

THOMAS P. DiNAPOLI  
STATE COMPTROLLER



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STATE OF NEW YORK  
**OFFICE OF THE STATE COMPTROLLER**

May 30, 2012

Dr. John B. King, Jr.  
Commissioner  
State Education Department  
State Education Building, Room 408  
89 Washington Avenue  
Albany, New York 12234

Ms. Elsa Magee  
Acting President  
Higher Education Services Corporation  
99 Washington Avenue  
Albany, New York 12255

Re: Touro College  
Report 2010-T-1

Dear Dr. King and Ms. Magee:

The Office of the State Comptroller audits postsecondary institutions to verify that only eligible students receive State-funded Tuition Assistance Program (TAP) awards. The objective of this audit was to determine whether Touro College management complied with the Education Law and the Commissioner of Education's Rules and Regulations when certifying students for TAP awards. Our audit did not include a review of the Higher Education Services Corporation's (HESC) processes to determine student award amounts.

**Summary**

Touro was overpaid \$313,665 because school officials incorrectly certified students for TAP. We tested the accuracy of the 29,317 TAP certifications the school awarded for the three-year period ended June 30, 2006, by reviewing a statistical sample of 200 randomly-selected awards. From our statistical sample, we disallowed five awards totaling \$9,293. A statistical projection of these audit disallowances to the entire population, using a 95 percent single-sided confidence level, resulted in an audit disallowance of \$292,302. We also disallowed ten awards totaling \$21,363 based on our review of other awards from outside the statistical sample period for the students in our random sample. These awards were not projected to the population. Therefore, we recommend HESC recover a total of \$313,665 (\$292,302 and \$21,363), plus applicable interest, from Touro.

## Background

Touro is a private institution of higher and professional education offering undergraduate and graduate programs in education, business, health sciences and information systems. Founded in 1971, the college's main campus is located in Manhattan. Currently Touro has an enrollment of approximate 17,500 students, many of whom attend classes at a number of locations in Manhattan. The college is accredited by the Middle States Commission on Higher Education, an institutional accrediting agency recognized by the United States Secretary of Education and the Council for Higher Education Accreditation.

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 a draft copy of this report to HESC, the State Education Department (SED) and Touro officials for their review and comments. We have considered their comments in preparing this report.

## Audit Results

The following table summarizes the disallowances resulting from our audit:

<b><u>Disallowed Payments during the 3-Year Sample Period</u></b>		
<b>Reason</b>	<b>Awards</b>	<b>Amount</b>
Students Not Matriculated	<u>5</u>	<u>9,293</u>
<b>Total Disallowance from the Sample Period</b>	<u><b>5</b></u>	<b>\$9,293</b>
<b>Projected Amount for the Sample Period</b>		<b>\$292,302</b>

<b><u>Disallowed Payments outside the 3-Year Sample Period</u></b>		
<b>Reason</b>	<b>Awards</b>	<b>Amount</b>
Students Not Matriculated	<u>10</u>	\$21,363
<b>Disallowance from Outside the Sample Period</b>	<u><b>10</b></u>	<b><u>\$21,363</u></b>

<b>Total Disallowance</b>	
<b>Total Disallowance (Projected Amount + Disallowance from Outside the Sample Period)</b>	<b><u>\$313,665</u></b>

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

### Students Not Matriculated

Section 661 of the New York State Education Law (Education Law) requires students who

received their first financial aid payment in the 1996-97 academic year or after, to have a high school diploma or its equivalent, or to have achieved a passing score, as determined by the United States Secretary of Education, on a federally-approved examination - referred to as an Ability-to-Benefit test. Section 661 also states students must have a certificate of graduation from a school providing secondary education. Therefore, students with foreign high school diplomas or transcripts must have a copy of a diploma or transcript; a mere translation of a diploma or transcript is not acceptable to be matriculated. Chief Executive Officers Memorandum (CEO) No. 05-04 establishes that only public high schools and registered non-public schools are permitted by the Education Law to issue high school diplomas in New York State.

Touro requires applicants to submit evidence of high school graduation or its equivalent, or to demonstrate their ability to benefit from higher education. An "equivalent" generally means a General Education Diploma, which is described in the Commissioner of Education's Rules and Regulations section 100.7(a)(2)(iii) as amended in 1999 and then in 2004. Where we found students did not have the actual General Education Diploma but complied with the General Education Diploma requirements, we determined they met their matriculation requirement. When we found students complied with the General Education Diploma requirements by means of completing 24 college credits, we determined they met matriculation requirements from that point forward. With regard to the Ability-to-Benefit test, Touro administers and grades two federally-approved Ability-to-Benefit tests; the Career Programs Assessment test and the Combined English Language Skills Assessment test. Federal guidelines require a passing score of 90 on the Combined English Language Skills Assessment test; and passing scores of 42, 43, and 41 on the language usage, reading and numerical components, respectively, of the Career Programs Assessment test. Students not achieving a passing score on the exam would not qualify for TAP awards.

