



JUN 19 2013

Randy F. Rock, President
Franklin Career Institute
91 North Franklin Street
Hempstead, NY 11550-3003

Certified Mail Return Receipt Requested
Domestic Return Receipt
7006 2760 0002 1734 8171

RE: **Final Program Review Determination**
OPE ID: 03328300
PRCN: 200640225454

Dear Mr. Rock:

The U.S. Department of Education's (Department's) School Participation Division – New York/Boston issued a program review report on April 20, 2009 covering Franklin Career Institute's (Franklin) administration of programs authorized by Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070 et seq. (Title IV, HEA programs), for the 2004/2005 and 2005/2006 award years. A copy of the program review report (and related attachments) and Franklin's response are attached. Any supporting documentation submitted with the response is being retained by the Department and is available for inspection by Franklin upon request. Additionally, this Final Program Review Determination (FPRD), related attachments, and any supporting documentation may be subject to release under the Freedom of Information Act (FOIA) and can be provided to other oversight entities after this FPRD is issued.

Purpose:

Final determinations have been made concerning all of the outstanding findings of the program review report. The purpose of this letter is to: (1) identify liabilities resulting from the findings of this program review report, (2) provide instructions for payment of liabilities to the Department, (3) notify the institution of its right to appeal, and (4) close the review.

The total liabilities due from the institution from this program review are \$1,209,210.

This final program review determination contains detailed information about the liability determination for all findings.

Protection of Personally Identifiable Information (PII):

PII is any information about an individual which can be used to distinguish or trace an individual's identity (some examples are name, social security number, date and place of birth). The loss of PII can result in substantial harm, embarrassment, and inconvenience to individuals and may lead to identity theft or other fraudulent use of the information. To protect PII, the findings in the attached report do not contain any student PII. Instead, each finding references students only by a student number created by Federal Student Aid. The student numbers were assigned in Appendix A, Student Sample. In addition, Appendices B, C, D and E also contain PII.

Appeal Procedures:

This constitutes the Department's FPRD with respect to the liabilities identified from the April 20, 2009 program review report. If Franklin wishes to appeal to the Secretary for a review of financial liabilities established by the FPRD, the institution must file a written request for an administrative hearing. Please

note that institutions may appeal financial liabilities only. The Department must receive the request no later than 45 days from the date Franklin receives this FPRD. An original and four copies of the information Franklin submits must be attached to the request. The request for an appeal must be sent to:

Ms. Mary E. Gust, Director
Administrative Actions and Appeals Service Group
U.S. Department of Education
Federal Student Aid/PC
830 First Street, NE - UCP3, Room 84F2
Washington, DC 20002-8019

Franklin's appeal request must:

- (1) indicate the findings, issues and facts being disputed;
- (2) state the institution's position, together with pertinent facts and reasons supporting its position;
- (3) include all documentation it believes the Department should consider in support of the appeal. An institution may provide detailed liability information from a complete file review to appeal a projected liability amount. Any documents relative to the appeal that include PII data must be redacted except the student's name and last four digits of his / her social security number (please see the attached document, "Protection of Personally Identifiable Information," for instructions on how to mail "hard copy" records containing PII); and
- (4) include a copy of the FPRD. The program review control number (PRCN) must also accompany the request for review.

If the appeal request is complete and timely, the Department will schedule an administrative hearing in accordance with § 487(b)(2) of the HEA, 20 U.S.C. § 1094(b)(2). The procedures followed with respect to Franklin's appeal will be those provided in 34 C.F.R. Part 668, Subpart H. **Interest on the appealed liabilities shall continue to accrue at the applicable value of funds rate, as established by the United States Department of Treasury, or if the liabilities are for refunds, at the interest rate set forth in the loan promissory note(s).**

Record Retention:

Program records relating to the period covered by the program review must be retained until the later of: resolution of the loans, claims or expenditures questioned in the program review; or the end of the retention period otherwise applicable to the record under 34 C.F.R. §§ 668.24(e)(1), (e)(2), and (e)(3).

The Department expresses its appreciation for the courtesy and cooperation extended during the review. If the institution has any questions regarding this letter, please contact Ebony Foy at 646-428-3882. Questions relating to any appeal of the FPRD should be directed to the address noted in the Appeal Procedures section of this letter.

Sincerely,

(b)(6)

Betty Coughlin
Director

Enclosure:

Protection of Personally Identifiable Information

cc: Paula Jones, Financial Aid Administrator
NY State Department of Education
Council on Occupational Education

bcc: Reading file, Correspondence file, Chris Curry, OCFO Accounts Receivable, Lauren Pope, Don Tanguilig, Denise Morelli, Kathleen Wicks, Sherrie Bell, Betty Coughlin, ERM

PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION

Personally Identifiable Information (PII) being submitted to the Department must be protected. PII is any information about an individual which can be used to distinguish or trace an individual's identity (some examples are name, social security number, date and place of birth).

PII being submitted electronically or on media (e.g., CD-ROM, floppy disk, DVD) must be encrypted. The data must be submitted in a .zip file encrypted with Advanced Encryption Standard (AES) encryption (256-bit is preferred). The Department uses WinZip. However, files created with other encryption software are also acceptable, provided that they are compatible with WinZip (Version 9.0) and are encrypted with AES encryption. Zipped files using WinZip must be saved as Legacy compression (Zip 2.0 compatible).

The Department must receive an access password to view the encrypted information. The password must be e-mailed separately from the encrypted data. The password must be 12 characters in length and use three of the following: upper case letter, lower case letter, number, special character. A manifest must be included with the e-mail that lists the types of files being sent (a copy of the manifest must be retained by the sender).

Hard copy files and media containing PII must be:

- sent via a shipping method that can be tracked with signature required upon delivery
- double packaged in packaging that is approved by the shipping agent (FedEx, DHL, UPS, USPS)
- labeled with both the "To" and "From" addresses on both the inner and outer packages
- identified by a manifest included in the inner package that lists the types of files in the shipment (a copy of the manifest must be retained by the sender).

PII data cannot be sent via fax.

Prepared for

Franklin Career Institute

Federal Student 
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OPE ID 033283
PRCN 200640225454

Prepared by
U.S. Department of Education
Federal Student Aid
School Participation Division – New York/Boston

Final Program Review Determination

JUN 19 2013

Table of Contents

	Page
A. Institutional Information.....	2
B. Scope of Review.....	3
C. Findings and Final Determinations.....	3
Resolved Findings	3
Resolved Findings with Comments	
Findings with Final Determinations	
Finding #1: Improper Administration of Ability to Benefit Tests	4
Finding #2: Inadequate Documentation of Student Eligibility for ESL Program	5
Finding #3: Inadequate/Conflicting Attendance Records	7
Finding #4: Incorrect Calculation of Return to Title IV	9
Finding #5: Improper Disbursement of Title IV Funds	11
Finding #6: Incomplete Verification	14
Finding #7: Conflicting Information	15
Finding #9: Documentation of Student Eligibility for FWS Employment	17
Finding #11: Documentation of Eligibility for SEOG Award/Disbursement	18
	20
D. Summary of Liabilities.....	22
E. Payment Instructions.....	
F. <u>Appendices</u>	
Appendix A: Program Review Sample	
Appendix B: Program Review Report	
Appendix C: Institution's Written Response.	
Appendix D: File Review Report – Finding #1	
Appendix E: File Review Report – Finding #4	
Appendix F: Cost of Funds Worksheets	
Appendix G: FedWire Instructions	

A. Institutional Information

Franklin Career Institute
91 North Franklin Street
Hempstead, NY 11550-3003

Type: Private, Nonprofit

Highest Level of Offering: Non-Degree 1 Year (900-1799 hours)

Accrediting Agency: Council on Occupational Education

Current Student Enrollment: 809 (2010/11)

% of Students Receiving Title IV, HEA funds: 56% (2010/11)

Title IV, HEA Program Participation (Source PCNet):

	2011-2012
Federal Pell Grant Program	\$2,694,683
Federal Supplemental Educational Opportunity Grant Program (FSEOG)	\$66,833
Federal Work Study Program	\$46,679

B. Scope of Review

The U.S. Department of Education (the Department) conducted a program review at Franklin Career Institute (Franklin) from August 21, 2006 to August 25, 2006. A follow-up visit was conducted on November 30, 2006. The review was conducted by Christopher Curry, Teresa Martinez, and Jane Eldred.

The focus of the review was to determine Franklin's compliance with the statutes and regulations as they pertain to the institution's administration of the Title IV, HEA programs. The review consisted of, but was not limited to, an examination of Franklin's policies and procedures regarding institutional and student eligibility, individual student financial aid and academic files, attendance records, student account ledgers, and fiscal records.

A sample of 37 files was identified for review from the 2005/06 and 2006/07 award years. The files were selected randomly from a statistical sample of the total population receiving Title IV, HEA program funds for each award year. In addition, 9 files were selected based on an expanded review of students enrolled in the ESL program. Appendix A lists the names and social security numbers of the students whose files were examined during the program review. A program review report was issued on April 20, 2009.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning Franklin's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific practices and procedures. Furthermore, it does not relieve Franklin of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs.

C. Findings and Final Determinations

Resolved Finding

Finding #8

Franklin has taken the corrective actions necessary to resolve Finding #8 of the program review report. Therefore, this finding may be considered closed. The institution's written response to this finding is included in Appendix C. Findings requiring further action by Franklin are discussed below.

Resolved Finding with Comments

The following program review finding has been resolved by the institution, and may be considered closed. This finding is/are included solely for the purpose of discussing resolution of the finding.

Finding #10: Inadequate Monitoring of FWS Employment

Noncompliance:

Title IV regulations require that the student's work must be governed by employment conditions, including pay, that are appropriate and reasonable in terms of any applicable Federal, State, or

local law 34 C.F.R. 675.20(c)(1)(iii). An institution is responsible for ensuring that the student is paid for work performed. 34 C.F.R. 675.16(a)(10).

The reviewers noted situations where students' work periods appeared to exceed New York State Labor Department guidelines concerning meal breaks and consecutive hours of work. For example, **student #11's** timesheets show that she worked periods of more than five consecutive hours numerous times, with as many as eight consecutive hours without a documented break. The student was employed on-campus at Franklin. This office has been informed that New York State Labor Laws require that employees who work shifts of more than four hours during the day be provided a meal break of at least 30 minutes.

It is unclear whether students were actually working extended periods without a break, or were paid for scheduled breaks, which is not allowed under Title IV regulations.

The reviewers also noted that Franklin paid **student #30** for 54.5 hours of work during November 2005. However, the time sheet indicates that the student actually worked a total of 59.5 hours that month.

Directives From Program Review Report:

Franklin was required to take the necessary steps to ensure that all applicable rules and guidelines are followed for students employed and receiving assistance under the FWS program.

Finding Resolution:

In response to this finding, Franklin clarified the circumstances of student #11's work periods. The institution apprised this office of changes that have been implemented as a result of this finding. Franklin also provided the requested clarification for whether Student #30 was paid the correct amount for work performed, and confirmed that additional payments are due to the student. **Franklin mailed a check for \$37.50 to the student for the five hours worked but not paid.**

Franklin stated they used the finding as an opportunity to improve procedures related to monitoring of FWS employment. Franklin revised its sign-in/sign-out sheets to better reflect a break period and instituted new procedures whereby FWS students sign a form acknowledging their understanding of having to take breaks under certain conditions.

Findings with Final Determinations

The program review report findings requiring further action are summarized below. At the conclusion of each finding is a summary of Franklin's response to the finding, and the Department's final determination for that finding. A copy of the program review report issued on April 20, 2009 is attached as Appendix B.

Note: Any additional costs to the Department, including interest, special allowances, cost of funds, unearned administrative cost allowance, etc., are not included in individual findings, but instead are included in the summary of liabilities table in Section D of the report.

Finding #1: Improper Administration of Ability to Benefit Tests

Noncompliance:

Only eligible students may receive Title IV program funds. 20 U.S.C. § 1091; 34 C.F.R. § 668.32. To be eligible, students must be academically qualified to study at a postsecondary level. In this regard, a student must have a high school diploma, a general education development certificate (GED), or be beyond the age of compulsory school attendance and have the ability to benefit from the program of instruction that is being provided. See 20 U.S.C. § 1091; 34 C.F.R. § 668.32(e). A student who does not have a high school diploma or GED must pass an independently administered ability to benefit (ATB) test prior to receiving Title IV funds. 34 C.F.R. § 668.32(e)(2). If a student does not meet one of these criteria, he/she is ineligible to receive Title IV funds.

The Department considers a test to be independently administered if the test is given by a test administrator who —

- (i) Has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the interest obtained through its agreement to administer the test, and has no controlling interest in any other educational institution;
- (ii) Is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals;
- (iii) Is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution or its parent corporation or at any other institution, or a member of the family of any of the above individuals.

34 C.F.R. § 668.151(b)(2)(i)-(iii).

During the review, Department reviewers were informed that Franklin employed Vocational Educational Testing, Inc. (VET) as its independent third-party tester for administration of the ATB tests for students enrolled at the institution, until that entity was dissolved in April 2006. After that, Franklin used Galina Fridman, who had been employed by VET as its independent test administrator before the company dissolved. Reviewers asked for a copy of Ms. Fridman's contract with Franklin, and were told that there was no contract, and that Ms. Fridman was paid through Franklin's payroll. Franklin's records contained a New Employee Data Sheet for Ms. Fridman indicating a 9/1/05 "starting date of employment".

During the course of discussions with school officials, the reviewers were informed that VET was owned by Lydia Rock, the wife of Franklin's president. Further research confirmed that Ms. Rock was also the Chairman of the Board for VET. In addition, Lydia Rock is identified as a member of Franklin's Board of Trustees. Due to the marital relationship between the owner of VET and the President of Franklin, neither VET nor its employees would meet the definition of an independent test administrator. Ms. Rock's position on Franklin's Board of Trustees would also prevent VET from meeting the independence standard outlined above.

Although VET ceased providing ATB testing for Franklin in 2006 when the company dissolved, Ms. Fridman's prior employment by VET would prevent her from meeting the required standards. In addition, Ms. Fridman's subsequent employment directly by Franklin would call into question the independence required by the Title IV regulations. Despite arguments to the contrary by Franklin, the information obtained by the Department suggests that Ms. Fridman was an employee of Franklin and not just an independent contractor for ATB testing.

Directives From Program Review Report:

Franklin was informed that any ATB tests administered to Franklin students by VET or Ms. Fridman are considered invalid due to the lack of an independent relationship. In response to the finding, Franklin was required to provide a list of all Title IV recipients who were admitted and were determined to be eligible for Title IV funds under the ATB provisions for the 2004/05 award year to the date of the report. Franklin was also required to provide documentation for all persons who have administered the ATB tests at the institution since the program review was conducted, including approvals from the testing agency, where applicable. Franklin was to provide certifications regarding whether any of those test administrators met the regulatory criteria described in the above citation, and provide the most current contact information for any of those individuals. In addition, Franklin was required to identify any Title IV funds disbursed to students who were admitted based on ATB tests that were not administered by persons who met the independent tester criteria.

Final Determination:

Franklin disagrees with the Department in this finding. The school contends that at all times, Franklin complied with the federal requirements that an ATB test be independently administered. The school made two general arguments to support its position. First, Franklin argued that its use of VET did not violate the requirement that ATB be independently administered because the company itself did not serve as the test administrator, but only served as a contractor for identifying, recruiting, and contracting independent contractors to give ATB tests at Franklin. Second, Franklin contends that Ms. Fridman was not an employee of the school. To support this position, Franklin argues that her inclusion on the payroll and the issuance of a W-2 do not create an employment relationship between Franklin and Ms. Fridman. In its argument, Franklin also noted that Ms. Fridman did not receive any benefits or vacation leave. Franklin's entire response is included as part of Appendix C.

The Department has reviewed Franklin's response and determined that it does not resolve the ATB finding. The evidence that the Department has obtained establishes that neither VET, nor Ms. Fridman meet the independence standards required under the Title IV ATB regulations.

First, the fact that VET contracted with Ms. Fridman to provide services for Franklin does not change the nature of the relationship between VET and Franklin. Franklin hired VET to perform the ATB testing at its school, and payment was made to VET. The contractual relationship to be reviewed for ATB purposes was between VET and Franklin. The principles of both of these entities are related. This is exactly the type of relationship that is prohibited under regulations. The fact that VET hired Ms. Fridman as a contract employee rather than a salaried employee is simply irrelevant to this issue.

The Department also rejects the argument made by Franklin regarding the time period after VET was dissolved. First, the evidence the Department has obtained establishes that Ms. Fridman became an employee of Franklin after VET dissolved. The school did not have a contract with Ms. Fridman to administer the ATB tests and the reviewers obtained documentation showing that Ms. Fridman became a new employee of Franklin on September 1, 2005. Franklin acknowledges

that Ms. Fridman received a W-2 but maintains that this does not create an employment relationship. Contrary to Franklin's contention, a W-2 is exactly the tax document that is provided to an employee. Other IRS documents are used if an individual is simply paid as a contractor. Further the absence of leave and benefits, does not in and of itself, establish that Ms. Fridman was not an employee. Last, Ms. Fridman previously worked for the company owned by Mr. Rock's wife. The regulations also cover an individual's former employment.

The purpose of the independence standard in the ATB regulations was to preclude any type of family or financial relationship between a testing entity and a school from tainting the ATB process. The facts uncovered with Franklin are exactly the types of relationships the Department was trying to prevent when it implemented the Title IV ATB requirements.

All of the factors here establish that the ATB tests administered by Franklin during this time period were not performed by an independent tester. Therefore, students who were administered a test by VET or Ms. Fridman were ineligible for Title IV funds, and any aid disbursed to the students must be returned. Based on results of the file review conducted by Franklin, attached as Appendix D, Franklin must return \$1,082,584.00 in disbursed federal aid.

Liabilities of \$37,528.14 were established for 69 students in this finding that are also included in the students liabilities established under Finding #4. Those duplicated amounts will be removed in the summary of liabilities table.

Instructions for payment of liabilities are included in the Payment Instruction section of this report.

Finding #2: Inadequate Documentation of Student Eligibility for ESL Program

The finding has been resolved for student 42.

Noncompliance:

For purposes of Title IV participation, an educational program that consists solely of instruction in ESL qualifies as an eligible program only if—

- (1)(i) The institution admits to the program only students who the institution determines need the ESL instruction to use already existing knowledge, training, or skills; and
(ii) The program leads to a degree, certificate, or other recognized educational credential.
- (2) An institution shall document its determination that ESL instruction is necessary to enable each student enrolled in its ESL program to use already existing knowledge, training, or skills with regard to the students that it admits to its ESL program under paragraph (j)(1)(i) of this section.

34 C.F.R. § 668.1(j).

The reviewers found cases where there was inadequate documentation that students enrolled in the ESL program were pursuing the program to use already existing knowledge, training, or skills. The reviewers did not find any specific notations by institutional officials documenting its determinations for any of the students sampled as required under the regulation.

For example, **student #46** indicated on his Career Interview Application (CIA) form that he was employed in "Cleaning" field. In the section where the student is asked to list the reason why

he/she want to continue education, the student indicated that, "I would like to learn English to help my child with her homework". There was no other documentation in the folder clarifying that the student needed the English to use prior knowledge, skills or training.

Student #45 filled out the employment section of her English as a Second Language Program Application Supplement (ESL-PAS), indicating that she was employed in the Homecare field. She wrote on her CIA form that the reason she wanted to continue her application was "to learn English to help my son".

Student #43 indicated on her ESL-PAS that she had been a family home-keeper for the past year, but she did not list any reason for continuing her education on the CIA form.

Student #41's records did not identify any prior training or employment, only indicating on the CIA form that his reason for continuing his education was to learn English.

