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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

April 6, 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, New York 12255

Re: Franklin Career Institute  
Report 2004-T-3

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 Franklin Career Institute (FCI) for the 2000-2001 through 2002-2003 academic years.

**Summary Conclusions**

In accordance with Article 14, Section 665(3)(b) of the New York State Education Law (Law), we determined that FCI was overpaid \$427,061 because school officials incorrectly certified numerous students as eligible for TAP awards. We tested the accuracy of the 1,050 TAP certifications FCI awarded for the three-year period that ended on June 30, 2003, by reviewing and evaluating the results using a statistical sample of 125 randomly-selected awards. From our random sample, we disallowed 29 awards totaling \$66,274. A projection of these audit disallowances to the entire population, using a 95-percent single-sided confidence level, results in an audit disallowance of \$412,386. We also disallowed 7 awards totaling \$14,675 based on our review of awards from outside the statistical sample period. They were not projected to the population. Therefore, we recommend that HESC recover a total of \$427,061, (\$412,386 and \$14,675), plus applicable interest, from FCI.

## **Background**

FCI, a not-for-profit registered business school located in Hempstead, Long Island and Kings County, New York, was organized in December 1997. FCI offers six programs which are registered with the New York State Education Department (SED). Two of these programs - a 1,500-hour Medical Office Assistant program and a 1,875-hour Medical Office Assistant program with an English as a Second Language (ESL) component, have been approved for State financial aid eligibility. However, FCI does not currently offer the ESL program. The 1500-hour Medical Office Assistant (MOA) program is offered over four-fifteen week terms, with students enrolling for ten five-week modules and a ten-week internship. A typical student's program consists of 25 hours of instruction per week.

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 this report to HESC, SED and FCI officials for their review and comments. We have considered their comments in preparing this audit report.

## **Audit Scope, Objective, and Methodology**

The objective of our performance audit was to determine whether FCI'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, FCI officials certified 1,050 TAP awards totaling \$2.3 million that were paid on behalf of 479 students during the three academic years that ended on June 30, 2003. We reviewed a sample of 125 randomly-selected TAP awards totaling \$287,905 that were made to 114 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.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations of FCI that are included within our audit scope. These standards also require that we review and report on FCI's internal control system and its compliance with those laws, rules, and regulations that are relevant to FCI'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 FCI, 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.

FCI's management is responsible for complying with the Law and the Regulations. In connection with our audit, we performed tests of FCI'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 FCI's overall compliance with such provisions. Our audit found that, for the transactions and records tested, FCI 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.

<b><u>Reason for Disallowance</u></b>	<b><u>Number of Awards</u></b>	<b><u>Amount</u></b>	<b><u>Total</u></b>
<b>Disallowances from the Statistical Sample:</b>			
Graduates Not Provided Program As Approved:			
1,500 Hour Requirements	13	\$27,128	
Core Course Requirements	5	12,500	
Students Not Meeting Matriculation Requirements	10	24,146	
Students Not Meeting Full-Time Requirements	8	19,287	
Students Not in Good Academic Standing	3	6,525	
TAP Awards Not Credited to Students' Accounts	2	5,000	
Excess TAP Award	<u>1</u>	<u>2,013</u>	
Total Disallowances from the Statistical Sample	42	96,599	
Less: Disallowances for More than One Reason	<u>13</u>	<u>30,325</u>	
Net Disallowance from the Statistical Sample	<u>29</u>	<u>\$66,274</u>	
Projected Amount			<u>\$412,386</u>

**Disallowances from Outside the Statistical Sample Period:**

Graduates Not Provided Program As Approved:		
1,500 Hour Requirements	6	\$ 13,575
Core Course Requirements	4	10,000
Student Not Meeting Full-Time Requirements	1	1,787
Excess TAP Award	<u>1</u>	<u>1,100</u>
Total Disallowances from Outside the Sample Period	12	26,462
Less: Disallowances for More than One Reason	<u>5</u>	<u>11,787</u>
Net Disallowance from Outside the Sample Period	<u>7</u>	<u>14,675</u>
<b>Total Audit Disallowance</b>		<u><u>\$427,061</u></u>

The disallowances are discussed in the following paragraphs. Students' names and related information were provided separately to FCI's 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) No. 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 FCI.
- 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 the 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 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 in a registered private business school 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. A component of the approved program is a core requirement that SED has determined provides the most essential skills or competencies students need to meet the occupational objectives of the program. PG No. 16-0301 states that students in TAP programs must complete all curriculum core requirements or pass qualifying examinations in those subject areas in order to receive the completion certificate. Students become ineligible for TAP if the total number of instructional hours offered is less than the amount registered with SED, or core courses were not offered or had not been offered in an educationally sound manner.

*Audit Determination* - We disallowed 19 awards (13 awards from our statistical sample period and 6 from outside the period) that had been paid on behalf of 12 students who graduated from FCI, but had not been provided the minimum number of approved instructional hours, as required. We also determined that 9 of these awards (5 awards from our statistical sample period and 4 from outside the period) related to 5 of the 12 students should also be disallowed because the students did not complete their program's core course requirements successfully. In the case of these 9 awards we found that one or more core courses were not offered in an educationally sound manner because they were taught by unlicensed teachers, attendance rosters were missing, and/or room capacities and student-to-teacher ratios exceeded SED's approved requirements.

*School Officials' Position* - FCI officials disagreed with the disallowance for the student who attended a course that was taught by an unlicensed teacher. They contend that although the teacher, a foreign trained medical doctor, was unlicensed at the time the student was taught, he had met SED's academic requirements and was therefore licensable. School officials agree with the disallowances for the remaining students. They indicated that FCI has taken steps to address this issue.

