Law and Regulations. Our objective in performing these tests was to obtain reasonable assurance that the students who received TAP awards were eligible for them. Our objective was not to provide an opinion on ACCT's overall compliance with such provisions. Our audit found that, for the transactions and records tested, ACCT was generally not in compliance with these provisions, as noted in the following sections of this report.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

Audit Disallowances

The following table summarizes the disallowances that resulted from our audit.

<u>Reason for Disallowance</u>	<u>Number of Awards</u>	<u>Amount</u>	<u>Total</u>
Disallowances from the Statistical Sample:			
Graduates Not Provided Program As Approved:			
1,500 Hour Requirement	18	\$42,649	
Students Not Meeting Full-Time Requirements	18	40,785	
Students Not in Good Academic Standing	10	23,653	
Students Not Meeting Matriculation Requirements	2	4,012	
TAP Awards Not Credited to Students' Accounts	2	5,000	
Over-certified Tuition	2	3,172	
Student Not Meeting Residency Requirements	<u>1</u>	<u>2,500</u>	
Total Disallowances from the Statistical Sample	53	\$121,771	
Less: Disallowances for More than One Reason	<u>18</u>	<u>41,808</u>	
Net Disallowance from the Statistical Sample	<u>35</u>	<u>\$79,963</u>	
Projected Amount			<u>\$1,755,272</u>
Disallowances from Outside the Statistical Sample Period:			
Graduates Not Provided Program As Approved:			
1,500 Hour Requirements	6	\$13,908	
Students Not Meeting Full-Time Requirements	6	12,972	
Students Not in Good Academic Standing	<u>1</u>	<u>2,500</u>	
Total Disallowances from Outside the Sample Period	13	29,380	
Less: Disallowances for More than One Reason	<u>5</u>	<u>11,460</u>	
Net Disallowance from Outside the Sample Period	<u>8</u>		<u>17,920</u>
Total Audit Disallowance			<u>\$1,773,192</u>

The disallowances are discussed in the following paragraphs. Students' names and related information were provided separately to ACCT officials.

General Requirements

Registered business schools must follow requirements established in the Law, the Regulations, and SED guidelines to ensure that their course hours are taught in an educationally sound manner. These requirements include:

- Sections 5001(1)(b) and 5002(6)(a) of the Law require registered business schools to employ teachers who are licensed by SED.

- Section 5002(1)(b)(3) of the Law requires SED to establish standards governing the maximum enrollment that a registered business school's equipment and physical plant will accommodate. SED's Policy Guideline (PG) 11-0301 established the methodology for determining the maximum student capacity for approved classrooms. SED has examined and set a maximum capacity for each classroom at ACCT.
- Section 126.4(a) of the Regulations requires that SED approve the student-to-teacher ratio for each course or curriculum, and states that schools shall ensure that student enrollment does not exceed the approved ratio after the first week of instruction.
- Section 126.4(e)(1) of the Regulations requires that schools maintain an attendance register for each course. The register is to include the name of the course, the room number, the time and date of each class session, a daily record of attendance for each student, the name and signature of the instructor, and verification by instructor that the attendance register is accurate.

SED has advised us that hours not taught in accordance with these requirements are not considered educationally sound, therefore such hours do not count toward determining whether students who graduated were offered a program meeting the approved minimum program requirements of 1,500 or more instructional hours, were taught the core course requirements of the program in which they were enrolled, or met the full-time attendance requirement for their TAP awards.

Graduates Not Provided Program As Approved

Criteria - Section 604 of the Law requires that students, including those attending registered business schools be enrolled in approved programs and demonstrate the ability to complete such courses, to be eligible for TAP awards. Section 145-2.3(b)(2)(iii) of the Regulations defines an approved two-year program as one that provides at least 1,440 instructional hours. Section 126.4 of the Regulations provides that proprietary schools shall conduct only those curricula or courses that have been approved by the Commissioner. Students become ineligible for TAP if the total number of instructional hours offered is less than the amount registered with SED, or courses were not offered or had not been offered in an educationally sound manner.