The required documentation was also lacking for **student #39**.

When questioned about the lack of specific documentation, institutional officials stated that the implication could be drawn from the student's current employment. However, as set forth in the regulations, Franklin is required to document its determination that ESL instruction is necessary to enable each student enrolling in its ESL program to use already existing knowledge, training, or skills. Furthermore, the information provided by some students discussed in this finding appears to indicate only personal reasons for improving their English skills.

Directives From Program Review Report:

As a result of this finding, Franklin was required to review the files for all Title IV recipients who were enrolled in the ESL program for the 2004/05 and 2005/06 award years. In response, Franklin was instructed to provide copies of all documentation that was collected, at the time students were enrolled, that documents the students' reasons for enrolling in the program, and the institution's evaluation of that information.

Franklin was also instructed to develop and implement procedures for collecting the required information from students as well as documenting the institution's determinations as required in regulations, and provide this office with copies of those procedures.

Final Determination:

Franklin provided the Department with copies of ESL Application Supplements for students #39, 42, 43, 45 and 46, which documented those students employment status at the time they enrolled in the programs at Franklin, asserting that the information on those forms suffices to meet the regulatory requirements.

Franklin acknowledged that the supporting documentation for Student 41 might be insufficient to demonstrate the student's knowledge, skill, and experience.

The Department has reviewed the documentation that was submitted and determined that Franklin did not collect adequate documentation for certain students enrolled in the ESL program. There was not sufficient evidence provided that showed these students were pursuing the program to use already existing knowledge, training, or skills. With the exception of Student #42, the institution has not provided the Department with any additional documentation that would change the findings of the Program Review Report.

The Career Interview Application and the English as a Second Language Program Application Supplement documents are not adequate to document the requirements under the provisions of 34 C.F.R. § 668.1(j). Instead of documenting that ESL instruction is necessary to enable each student enrolled in its ESL program to use already existing knowledge, training, or skills to work in specific fields, the forms rely on the students' employment history and assumes the reviewer would know the basic skills involved in the positions. The forms ask vague open-ended questions that do not always provide the answers needed to meet the regulatory requirements. The Department recommends a revision of The Career Interview Application (CIA) and the English as a Second Language Program Application Supplement (ESL-PAS).

As indicated on the Program Review Report, student #46 indicated on the CIA form that his last place of employment was "Cleaning". The student was also asked to list on that form the reason why he wanted to continue his education and how it will benefit the student's future. The student indicated that, "I would like to learn English to help my child with her homework". The ESL-PAS document only indicated the student was employed in a cleaning position, and had skills in customer service. It did not indicate that the student was pursuing the program to use already existing knowledge, training, or skills. Franklin apparently presumes that the student needed to enhance his English language skills to enhance his ability to perform in his current position. This is an undocumented presumption, as the student's English language skills may be sufficient to allow her to function in her current position. The burden is on Franklin to document that the student meets the regulatory requirement, especially given the student's own expressed reason for wanting to learn English. Franklin has failed to meet the burden of proof in this case.

Similarly, Franklin failed to submit any additional documentation to support its position for students 39, 41, 43 and 45. Based on Franklin's failure to secure adequate documentation to demonstrate that the students were pursuing the program to use already existing knowledge, training, or skills, all Title IV funds disbursed to students #39, 41, 43, 45 and 46 are institutional liabilities.

According to the National Student Loan Data System, the total Pell Grant funds disbursed to these students are as follows:

#39	\$4,000
#41	4,050
#43	4,050
#45	4,050
#46	3,700
Total	\$19,850

Instructions for payment of liabilities are included in the Payment Instruction section of this report.

Finding #3: Inadequate/Conflicting Attendance Records

Noncompliance:

An institution must maintain documentation establishing each student's or parent borrower's eligibility for Title IV funds. At a clock-hour school, required documentation includes attendance records to document that the appropriate number of clock hours were offered or completed. 34 C.F.R. § 668.24(c)(iii).

Regulations define a clock hour as: a period of time consisting of—

- (1) A 50- to 60-minute class, lecture, or recitation in a 60-minute period;
- (2) A 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period.

34 C.F.R. § 600.

The reviewers found numerous questions and conflicts when reviewing the attendance records at Franklin. Students who are absent from class at Franklin are allowed to make-up hours at pre-scheduled make-up sessions. The students are required to fill out Make-Up Reports identifying the date(s) that they were absent, the Subject/Class, and the number of hours that are being made up. An instructor would sign-off on these forms, and assign the appropriate work to the students. However, reviewers noted numerous discrepancies when testing the backup documentation for make-up hours reported on students' computerized Attendance Summary reports. The issues identified are outlined below.

Student #37's records contain a Make-Up Report indicating that she received credit for three hours of make-up in the Medical Billing class for an extra-credit report on 2/14/06. The student also received credit for nine make-up hours in the Microsoft Word class on 1/5/06, for a "Tables Project". Other Make-Up Reports were found for this student for apparent projects were approved on 2/10/06 (2.5 hours), 1/3/06 (4.5 hours), and 1/3/06 again (5 hours). In all, the student received approval for a total of 10 make-up hours on 1/3/06. Also, most of the projects approved on 1/3/06 were identified as make-up for a class absence on 10/8/05 and 10/10/05, apparently for a class the student had completed and received an "A" grade back in October 2005. Based on this information, it is questionable whether most of the make-up hours recorded for this student involved faculty supervised instruction.

Furthermore, the reviewers found two Make-Up Reports, both of them reporting work the student claimed that she performed between 7 PM and 7:30 PM on 1/19/06, receiving credit for half-hour make-up for two different classes on different days.

These make-up hours were added into Franklin's computerized attendance system, and were included in determining the total number of hours the student completed. This student stopped attending Franklin on 3/7/08, after completing 384.5 hours of 560 hour offered in her program. The 50.5 hours of make-up entered into the computerized attendance system were added to the actual recorded hours present, resulting in the student being identified as having completed 436 hours of instruction. The implications of questionable make-up hours relating to disbursements of funds to students and R2T4 calculations are further discussed in findings #4 and 5.

Student #17's records contained a Make-Up Report showing that the student made up one hour of a class he missed in Business English on 1/13/05. However, Franklin's Class Attendance Roster shows the student was present for that class that whole week. In addition, the Make-Up report was issued on 1/12/05, apparently indicating the student was approved to make-up a class that had not yet been offered. Similar discrepancies were also found for this student for make-up hours approved on 12/20/04, 12/21/04, 1/3/05, and 1/14/05.

The records also contained a Make-Up Report for the Business English class the student missed on 12/2/04. This Make-Up Report was issued on 12/6/04. However, the reviewers also found Make-Up reports issued on 12/7/04, 12/8/04, 12/9/04 and 12/10/04, all approved for make-up of the Business English class the student missed on 12/2/04, for a total of five make-up hours. The Class Attendance Roster indicates that the student was absent that date, but that class was only offered for two hours on 12/2/04.

The reviewers also found many examples of conflicting information, as described in the cases above, for **student #25**. In addition, the reviewers found that this student was credited for multiple hours of make-up for the Internet course between 8/9/05 and 8/12/05, when the student didn't begin the Internet class until the week of 8/18/05.

Conflicting information regarding attendance was also found **in student #32's** file.

Interviews with instructors who were assigned to monitor make-up sessions indicate that students would sometimes arrive without specific work assignments. In such cases the instructors indicated that they would assign some work or projects that were applicable to the course the student needed to make-up hours for, although they could not be sure that it had anything to do with the specific part of the coursework the student had missed.

The pervasive nature of this finding in the sample of students tested for this issue calls into question the number of hours completed by students as reported in Franklin's records. For Title IV purposes, this has the greatest possible implications for determining whether returns are due to the programs for students who did not complete their programs.

Directives from Program Review Report:

This issue was discussed with school officials during the program review. Franklin undertook a self-study based on the preliminary discussion to determine the potential impact of the deficiencies. The resulting report submitted by Franklin was not useful, as it did not address all issues discussed in the requirements stated for this finding.

As a result of this finding, Franklin was required to perform a review of files for all Title IV recipients who attended the institution for the 2004/05 and 2005/06 award years, and did not complete their programs. Franklin was directed to evaluate the documentation of the make-up hours based on the issues described above, and to consider any other questionable circumstances not uncovered in our limited review. Franklin was instructed to identify criteria for determining which hours are invalid, and share that information with this office. Franklin was then required to apply the agreed-upon criteria to ascertain the appropriate number of hours completed for this group of students, and determine if there are any resulting funds to be returned to the Title IV programs.

Final Determination:

The institution provided the file review for all Title IV recipients who attended the institution for the 2004/05 and 2005/06 award years, and did not complete their programs. The resulting liabilities associated with this violation are discussed in Finding 4.

Finding #4: Incorrect Calculation of Return to Title IV

Noncompliance:

When a student withdraws prior to the completion of his/her program of study, the school must determine if the amount of Title IV assistance disbursed to the student exceeded the amount of Title IV funds earned as of the date of the student's withdrawal. 34 C.F.R. § 668.22(e). The percentage of Title IV grant or loan assistance that has been earned by the student is equal to the percentage of the payment period or period of enrollment that the student completed as of the student's withdrawal date. 34 C.F.R. § 668.22(e)(2). For a program such as Franklin's that is

measured in clock hours, the percentage completed is determined by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours scheduled to be completed as of the student's withdrawal date. The scheduled clock hours used must be those established by the institution prior to the student's beginning class date for the payment period or period of enrollment and must be consistent with the published materials describing the institution's programs, unless the schedule was modified prior to the student's withdrawal. 34 C.F.R. § 668.22(f)(1)(ii).

As set forth below, the Department found that Franklin failed to accurately account for the number of hours scheduled and completed hours for students who withdrew in their second and subsequent payment periods.

Student #37 stopped attending school on 3/7/06. Franklin's attendance system recorded that the student had been present for 384.5 hours, and had been absent for 175.5 hours, for a total of 560 hours of instruction offered through the last date of attendance. The system also showed that the student had completed 50 make-up hours.

Franklin has a 10% excused absence policy. Based on the combination of hours completed, make-up hours, and excused absences, it was clear the student had entered her second payment period before withdrawing. The issue is the number of hours completed in that second payment period.

Franklin made the determination that the student had completed 110 hours in her second payment period (560 hours offered – 450 hours in first payment period). Based on the 110 hours, Franklin determined that the student was eligible to receive a post-withdrawal disbursement of \$494 in Pell Grant funds for her second payment period. However, a closer evaluation provides a different result. Completion of a payment period is based on clock hours attended, with a reasonable allowance for excused absences. Therefore, Franklin cannot presume in its R2T4 calculations that the first 450 clock hours offered to a student encompasses a complete payment period. Hours that the student was absent in the first payment period, in excess of the number of hours made-up and the number of excused hours for the payment period, should not be considered when determining when the student completed the payment period.

Considering the 384.5 clock hours student #37 completed, 45 excused absences (10% of 450 hours in payment period), and 50 make-up hours, the student would have completed her first payment period during the week of 2/13/06. Determining the exact date is difficult because Franklin's computerized attendance system only records the total number of make-up hours, it does not record the detail of the day the hours were completed. Based on this approximation, the student only attended into the third week of her second payment period, encompassing a total of 53.5 clock hours of instruction offered.

Based on the student's enrollment for 53.5 clock hours in the second payment period, she would have been eligible to receive a post-withdrawal disbursement of \$129.60 in Pell Grant funds for her second payment period, instead of the \$494 disbursed by Franklin.

Similar errors were found with post withdrawal disbursements made for **students #6, 18, and 39** that did not account for the actual point at which the student started their second payment periods.

In addition, Franklin's records show that it determined on 10/8/04 that **Student #1** had dropped out of school, with a 9/20/04 last date of attendance (LDA). An R2T4 calculation was performed using the hours offered through 9/20/04. However, the computerized attendance summary for

this student indicates the last date of program attendance during the week of 9/6/04. The summary shows only 25 absent hours the week of 9/20/04, and 5 absent hours on 2/20/04. Therefore, it appears as though hours of non-attendance after the student's actual LDA were improperly included in the R2T4 calculation.

Directives From Program Review Report:

Franklin's process for performing R2T4 calculations involved the use of a privately-developed automated worksheet. As described in this finding, it appears that this spreadsheet would automatically use the bottom-line total hours in the system, instead of performing the analysis required to identify the specific point at which a student completed a payment period. This calls into question whether accurate R2T4 calculations were performed for students who Franklin determined had completed their first payment period.

In response to this finding, Franklin was required to provide clarification of the process that has been used for determining the completion percentages of students who withdrew from school, from the 2004/05-award year to the present.

Due to the systemic and material nature of this finding, Franklin was required to perform a review of all Title IV recipients who withdrew from the school to determine whether additional returns of funds are due to the Title IV programs. Franklin also needed to consider the issues related to make-up hours discussed in finding #3 to ensure complete and accurate determinations are made.

Franklin was also required to apprise this office of procedures implemented to ensure the regulatory requirements will be met in the future.

Final Determination:

Franklin disagreed with the finding that it failed to accurately account for the number of hours scheduled and completed for the students who withdrew in the second and subsequent payment periods. Franklin believes that at all times its policies have complied with the statutory and regulatory requirements for Return to Title IV calculations. In its response, Franklin stated that "When determining when a student has completed a payment period for purposes of disbursing aid to an enrolled student is governed by a separate set of rules and calculation than those governing the determination of how much aid a student who has withdrawn has earned."

The Department agrees that each process is governed by a separate set of rules and calculations, however, the two processes are related to one another; and an institution must determine how much of a payment period the student completed before it can calculate the Return to Title IV funds.

Franklin provided the required file review. The results are attached as Appendix E.

Based on this information the school is required to repay \$93,840.00 to the Title IV programs.

Liabilities of \$37,528.14 were established for 69 students in this finding that are also included in the students liabilities established under Finding #1. Those duplicated amounts will be removed in the summary of liabilities table.

Instructions for payment of liabilities are included in the Payment Instruction section of this report.

Finding #5: Improper Disbursement of Title IV Funds

Noncompliance:

An institution must disburse Title IV funds on a payment period basis. The first payment period for an eligible program that measures programs in clock hours, and is one academic year or less in length, equals the period of time in which the student completes the first half of the number of clock hours in the program. The second payment period is the period of time in which the student completes the program. 34 C.F.R. § 668.4(c)(1). For a student enrolled in an eligible program that is more than one academic year in length, the first payment period for the first academic year and any subsequent full academic year is the period of time in which the student successfully completes half of the number of credit hours or clock hours, as applicable, in the academic year and half of the number of weeks of instructional time in the academic year. The second payment period is the period of time in which the student successfully completes the academic year. 34 C.F.R. § 668.4(c)(1).

An institution may disburse funds to a student for a payment period only if the student enrolled in classes for that payment period, and is eligible to receive those funds. 34 C.F.R. § 668.164(b)(1). A school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence. 34 CFR 668.604(c)(4).

The reviewers found that Franklin was not complying with Title IV disbursement provisions.

Franklin disbursed \$2025 in Pell Grant funds to **student #28** for her second payment period on 1/20/06. However, the student was on a leave of absence (LOA) that began 12/15/05. The student never returned from the LOA, and Franklin subsequently returned the funds to the program on 7/10/06.

In addition, the student had completed only 321.5 hours at the time of the disbursement. Even allowing for a maximum of 10% excused absences (45 hours), the student had not completed her first payment period of 450 hours. It appears that the disbursement was paid based on the total number of hours offered, instead of the hours completed.

Student #30 stopped attending school on 4/17/06, after completing 397.5 clock hours, including make-up hours. Franklin performed an R2T4 calculation and determined that, because the student had been offered a total of 567 hours of instruction before he withdrew, he was entitled to a partial disbursement of Pell Grant funds for a second payment period. However, even allowing for excused absences, the student had not completed his first payment period, and was not eligible for any further disbursements.

Directives From Program Review Report:

Franklin was informed that this issue was related to those discussed in findings # 3 and 4. Therefore, the resolution of this finding was addressed in the requirements for those findings.

Final Determination:

Franklin acknowledged the error in disbursing aid to the two students cited in this finding. Students #28 and #30 withdrew before completing their first payment period and should not have received their second disbursement. Franklin also asserted that the examples noted in this finding were individual instances of miscalculation, and claimed that there was no relation between these cases and Finding #4, which documented that the institution failed to consider whether students had completed their payment periods when performing R2T4 calculations.

Franklin is liable for a \$527 ineligible Pell Grant disbursement paid to student #30.

Liabilities of \$527 were also established for student #30 in Finding #4; that amount is included in the student liabilities for this finding, however, those duplicated amounts will be removed in the summary of liabilities table.

Finding #6: Incomplete Verification

The finding has been resolved for student 26.

Noncompliance:

An institution is responsible for verifying all required information submitted by applicants for student financial assistance in connection with the calculation of their expected family contributions (EFC) for Title IV assistance. See 34 C.F.R. §§ 668.51(a), 668.56(A)(1)(2)(3)(4), 668.57(a)(b)(c)(d). An institution is responsible for ensuring that applicant information is updated when changes occur, for resolving conflicting information discovered during verification, and for using corrections to data originally reported to determine whether student eligibility would be impacted. 34 C.F.R. §§ 668.55(a)(1)(i)(ii), 668.59(a)-(e).

The reviewers found cases where Franklin failed to complete verification requirements for students.

Student #15's ISIR for the 2004/05 award year was selected for verification. The file contained a copy of her parents' 2003 tax return, which identified \$9,325 in pensions and annuities on line 16a that were not taxed. This amount should have been reported on the ISIR at line 79, unless the amount on line 16a was a pension rollover. However, there was no documentation in the file indicating a rollover, and there was no income reported on line 79.

Student #37's 2005/06 ISIR was selected for verification. Franklin collected a copy of her parent's tax return, and a verification worksheet that confirmed the members of the parent's household reported on the ISIR. However, Section C of the verification worksheet was blank. Section C is where the student would confirm whether they filed a tax return, and also report any income or benefits they received in 2004.

Directives From Program Review Report:

In response to this finding, Franklin was instructed to apprise this office of procedures implemented to ensure the regulatory requirements will be met in the future. In addition, Franklin was required to review the files for the students discussed in this finding to determine whether the students were eligible for all Title IV funds disbursed. Franklin was informed that it could attempt to collect any missing documentation and perform all required need analyses to confirm students' eligibility if information was revised as a result of verification. The institution was also informed that it would be liable for the amounts of any awards in excess of students' revised need, and for all Title IV funds awarded to the student in the applicable award year if the required documentation was not collected. Franklin was to provide copies of all documentation collected and all recalculations performed. In cases where information on verification worksheets was revised, the changes were to be initialed and the worksheets signed again by the required persons. Franklin was required to report the total amount of ineligible Title IV funds disbursed to the students.

Final Determination:

Student 15 - Franklin agreed there was an error in regard to the verification process for Student 15. Franklin corrected the error and conducted a needs analysis with the correct information. The result was a change in the Expected Family Contribution from \$1847 to \$3677. The Federal Pell Grant award decreased from \$1467 to \$400. Franklin is responsible for the \$1067 overaward.

Student 37 - The Department found that section C of Student 37's verification worksheet was left blank. Section C confirms whether the student filed a tax return and reported any income or benefits for the previous year. Franklin noted that during the verification process they confirmed the student did not earn any income and the student inadvertently failed to check the box indicating that no tax return was filed, and that no recalculation of the award was required.

Franklin stated that it determined that the student did not earn any income for the year in question, but it failed to provide any documentation from the student to verify that fact. Therefore, the institution's assertion that it had confirmed the student did not earn any income cannot be documented. Without the required verification, student #37 is not eligible for any of the funds disbursed, in the following amounts:

Pell Grant – 1 st Disbursement	\$2,025
Pell Grant – 2 nd Disbursement	494

The reviewers noted that the \$494 2nd disbursement was identified as a liability in the file review performed for Finding #4.