*Auditors' Comments* - SED officials advised us that the teacher was neither licensed nor licensable to teach the course for which the student's award was disallowed.

### **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 10 awards from our statistical sample period that had been paid on behalf of 10 students who did not meet the matriculation requirements. The files for six of these students did not contain proof of high school graduation or its equivalent. The files for two other students show that the students had failed the ability-to-benefit examination. The remaining two students had passed the ATB examination after they were admitted to and had begun classes at FCI. For these two students, we disallowed awards that were received prior to the students having passed the examinations.

*School Officials' Position* - FCI officials agree with these disallowances and indicate that they have taken steps to address this issue.

### **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 9 awards (8 awards from our statistical sample period and 1 from outside the period) that had been paid on behalf of 9 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:

- Four students were enrolled in courses for which the school could not provide attendance registers.
- Two students were taught by teachers who were not licensed to teach the courses they taught.
- Two students were enrolled in courses in which the class size exceeded the approved classroom capacity for those courses.
- One student was not enrolled in any classes.

*School Officials' Position* - FCI officials disagree with the disallowance for the student who attended a course that was taught by an unlicensed teacher. They contend that although the teacher, a foreign trained medical doctor, was unlicensed at the time the student was taught, he however had met SED's academic requirements and was therefore licensable. FCI officials agree with the disallowances for the remaining students and indicate that they have taken steps to address this issue.

*Auditors' Comments* - SED officials advised us that the teacher was neither licensed nor licensable to teach the course for which the student's award was disallowed.

### **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, he or she 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 three awards from our statistical sample period that had been paid on behalf of two students who failed to maintain good academic standing. One of the two students had received an award in a term after she had failed to meet the pursuit of program requirements. The remaining student had failed to meet the requirements relating to both pursuit of program and satisfactory academic progress. These two students had not received waivers, 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* - FCI officials agree with these disallowances.

### **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 a student whose TAP awards were not credited to her account. Since the college did not distribute the funds properly so the student could benefit from the TAP awards, we are disallowing these awards.

*School Officials' Position* - FCI officials agree with the disallowances for the student. They further indicated that FCI has taken steps to address this issue.

### **Excess TAP Awards**

*Criteria* - Section 665(3) of the Law requires that participating institutions certify to HESC that each student receiving a TAP award has incurred a full tuition liability for that term of attendance. 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 student.

*Audit Determination* - We fully or partially disallowed two awards (one award from our statistical sample period and one from outside the period) that had been paid on behalf of two students. One student was charged a lower tuition than the amount reported to HESC. The other was charged no tuition. Recalculation of the award amounts by HESC, based on the actual tuition each student was charged, resulted in reductions in the students' TAP awards.

*School Officials' Position* – FCI officials agree with these disallowances.

### **Other Matters Needing Attention**

We identified two issues that SED needs to review with FCI officials.

#### **Unlicensed Teachers**

*Criteria* - Sections 5001(1)(b) and 5002(6) of the Law require registered business schools to employ teachers who are licensed by SED. Completed applications for teachers' licenses must be mailed to SED and postmarked four days before the applicants begin their employment at the school.

*Audit Determination* - We identified 14 teachers who were teaching courses at FCI without first being licensed. For example, one began teaching in September 2001, but, FCI did not obtain a license for this teacher until October 2004 - only after the auditors had brought the unlicensed status to the school's attention. In another instance, a teacher was hired and began teaching a Medical Billing course in October 2002 without proper licensure. Moreover, the license to teach this course was not applied for until February 2003.

We sought and were provided with guidance by SED on whether courses taught by teachers who did not meet the licensing criteria were eligible for TAP awards. Based on SED advice, we disallowed awards for students who attended classes that were taught by certain unlicensed teachers (see Graduates Not Provided Program As Approved and Students Not Meeting Full-Time Requirements sections of this report). In addition, based on SED's advice, we did not disallow awards that were made to students who were taught by other unlicensed teachers.

*School Officials' Position* – FCI officials agree with this finding. They indicated that steps have been taken steps to address this issue.

#### **Missing Attendance Registers**

*Criteria* - Section 126.4(e)(1) of the Regulations requires, in relevant part, 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 instructor verification that the attendance register is accurate.

*Audit Determination* - We found that FCI did not maintain an attendance register for each course as required. FCI offered 1,431 courses from June 8, 2000 to July 18, 2003, but school officials could provide no registers for 195 of them. Some of the attendance registers for another 61 courses were also unavailable. We reviewed the secondary documentation FCI provided as a substitute for the missing attendance registers, but we found it was not sufficient to establish that some students had maintained their full-time attendance status. We disallowed the awards for these students. (See Students Not Meeting Full-Time Requirements section of this report.)

*School Officials' Position* - School officials agree with this finding. They indicated that FCI has taken steps to address this issue.

### **Recommendations to the Higher Education Services Corporation**

1. *Recover the \$427,061, plus applicable interest, from Franklin Career Institute for its incorrect TAP certifications.*
2. *Ensure that Franklin Career Institute officials comply with the Higher Education Service Corporation requirements relating to accurate reporting of tuition amounts and the crediting of TAP awards to students' accounts.*

### **Recommendation to the State Education Department**

*Ensure that Franklin Career Institute officials comply with State Education Department requirements relating to approved programs, full-time attendance, matriculation, good academic standing, teachers' licenses, and attendance registers cited in this report.*

Major contributors to this report were Kenrick Sifontes, Cindi Frieder, Salvatore D'Amato, Erica J. Zawrotniak, Kezia Chacko, Jeny Varghese, and Johnathan Spitzer.

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

Very truly yours,

Steven E. Sossei  
Audit Director

cc: Randy Rock, Franklin Career Institute  
John F. Cape, Division of the Budget