Further, according to Title 34 of the Code of Federal Regulations (Code), the Combined English Language Skills Assessment test can be used to determine the ability-to-benefit of a non-native student who will be enrolled solely in an English as a Second Language program, as well as a student who is enrolled in a postsecondary educational program taught in English and has an English as a Second Language component in which the student is also enrolled. The Code also states a student enrolled in secondary school is not eligible for aid from this program.

Section 145-8.4(b)(1) and Subpart 52.2(d)(2) of the Commissioner's Regulations both outline the need for the schools to only accept and maintain appropriate credentials which document students have the ability to benefit from the instruction they will receive. This can only be achieved when the school's admission office is aware of the country-specific high school graduation requirements which impact the acceptability of such credentials.

To be eligible for admission to a New York State college a student graduating from a high school in a Caribbean country also needs to have passed either the Caribbean Examinations Council examination or the General Certificate of Education "O" Level examination.

We disallowed 15 awards (five from the statistical sample period and ten others from outside this period) paid to five students who were not properly matriculated. Additional details are given below:

- Two students indicated they graduated from foreign high schools. One of these students provided documents from a foreign country that do not indicate the student earned the equivalent of a U.S. high school diploma. For the other student, Touro officials did not provide any evidence the student graduated high school. The officials also did not provide proof the student passed the required national exam.

Touro officials believe the documents provided for one of these students indicate the student earned the equivalent of a U.S. high school diploma. For the other student, Touro officials provided a transcript they believe shows the student graduated from high school and thus, was eligible for the TAP award.

However, for the first student the foreign documents do not indicate the student graduated high school and earned the equivalency of a U.S. high school diploma. For the other student, the transcript only indicates the student completed the 11<sup>th</sup> grade. In addition, this student did not show proof of having taken or passed either the Caribbean Examinations Council, or a General Certificate of Education exam. Since the student attended high school in Jamaica, proof of passing one or the other of these exams is required for admission to a New York State college.

- Two students graduated from private high schools not registered with SED.

Touro officials do not believe that when the students were matriculated the Education Law required the students to have a high school diploma from a registered non-public high school. The officials also believe CEO No. 05-04 relates to requirements for earning a college degree and not TAP eligibility.

We do not agree with Touro officials. CEO No. 05-04 clearly indicates as of September 30, 2004 only public high schools and registered non-public schools are permitted by the Education Law to issue high school diplomas in New York State. Since these students were admitted to Touro after this date and did not earn diplomas from either a public high school or a registered non-public school, their diplomas are not acceptable and they are not eligible for their TAP awards.

- Touro certified one student for a seventh TAP award, although eligibility under the Associate degree program that the student was enrolled in is limited to six terms.

Touro officials contend the student was enrolled in a Baccalaureate degree program and therefore eligible for a seventh TAP award.

Touro's records indicate the student was enrolled in an Associate degree program.

## **Audit Scope**

According to HESC records, Touro officials certified 29,317 TAP awards totaling more than \$54.4 million paid on behalf of 11,471 undergraduate students during the three academic years ended June 30, 2006. We reviewed a statistical sample of 200 awards totaling \$354,061 made to 200 undergraduate students during this period. We also reviewed other awards that came to our attention during the audit.

## **Methodology**

We did our performance audit according to generally accepted government auditing standards. Those standards require we plan and do the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In planning and doing our audit of Touro, 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 college's accounting system and other systems supporting claims for student financial aid.

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

In addition to being the State Auditor, the Comptroller has certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. 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.

## **Authority**

Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Article XIV, Section 665(3) of the State Education Law authorize the State Comptroller to audit the Tuition Assistance Program.

## **Contributors to the Report**

Major contributors to this report were Dennis Buckley, Yelena Feldman, Harry Maher and Hector Arismendi.

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

*Recover the \$313,665 plus applicable interest from Touro College for its incorrect TAP certifications.*

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

*Ensure Touro officials comply with the State Education Department requirements relating to matriculation.*

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

Yours truly,

A handwritten signature in black ink, appearing to read "John F. Buyce". The signature is fluid and cursive, with the first name "John" being the most prominent part.

John F. Buyce, CPA, CIA, CGFM  
Audit Director

cc: Dr. Alan Kadish, Touro College  
Tom Lukacs, Division of the Budget