The total liability for this finding is \$3,586.

Liabilities of \$494 were established for student #37 in Finding #4, and liabilities of \$2,519 were established in Finding #7. Pell Grant liabilities of \$1,467 were established for student #15 in Finding #7. These amounts are included in the student liabilities for this finding however, those duplicated amounts will be removed in the summary of liabilities table.

Finding #7: Conflicting Information

The finding has been resolved for students 28 and 31.

Noncompliance:

An institution is required to develop and apply an adequate system to identify and resolve discrepancies in the information that the institution receives from different sources with respect to the student's application for financial aid under Title IV programs. 34 C.F.R. § 668.16(f).

The reviewers found instances where Franklin failed to resolve conflicting information in students' records relating to the eligibility for Title IV funds.

Student #15 completed her Student Profile Form indicating that she was employed in 2004, but she reported that she had no income in 2004.

Student #37's ISIR, based on a FAFSA signed on 9/7/05, indicates that she was an unmarried student, and dependent on her parent. However, the student reported on her Career Interview

Application, which was completed on 9/6/05, that she was married. If the student were actually married at the time she completed the FAFSA, she would have been considered independent, and would have been required to report her spouse's income.

Directives From Program Review Report:

In response to this finding, Franklin was required to apprise this office of procedures implemented to ensure the regulatory requirements would be met in the future. Franklin was also instructed to provide documentation confirming the resolution of the issues identified for the students discussed, including any required need analysis recalculations of the students' Title IV eligibility, and any impact on awards.

Final Determination:

Franklin confirmed that the conflicting information for students # 15 and #37 could not be resolved, and accepted the liability for these students.

The liabilities for this finding are as follows:

Student #15	\$1467 Pell Grant, 1019 FWS (75% of \$1359)
Student #37	\$2519 Pell Grant

Total liabilities for this finding is \$3,986 Pell Grant, \$1,019 FWS

Pell Grant liabilities of \$494 were established for student #37 in Finding #4, and liabilities of \$2,519 were established in Finding #6. Pell Grant liabilities of \$1,467 were also established for student #15 in Finding #6. These amounts are included in the student liabilities for this finding, however, those duplicated amounts will be removed in the summary of liabilities table.

Instructions for payment of liabilities are included in the Payment Instruction section of this report.

Finding #9: Documentation of Student Eligibility for FWS Employment

Noncompliance:

A student at an institution of higher education is eligible to receive part-time employment under the FWS program for an award year if the student meets student eligibility requirements and is enrolled or accepted for enrollment as an undergraduate, graduate or professional student at the institution. 34 C.F.R. § 675.9.

Franklin's records indicated that **student #25** completed her program on 3/24/06, with the end of her externship. However, the student continued to work in her position at Franklin from 4/4/06 through 4/28/06. Unless the student's program of study was extended beyond 3/24/06, the student was not eligible to receive FWS funds for work performed beyond that date. Franklin was asked to clarify the date the student completed the program, but the school only provided a copy of a diploma, indicating that it was issued in April 2006.

Directives From Program Review Report:

In response to this finding, Franklin was required to confirm the date that the student completed her program of study.

Final Determination:

Franklin stated that Student #25 officially graduated on April 7, 2006, with her last scheduled day of attendance being March 31, 2006. She was offered full time employment beginning May 1, 2006 and asked to continue to work at the school through the month of April. The school stated that the student's request for FWS was granted without realizing the student had officially graduated. The student continued to be compensated with FWS funds in error.

Franklin is liable for the federal share of the FWS funds disbursed after the student had completed their program of study. The calculated liability is based on 75% of the \$ 352.50 the student received for the month of April, 2006, or \$264.38. Franklin is also liable for \$14.85 interest for a total of \$280.23.

Instructions for payment of liabilities are included in the Payment Instruction section of this report.

Finding #11: Documentation of Eligibility for SEOG Award/Disbursement

This finding has been resolved for students 15 and 35.

Noncompliance:

A student is eligible to receive an FSEOG for an award year if the student meets the relevant student eligibility requirements, and is enrolled or accepted for enrollment as an undergraduate student at the institution. 34 C.F.R. § 676.9. In selecting among eligible students for FSEOG awards in each award year, an institution shall select those students with the lowest expected family contributions who will also receive Federal Pell Grants in that year. 34 C.F.R. § 676.10 (a)(1).

Reviewers were not able to find documentation supporting FSEOG awards to some students in the program review sample.

Student #32 dropped out of school on 5/3/06. Franklin made two FSEOG disbursements of \$200 each on 5/15/06. The latest award letter found in the student's file was dated 5/1/06, and did not indicate any FSEOG awards for this student.

Directives From Program Review Report:

In response to this finding, Franklin was required to provide documentation to show that the FSEOG funds were awarded to the students identified while they were still enrolled and attending classes in their programs of study. Franklin was also required to provide documentation of its awarding FSEOG awarding procedures, including the timeframes when awards are made to students.

Final Determination:

Franklin agrees with Finding 11 as it relates to Student 32. Student 32 was mistakenly awarded \$400 in FSEOG after her last date of attendance. Franklin is therefore liable for the federal share of the award, or \$300.

Franklin stated that they have updated their data processing system. FSEOG is now disbursed to students at the beginning of each award year. Franklin believes the new data processing system is an asset in ensuring all awards have been made while the students were still in school.

Franklin included copies of its FSEOG awarding procedures as well as its overall packaging procedures.

Instructions for repayment are provided in the Payment Instructions Section of this FPRD.

D. Summary of Liabilities

The total amount calculated as liabilities from the findings in the program review determination is as follows. The liability amount in the first chart below reflects duplicated, and unduplicated, liabilities because some students appear in more than one finding. This information is provided so that the institution understands the liabilities associated with each finding. Duplicate liabilities have been removed in the second chart. The payment instructions in Section E have been adjusted to reflect the unduplicated liabilities.

Liabilities	Pell (Closed Award Year)	FSEOG	FWS
Finding 1	\$1,082,584		
Finding 2	\$19,850		
Finding 4	\$93,840		
Finding 5	\$527		
Finding 6	\$3,586		
Finding 7	\$3,986		\$1,019
Finding 9			\$264.38
Finding 11		\$300	

Unduplicated Liabilities	Pell (Closed Award Year)	FSEOG	FWS	
Finding 1	\$1,082,584			
Finding 2	\$19,850			
Finding 4	\$56,312			
Finding 7	\$3,492		\$1,019	
Finding 9			\$264.38	
Finding 11		\$300		
Subtotal 1	\$1,162,238	\$300	\$1,283.38	
Interest/SA	\$45,318.74	\$16.85	\$53.67	
Subtotal 2	\$45,318.74	\$16.85	\$53.67	
TOTAL	\$1,207,556.74	\$316.85	\$1,337.05	
Payable To:				Totals
Department	\$1,207,556.74	\$316.85	\$1,337.05	\$1,209,210.64

Duplicate Liabilities:

The Actual Liabilities table above contains duplicate liabilities. The Established Liabilities table reflects adjustments made to remove all duplicate liabilities as described in Findings # 1, 4, 5 and 7.

E. Payment Instructions

1. Liabilities Owed to the Department

Liabilities Owed to the Department \$100,000 or More

Franklin owes to the Department \$1,209,210. This liability must be paid using an electronic transfer of funds through the Treasury Financial Communications System, which is known as FEDWIRE. Franklin must make this transfer within **45 days of the date of this letter**. This repayment through FEDWIRE is made via the Federal Reserve Bank in New York. If Franklin bank does not maintain an account at the Federal Reserve Bank, it must use the services of a correspondent bank when making the payments through FEDWIRE.

Any liability of \$100,000 or more identified through a program review must be repaid to the Department via FEDWIRE. The Department is unable to accept any other method of payment in satisfaction of these liabilities.

Payment and/or adjustments made via G5 will not be accepted as payment of this liability. Instead, the school must first make any required adjustments in COD as required by the applicable finding(s) and Section II – Instructions by Title IV, HEA Program (below), remit payment, and upon receipt of payment the Department will apply the funds to the appropriate G5 award (if applicable).

Instructions for completing the electronic fund transfer message format are included on the attached FEDWIRE form.

Terms of Payment

As a result of this final determination, the Department has created a receivable for this liability and payment must be received by the Department within **45 days of the date of this letter**. If payment is not received within the 45-day period, interest will accrue in monthly increments from the date of this determination, on the amounts owed to the Department, at the current value of funds rate in effect as established by the Treasury Department, until the date of receipt of the payment. Franklin is also responsible for repaying any interest that accrues. If you have any questions regarding interest accruals or payment credits, contact the Department's Accounts Receivable Group at (202) 245-8080 and ask to speak to Franklin's account representative.

If full payment cannot be made within **45 days** of the date of this letter, contact the Department's Accounts Receivable Group to apply for a payment plan. Interest charges and other conditions apply. Written request may be sent to:

U.S. Department of Education
OCFO Financial Management Operations
Accounts Receivable Group
550 12th Street, S.W., Room 6114
Washington, DC 20202-4461

If within 45 days of the date of this letter, Franklin has neither made payment in accordance with these instructions nor entered into an arrangement to repay the liability under terms satisfactory to the Department, the Department intends to collect the amount due and payable by administrative offset against payments due Franklin from the Federal Government. Franklin **may object to the collection by offset only by challenging the existence or amount of the debt.** To challenge the debt, Franklin must **timely appeal** this determination under the procedures described in the "Appeal Procedures" section of the cover letter. The Department will use those procedures to consider any objection to offset. **No separate appeal opportunity will be provided.** If a timely appeal is filed, the Department will defer offset until completion of the appeal, unless the Department determines that offset is necessary as provided at 34 C.F.R. § 30.28. This debt may also be referred to the Department of the Treasury for further action as authorized by the Debt Collection Improvement Act of 1996.

2. Pell Grant – Cancelled Award Year

Finding(s): #1, 2, 4, and 7
 Appendices: D, E & F

Franklin must repay:

Pell Grant Cancelled Award Year			
Amount (Principal)	Amount (Interest)	Title IV Grant	Award Year
\$403,189	\$15,446	Pell Grant	2004/05
\$750,484	29,188	Pell Grant	2005/06
\$ 8,565	684	Pell Grant	2006/07
Total Principal	Total Interest		
\$1,162,238	\$45,318		

The liability above is for award years 5 years or older and student adjustments in the Common Origination and Disbursement (COD) system are no longer possible. Instead, the funds will be returned to the general program fund for the applicable Title IV program.

Appendix A – Program Review Sample

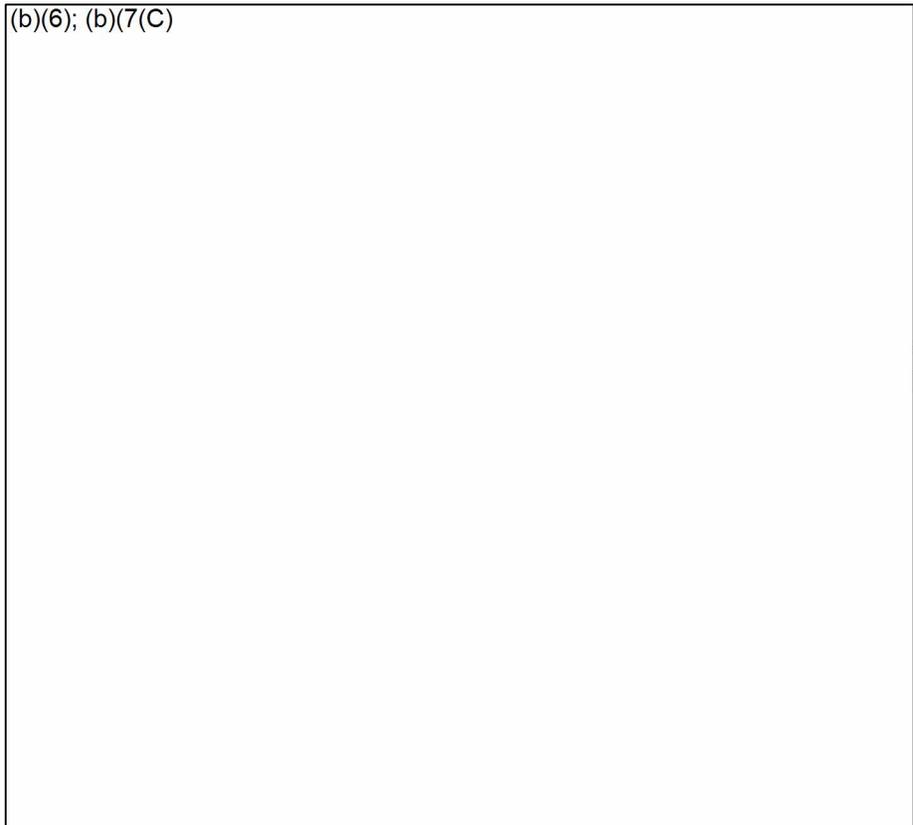
Appendix A: Student Sample

2004/05

Student's Name	Student's SSN (last four digits only)
(b)(6); (b)(7)(C)	

Student's SSN (last four
digits only)

(b)(6); (b)(7)(C)



s SSN (last four
ly)



APR 20 2009

Randy Rock, President
Franklin Career Institute
91 North Franklin Street
Hempstead, NY, 11550-3003

Overnight Mail, Tracking # 8693 2081 9943

RE: **Program Review Report**
OPE ID: 033283
PRCN: 200640225454

Dear Mr. Rock:

From August 21, 2006 through November 30, 2006, Christopher Curry, Jane Eldred, and Teresa Martinez conducted a review of Franklin Career Institute's (Franklin's) administration of the programs authorized pursuant to Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070 et seq. (Title IV, HEA programs). The findings of that review are presented in the enclosed report.

Findings of noncompliance are referenced to the applicable statutes and regulations and specify the action required to comply with the statute and regulations. Please review the report and respond to each finding, indicating the corrective actions taken by Franklin. The institution's response should be sent directly to Christopher Curry of this office within 30 calendar days of receipt of this letter. Please see the enclosure Protection of Personally Identifiable Information (PII) for instructions regarding submission of required data / documents containing PII.

Record Retention:

Program records relating to the period covered by the program review must be retained until the later of: resolution of the loans, claims or expenditures questioned in the program review; or the end of the retention period otherwise applicable to the record under 34 C.F.R. § 668.24(e).

Federal Student Aid, School Participation Team – New York/Boston
32 Old Slip, 25th Floor, New York, NY 10005
www.FederalStudentAid.ed.gov

FEDERAL STUDENT AID  START HERE. GO FURTHER.

Franklin Career Institute
OPEID 033283
PRCN 200640225454
Page 2

We would like to express our appreciation for the courtesy and cooperation extended during the review. Please refer to the above Program Review Control Number (PRCN) in all correspondence relating to this report. If you have any questions concerning this report, please contact Christopher Curry at 646-428-3738 or Christopher.Curry@ed.gov.

Sincerely,

(b)(6)

Betty Coughlin
Team Leader

cc: Paula Jones, Financial Aid Administrator

Enclosure:
Protection of Personally Identifiable Information

bcc: Reading file, Correspondence file, Betty Coughlin, Christopher curry, ERM

Franklin Career Institute
OPEID 033283
PRCN 200640225454
Page 1



START HERE
GO FURTHER
FEDERAL STUDENT AID

Prepared for

Franklin Career Institute

OPE ID: 033283
PRCN: 200640225454

Prepared by
U.S. Department of Education
Federal Student Aid
School Participation Team – New York/Boston

Program Review Report

April 20, 2009

Table of Contents

Table of Contents		Page
A.	Institutional Information.....	3
B.	Scope of Review.....	4
C.	Findings	4
	Finding #1: Improper Administration of Ability to Benefit Tests	5
	Finding #2: Inadequate Documentation of Student Eligibility for ESL Program.	6
	Finding #3: Inadequate/Conflicting Attendance Records	8
	Finding #4: Incorrect Calculation of Return to Title IV	10
	Finding #5: Improper Disbursement of Title IV Funds	13
	Finding #6: Incomplete Verification	14
	Finding #7: Conflicting Information	15
	Finding #8: Missing Authorization to Credit Federal Work Study Funds..	16
	Finding #9: Documentation of Student Eligibility for FWS Employment.	17
	Finding #10: Inadequate Monitoring of FWS Employment	17
	Finding #11: Documentation of Eligibility for SEOG Award/ Disbursement	18
	Appendix A: Student Sample.....	20

B. Scope of Review

The U.S. Department of Education (the Department) conducted a program review at Franklin Career Institute (Franklin) from August 21, 2006 to November 30, 2006. The review was conducted by Christopher Curry, Jane Eldred, and Teresa Martincz.

The focus of the review was to determine Franklin's compliance with the statutes and federal regulations as they pertain to the institution's administration of Title IV programs. The review consisted of, but was not limited to, an examination of Franklin's policies and procedures regarding institutional and student eligibility, individual student financial aid and academic files, attendance records, student account ledgers, and fiscal records.

A sample of 37 files was identified for review from the 2004/05 and 2005/06 award years. The files were selected randomly from a statistical sample of the total population receiving Title IV, HEA program funds for each award year. In addition, nine files were selected based on an expanded review of Title IV recipients enrolled in the ESL program. Appendix A lists the names and partial social security numbers of the students whose files were examined during the program review.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning Franklin's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific practices and procedures. Furthermore, it does not relieve Franklin of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs.

This report reflects initial findings. These findings are not final. The Department will issue its final findings in a subsequent Final Program Review Determination letter.

C. Findings

During the review, several areas of noncompliance were noted. Findings of noncompliance are referenced to the applicable statutes and regulations and specify the actions to be taken by Franklin to bring operations of the financial aid programs into compliance with the statutes and regulations.

Finding #1: Improper Administration of Ability to Benefit Tests

Citation: The Title IV regulations at 34 C.F.R. § 668.151 establish that:

(a)(1) To establish a student's eligibility for Title IV, HEA program funds under this subpart, if a student has not passed an approved state test, under §668.143, an institution must select a certified test administrator to give an approved test.

(b) The Secretary considers that a test is independently administered if the test is—

(2) Given by a test administrator who—

(i) Has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the interest obtained through its agreement to administer the test, and has no controlling interest in any other educational institution;

(ii) Is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals;

(iii) Is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution or its parent corporation or at any other institution, or a member of the family of any of the above individuals.

Noncompliance: The reviewers were informed that Franklin employed Vocational Educational Testing, Inc. as its independent third-party tester for administration of the ability to benefit (ATB) tests for students enrolled at the institution, until that entity was dissolved in April 2006. After that, Franklin used Galina Fridman, who had been an employee of Vocational Educational Testing, Inc before it dissolved, as its independent test administrator.

Reviewers asked for a copy of Ms. Fridman's contract with Franklin, and were told that there was no contract, and that Ms. Fridman was paid through Franklin's payroll. Franklin's records contained a New Employee Data Sheet for Ms. Fridman indicating a 9/1/05 "starting date of employment".

During the course of discussions with school officials, the reviewers were informed that Vocational Educational Testing, Inc. was owned by Lydia Rock, the wife of Franklin's president. Further research confirmed that Ms. Rock was the Chairman of the Board for Vocational Educational Testing, Inc. In addition, Lydia Rock is identified as a member of Franklin's Board of Trustees. As such, any employee or former employee of Vocational Educational Testing, Inc. would not meet the criteria of an independent test administrator as specified in regulation.