Audit Determination - We disallowed 24 awards (18 awards from our statistical sample period and six from outside the period) that had been paid on behalf of 16 students who graduated from ACCT but were not provided the minimum number of approved instructional hours, as required.

- Nine students were taught by teachers who were not licensed to teach the courses they taught.
- Two students were enrolled in courses for which the school could not provide either attendance registers or records of internship.
- Eleven students were enrolled in courses in which the number of registered students exceeded the student-teacher ratios for those courses.

- One student was enrolled in courses in which the class size exceeded the classroom capacity for those courses.
- Two students enrolled in courses for which the students previously received passing grades and they did not enroll in a required course.

The status of several of these students who graduated without being provided the program as approved was disallowed for multiple reasons. Duplicate disallowances were subtracted when determining the net audit disallowance.

School Officials' Position - School officials indicated that ACCT was unable to respond to the audit findings because the school ceased operations in October 2004 and sent its records to SED in December 2005, prior to receiving the preliminary audit findings report.

Students Not Meeting Full-Time Requirements

Criteria - Section 661(4)(b) of the Law requires in relevant part, that a student be in full-time attendance, as defined by the Commissioner of Education, to be eligible for a TAP award. Section 145-2.1(b) of the Regulations states that, in non-collegiate programs that measure study in terms of instructional hours, full-time study requires a minimum of 24 instructional hours a week. Section 126.4 of the Regulations states that schools shall conduct only those courses that have been approved by the Commissioner, and shall conduct such courses in accordance with Sections 5002(4) and (5) of the Law. As described in the general requirements above, course hours not offered in an educationally sound manner are not counted toward determining a student's full-time status.

Audit Determination - We disallowed 24 awards (18 awards from our statistical sample period and 6 from outside the period) that had been paid on behalf of 21 students who did not meet the full-time attendance requirements. These students were not offered at least 24 hours of instruction a week in an educationally sound manner, as follows:

- Seven students were taught by teachers who were not licensed to teach the courses they taught.
- Four students were enrolled in courses for which the school either could not provide attendance registers or teachers signatures were missing.
- Four students were enrolled in courses in which the class size exceeded the classroom capacity for those courses.
- Sixteen students were enrolled in courses in which the number of registered students exceeded the student-teacher ratios for those courses.
- Two students enrolled in courses for which the students previously received passing grades and they did not enroll in a required course.

The full-time status of several of these students was disallowed for multiple reasons. Duplicate disallowances were subtracted when determining the net audit disallowance.

School Officials' Position - School officials indicated that ACCT was unable to respond to the audit findings because the school ceased operations in October 2004 and sent its records to SED in December 2005, prior to receiving the preliminary audit findings report.

Students Not in Good Academic Standing

Criteria - Section 665(6) of the Law requires students to be in good academic standing to be eligible for TAP awards. To maintain such standing, a student is required by Section 145-2.2 of the Regulations to maintain satisfactory academic progress towards completion of a program and to pursue the program of study in which he or she is enrolled. To maintain satisfactory academic progress, a student must complete a portion of the curriculum with a minimum cumulative passing average. A student is pursuing the approved program of study if, during each term of study for which an award is received, the student receives a passing or failing grade in a predetermined percentage of the minimum full-time course load required to qualify for the appropriate level of TAP payment.

A student who fails to maintain good academic standing loses TAP eligibility. However, good academic standing can be regained if the deficiencies are made up without additional State awards, a TAP waiver is obtained, or the student remains out of school for at least one calendar year or transfers to another institution.

Audit Determination - We disallowed 11 awards (ten awards from our statistical sample period and one from outside the period) that had been paid on behalf of ten students who failed to maintain good academic standing. All of these students had not met the pursuit of program requirement because they had not completed enough course hours in the term prior to the terms in which their awards were disallowed. The ten students had not made up the deficiencies without additional State awards, or had not remained out of school for one year. Therefore, they were ineligible for their TAP awards.

School Officials' Position - School officials indicated that ACCT was unable to respond to the audit findings because the school ceased operations in October 2004 and sent its records to SED in December 2005, prior to receiving the preliminary audit findings report.