Additionally, Franklin submitted information arguing that the inclusion of a person on the payroll would not make Ms. Fridman an employee of Franklin, since they claim that she was not eligible for any benefits of a "regular" employee, such as health insurance, paid

holidays, etc. However, this office has confirmed with the Department's Office of General Counsel that this argument is not sufficient to demonstrate Ms. Fridman's independence.

Required Action: Any ATB tests administered to Franklin students by Vocational Educational Testing, Inc, and former employees of that entity are considered invalid due to the lack of an independent relationship.

In response to this finding, Franklin must provide a list of all Title IV recipients who were admitted and were determined to be eligible for Title IV funds under the ATB provisions for the 2004/05 award year to the present. Franklin must also provide documentation for all persons who have administered the ATB tests at the institution since the program review was conducted, including approvals from the testing agency, where applicable. Franklin must also provide certifications whether any of those test administrators met the regulatory criteria described in the above citation, and provide the most current contact information for any of those individuals.

Franklin will be required to identify any Title IV funds disbursed to students who were admitted based on ATB tests that were not administered by persons who met the independent tester criteria. The required format and timeframes will be provided upon review of the institution's response to this finding.

Finding #2: Inadequate Documentation of Student Eligibility for ESL Program

Citation: Under the provisions of 668.1(j), in addition to satisfying the relevant provisions of this section, an educational program that consists solely of instruction in ESL qualifies as an eligible program if—

- (1)(i) The institution admits to the program only students who the institution determines need the ESL instruction to use already existing knowledge, training, or skills; and
 - (ii) The program leads to a degree, certificate, or other recognized educational credential.
- (2) An institution shall document its determination that ESL instruction is necessary to enable each student enrolled in its ESL program to use already existing knowledge, training, or skills with regard to the students that it admits to its ESL program under paragraph (j)(1)(i) of this section.

Noncompliance: The reviewers found cases where there was inadequate documentation that students enrolled in the ESL program was pursuing the program to use already existing knowledge, training, or skills. The reviewers did not find any specific notations by institutional officials documenting its determinations for any of the students sampled, as specified in regulation.

For example, **student #46** indicated on his Career Interview Application (CIA) form that he was employed in "Cleaning" field. In the section where the student is asked to list the reason why they want to continue their education, the student indicated that, "I would like to learn English to help my child with her homework". There was no other documentation in the folder clarifying any other knowledge, skill or training for which the student wanted to improve his English.

Student #45 filled out the employment section of her English as a Second Language Program Application Supplement (ESL-PAS), indicating that she was employed in the Homecare field. She wrote on her CIA form that the reason she wanted to continue her application was "to learn English to help my son".

Student #43 indicated on her ESL-PAS that she had been a family home-keeper for the past year, but she did not list any reason for continuing her education on the CIA form.

Student #41's records did not identify any prior training or employment, only indicating on the CIA form that his reason for continuing his education was to learn English.

Student #42's file did not contain any information about employment history, and there was only a Student Profile form that listed some of the subjects she studied in high school in Russia. Therefore, it is unclear what existing knowledge, training, or skills the student possessed.

The required documentation was also lacking for **student #39**.

When questioned about the lack of specific documentation, institutional officials stated that the implication could be drawn from the student's current employment. However, as noted in the above citation, Franklin is required to document its determination that ESL instruction is necessary to enable each student enrolling in its ESL program to use already existing knowledge, training, or skills. Furthermore, the information provided by some students discussed in this finding appears to indicate personal reasons for improving their English skills.

Required Action: As a result of this finding, Franklin must review the files for all Title IV recipients who were enrolled in the ESL program for the 2004/05 and 2005/06 award years. In response, Franklin must provide copies of any documentation that was collected, at the time students were enrolled, that documents the students' reasons for enrolling in the program, and the institution's evaluation of that information. The response must also include the most current contact information for these students. Franklin will be apprised of any additional requirements upon review of the response to this finding.

Franklin must also develop and implement procedures for collecting the required information from students as well as documenting the institution's determinations as required in regulations, and provide this office with copies of those procedures.

Franklin will be apprised of any additional requirements upon review of the response to this finding.

Finding #3: Inadequate/Conflicting Attendance Records

Citation: The records that an institution must maintain in order to comply with the provisions of this section include but are not limited to documentation of each student's or parent borrower's eligibility for Title IV funds. At a clock-hour school, this includes attendance records to document that the appropriate number of clock hours were offered or completed. 34 C.F.R. § 668.24(c)(iii)

Regulations define a clock hour as: a period of time consisting of—

- (1) A 50- to 60-minute class, lecture, or recitation in a 60-minute period;
- (2) A 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period. 34 C.F.R. § 600.2

Noncompliance: The reviewers found numerous questions and conflicts when reviewing the attendance records at Franklin.

Students who are absent from class at Franklin are allowed to make-up hours at pre-scheduled make-up sessions. The students are required to fill out Make-Up Reports identifying the date(s) that they were absent, the Subject/Class, and the number of hours that are being made up. An instructor would sign-off on these forms, and assign the appropriate work to the students. However, reviewers noted numerous discrepancies when testing the backup documentation for make-up hours reported on students' computerized Attendance Summary reports.

Student #37's records contain a Make-Up Report indicating that she received credit for three hours of make-up in the Medical Billing class for an extra-credit report on 2/14/06. The student also received credit for nine make-up hours in the Microsoft Word class on 1/5/06, for a "Tables Project". Other Make-Up Reports were found for this student for apparent projects were approved on 2/10/06 (2.5 hours), 1/3/06 (4.5 hours), and 1/3/06 again (5 hours). In all, the student received approval for a total of 10 make-up hours on 1/3/06. Also, most of the projects approved on 1/3/06 were identified as make-up for a class absence on 10/8/05 and 10/10/05, apparently for a class the student had completed and received an "A" grade back in October 2005. Based on this information, it is questionable whether most of the make-up hours recorded for this student involved direct faculty supervision.

Furthermore, the reviewers found two Make-Up Reports, both of them reporting work the student claimed that she performed between 7 PM and 7:30 PM on 1/19/06, receiving credit for half-hour make-up for two different classes on different days.

These make-up hours were added into Franklin's computerized attendance system, and were included in determining the total number of hours the student completed. This student stopped attending Franklin on 3/7/08, after completing 384.5 hours of 560 hours offered in her program. The 50.5 hours of make-up entered into the computerized attendance system were added to the actual recorded hours present, resulting in the student being identified as having completed 436 hours of instruction. The implications of questionable make-up hours relating to disbursements of funds to students and R2T4 calculations are further discussed in findings #4 and 5.

Student #17's records contained a Make-Up Report showing that the student made up one hour of a class he missed in Business English on 1/13/05. However, Franklin's Class Attendance Roster shows the student was present for that class that whole week. In addition, the Make-Up report was issued on 1/12/05, apparently indicating the student was approved to make-up a class that had not yet been offered. Similar discrepancies were also found for this student for make-up hours approved on 12/20/04, 12/21/04, 1/3/05, and 1/14/05.

The records also contained a Make-Up Report for the Business English class the student missed on 12/2/04. This Make-Up Report was issued on 12/6/04. However, the reviewers also found Make-Up reports issued on 12/7/04, 12/8/04, 12/9/04 and 12/10/04, all approved for make-up of the Business English class the student missed on 12/2/04, for a total of five make-up hours. The Class Attendance Roster indicates that the student was absent that date, but that class was only offered for two hours on 12/2/04.

The reviewers also found many examples of conflicting information, as described in the cases above, for **student #25**. In addition, the reviewers found that this student was credited for multiple hours of make-up for the Internet course between 8/9/05 and 8/12/05, when the student didn't begin the Internet class until the week of 8/18/05.

Conflicting information regarding attendance was also found in **student #32's** file.

Interviews with instructors who were assigned to monitor make-up sessions indicate that students would sometimes arrive without specific work assignments. In such cases the instructors indicated that they would assign some or projects that were applicable to the course the student needed to make-up hours for, although they could not be sure that it had anything to do with the specific part of the coursework the student had missed.

Required Action: The pervasive nature of this finding in the sample of students tested for this issue calls into question the number of hours completed by students as reported in Franklin's records. For Title IV purposes, this has greatest possible implications for determining whether returns are due to the programs for students who did not complete their programs.

This issue was discussed with school officials during the program review. Franklin undertook a self-study based on the preliminary discussion to determine the potential impact of the deficiencies. The resulting report submitted by Franklin was not useful, as it did not address all issues discussed in the requirements stated for this finding.

As a result of this finding, Franklin must perform a review of file for all Title IV recipients who attended the institution for the 2004/05 and 2005/06 award years, and did not complete their programs, evaluating the documentation of the make-up hours based on the issues described herein, as well as considering any other questionable circumstances not uncovered in our limited review. Franklin must then identify criteria for determining which hours are invalid, and share that information with this office. Franklin will then apply the agreed-upon criteria to ascertain the appropriate number of hours completed for this group of students, and determine if there are any resulting funds to be returned to the Title IV programs.

The specific format for reporting program liabilities will be provided at a later date.

In immediate response to this finding, Franklin must apprise this office of procedures implemented to ensure the regulatory requirements will be met in the future.

Due to the other possible implications of this finding on the students' academic programs, this issue is being referred to Franklin's licensing and accrediting bodies.

Finding #4: Incorrect Calculation of Return to Title IV

Citation: According to 34 C.F.R. § 668.22(e)(1), the amount of Title IV grant or loan assistance that is earned by the student is calculated by—

- (i) Determining the percentage of Title IV grant or loan assistance that has been earned by the student, as described in paragraph (e)(2) of this section; and
- (ii) Applying this percentage to the total amount of title IV grant or loan assistance that was disbursed (and that could have been disbursed, as defined in paragraph (l)(1) of this section) to the student, or on the student's behalf, for the payment period or period of enrollment as of the student's withdrawal date.

The percentage of Title IV grant or loan assistance that has been earned by the student is—

(i) Equal to the percentage of the payment period or period of enrollment that the student completed (as determined in accordance with paragraph (f) of this section) as of the student's withdrawal date, 34 C.F.R. § 668.22(e)(2)

Additionally, 34 C.F.R. § 668.22(f) specifies that, for purposes of paragraph (e)(2)(i) of this section, the percentage of the payment period or period of enrollment completed is determined—

(ii)(A) In the case of a program that is measured in clock hours, by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours scheduled to be completed as of the student's withdrawal date.

(B) The scheduled clock hours used must be those established by the institution prior to the student's beginning class date for the payment period or period of enrollment and must be consistent with the published materials describing the institution's programs, unless the schedule was modified prior to the student's withdrawal.

Noncompliance: Franklin failed to accurately account for the number of hours scheduled and completed for students who withdrew in their second and subsequent payment periods.

Student #37 stopped attending school on 3/7/06. Franklin's attendance system recorded that the student had been present for 384.5 hours, and had been absent for 175.5 hours, for a total of 560 hours of instruction offered through the last date of attendance. The system also showed that the student had completed 50 make-up hours.

Franklin has a 10% excused absence policy. Based on the combination of hours completed, make-up hours, and excused absences, the student had obviously entered her second payment period before withdrawing.

Franklin made the determination that the student had completed 110 hours in her second payment period (560 hours offered – 450 hours in first payment period). Based on the 110 hours, Franklin determined that the student was eligible to receive a post-withdrawal disbursement of \$494 in Pell Grant funds for her second payment period. However, a closer evaluation provides a different result. Completion of a payment period is based on clock hours attended, with a reasonable allowance for excused absences. Therefore, Franklin cannot presume in its R2T4 calculations that the first 450 clock hours offered to a student encompasses a complete payment period. Hours that the student was absent in the first payment period, in excess of the number of hours made-up and the number of excused hours for the payment period, should not be considered when determining when the student completed the payment period.

Considering the 384.5 clock hours student #37 completed, 45 excused absences (10% of 450 hours in payment period), and 50 excused absences, the student would have completed her first payment period during the week of 2/13/06. Determining the exact

date is difficult because Franklin's computerized attendance system only records the total number of make-up hours, it does not record the detail of the day the hours were completed. Based on this approximation, the student only attended into the third week of her second payment period, encompassing a total of clock 53.5 hours of instruction offered.

Based on the student's enrollment for 53.5 clock hours in the second payment period, she would have been eligible to receive a post-withdrawal disbursement of \$129.60 in Pell Grant funds for her second payment period, instead of the \$494 disbursed by Franklin.

Franklin also made disbursements after performing R2T4 calculations for **students #6, 18, and 39** that did not account for the actual point at which the student started their second payment periods.

Franklin's records show that it determined on 10/8/04 that **Student #1** had dropped out of school, with a 9/20/04 last date of attendance (LDA). An R2T4 calculation was performed using the hours offered through 9/20/04. However, the computerized attendance summary for this student indicates the last date of program attendance during the week of 9/6/04. The summary shows only 25 absent hours the week of 9/20/04, and 5 absent hours on 2/20/04. Therefore, it appears as though hours of non-attendance after the student's actual LDA were improperly included in the R2T4 calculation.

Required Action: Franklin's process for performing R2T4 calculations involved the use of a privately-developed automated worksheet. As described in this finding, it appears that this spreadsheet would automatically use the bottom-line total hours in the system, instead of performing the analysis required to identify the specific point at which a student completed a payment period. This calls into questions whether accurate R2T4 calculations were performed for students who Franklin determined had completed their first payment period.

Therefore, in response to this finding, Franklin must provide clarification of the process that has been used for determining the completion percentages of students who withdrew from school, from the 2004/05 award year to the present.

Due to the systemic and material nature of this finding, Franklin will be required to perform a review of all Title IV recipients who withdrew from the school to determine whether additional returns of funds are due to the Title IV programs. Franklin will also need to consider the issues discussed in finding #3 to ensure complete and accurate determinations are made. Once Franklin has provided the required information, further instructions will be provided for the completion of the file review and determination of the results.

In immediate response to this finding, Franklin must apprise this office of procedures implemented to ensure the regulatory requirements will be met in the future. Franklin will be apprised of any additional requirements upon review of the response to this finding.

Finding #5: Improper Disbursement of Title IV Funds

Citation: An institution must disburse Title IV funds on a payment period basis. An institution may disburse funds to a student for a payment period only if the student enrolled in classes for that payment period, and is eligible to receive those funds. C.F.R. § 668.164(b)(1)

Regulations define how an institution must define its payment periods for purposes of awarding and disbursing Title IV funds. 34 CFR § 668.4(c) specifies that the first payment period for an eligible program that measures programs in clock hours, and is one academic year or less in length, equals the period of time in which the student completes the first half the number of clock hours in the program. The second payment period is the period of time in which the student completes the program.

For a student enrolled in an eligible program that is more than one academic year in length, for the first academic year and any subsequent full academic year—the first payment period is the period of time in which the student successfully completes half of the number of credit hours or clock hours, as applicable, in the academic year and half of the number of weeks of instructional time in the academic year; and the second payment period is the period of time in which the student successfully completes the academic year;

A school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence (34 CFR 668.604(c)(4)).

Noncompliance: Franklin disbursed \$2025 in Pell Grant funds to **student #28** for her second payment period on 1/20/06. However, the student was on a leave of absence (LOA) that began 12/15/05. The student never returned from the LOA, and Franklin subsequently returned the funds to the program on 7/10/06.

In addition, the student had completed only 321.5 hours at the time of the disbursement. Even allowing for a maximum of 10% excused absence (45 hours), the student had not completed her first payment period of 450 hours. It appears that the disbursement was paid based on the total number of hours offered, instead of the hours completed.

Student #30 stopped attending school on 4/17/06, after completing 397.5 clock hours, including make-up hours. Franklin performed an R2T4 calculation and determined that, because the student had been offered a total of 567 hours of instruction before he withdrew, he was entitled to a partial disbursement of Pell Grant funds for a second

payment period. However, even allowing for excused absences, the student had not completed his first payment period, and was not eligible for any further disbursements.

Required Action: This issue appears to be related to those discussed in findings # 3 and 4. Therefore, the resolution of this finding should be addressed in the requirements for those findings.

Franklin will be apprised of any additional requirements upon review of the response to those findings.

Finding #6: Incomplete Verification

Citation: An institution is responsible for verifying all required information submitted by applicants for student financial assistance in connection with the calculation of their expected family contributions (EFC) for Title IV assistance. 34 C.F.R. §668.51(a), 34 C.F.R. §668.56 (A)(1)(2)(3)(4), and C.F.R. 34 §668.57 (a)(b)(c)(d). An institution is responsible for updating information and resolving conflicting information under 34 C.F.R. §668.55(a)(1)(i)(ii) and using corrections to data originally reported to determine whether student eligibility would be impacted, 34 C.F.R. 668.59 (a)(b)(c)(d)(e).

Noncompliance: The reviewers found cases where Franklin failed to complete verification requirements for students.

Student #15's ISIR for the 2004/05 award year was selected for verification. The file contained a copy of her parents' 2003 tax return, which identified \$9,325 in pensions and annuities on line 16a that were not taxed. This amount should have been reported on the ISIR at line 79, unless the amount on line 16a was a pension rollover. However, there was no documentation in the file indicating a rollover, and there was no income reported on line 79.

Student #37's 2005/06 ISIR was selected for verification. Franklin collected a copy of her parent's tax return, and a verification worksheet that confirmed the members of the parent's household reported on the ISIR. However, Section C of the verification worksheet was blank. Section C is where the student would confirm whether they filed a tax return, and also report any income or benefits they received in 2004.

Student #26 also failed to complete Section C on her 2005/06 verification worksheet when she had reported on her FAFSA/ISIR that she had not filed an income tax return in 2004.

Required Action: In response to this finding, Franklin must apprise this office of procedures implemented to ensure the regulatory requirements will be met in the future.

In addition, Franklin must review the files for the students discussed in this finding to determine whether the students were eligible for all Title IV funds disbursed. Franklin may attempt to collect any missing documentation and perform all required need analyses to confirm students' eligibility if information was revised as a result of verification. The institution is liable for the amounts of any awards in excess of students' revised need.

Franklin is liable for all Title IV funds awarded to the student in the applicable award year if the required documentation cannot be collected. Franklin must provide copies of all documentation collected and all recalculations performed. Please note, in cases where information on verification worksheets is revised, the changes must be initialed and the worksheets must be signed again by the required persons.

In response to this finding, Franklin must report the total amount of ineligible Title IV funds disbursed to the students.

Instructions for the repayment of any liabilities will be provided in the Final Program Review Determination (FPRD) letter.

Finding #7: Conflicting Information

Citation: An institution is required to develop and apply an adequate system to identify and resolve discrepancies in the information that the institution receives from different sources with respect to the student's application for financial aid under Title IV programs. 34 C.F.R. § 668.16(f).

Noncompliance: The reviewers found instances where Franklin failed to resolve conflicting information in students' records relating to the eligibility for Title IV funds.

Student #28 completed her Student Profile Form indicating that she was employed from 7/04 through 8/05, but she reported that she had no income in 2004.

A similar issue was noted for **student #15**.

Student #37's ISIR, based on a FAFSA signed on 9/7/05, indicates that she was an unmarried student, and dependent on her parent. However, the student reported on her Career Interview Application, which was completed on 9/6/05, that she was married. If the student were actually married at the time she completed the FAFSA, she would have been considered independent, and would have been required to report her spouse's income.

Student #31's 2005/06 ISIR indicated that she was unmarried; the ISIR was based on a FASFA that was completed 4/24/06. She also checked that she was single on her Career Interview Application, although it appears that she had originally checked that she was married, but that mark was removed. However, the Certification of Naturalization that she submitted to document her citizenship identified that she was married. That document was dated 2/18/06.

Required Action: In response to this finding, Franklin must apprise this office of procedures implemented to ensure the regulatory requirements will be met in the future.

Franklin must also provide documentation confirming the resolution of the issues identified for the students discussed above, including any required need analysis recalculations of the students' Title IV eligibility, and any impact on awards.

Any Title IV funds disbursed in excess of the students' actual eligibility will be institutional liabilities. Instructions for the repayment of any liabilities will be provided in the Final Program Review Determination (FPRD) letter.

Franklin will be notified of any additional requirements after this office has reviewed the response to this finding.

Finding #8: Missing Authorization to Credit Federal Work Study Funds

Citation: Under the provisions of 34 C.F.R. § 675.16(a)(3)(iii), an institution may pay Federal Work Study (FWS) funds to a student by crediting the student's account at the institution after obtaining the authorization described in paragraph (a)(4)(i).

675.16(a)(4)(i) specifies that an institution must obtain a separate written authorization from the student if the student is paid FWS compensation by—
(A) Crediting the student's account at the institution; or (B) Initiating an EFT to a bank account designated by the student.

Noncompliance: Franklin failed to provide reviewers with specific authorizations for students who had Federal Work Study (FWS) funds credited directly to their account at the school. In response to requests for the authorization, Franklin provided copies of Financial Aid Status & Waiver Forms. That form is used for students to authorize retention of credit balances for students. There is no mention on that document of specific authorizations by the student to credit FWS funds directly their account.

Required Action: In response to this finding, Franklin must immediately develop and utilize an appropriate authorization form for the credit of FWS funds directly to students'

accounts at the institution. Franklin must provide a copy of the authorization in its response to this report.

Finding #9: Documentation of Student Eligibility for FWS Employment

Citation: Regulations at 34 C.F.R. § 675.9 specify that a student at an institution of higher education is eligible to receive part-time employment under the FWS program for an award year if the student meets the relevant eligibility requirements contained in 34 CFR 668.32, and is enrolled or accepted for enrollment as an undergraduate, graduate or professional student at the institution.

Noncompliance: Franklin's records indicated that student #25 completed her program on 3/24/06, with the end of her externship. However, the student continued to work in her position at Franklin from 4/4/06 through 4/28/06. Unless the student's program of study was extended beyond 3/24/06, the student was not eligible to receive FWS funds for work performed beyond that date. Franklin was asked to clarify the date the student completed the program, but only provided a copy of a diploma, indicating that it was issued in April 2006.

Required Action: In response to this finding, Franklin must confirm the date that the student completed her program of study.

Franklin will be apprised of any additional requirements upon review of the response to this finding.

Finding #10: Inadequate Monitoring of FWS Employment

Citation: Regulations require that the student's work must be governed by employment conditions, including pay, that are appropriate and reasonable in terms of any applicable Federal, State, or local law. 34 C.F.R. 675.20(c)(1)(iii)

An institution is responsible for ensuring that the student is paid for work performed. 34 C.F.R. 675.16(a)(10)

Noncompliance: The reviewers noted situations where students' work periods appeared to exceed New York State Labor Department guidelines concerning meal breaks and consecutive hours of work. For example, student #11's timesheets show that she worked periods of more than five consecutive hours numerous times, with as many as eight consecutive hours without a documented break. The student was employed on-campus at Franklin. This office has been informed that New York State Labor Laws require that

employees who work shifts of more than four hours during the day be provided a meal break of at least 30 minutes.

It is unclear whether students were actually working extended periods without a break, or were paid for scheduled breaks, which is not allowed under Title IV regulations.

The reviewers also noted that Franklin paid **student #30** for 54.5 hours of work during November 2005. However, the time sheet indicates that the student actually worked a total of 59.5 hours that month.

Required Action: Franklin must take steps to ensure that all applicable rules and guidelines are followed for students employed and receiving assistance under the FWS program.

In response to this finding, Franklin must clarify the circumstances of student #11's work periods. The institution must also apprise this office of changes that have been implemented as a result of this finding.

Franklin must also confirm whether Student #30 was paid the correct amount for work performed, and confirm to this office if additional payments are due to the student. Franklin will be apprised of any additional requirements upon review of the response to this finding.

Finding #11: Documentation of Eligibility for SEOG Award/Disbursement

Citation: Regulations at 34 C.F.R. § 676.9 specify that a student is eligible to receive FSEOG for an award year if the student meets the relevant eligibility requirements contained in 34 CFR 668.32, and is enrolled or accepted for enrollment as an undergraduate student at the institution.

In selecting among eligible students for FSEOG awards in each award year, an institution shall select those students with the lowest expected family contributions who will also receive Federal Pell Grants in that year. 34 C.F.R. § 676.10 (a)(1)

Noncompliance: Reviewers were not able to find documentation supporting FSEOG awards to some students in the program review sample.

Student #15 finished her program on 11/28/05. The student's ledger showed two FSEOG disbursements of \$1000 each were paid to the student's account on 12/2/05 and 5/15/06. The reviewers did not find any documentation in the student's file showing whether the funds were awarded to the student while she was still enrolled and eligible. Further information was requested during the program review, but not was provided.

The student also had an EFC that was higher than other students who were not awarded FSEOG funds.

Student #32 dropped out of school on 5/3/06. Franklin made two FSEOG disbursements of \$200 each on 5/15/06. The latest award letter found in the student's file was dated 5/1/06, and did not indicate any FSEOG awards for this student.

Student #35 completed her program on 5/29/06. The only documentation in her file indicating an FSEOG award was an Award Notification dated 7/19/06.

Required Action: In response to this finding, Franklin must provide documentation to show that the FSEOG funds were awarded to the students identified while they were still enrolled and attending classes in their programs of study. Franklin must also provide documentation of its awarding FSEOG awarding procedures, including the timeframes when awards are made to students.

Franklin will be apprised of any additional requirements upon review of the response to this finding.

Appendix C – Institution's Written Response

Franklin Career Institute
Response to Program Review Report: 200640225454

Submitted to:
Mr. Christopher Curry
Federal Student Aid
School Participation Team – New York/Boston
U.S. Department of Education
32 Old Slip, 25th Floor
New York, NY 10005

During August 21, 2006-November 30, 2006, the United States Department of Education conducted a program review at Franklin Career Institute (Franklin) to determine Franklin's compliance with the statutes and federal regulations as they pertain to the institution's administration of Title IV programs. A randomly selected statistical sample of 37 files was reviewed from the 2004-2005 and 2005-2006 award years. Additionally nine files were selected based on an expanded review of Title IV recipients enrolled in the ESL program and included, resulting in a total of 46 student files included in the review.

The Program Review Report, PRCN 200640225454, (Report), issued April 20, 2009, includes eleven initial findings. As detailed below, Franklin disagrees with nearly all of the reviewers' findings—many of the findings reflecting a limited review of the available documentation and/or a misunderstanding or misapplication of the law at issue. Each of the initial findings is discussed in turn.

FINDING #1: Administration of Ability to Benefit Tests

At all times, Franklin has complied with federal requirements that an ability to benefit (ATB) test be "independently administered". The Report cites Franklin as failing to comply with the independently administered requirement on the grounds that (i) a company Franklin used to identify test administrators, Vocational Educational Testing, Inc. (VET), was allegedly not independent of Franklin and that (ii) a test administrator Franklin used, (b) (6), (b) (7) was not independent of Franklin because she had been an employee of VET and was later an employee of Franklin while continuing to serve as an ATB test administrator. Franklin strongly disagrees with this entire finding as demonstrated below.

A. Franklin's Use of VET Did Not Violate the Requirement that the ATB Test Be Independently Administered

The Report fails to identify any reason Franklin's relationship with VET created to a violation of the independently administered requirements. The regulation governing the administration of

ATB tests, including the requirement that they be “independently administered”, is 34 CFR 668.151 and reads in pertinent part:

- (b) The Secretary considers that a test is independently administered if the test is—
 - (1) Given at an assessment center by a test administrator who is an employee of the center; or
 - (2) Given by a test administrator who—
 - (i) Has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the interest obtained through its agreement to administer the test, and has no controlling interest in any other educational institution;
 - (ii) Is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals.
 - (iii) Is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution or its parent corporation or at any other institution, or a member of the family of any of the above individuals; and
 - (iv) Is not a current or former student of the institution.

34 CFR 668.151(b)(2). The focus, then, in examining whether a test given at a location *other than* an assessment center qualifies as “independently administered”, is on the independence of the test administrator *giving* the test.¹ VET never served as Franklin’s test administrator but rather as a contractor for identifying, recruiting, and contracting independent contractors to give ATB tests at Franklin. The test administrators identified through VET that gave ATB tests at Franklin were never employees of either VET or Franklin—rather, these three test administrators were independent contractors through VET. At all times throughout their relationship with VET, they remained independent contractors. Please see Attachments 1-A and 1-B, copies of the test administrators’ 1099 tax forms reflecting their independent contractor relationship with VET during the years at issue, 2004 and 2005 respectively.

Accordingly, the Report’s finding that “any employee or former employee of VET would not meet the criteria or [sic.] an independent test administrator” is irrelevant because no employees or former employees of VET ever administered any tests for Franklin. Test administrators identified through VET were independent contractors, never employees, of VET. The Report fails to identify or explain any rationale for how these independent contractors would fail to meet the independence requirements.

*B. (b) (6), (b) is Not an Employee of Franklin Under any Reasonably Applied Standard—
She at All Times Met the Independence Criteria*

¹ While the independence of the test administrator is not the sole factor in determining whether an ATB test was “independently administered”, it is the sole issue raised under Finding #1. 34 CFR 668.151(c) addresses certain conditions in which the Secretary will consider a test to not be independently administered, but none of these conditions are at issue in this case.

Beyond the Report's erroneous finding that (b) (6), (b) (7) did not meet the independence criteria because of her former relationship with VET, the Report's finding that (b) (6), (b) (7) was also ineligible because she was an employee of Franklin is factually incorrect. The Report's rationale for finding (b) (6), (b) (7) to have been an "employee" of Franklin is based solely on two facts: (1) she was paid by W-2 instead of 1099² and (2) her file includes a "New Employee Data Sheet" indicating her "starting date of employment". In the complete context of the relationship between (b) (6), (b) (7) and Franklin, these facts are insufficient to establish (b) (6), (b) (7) as an "employee" as opposed to an "independent contractor".

At all times, (b) (6), (b) (7) was approved by the test publisher. The only services which she performed for Franklin were those as an ATB test administrator: maintaining control over ATB test and answer materials, meeting testees, administering tests at institution facilities under conditions required by the test publisher and the regulations, securing answer sheets and submitting answer sheets to the appropriate testing entities for scoring. She performed no other services for Franklin. At all times, these limited services were identical to the services which she performed for other institutions. Indeed, Franklin was one of several institutions for which (b) (6), (b) (7) provided these identical services. Whether inadvertently placed on the payroll (as at Franklin) or subject to 1099 tax reporting (as, at VET, and perhaps elsewhere) at all times consistent with her test administrator obligations, she performed these services independent of any control by Franklin.

Applying the proper legal analysis, the facts clearly establish that (b) (6), (b) (7) was an independent contractor, *not an employee*, of Franklin. When determining whether a worker is an employee or an independent contractor, numerous factors are weighed and considered in evaluating the entire relationship and ultimately the degree or extent to which the business directs and controls the worker. According to the Internal Revenue Service (IRS), the facts that provide evidence as to the degree of control and independence fall within three categories: (1) behavioral control, (2) financial control, and (3) the type of relationship between the parties. IRS Publication 1779.³ In addition to the summary provided in IRS Publication 1779, the IRS has adopted a 20 factor test to guide the analysis. As demonstrated on Attachment 1-C, the application of these 20 factors further supports (b) (6), (b) (7) status as an independent contractor.⁴

1. Behavioral Control

² The decision to pay (b) (6), (b) (7) as an employee (withholding taxes and issuing a year-end W-2) was made in error. As discussed below, she does not meet the essential indicia of employee status and the form of her compensation is not dispositive.

³ *Independent Contractor or Employee...*, Publication 1779, Department of Treasury, Internal Revenue Service, (Rev. 8-2008), located online at: <http://www.irs.gov/pub/irs-pdf/p1779.pdf>; *See also Employer's Supplemental Tax Guide*, Publication 15-A, Circular E, at p. 6, Department of Treasury, Internal Revenue Service (2009), located online at: <http://www.irs.gov/pub/irs-pdf/p15a.pdf>.

⁴ Many of these 20 factors also apply under one of the three prongs of the degree of control and independence test. Therefore, in order to avoid repetitiveness, the 20 factor test is not discussed separately within the body of this response.

Behavioral control looks to the “right to direct or control how the worker does the task for which the worker is hired.”⁵ When reviewing the behavioral control standard, one must consider the type and degree of instructions, trainings, and oversight the business gives the worker. While an employee is generally trained on how to perform the required services and tasks because the employer wants them executed in a particular manner, independent contractors ordinarily use their own methods.

When (b) (6), (b) initially came to Franklin’s premises as an independent contractor working through VET, after introductions, Franklin staff showed her where the testing materials were stored, showed her the testing room, and established a testing schedule that was mutually convenient. There was no follow-up instruction, training or oversight. Thereafter, she came in, met with the testees, administered the tests, completed the necessary procedures after the testing ended, and secured and mailed the answer sheets as required by the test publisher.

In the latter part of 2005, when VET discontinued its operations, (b) (6), (b) agreed to provide services directly to Franklin as she had previously provided through VET. Franklin required no training, provided no additional instructions on how her work should be performed, and exercised no additional control on when, where, or how her work would be performed.⁶ Franklin entered into no formal written agreement with her and orally agreed to continue the pre-existing arrangement. There was simply no change in the utter absence of behavioral control. Under the behavioral control analysis—undoubtedly the most critical—(b) (6), (b) (7) clearly remained an independent contractor.

2. Financial Control

The facts that must be explored when determining the extent of the business’ financial control are the extent of the worker’s: (1) unreimbursed business expenses, (2) investment, (3) method of payment, and (4) opportunity for profit or loss.⁷ Franklin did not pay for any expenses related to (b) (6), (b) (7) certification by the test publisher as an ATB test administrator and did not restrict her ability to serve as a test administrator for other schools. (b) (6), (b) was free to provide her services to other institutions at all times and, in fact, served as a test administrator for several other institutions. Attachment 1-E includes a signed statement from (b) (6), (b) attesting to the fact that she served as an independent tester at other institutions during the period she served as an independent tester at Franklin as well as two letters from ACT, the test publisher, certifying her to administer ATB tests at multiple locations during the period at issue.

⁵ *Employer’s Supplemental Tax Guide*, Publication 15-A, Circular E, at p. 6; See also *Independent Contractor or Employee, Training Materials*, at page 2-8, Department of Treasury, Internal Revenue Service (1996), located online at: <http://www.irs.gov/pub/irs-utl/emporind.pdf>.

⁶ Upon entering this agreed arrangement, (b) (6), (b) was not given an orientation or any of the items Franklin employees receive during their mandatory employee orientation such as an employee handbook. Upon completion of the mandatory employee orientation, a completed employee orientation checklist is included in each Franklin employee’s file. See Attachment 1-D for a copy of Franklin’s employee orientation checklists. Because she was not an employee, (b) (6), (b) never received this orientation, and accordingly, her file does not include an employee orientation checklist.

⁷ *Independent Contractor or Employee, Training Materials*, at 2-16.

In terms of method of payment, while payment per project is common for independent contractors, hourly compensation is a common form of payment for test administrators and others.⁸ Payment in such fashion does not preclude an independent contractor finding. Even though she was paid hourly, unlike Franklin's employees, she was not required to record her time electronically; rather she simply reported her hours and was paid accordingly. At all times, she retained the ability to profit from her certification by the test publisher, by securing as many clients as she chose.

3. Type of Relationship Between the Parties

Facts showing the type of relationship between the parties include: (1) written contracts; (2) benefits the business provides the worker; (3) permanency of the relationship; and (4) performed services as part of the company's regular business.⁹ (b) (6), (b) (7) did not have a written contract prior to 2005 while she was plainly an independent contractor working through VET or thereafter while performing the same services under the same conditions directly for Franklin.

Critically, (b) (6), (b) (7) did not receive any of the benefits that employees of Franklin received, such as holiday pay, personal days, vacation, sick days or health insurance. Unlike Franklin's employees, she was never given an employee orientation or an employee handbook and was not required to swipe an electronic time card to record her time. Moreover, (b) (6), (b) (7) duties as ATB test administrator were not part of Franklin's regular business. Rather, she performed a service required by the regulations as part of the admissions process. Since the regulations themselves require that the testing be independently administered, by definition, these services cannot reasonably be viewed as a part of Franklin's regular business. Finally, there is no permanency to the relationship between Franklin and (b) (6), (b) (7) each retains the right to terminate the relationship, as they did when (b) (6), (b) (7) was indisputably an independent contractor working through VET.

Finally, because of the nature of her services, (b) (6), (b) (7) work was not "full time" and she only provided services when there were ATB testees to be tested, perhaps averaging approximately 10 hours per month. While she normally provided her services on a set schedule, a schedule was set to allow Franklin to coordinate the presence of testees. Nevertheless, (b) (6), (b) (7) always had the right to change or adjust the schedule to meet her own needs. Plainly, then, the totality of the circumstances demonstrate an independent contractor, rather than employee, relationship.

4. The Law is Clear: A W-2 is Not Dispositive in Establishing an Employer-Employee Relationship

Where the totality of the circumstances support independent contractor status, such status is not altered by a W-2 relationship or even a contract explicitly identifying the worker as an

⁸ *Independent Contractor or Employee, Training Materials*, at 2-20; See also *Employer's Supplemental Tax Guide, Publication 15-A, Circular E*, at p. 6.

⁹ *Employer's Supplemental Tax Guide, Publication 15-A, Circular E*, at p. 7.

employee.¹⁰ Even where a W-2 is filed, the focus of the analysis to determine whether an individual is an employee or an independent contractor must remain on “the actual relationship existing between the contracting parties, and that a contract purporting to establish an employer/employee relationship is not controlling where application of the common law factors to the facts and circumstances of a particular case establishes no such relationship exists.”¹¹

In addition the letter of the law’s support of (b) (6), (b) (7) independence, the spirit of the law regarding independent test administration supports (b) (6), (b) (7) independence as well. The regulations aim to ensure a separation between the test administrator and the business to eliminate internal business pressures that could interfere with fair and conflict free test administration. The intent is similar to that requiring Administrative Law Judges with the Office of Hearing and Appeals at the United States Department of Education or members of the Office of the Inspector General to be independent of the Department. Payment via W-2 has no bearing on such workers abilities to maintain their independence.

C. Finding #1 Conclusion

In light of the information provided above, Franklin strongly disagrees with the Report’s finding that that there was a violation of the independently administered requirements. All test administrators selected by Franklin, including (b) (6), (b) (7)(C) met the independent test administrator requirements. Accordingly, Franklin should not be required to provide file review like information regarding Title IV recipients who were admitted under the ATB provisions.

FINDING #2: Documentation of Student Eligibility of ESL Program

The Report cites cases where the reviewers felt there was inadequate documentation that students enrolled in the ESL program were pursuing the program to use already existing knowledge, training or skills. In these cases (Students #39, #41, #42, #43, #45, #46), the Report seems to mistakenly treat any statement by a student that they had an interest beyond solely improving upon “already existing knowledge, training, or skills” as making them ineligible for the ESL program. Recognizing that a desire to learn English for a reason beyond improving upon existing knowledge, training or skills does not disqualify an applicant’s eligibility to participate in the ESL program, in conjunction with a more complete review of the underlying documents, reflects that Franklin maintained sufficient documentation to support the eligibility for all but possibly one of the students cited in the Report.