Students Not Meeting Matriculation Requirements

Criteria - Section 5002(1)(b)(1) of the Law requires that, to be admitted to a registered business school, students must possess either a high school diploma or its equivalent, or demonstrate the ability to benefit from the instruction, with certain exceptions. Section 126.1(g) of the Regulations defines documentation of entrance requirements as a copy of the student's high school diploma or transcript, General Equivalency Diploma and the original ability-to-benefit (ATB) examination answer sheet indicating a passing score.

Audit Determination - We disallowed two awards from our statistical sample period that had been paid on behalf of two students who did not meet the matriculation requirement. The files for these students did not contain proof of high school graduation or its equivalent.

School Officials' Position - School officials indicated that ACCT was unable to respond to the audit findings because the school ceased operations in October 2004 and sent its records to SED in December 2005, prior to receiving the preliminary audit findings report.

TAP Awards Not Credited to Students' Accounts

Criteria - Section 2205.3(e)(iii) of the Regulations requires that each student's account be credited within seven days after the receipt of a TAP award or within seven days from the date the applicant incurred a full tuition liability for the semester, whichever is later.

Audit Determination - We disallowed two awards from our statistical sample period that had been paid on behalf of two students whose TAP awards were not credited to their accounts. Since ACCT did not distribute the funds properly so the students could benefit from the TAP awards, we are disallowing these awards.

School Officials' Position - School officials indicated that ACCT was unable to respond to the audit findings because the school ceased operations in October 2004 and sent its records to SED in December 2005, prior to receiving the preliminary audit findings report.

Over-Certified Tuition

Criteria - Section 665(3) of the Law requires that participating institutions certify to HESC the actual amount of tuition liability incurred by each student receiving a TAP award. Section 667 of the Law requires that the amount of the TAP award be based on the amount of tuition a student is charged. Section 2205.3(b) of the HESC Regulations states that institutions shall be responsible for the accuracy of information reported to HESC concerning the tuition charged the applicant. PG 16-0301 states that TAP funds may be collected only for each full term or quarter in which the student is in full-time attendance.

Audit Determination - We partially disallowed two awards that had been paid on behalf of two students whose tuition liability had been reported inaccurately to HESC. Both students left early in the semester incurring less than full tuition liability. Recalculation of the award amounts by HESC, based on the actual tuition each student should have been charged, resulted in a reduction in each student's TAP awards.

School Officials' Position - School officials indicated that ACCT was unable to response to the audit findings because the school ceased operations in October 2004 and sent its records to SED in December 2005, prior to receiving the preliminary audit findings report.

Student Not Meeting Residency Requirements

Criteria - Section 661 of the Law requires that an applicant for an award at the undergraduate level of study be a legal resident of New York State (State) for at least one year immediately preceding the beginning of the semester for which an award is made, or be a legal resident of the State during the last two semesters of high school. Furthermore, according to HESC's Manual of Programs and Procedures (Manual), "the student must show having established a domicile or permanent place of

abode in New York State. Living in New York State solely to attend a college or another postsecondary institution does not, in itself, establish legal residence.” The Manual also stipulates that institutions should not certify eligibility for State awards for any student whose State residency is suspect.

Audit Determination - We disallowed one sample term award paid on behalf of a student who was not a State resident. According to documentation included in the student’s file, the student graduated from high school in Florida and filed a tax return with a Florida address. In addition, there was no documentation indicating that the student was a New York State resident prior to attending classes at ACCT.

School Officials’ Position - School officials indicated that ACCT was unable to respond to the audit findings because the school ceased operations in October 2004 and sent its records to SED in December 2005, prior to receiving the preliminary audit findings report.

Recommendations to the Higher Education Services Corporation

Recover the \$1,773,192, plus applicable interest, from the American Center for Career Training for its incorrect TAP certifications.

Since the school is no longer operational, we have no recommendations for SED.

Major contributors to this report were Karen Bogucki, Harold Maher, Kezia Chacko, Yelena Feldman and Danielle Marciano.

We wish to express our appreciation to the management and staff of the American Center for Career Training for the courtesies and cooperation extended to our auditors during this audit.

Very truly yours,

Kenrick Sifontes
Audit Manager

cc: Robert Berger
John F. Cape, Division of the Budget