Before addressing the supporting documentation for each student, it is helpful to review Franklin’s admissions process for students applying to the ESL program. Franklin uses a Career Interview Application Form to provide the Admissions interviewer with insight and talking points to prepare for interviewing the given student. The reviewers seemed to rely heavily, if not exclusively, on this document in reaching their finding. While this form may provide supporting documentation used in the eligibility determination process, this form is only one portion of the

¹⁰ *Butts v. Commissioner*, T.C. Memo. 1993-478, at 9, *aff’d per curiam* 49 F.3d (11th Cir. 1995); *See also Smithwick v. Commissioner*, T.C. Memo. 1993-582.

¹¹ *Id.*

application process. Each applicant then undergoes an interview and must also complete an ESL Application Supplement. A major portion of the ESL program admissions interview process is focused on the advantages of learning English as it relates to existing employment positions.

Student #39's ESL Application Supplement (Attachment 2-A) documents the student's knowledge, skill, and experience as a licensed beautician and nail technician.

For Student #42, the ESL Application Supplement (Attachment 2-B) documents the student's knowledge, skill, and experience as a licensed Personal Care Assistant with job-related skills that include "insuring a healthy environment; preparing meals; assisting with lifting and positioning; performing bed bath, dressings; monitoring health statuses & medication intake."

Student #43's ESL Application Supplement (Attachment 2-C) documents her knowledge, skill, and experience as in the home care field. As reflected therein, the student was employed with a company called Family Home Care, and according to our placement records for Student #43 (Attachment 2-D), she continued working for Family Home Care Services following her graduation from the program.

The ESL Application Supplement for Student #45 (Attachment 2-E) documents her knowledge, skill, and experience as a licensed Home Health Aid with job-related skills including "performing bed bath, shaving, mouth care; assisting with lifting, positioning; applying comfort devices; preparing meals, measuring I & O." Attachment 2-E also lists employment experience in both homecare and factory work.

The reviewers recognize that Student #46's Career Interview Application form documented his employment experience in the cleaning field, but they then proceed to cite the student's statement that he would like to learn English to help his child with homework. As discussed above, an interest in learning English for any reason beyond using ESL instruction to use already existing knowledge, training, or skills does not disqualify a student's eligibility for the ESL program. While the information provided on the Career Interview Application by itself should be sufficient to document existing knowledge, training, or skills, Franklin notes that Student #46's ESL Application Supplement (Attachment 2-F) also documents the student's experience in the cleaning field and additionally documents his customer service skills.

Franklin acknowledges that supporting documentation for Student #41 may be insufficient to demonstrate the student's existing knowledge, skill, or experience at the time of application. This student was employed as a jeweler with a company named "EMA" as reflected in his Application Supplement (Attachment 2-G). Franklin tracks post-program employment placement of its students, and its placement records for Student #41 (Attachment 2-H) reflect that he continued his employment with EMA Jewelry following the program. Franklin is confident that the proper determination was made with regard to this student's eligibility prior to admitting Student #41 into the ESL Program, however the school recognizes the documentation supporting this determination is somewhat lacking. This is the only student cited in the Report where the reviewers' initial finding may be appropriate. As demonstrated above, the Supplemental Applications clearly establish "already existing knowledge, training, or skills" for all other students cited in this finding.

In light of the supporting documentation discussed above, Franklin respectfully disagrees with the reviewers' finding. While Franklin recognizes it may not have provided sufficient documentation regarding one of the cited student's eligibility, this is not sufficient to require the institution to complete a full file review of all Title IV recipients enrolled in the ESL program for the 2004-2005 and 2005-2006 award years. Accordingly, Franklin asks that this required action be reconsidered. Additionally, Franklin notes that it has not offered the ESJ Program since award year 2005-2006.

FINDING #3: Attendance Records

Under New York State Education Department regulations, a school may permit make-up sessions to count for attendance purposes. Specifically, NYSED 126.4(e)(5) reads:

Any make-up session for attendance purposes shall be approved by the licensed school director, and shall consist of instruction in that portion of the course or curriculum which was not received by the student as a result of absences. A record of make-up sessions shall be maintained in the attendance register. Any charge for make-up sessions shall be expressed on the enrollment agreement and in the school's catalog.

Franklin has at all times complied with these regulations with its policies allowing students to "make-up" work for absences. The reviewers raise concerns with Franklin's documentation of make-up hours and had questions regarding make-up records for 4 of the 46 students included in their review. Following an overview of Franklin's make-up policy at the time in question and currently, the questions raised regarding the four students are addressed student by student.

A. Franklin's Make-Up Process

Franklin requires that make-up time be completed during scheduled make-up sessions and always under the supervision of a make-up instructor who, as well as being a facilitator for the work being made-up, verifies that the student did spend the appropriate amount of time in completing the make-up assignment. This has always been Franklin's policy including during the review period through to current day.

During the period at issue in the program review, handwritten make-up reports were the means for Franklin's collection and recording of make-up hours. These make-up reports included the student's name, the "date issued" (which reflects the date the student actually made-up work for the absence), the class for which the work is being made up, the assignment, the amount of make-up time completed, a signature of the make-up instructor verifying the student spent the reported time on the reported assignment, the date(s) of the absence(s) for which the make-up work was being completed, and a dated signature by the course instructor accepting the make-up report. It is critical to note the varying dates that appear on the report, because as discussed below, the reviewers seem to have had some confusion in properly interpreting the different

dates on the make-up reports. Several make-up reports are included as attachments for this finding as referenced further below.

B. Explanation of Questioned Files

In reviewing the files of the students cited in Finding #3, Franklin staff matched the questioned make-up slips to the corresponding dates of absences. As explained in detail below, student by student, the far majority of the concerns raised in the Report are easily explained. Where we were unable to match a make-up report to an absence, it is noted. Franklin acknowledges that there were some human errors due to carelessness that lead to some of the questions raised by the reviewers; however, Franklin rests assured that the improvements made to its record keeping system in 2006, as they relate to make-up hours, should prevent such minor errors from going undetected as they may have during the review period.¹²

The specific concerns raised under Finding #3 are discussed below, in turn, by student.

1. Student #37

The Report highlights multiple concerns regarding the attendance and make-up records for Student #37. The report raises a variety of concerns—each concern is addressed in turn.

First, as noted in the Report, Student #37 received credit for three hours of make-up in the Medical Billing class for an extra-credit report approved by her instructor on 2/14/06. The student was absent for two consecutive days, February 2 and 3, 2006, representing four missed hours of class. On the make-up slip, she should have noted her dates of absence as 2/2/06 and 2/3/06, but she inadvertently listed only 2/2/06. Because the student missed information regarding insurance fraud during those two classes, the instructor assigned a report on the topic which was done during this make-up period under the supervision of an instructor. The attendance records for this student in the class at issue for 2/2/06 and 2/3/06, as well as the referenced make-up report matching these absences, are included at Attachments 3-A.

Second, the Report notes that Student #37 received credit for nine make-up hours in the Microsoft Word class on 1/5/06 for a "Tables Project". This student regularly attended Franklin's Evening Division, between the hours of 5:30 pm and 10:30 pm, Monday through Friday. During the period of 12/5/05-1/4/06, Student #37 was absent from the scheduled Advanced Microsoft Word for a total of 23 hours. In order to allow her to complete much of the work covered in the course during her absences, the teacher arranged for the student to commit an entire 9 hour day to make-up work for this course. The "Tables Project" assigned by the instructor consisted of instruction in the portion of the course that was missed due to her absences. The student's nine hour make-up day was supervised as required under Franklin's policies and made up for 9 of the 23 hours missed.

Next, the Report questions make-up reports for this student dated 2/7/06 and 2/10/06 (Attachment 3-B). During the module running 1/16/06-2/17/06, Student #37 was absent 9 hours

¹² Improvements to the make-up system are discussed following the explanation of the specific student files that were questioned.

from Anatomy and Physiology. Attachment 3-B also includes the relevant attendance records. On 2/7/06, the student made up one of those hours for a test missed during class on 2/3/06. As for the rest of the make-up time for this period, the instructor determined the student would be best served academically by assigning a research project and a report for the work missed. This work was completed during a 2.5 hour make-up session on 2/10/06. The make-up report inadvertently lists only one date of absence for which this work corresponds but should have listed the multiple days of class missed for which this work was assigned. Accordingly, all three make-up hours are properly accounted for.

The Report also references three make-up reports signed by the course instructor on 1/3/06 for 5, 0.5, and 4.5 hours, which are included at Attachment 3-C. The Report questions these make-up reports as to whether a total number of ten hours were truly made-up in one day and suggests the projects approved for these make-up sessions were for a class the student had already completed and received a grade. First, the Report errs in its statement that these three reports reflect time made up on 1/3/06. Although the reports were signed by the course instructor on 1/3/06, the make-up reports clearly reflect that the make-up work was completed on 12/21/05 (for a total of 5.5 make-up hours) and 12/22/05 (for a total of 4.5 hours). Second, the Report mistakenly assumes that these reports reflect work made-up for Keyboarding, a course that the student had already completed and received a grade when actually the course at issue, Microsoft Word, was on-going at the time the work was made up.

The class at issue in these make-up reports, Microsoft Word, was offered over two modules, running 10/27/05-1/13/06. As mentioned above, during the second half of this class, Student #37 was absent for 23 hours. For the first half (10/27/05-12/2/05), the student was absent 20 hours from class. The hours made up on the reports signed by the instructor on 1/3/06 were for absences during the first half of this course. The class dates listed as the relevant absences on the make-up reports are incorrect, however the correct course is listed on those reports ("Adv. Word"). The Report mistakenly assumes this make-up work occurred for the class offered during the dates that were listed, Keyboarding, as opposed to the actual course correctly listed on those reports, Microsoft Word. As such, the Report's assertion that this make-up work was for a class that the student had already completed and received a grade is incorrect.

Finally with regard to Student #37, the reviewers were also mistaken in their finding that two make-up reports corresponded to work the student performed between 7:00 pm and 7:30 pm on the same day, 1/19/06, leading to her receiving double credit for a half-hour of make-up work for two different classes on different days. Similar to one of the reviewers' errors noted above, these two make-up reports were for work made up on two different dates. Although both signed by the instructor on 1/19/06, these reports clearly reflect that the make-up work was done *not* on the same day but rather 0.5 hours on 1/11/06 and 0.5 hours on 1/19/06.¹³ These make-up reports are included at Attachment 3-D.

2. Student #17

¹³ The student accidentally listed the date for the make-up work as 1/11/05 instead of 1/11/06—a common error at the beginning of a new year. Considering the date of absence this make up work for was 12/6/05 and that the instructor signed off on the make-up report on 1/19/06, it is obvious that the student intended to write 1/11/06.

The Report is incorrect in its implication that a make-up report for Student #17 for one hour of class missed in Business English on 1/13/05 should not count because the student was present for Business English that entire week. In fact, the student did miss an hour of instruction in Business English that week. The Business English class met two times per day, and attendance for each hour meeting was recorded on separate attendance rosters. Attachment 3-E includes both the questioned make-up report and the attendance roster reflecting the hour of Business English class that Student #17 missed on 1/13/05.

The Report also challenges a series of make-up reports of Student #17 as being approved for make-up in a class that had not yet been offered. Franklin agrees with the Report that Student #17 may have been permitted to make-up a few classes in advance of anticipated absence.

Finally with regard to Student #17, the Report questions multiple make-up reports listed as being for a missed Business English class on 12/2/04. Franklin recognizes there was an error with these make-up reports—the wrong class absence date was inadvertently listed. These make-up hours were for the course Introduction to the Medical Office, not Business English. Student #17 was absent for the second day of the Introduction to the Medical Office Program, held on 12/2/04, which was a five hour class. Student #17 made up these five hours the next week, one hour each day, those hours reflected in the make-up reports at issue. Student #17 did not actually even begin Business English until 12/6/04. The make-up reports and the attendance records reflecting this absence are included at Attachment 3-F.¹⁴

3. Student #25

Regarding Student #25, the Report states that the reviewers found examples of conflicting information, as described in the cases discussed above. The only specific example the Report cites is that the reviewers found that this student was credited for multiple hours of make-up for the internet course between 8/9/05 and 8/12/05, when the student didn't begin the internet class until the week of 8/18/05.

Franklin recognizes that there may have been some conflicting information on the make-up reports due to human error and carelessness by the student and/or instructor involved in ensuring the accuracy of each piece of information contained on the make-up reports. Franklin is confident that the improvements it has made to its system for recording make-up hours has had a profound impact on eliminating such inconsistencies due to carelessness and/or simple human error.¹⁵ Despite inconsistencies that may have occurred in the individual make-up report slips during this period, Franklin at all times required and ensured that make-up reports were only completed and accepted where an instructor ensured the time was in fact made-up for a missed class and that the work completed during the make-up time was directly related to the instruction missed due to absence.

¹⁴ The attendance record included at Attachment 3-F is a print out of the weekly attendance recorded in the system for that week (the week of 11/29). In order to be entered into the attendance system, a Franklin attendance officer had to review the manual attendance sheets completed by the instructors, which would have indicated the student's absences. The attendance record for the week of 11/29 shows that the student should have been in attendance for 10 hours that week, but that she was only present for 5 hours reflecting the student's absence.

¹⁵ These improvements to the system are discussed following the explanation of the specific student files that were questioned.

Specific to Student #25, who successfully graduated, this student made up many more hours than necessary during her program. Although she made-up a much larger number of hours during her attendance, she needed to make-up only 19 hours in total to have met Franklin's 80% attendance rate requirement which is necessary to graduate. Student #25 exceeded the attendance requirements and was not required to have made-up all the time she did in order to graduate or to qualify for Title IV. Copies corresponding make-up reports and attendance records for Student #25 for at least 19 hours of make-up time are included at Attachment 3-G.

4. Student #32

As the reviewers did not specify individual questions or concerns for this student, we conducted an overall review of this student's file in an effort to connect each make-up report to the respective absence for which the make-up was completed. As indicated in other responses, we found some errors in the hand-written completion of information on some of the make-up reports such as date of absence, missing assignments, etc. However, we were able to match virtually all make-up slips with their correct corresponding absence for all but an insignificant number of make-up hours. Make-up slips and corresponding attendance rosters for Student #32 are included at Attachment 3-H.

C. Updates to Make-Up System since Program Review Period

In July 2006, Franklin adopted a new computerized student record keeping system. One of the features of this new system is that it records individual absences by subject, period, and module, and will only accept make-up hours if the information reported on the make-up report directly corresponds to an actual absence. We have attached a sample copy of the information contained in our new system for your review at Attachment 3-I. On the "Daily Attendance Sheet", the instructor crosses out the student's bar code for all students present. If the bar code is not crossed out, the student is recorded as absent. The system can produce a "Make Up Attendance Report" for each student, which lists all absences including absence date, courts, and hours missed. The attachment demonstrates this capacity—reflecting a student's absence on 5/27/09 on her "Make Up Attendance Report" that was scanned into the system from the corresponding "Daily Attendance Sheet".

Since the implementation of this new system, whenever a make-up report is submitted, the computer will not accept the make-up information unless it fully matches to an actual absence. As such, the opportunity for errors on make-up reports has dramatically decreased. Franklin also implemented minor changes to the format of the make-up report and revised the training provided to its students during orientation regarding the make-up process in accordance with the changes to its system and its procedures.

A second change to note in Franklin's approach to recording make-up hours since the period of time at issue in the program review is the manner in which instructor's attendance records are reviewed and maintained. During the review period, each attendance sheet included a week's worth of classes. At the beginning of each week, the attendance sheet from the prior week was removed from the instructors' attendance binder and submitted to administration. This practice

may have made the instructor's ability to formally check and verify the accuracy of information on each make-up report more challenging and may have lead to some of the human errors detected on certain make-up reports (e.g., wrong date of absence listed on a make-up report). Since implementation of the new computerized student record keeping system, instructors submit attendance sheets daily while simultaneously maintaining a "white book" in which they maintain the entire module's attendance and a cumulative record of grades attained for each class they teach that module, as well. The instructor maintains this book the entire module and turns it in when the grades are submitted. Use of the white books improves the instructors' ability to ensure accuracy when approving make-up reports.

D. Finding #3 Conclusion

For all these reasons, Franklin believes it should not be required to conduct a complete file review related to this finding. Additionally, please note, Franklin's response to Finding #4 resolves concerns raised in this finding with regard to the reviewers' concerns of implications upon R2T4 calculations.

FINDING #4: Return to Title IV

Franklin respectfully disagrees with the Report's finding that Franklin failed to accurately account for the number of hours scheduled and completed for students who withdrew in their second and subsequent payment periods. At all times, Franklin's policies have complied with the statutory and regulatory requirements regarding the calculation of return to Title IV. Accordingly, Franklin disagrees with the cited cases and does not believe a file review of all Title IV recipients who withdrew from the school is necessary in that its return to Title IV calculations are supported by the statute and regulations.

Determining when a student has completed a payment period for purposes of disbursing aid to an enrolled student is governed by a separate set of rules and calculation than those governing the determination of how much aid a student who has withdrawn has earned. However, the Report appears to conflate the two processes at times, for example, delving into the 10% allowance for excused absences which applies only in determining the correct timing for purposes of disbursing aid and not for calculating return to title IV.

The treatment of title IV funds when a student withdraws requires the institution to calculate the amount of title IV assistances earned by the student. 34 CFR 668.22(e). Federal regulation defines the percent a student has earned based on whether the student completed more than 60% of the scheduled payment period. 34 CFR 668.22(e)(2). Where the student has completed more than 60% of the entire payment period, the student has earned 100% of the aid. 34 CFR 668.22(e)(2)(ii)(B). If the student has completed 60% or less of the payment period, however, the "percentage of payment period completed" as defined in 668.22(f) governs.

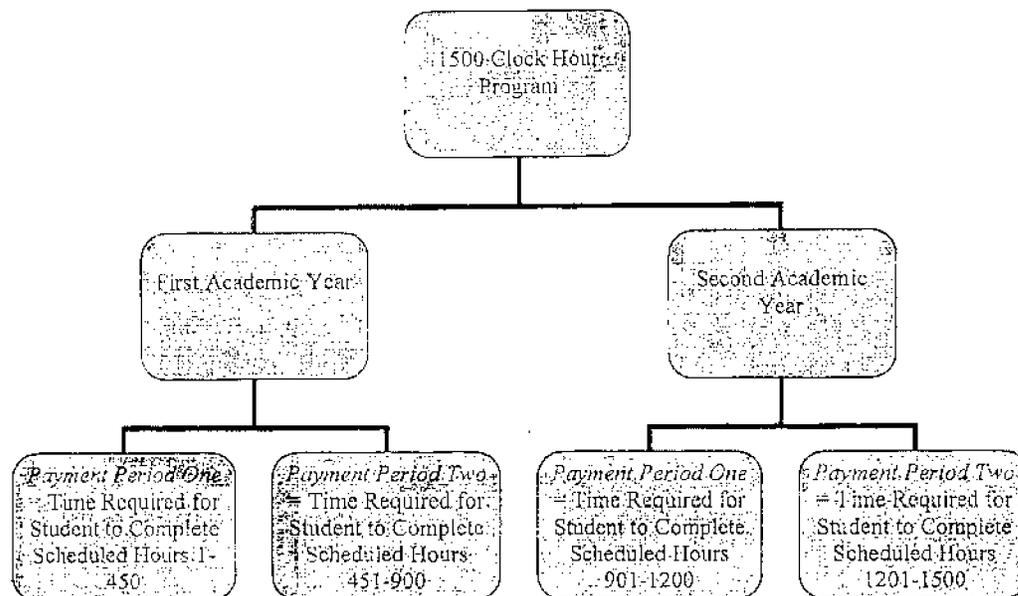
In the case of a program that is measured in clock hours, 34 CFR 668.22(f)(ii)(a) instructs that the applicable percentage of the payment period completed is determined:

...by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours scheduled to be completed as of the student's withdrawal date.

Mathematically, this would be expressed as follows:

$$\frac{\text{Number of clock hours scheduled to be completed as of the student's withdrawal date}}{\text{Total number of clock hours in the payment period or period of enrollment}}$$

When applying this calculation in a second, or subsequent, payment period (i.e., a payment period other than the first payment period), this calculation is not to include hours scheduled for which a student has already earned and received aid. Certainly, the definition of this regulation makes that much clear ("percentage of payment period completed"—as opposed to percentage of program completed for example). Accordingly, where a student has been determined to have earned aid for the first payment period already, the first 450 scheduled clock hours must be disregarded from this calculation—in both the numerator and the denominator. The regulations further specify that the scheduled clock hours to be used "must be those established by the institution". For example, Franklin's 1500 clock hour program is divided into scheduled payment periods as such:



This perfectly mirrors the examples provided in the Financial Student Aid Handbook for scheduling payment periods for clock-hour programs longer than an academic year with a remaining portion. See, e.g., 2005-2006 Handbook p. 3-8.

Where a student has successfully completed 450 hours and then withdraws in the second payment period, the institution must determine the amount of title IV assistance subsequently earned by the student using the above fraction established by the regulation. The student has

already earned and received aid connected to the first 450 scheduled hours, so for purposes of determining how much a student has earned subsequently, the critical timeframe is looking at the program's clock hours scheduled thereafter until the withdrawal. The numerator will be the total number of program hours scheduled as of the student's withdrawal date minus the previously earned 450. Further, because the regulations also specify that the scheduled clock hours to be used "must be those established by the institution", the denominator for this calculation in a program with a schedule such as the one explained above should be 450. As further support for the denominator being 450, consider an email from Brian Kerrigan, United States Department of Education Office of Postsecondary Education, responding to a question from Paul Pari, an employee of Educational Compliance Management (ECM). This email exchange is included as Attachment 4-A. The underlying question therein addresses the exact principle at issue here—if a student does not successfully complete the first payment period until sometime after the 450th scheduled hour of a 900 hour program or first academic year, how many scheduled hours are included in the second payment period? Mr. Kerrigan answers that the second payment period will still include 450 scheduled hours, and that any scheduled hours past the 451st hour that the student used to complete the first payment period are "brought over" into the second payment period. For all these reasons, Franklin is using the correct calculation in its R2T4 procedures.

The Report erroneously focuses on how many hours students actually *completed* in their second payment period as opposed to the number of scheduled hours, as required under the regulations. The Report states, "It appears that the disbursement was paid based on the total number of hours offered, instead of the hours completed." Compare this with the language of the regulation: "dividing...into the number of clock hours *scheduled* to be completed as of the student's withdrawal date" (emphasis added).

The Report appears to confuse the process used for determining when an enrolled student completes a payment period with the process used for determining how much aid a student who has withdrawn has earned. The regulations are clear—it is not what percentage of the subsequent payment period the student has successfully "completed" (or attended) but what percentage of the subsequent period was "scheduled" through, or offered as of, the student's date of withdrawal.¹⁶

How much a student has "completed" can be seen as a preliminary part of the calculation—for if a student has "completed" more than 60% of the "scheduled" hours, that student is deemed to have earned 100% of the aid. 34 CFR 668.22(e)(2)(ii)(B). Clearly, this would be in any institution's interest to point out. Where this condition is not reached, however, the critical number is the number of hours scheduled—not completed as stated and apparently confused in the Report.¹⁷

¹⁶ There is one caveat—a student must have a 70% attendance record in order to use scheduled hours in the R2T4 computation. In no case did Franklin use scheduled hours in determining aid earned for a student who completed less than 70% of the scheduled hours as of the student's date of withdrawal.

¹⁷ As discussed in the prior footnote, where a student has completed, or attended, less than 70% of the scheduled hours through the date of withdrawal, the student's actual hours completed as opposed to the hours scheduled are used in the calculation. Franklin's policies comply with this rule, and this situation is not at issue in any of the cases cited in the Report.

As explained above, Franklin's policy for calculating how much aid a student withdrawing in a subsequent payment period had earned is completely consistent with the governing regulation, 34 CFR 668.22. Nonetheless, Franklin notes that by letter dated February 9, 2009, Franklin notified Region II of its intent to switch back to measuring progress in credit hours as opposed to clock hours. Regardless of this change, Franklin continues to ensure that the governing regulatory requirements are met.

FINDING #5: Disbursement of Title IV Funds

Franklin acknowledges there appear to have been errors made in disbursing aid for the two students cited in this finding (Students #28 and #30), however it is unclear what general or continuing violation this finding intends to establish. Rather this finding appears to involve two students who did not complete sufficient hours to warrant a second disbursement. We agree that as to these two students the disbursement was in error.

As Franklin has established in responding to earlier findings in this report, Franklin's policies at all times have complied with the statutory and regulatory requirements regarding the calculation of disbursements and return to Title IV. While individual instances of miscalculations may have occurred on occasion due to human error, as in the cited cases of Student #28 and #30, Franklin ensures that governing regulatory requirements are met through its policies under and participation in the Title IV program. Unlike the students included in Finding #4, these two students withdrew before completing their first payment period and therefore should not have received second disbursements.

FINDING #6: Verification

The reviewers cited three cases where Franklin failed to complete verification requirements. Franklin responds to each cited case (Students #15, #26, and #37) in turn.

Franklin agrees that there was an error with regard to Student #15 during the verification process. Accordingly, a needs analysis with the verified information was conducted, resulting in a change of this student's EFC from 1841 to 3677. A recalculation was conducted based on this revised EFC. The results of the recalculation indicate that her award should have been decreased from \$1467 to \$400. The revised S.N.A.P for this student is included at Attachment 6-A. The corrected information for line 79 appears on the S.N.A.P. and the resulting EFC and Award appear in the upper right hand section of the page.

The reviewers point out that Section C of the verification worksheet for Student #37 was left blank. This is the section where the student would confirm whether they filed a tax return and report any income or benefits the student received during 2004. During the verification process, it was confirmed that the student did not earn any taxable or non-taxable income during 2004 but the student inadvertently failed to check the box indicating that no tax return was filed. Accordingly, no recalculation of Student #37's award is required—the student was eligible for all Title IV funds disbursed.

The reviewers noted the same issue discussed regarding Student #37 for Student #26. Franklin notes that Student #26 had not been selected for verification. The verification worksheet was used with Student #26 for a purpose other than verification. As such, Franklin was not required to complete the verification worksheet for Student #26. The student was eligible for all Title IV funds disbursed.

As such, Franklin has determined the total Title IV aid at issue under Finding #6 is \$1,167. A copy of Franklin's Verification Procedures are included at Attachment 6-B for your reference.

FINDING #7: Conflicting Information

For Finding #7, the reviewers believed Franklin failed to resolve conflicting information in the records of four students (Students # 15, 28, 31, and 37) relating to Title IV eligibility. Franklin agrees with the reviewers in three of the instances and disagrees with the reviewers' finding with regard to one of the students cited.

Franklin acknowledges that there was conflicting information in the records of Students #15, #28, and #37 relating to their eligibility for Title IV. Franklin was able to complete a corrected needs analysis for Student #28, which resulted in the student's EFC remaining at zero. The revised needs analysis (S.N.A.P.) is included with this response at Attachment 7-A. Accordingly, no recalculation of this student's PELL Grant is required, and there was no impact on this student's award. As for Students #15 and #37, however, due to the amount of time that has passed and the challenge in now trying to resolve the conflicting information, Franklin has determined it will not be able to conduct a revised needs analysis for these two students. As such, Franklin accepts liability for the funds awarded to Students #15 and #37.

With regard to Student #31, Franklin disagrees with the reviewers' finding. For this student, the reviewers pointed to a Certification of Naturalization that the student submitted to document her citizenship that indicated that she was married as contradicting the student's 2005-2006 ISIR, based on her FASFA completed in April 2006, which indicated she was unmarried. The student separated from her husband in 2004. As per the Financial Student Aid Handbook's Application and Verification Guide, where an applicant is married but separated, the income of the spouse is not to be included in calculating EFC. See e.g., 2005-2006 FSA Handbook, AVG pages 59, 61, 86. Attachment 7-B is a signed statement from Student #31 attesting to her separation and the fact that she receives no support from her husband.

In sum, for Finding #7, Franklin has determined it owes no liability with regard to Students #28 and #31 and accepts liability for Students #15 and #37. Franklin will continue to comply with the verification requirements, including its Verification Procedures, referenced in Finding #6 and included at Attachment 6-A.

FINDING #8: Authorization to Credit Federal Work Study Funds

Under 34 C.F.R. §675.16(a), an institution may pay Federal Work Study (FWS) compensation to a student by crediting the student's account at the institution after obtaining a specific written authorization from the student. The reviewers cited that Franklin's Financial Aid Status & Waiver Form, which is used to authorize retention of credit balances for students, does not mention authorization by the student to credit FWS funds directly to their account. While that form may not specifically authorize the credit of FWS directly to student accounts, Franklin has always obtained such an authorization in advance of crediting FWS to a student's account. During the period of time at issue, this authorization was included on its Estimated Financial Aid Work Sheet (EFAWS). Furthermore Franklin recently took steps to improve upon its established process of obtaining such authorization.

Along with its Estimated Financial Aid Work Sheet (EFAWS), Franklin now includes an additional, separate, authorization form for obtaining a student's permission for FWS payroll to be credited to the student's ledger account. Franklin's independent auditor found its EFAWS to be sufficient but suggested Franklin create an additional authorization form beyond the language in the EFAWS. Franklin incorporated this suggestion by creating an additional form that solely addresses the authorization of crediting FWS compensation to a student's account. Franklin began use of this additional form in 2006-2007 and has continued use of this form through the present time. A copy of the current EFAWS and accompanying form is included at Attachment 8-A.

FINDING #9: Student Eligibility for FWS Employment

The reviewers found that one student continued to work in her Federal Work Study (FWS) position after completion of her program of study. Franklin agrees with the Reviewers finding.

Student #25 officially graduated on April 7, 2006, with her last scheduled day of attendance at her externship being March 31, 2006. She was offered full time employment beginning May 1, 2006 and asked to continue working at the school through the month of April. Her request was granted without realizing the student had officially graduated, the student continued to be compensated with FWS funds in error.

FINDING #10: Monitoring of FWS Employment

In Finding #10, a finding that student work periods appeared to exceed New York State Labor Department (NYSLD) guidelines concerning meal breaks and consecutive hours of work, the Report misstates the NYSLD guidelines as requiring employees who work shifts of more than four hours during the day to be provided a meal break of at least 30 minutes. Actually, NYSLD guidelines entitle employees working shifts of more than *six* hours, *not four* hours, to a meal break of at least 30 minutes. The state labor law is more detailed than simply entitling an employee to a break of at least 30 minutes when working a shift of 6 or more hours, but there is no requirement under state law or NYSLD guidelines that entitles employees to a break for a shift of less than 6 hours. Copies of Section 162 of the NYS Labor Law and the NYSLD guidelines are included at Attachment 10-A.

The Report asks Franklin to respond to clarify the circumstances regarding reviewers' concerns relating to two FWS students (Students # 11 and #30). The reviewers raised concerns that the timesheets for Student #11 worked periods of more than five consecutive hours numerous times, with as many as eight consecutive hours without a documented break. First, as discussed above, NYS labor law does not require an employee be provided with a break for any shift lasting up to, but not more than, six hours. For shifts of more than six hours, Franklin's policy has always been in accordance with state labor laws and guidelines. Franklin has always treated such breaks as unpaid. During orientation for FWS students selected for employment, Franklin trains its student employees on its sign-in/sign-out procedures and the reporting processes, among other orientation topics.

Although Franklin already had procedures in place to ensure students, including Student #11, were not paid for breaks, Franklin has used this finding as an opportunity to improve its procedures related to monitoring of FWS employment. In particular, Franklin has revised its sign-in/sign-out sheet to better reflect a break period and instituted new procedures whereby FWS students sign a form acknowledging their understanding of having to take breaks under certain conditions. The revised sign-in/sign-out sheet and the acknowledgement form are included at Attachment 10-B.

With regard to Student #30, Franklin agrees with the reviewers concern that the student may not have been paid for all hours worked during a given month. It appears five hours were inadvertently omitted when the November FWS hours were being summarized, leading the student to be paid for 54.5 hours of work as opposed to the 59.5 hours worked. In recognition of this error, Franklin has prepared and mailed a check to the student for the five hours worked but not paid. A copy of the check is included at Attachment 10-C.

FINDING #11: Eligibility for SEOG Award/Disbursement

Finding #11 questions the documentation supporting FSEOG awards to three students in the program review sample (Students #15, #32, and #35). For all three students, the report says the reviewers did not find any documentation as to when the students were awarded their FSEOG. As such, the Report questions whether there is documentation to support that the students received their FSEOG awards while enrolled and eligible.

Franklin agrees with Finding #11 as it relates to Student #32 only. Franklin acknowledges that Student #32 was awarded FSEOG mistakenly after her last day of attendance; however, neither Student #15 nor Student #35 was awarded FSEOG following their last days of attendance.

Student #15 was awarded \$2,000 in FSEOG on 12/2/05 and received one disbursement of \$1,000 that same day. This student's last day of attendance was 12/3/05, not 11/28/05 as mistakenly stated in the Report. Attachment 11-A includes Student #15's attendance records for her

externship, reflecting that she attended her externship on Saturday 12/3/05.¹⁸ Near the end of the year, it was determined that the student was owed her second disbursement, which was made on 5/15/06.

Student #35 was awarded \$500 in FSEOG on 5/15/06. Her last day of attendance was after that time, as reflected in her externship attendance records, included at Attachment 11-B. As reflected therein, her last marked attendance for her externship was on May 26, 2006, the Friday of the "Week of May 22, 2006".

During 2006, Franklin changed Data Processing systems to the Diamond D System. Since that time all students are awarded FSEOG at the beginning of the Award Year at the same time that PELL and NY State TAP Grants are scheduled. The schedules of all of these disbursements are on a Payment Period basis within each Award Year. The new computer system is an asset in ensuring all awards have been made while students were still in school.

Franklin's packaging procedures are included at Attachment 11-C, and a summary of Franklin's FSEOG awarding procedures are included at Attachment 11-D.

CONCLUSION

In closing, Franklin respectfully disagrees with a majority of the findings and required actions issued in the Report and requests that they be reconsidered and revised accordingly. With regard to the findings with which Franklin agrees, Franklin will await further instructions from the Department on how to proceed.

¹⁸ The Report erroneously states that this student's last day of attendance was 11/28/05. This error may be due to a quick reading of the attendance report, which records attendance by week. For the "Week of November 28, 2005", the student was clearly in attendance through that Saturday, which was December 3, 2005.

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July 7, 2011

Mr. Stephen Podeszwa
Institutional Review Specialist
U.S. Department of Education
32 Old Slip, 25th Floor
New York, NY 10005

Re: Requirement to Resubmit Program Review Response

**OPE ID: 033283
PRCN 200640225454**

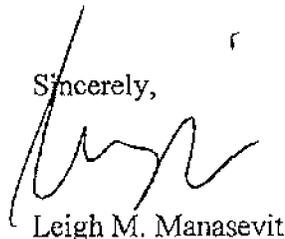
Dear Mr. Podeszwa:

Please be advised that Brustein & Manasevit, PLLC represents Franklin Career Institute ("Franklin") in this matter. Attached you will find Franklin's response to your April 8, 2011 letter requesting a resubmission of the program review response and request for additional information.

As noted in the resubmitted response, Franklin does not concur with the Findings set forth in the Original Program Review Report or the Requirement to Resubmit Program Review Response letter. We maintain Franklin's understanding of, and policies related to, the requirements of 34 CFR § 668.151 and 34 CFR § 668.22 to be correct. Nonetheless, to comply with your request for resubmission, Franklin has prepared and is herein submitting the requested documentation for Findings # 1 and #4. Where appropriate, documents previously provided as attachments are referenced as such.

As designated counsel for Franklin in this matter, we request that all further communications on this matter be directed to our office. If you have any questions, please do not hesitate to contact me.

Sincerely,



Leigh M. Manasevit

Franklin Career Institute
Program Review Response Resubmission
OPE ID: 033283
PRCN 200640225454

Submitted to:
Mr. Stephen Podeszwa
Institutional Review Specialist
U.S. Department of Education
32 Old Slip, 25th Floor
New York, NY 10005

The Program Review Report, PRCN 200640225454, issued April 20, 2009 included eleven initial findings. Franklin Career Institute ("Franklin"), in its July 13, 2009 Response to Program Review Report ("Response"), disagreed with nearly all of the findings and detailed its disagreement therein. On April 8, 2011 the United States Department of Education ("Department") sent a letter detailing Franklin's Requirement to Resubmit Program Review Response. The Department's letter addressed only Findings #1 and #4 and requested additional responses and documentation with regard to those findings. Franklin reserves its disagreements with the original Program Review Report and cross references them herein as they apply to the Requirement to Resubmit Program Review Response letter. As reflected in its Response, Franklin maintains that all policies were compliant with the appropriate regulation. The requested documentation has been attached and addressed below.

Finding #1: Administration of Ability to Benefit Tests

In its Requirement to Resubmit Program Review Response letter, the Department claimed Franklin failed to comply with the federal requirements that an ability to benefit (ATB) test be "independently administered" under 34 CFR § 668.151. The Department's position is that ATB test administrator (b) (6), (b) (7)(C) was a former employee of Vocational Educational Testing (VET) and did not meet the criteria of an independent test administrator as specified in section 34 CFR § 668.151(b)(2) of the regulation.

Franklin reserves and reasserts the position that (b) (6), (b) (7) qualified at all times as an 'independent test administrator'. (b) (6), (b) (7) not VET, was the test administrator giving the test. Moreover, (b) (6), (b) (7) was an Independent Contractor, and not an employee, of VET. VET, in a contractor role, identified, recruited and contracted independent contractors who would administer ATB tests at Franklin. At no time were the ATB administrators' employees of either VET or Franklin. (b) (6), (b) (7) independent contractor status with VET is reflected in the 1099 forms she filed in 2004 and 2005, which were included in Franklin's July 2009 Response as Attachments 1-A and 1-B.

In its Program Review Report, the Department had also claimed that (b) (6), (b) (7) was ineligible as she was a former employee of Franklin. While this is not addressed in the Requirement to Resubmit Program Review Response letter, we reiterate our position that (b) (6), (b) (7) was an independent contractor throughout the use of her services and never an employee of Franklin. This argument is supported by the Internal Revenue Services (IRS) principles regarding independent contractors including behavioral control, financial control and the relationship between the parties.

During her work as an ATB test administrator, Franklin provided no training or instruction, and exercised no control on the performance of her work beyond providing testees and a space for administering the ATB test. Franklin never paid any expense related to her certification by the test publisher as an ATB test administrator and did not restrict her ability to secure or serve other clients. As to the type of relationship between Franklin and (b) (6), (b) (7) there was no written contract of employment, (b) (6), (b) (7) did not receive any employee benefits, and she remained free to adjust her schedule throughout the pertinent time period. Finally, the law has made clear that the use of a W-2 form for tax purposes is not dispositive of an employee/employer relationship.¹

While Franklin continues to disagree with the Department's position on Finding # 1, in an effort to fully cooperate with the Department's request, Franklin is providing herein at Attachment A, a list of all Title IV recipients who were admitted under the ATB provisions for the award years 2004/2005 through 2006/2007. During this period there were two ATB administrators, (b) (6), (b) (6), and (b) (6), (b) (7)(C). Franklin maintains that both qualified as independent testers.

Additionally, at Attachment B, Franklin is providing documentation for the three individuals who have administered the ATB tests since the program review was conducted, (b) (6), (b) (7)(C), (b) (6), (b) (7) and (b) (6), (b) (7)(C). Included in Attachment B are current contact information for these individuals and copies of testing agency approval and certification.

Additionally, for students admitted based on ATB tests administered during this period, there is an extremely compelling reason that no significant interest of the Department has been harmed—even assuming that there was noncompliance regarding the ATB testing. On October 29th 2010, the Department issued Program Integrity Rules. The Department has since created an alternative to the ATB test allowing students who satisfactorily complete 6 semester, trimester or quarter credit hours, or 225 clock hours, applicable toward a degree or certificate offered by the institution to establish their Title IV, HEA eligibility.² While these regulations were enacted after the years in question, they reflect a significant change in the Department's view of the

¹ *Independent Contractor or Employee...*, Publication 1779, Department of Treasury, Internal Revenue Service, (Rev. 8-2008), located online at: <http://www.irs.gov/pub/irs-pdf/p1779.pdf>

² Department of Education Program Integrity Issues; 75 Fed. Reg. 66919 (Oct. 29, 2010)

importance of the ATB test. Under the current approach, students who would otherwise be required to pass an ATB test to qualify for Title IV assistance would become eligible after successfully completing 6 credit hours or 225 clock hours. Thus, even if there had been an ATB violation, then these new regulations would be the appropriate guide for determining liability as they reflect an important policy shift that is equally applicable to the situation at hand as it is to new enrollees.

Finding #4: Return to Title IV

The Program Review Report claimed that Franklin failed to accurately account for the number of hours scheduled and completed for the students who withdrew in the second and subsequent payment periods. As stated in the Response, Franklin respectfully disagrees and believes that its policies have complied with the statutory and regulatory requirements regarding the calculation of return to Title IV.

Franklin performed the calculation as directed by 34 CFR § 668.22(f)(ii)(a) by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours scheduled to be completed as of the students withdrawal date.

For the purposes of a Return to Title IV calculation, a school must determine how much aid has been earned during a scheduled payment period. In order to complete the calculation, a payment period must be defined. Under 34 CFR § 668.4 (c)(2)(i), the payment period for a clock hour program of one year or more is defined as

(A) The first payment period is the period of time in which the student successfully completes half of the number of credit hours or clock hours, as applicable, in the academic year and half of the number of weeks of instructional time in the academic year; and

(B) The second payment period is the period of time in which the student successfully completes the academic year.

As noted in our initial response, Franklin's 1500 hour program was defined in accordance with this provision; during the first academic year, the first payment period was 450 hours, the second 451-900 hours. During the second academic year, the first payment period was 901-1200 hours, the second 1201-1500 hours.

Franklin has used the correct calculation its return to Title IV procedures, and has relied on the language of the regulations as well as statements from the Department, previously attached with Franklin's Response at 4-A. Franklin cross references herein the entire argument made in its initial Response to the Program Review Report for finding #4. In its Requirement to Resubmit Program Review Response Letter, the Department states that there appears to be a "disagreement

in the interpretation of the phrase the number of clock hours scheduled to be completed as of the student's withdrawal date." Franklin's interpretation is based on its reading of the regulation. The Department points to Part B of 34 CFR § 668.22 (f) as support for their understanding, but as noted above, Franklin was and has remained in compliance with that provision.

While continuing to respectfully disagree, Franklin has reviewed all Title IV recipients who withdrew from the school for the award years 2004/2005 through 2006/07 as requested. A recalculation of Return to Title IV has been conducted using the understanding of the formula reflected in the Requirement to Resubmit Program Review Response. At Attachment C, Franklin has attached a spreadsheet containing the requested information, including:

- 1) Student's name
- 2) The amount of late, under-funded, or unmade refunds identified by program
- 3) The date the school determined the student withdrew
- 4) The last date of attendance
- 5) The date the refund was made.

Please note, with reference to the three requested dates associated with the review of R2T4 calculations, the following explanation explains why some of the dates might appear at first glance to be either late (Date of Refund greater than 45 days after the Date of Determination) or impossible (Date of Refund before the Date of Determination).

1. In many instances, the student's final PELL payment was a Post Withdrawal Disbursement (PWD). In all cases, the students met the requirements for a Late Disbursement and the PWD was made within the statutory deadline of 120 days (for the time period under review). In those cases the Date of Refund is actually the date of the PWD so time frames greater than the 45 days after the Date of Determination for refunds are correct.
2. In other instances, the Refund Date is prior to the Date of Determination. In this instance, the date listed does not reflect a "refund date" but the date of last disbursement of Title IV funds. At the time the original calculation was made, there was no refund due as the student had earned the full disbursement based on the attendance information in the school's recordkeeping system and the methodology (which is the basis for FCI's response to this finding) used at the time. As a result of the subsequent review of makeup hours as well as a recalculation of the R2T4 using the methodology described in the Program Review report, a refund has been calculated and that newly calculated refund amount appears on the attached spreadsheet.

Appendix D – File Review Report – Finding #1

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7(C))

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Appendix E – File Review Report – Finding #4

Franklin Career Institute-Program Review
Student Information

Last	First	Additional Refund	Date of Determination	LDA	Date of Refund	
(b)(6); (b)(7)(C)		188.15	12/16/2005	11/23/2005	1/20/2006	
		52.75	4/7/2006	4/5/2006	5/1/2006	
		945.00	10/21/2005	7/15/2005	10/31/2005	
		202.40	4/7/2007	3/23/2007	5/15/2007	
		747.27	7/14/2006	6/14/2006	7/19/2006	
		382.00	5/13/2005	1/14/2005	5/27/2005	
		1,033.00	6/12/2005	5/30/2005	7/20/2005	
		4.45	5/26/2006	5/11/2006	6/8/2006	
		3.55	7/30/2004	7/15/2004	8/13/2004	
		2.30	10/22/2004	10/8/2004	10/28/2004	
		x	939.50	5/19/2006	5/2/2006	6/8/2006
		x	133.75	3/18/2005	3/16/2005	4/7/2005
		x	210.32	6/23/2006	6/15/2006	7/19/2006
		x	1,350.00	9/1/2005	8/19/2005	9/13/2005
		x	20.35	2/1/2005	1/19/2005	4/7/2005
		x	21.32	3/21/2007	3/12/2007	4/18/2007
		x	254.65	9/13/2004	8/30/2004	9/30/2004
		x	1,354.72	8/31/2004	9/23/2004	2/3/2004
		x	888.97	3/4/2005	3/4/2005	3/4/2005
		x	362.30	3/31/2006	3/23/2006	5/1/2006
		x	133.65	2/24/2006	2/7/2006	3/1/2006
		x	698.25	8/26/2005	8/9/2005	9/1/2005
		x	913.27	9/27/2004	9/14/2004	3/8/2004
		x	10.57	8/19/2005	8/4/2005	8/24/2005
		x	67.22	6/2/2006	5/31/2006	6/8/2006
		x	0.72	11/12/2004	9/21/2004	11/12/2004
		x	757.75	4/7/2006	4/6/2006	5/1/2006
		x	1,372.05	2/3/2006	1/11/2006	3/1/2006
		x	1,474.10	7/29/2005	6/28/2005	8/8/2005
		x	332.27	12/16/2004	11/22/2004	8/13/2004
		x	1,316.25	1/11/2007	1/11/2007	1/11/2007
		x	1,030.00	11/4/2005	5/3/2005	11/9/2005
		x	14.50	1/13/2006	12/13/2005	1/20/2006
		x	500.00	9/9/2005	5/20/2005	9/13/2005
		x	584.55	9/7/2006	8/24/2006	3/1/2006
		x	99.32	8/19/2005	7/27/2005	8/24/2005
		x	702.00	5/1/2006	3/24/2006	5/1/2006
		x	517.00	1/20/2005	12/7/2004	2/1/2005
		x	14.40	6/3/2005	5/4/2005	6/22/2005
		x	945.77	2/16/2005	1/31/2005	3/2/2005
x	740.27	11/21/2005	11/1/2005	1/20/2006		
x	1,723.27	8/14/2006	7/31/2006	7/19/2006		
x	1,079.00	8/13/2004	7/27/2004	5/14/2004		
x	945.00	7/21/2006	10/28/2005	1/20/2006		
x	1,057.00	3/3/2006	2/15/2006	4/3/2006		
x	895.05	5/5/2006	4/24/2006	5/1/2006		

x = Students duplicated at Finding #1

Franklin Career Institute-Program Review
Student Information

Last	First	Additional Refund	Date of Determination	LDA	Date of Refund
(b)(6); (b)(7(C))		339.97	4/25/2006	4/20/2006	5/15/2006
		1,066.50	11/3/2006	11/2/2006	10/26/2006
		44.95	10/1/2004	9/24/2004	10/6/2004
		42.20	5/6/2005	4/26/2005	5/10/2005
		940.95	8/19/2005	8/19/2005	9/13/2005
		139.50	12/15/2005	9/6/2005	1/24/2006
		2,061.45	8/7/2006	7/10/2006	8/3/2006
		15.30	4/8/2005	3/21/2005	5/10/2005
		675.00	5/31/2007	5/24/2007	7/9/2007
		872.30	10/6/2006	9/23/2006	12/6/2006
		2,025.00	7/21/2006	7/14/2006	8/4/2006
		994.60	4/5/2006	3/24/2006	5/1/2006
		107.72	3/10/2005	2/14/2005	4/7/2005
		949.32	8/5/2005	7/20/2005	8/9/2005
		1,246.95	4/28/2006	4/11/2006	5/15/2006
		316.00	2/10/2006	1/19/2006	3/1/2006
		316.00	2/10/2006	1/19/2006	3/1/2006
		996.30	6/24/2005	6/15/2005	6/22/2005
		247.00	4/28/2005	3/28/2005	5/10/2005
		325.85	6/23/2006	6/6/2006	7/10/2006
		409.32	3/16/2005	2/17/2005	4/7/2005
		630.00	4/20/2006	3/31/2006	5/1/2006
		527.00	4/28/2006	4/17/2006	5/15/2006
		152.10	4/13/2006	4/3/2006	5/1/2006
		13.95	6/10/2005	5/23/2005	6/22/2005
		469.90	2/17/2006	2/8/2006	3/1/2006
		22.50	4/18/2005	4/12/2005	6/22/2005
		21.55	8/30/2004	8/27/2004	9/9/2004
		86.20	6/21/2006	12/6/2005	7/10/2006
		708.57	5/26/2006	5/12/2006	6/8/2006
		439.52	4/10/2006	3/24/2006	5/1/2006
		1,046.92	10/26/2006	2/17/2007	10/26/2006
		1,174.50	4/19/2006	3/24/2006	5/1/2006
		91.17	5/6/2005	3/25/2005	5/10/2005
		17.82	5/12/2006	5/8/2006	5/23/2006
		1,308.15	9/13/2004	8/26/2004	12/19/2003
		805.95	10/27/2006	10/20/2006	11/17/2006
		791.77	1/25/2005	7/12/2004	1/28/2005
		822.47	6/10/2005	5/25/2005	6/22/2005
		336.60	4/19/2005	3/24/2005	5/10/2005
		224.72	5/2/2007	4/27/2007	5/15/2007
		1,358.77	10/1/2004	9/24/2004	4/14/2004
		707.00	7/30/2007	7/13/2007	7/30/2007
		291.10	7/13/2004	7/2/2004	7/26/2004
		270.90	3/30/2007	3/23/2007	4/20/2007
		1,350.00	12/6/2006	9/23/2006	12/6/2006

Franklin Career Institute-Program Review
Student Information

Last	First	Additional Refund	Date of Determination	LDA	Date of Refund	
X	(b)(6); (b)(7)(C)	267.47	6/10/2005	5/17/2005	6/22/2005	
		22.67	12/21/2006	1/11/2007	1/11/2007	
		1,746.40	10/22/2004	10/4/2004	11/12/2004	
		66.82	2/18/2005	2/8/2005	3/4/2005	
		742.77	6/13/2007	6/13/2007	6/13/2007	
		121.60	3/14/2006	2/13/2006	4/3/2006	
		X	61.20	10/6/2005	9/23/2005	10/25/2005
		X	168.17	3/14/2006	2/13/2006	4/3/2006
			427.00	12/3/2004	11/5/2004	12/29/2004
		X	140.05	2/3/2006	1/30/2006	3/1/2006
		X	6.35	3/9/2005	2/3/2005	4/7/2005
			26.15	7/5/2006	6/28/2006	7/10/2006
		X	34.02	2/25/2005	2/1/2005	3/4/2005
			980.10	2/18/2005	2/9/2005	5/14/2004
		X	279.05	2/24/2006	2/1/2006	3/1/2006
		X	0.10	3/14/2006	2/28/2006	4/3/2006
			1,991.25	12/1/2006	9/27/2006	12/8/2006
			1,229.17	5/26/2005	10/22/2004	10/6/2004
			834.35	9/3/2004	8/19/2004	9/9/2004
			24.75	3/2/2006	2/4/2006	4/3/2006
			721.00	6/10/2005	5/27/2005	6/22/2005
			222.25	12/16/2004	8/17/2004	12/28/2004
		X	321.92	8/12/2005	7/22/2005	8/22/2005
		X	221.40	8/26/2005	8/2/2005	9/1/2005
		X	824.17	7/1/2005	6/29/2005	6/22/2005
			945.00	7/29/2005	6/27/2005	9/13/2005
			26.22	3/2/2005	1/28/2005	4/7/2005
		X	236.60	6/9/2006	5/23/2006	7/10/2006
			153.45	5/1/2006	4/27/2006	5/15/2006
			54.35	9/17/2004	9/1/2004	9/30/2004
		X	844.42	6/2/2006	5/19/2006	5/15/2006
		X	180.00	1/19/2005	1/10/2005	2/1/2005
		X	1,093.50	5/9/2005	5/5/2005	5/10/2005
			35.20	4/29/2005	4/14/2005	5/10/2005
		X	3.77	2/3/2005	2/2/2005	4/7/2005
		X	427.77	4/28/2006	4/12/2006	5/15/2006
			1,593.45	1/17/2006	1/12/2006	1/26/2006
			520.82	12/10/2004	11/22/2004	12/29/2004
		X	449.50	8/19/2005	8/8/2005	8/24/2005
			832.95	1/11/2007	1/11/2007	1/11/2007
	1,603.80	5/12/2006	4/7/2006	5/23/2006		
X	1,125.00	12/16/2005	12/3/2005	1/20/2006		
	2,244.82	3/3/2006	2/15/2006	4/3/2006		
	968.00	9/16/2005	8/26/2005	10/25/2005		
	252.00	3/23/2005	10/25/2004	4/7/2005		
	45.00	5/27/2005	3/11/2005	6/22/2005		

Franklin Career Institute-Program Review
Student Information

Last	First	Additional Refund	Date of Determination	LDA	Date of Refund	
(b)(6); (b)(7)(C)		391.70	2/16/2005	1/19/2005	3/2/2005	
		2,025.00	10/25/2006	10/18/2006	8/1/2006	
		30.60	5/13/2005	4/18/2005	5/27/2005	
		158.00	7/16/2004	7/1/2004	8/13/2004	
	X		269.00	3/24/2006	2/21/2006	4/3/2006
			56.97	12/10/2004	11/19/2004	12/29/2004
			540.22	6/25/2007	6/15/2007	7/25/2007
			994.50	8/2/2004	7/30/2004	8/13/2004
			22.32	10/22/2004	10/8/2004	10/28/2004
			78.52	8/19/2005	7/27/2005	8/24/2005
	X		129.90	2/26/2007	2/15/2007	3/14/2007
			12.05	5/12/2006	4/20/2006	5/23/2006
	X		1,101.60	6/1/2007	6/1/2007	4/20/2007
			654.40	12/16/2005	11/22/2005	1/20/2006
			146.20	9/4/2004	8/17/2004	9/9/2004
			130.20	10/15/2004	9/21/2004	11/12/2004
			4.55	8/13/2004	7/26/2004	8/13/2004
			399.10	2/16/2006	1/19/2006	3/1/2006
			55.17	1/6/06	12/12/2005	1/20/2006
	X		917.32	5/5/2006	4/26/2006	5/1/2006
			545.00	3/7/2006	2/24/2006	4/3/2006
			528.35	12/29/2005	12/29/2005	1/20/2006
			494.00	4/5/2006	3/7/2006	5/1/2006
			409.05	12/1/2005	11/2/2005	1/20/2006
			1,034.77	7/28/2006	7/17/2006	5/15/2006
			1,275.75	7/8/2005	6/24/2005	5/10/2005
			427.22	4/4/2007	3/23/2007	4/18/2007
			35.10	7/30/2004	7/6/2004	8/13/2004
			136.00	5/9/2005	10/18/2004	5/27/2005
	X		842.40	11/11/2005	10/17/2005	8/24/2005
	X		58.40	1/12/2005	1/10/2005	2/1/2005
			93,840.45			

Appendix F – Cost of Funds Calculations

Late or Unmade Returns (Non-Loan) - Cost of Funds

complete

Name of Institution: Franklin Career Institute - Finding #4

Note: The withdrawal date is necessary to determine if an institution has 30 (default) or 45 days to return funds

No.	Description/Name	Return Amount	Program	WD Date	Institution Del Date	Return Paid Date	Return Due Date	Days Late	Imputed CVFR	Federal Share	To ED	To Inst Accounts
(b)(6); (b)(7)		\$382.00	Pell Grant	01/14/05	5/13/2005	4/20/2009	06/12/05	1408	1.00%	\$ 382.00	\$ 14.74	\$ -
(C)		\$1,033.00	Pell Grant	05/30/05	6/12/2005	4/20/2009	07/12/05	1378	1.00%	\$ 1,033.00	\$ 39.00	\$ -
		\$3.55	Pell Grant	07/15/04	7/30/2004	4/20/2009	08/29/04	1695	1.00%	\$ 3.55	\$ 0.16	\$ -
		\$254.65	Pell Grant	08/30/04	9/13/2004	4/20/2009	10/13/04	1650	1.00%	\$ 254.65	\$ 11.51	\$ -
		\$1,354.72	Pell Grant	08/31/04	9/23/2004	4/20/2009	10/23/04	1640	1.00%	\$ 1,354.72	\$ 60.88	\$ -
		\$888.97	Pell Grant	03/04/05	3/4/2005	4/20/2009	04/03/05	1478	1.00%	\$ 888.97	\$ 38.00	\$ -
		\$913.27	Pell Grant	09/14/04	9/27/2004	4/20/2009	10/27/04	1636	1.00%	\$ 913.27	\$ 40.94	\$ -
		\$332.27	Pell Grant	11/22/04	12/16/04	4/20/2009	01/15/05	1556	1.00%	\$ 332.27	\$ 14.17	\$ -
		\$1,030.00	Pell Grant	05/03/05	11/04/05	4/20/2009	12/04/05	1233	1.00%	\$ 1,030.00	\$ 34.80	\$ -
		\$500.00	Pell Grant	05/20/05	09/09/05	4/20/2009	10/09/05	1289	1.00%	\$ 500.00	\$ 17.66	\$ -
		\$517.00	Pell Grant	12/07/04	01/20/05	4/20/2009	02/19/05	1521	1.00%	\$ 517.00	\$ 21.55	\$ -
		\$945.77	Pell Grant	01/31/05	02/16/05	4/20/2009	03/18/05	1494	1.00%	\$ 945.77	\$ 38.72	\$ -
		\$1,079.00	Pell Grant	07/27/04	08/13/04	4/20/2009	09/12/04	1681	1.00%	\$ 1,079.00	\$ 49.70	\$ -
		\$44.95	Pell Grant	09/24/04	10/01/04	4/20/2009	10/31/04	1632	1.00%	\$ 44.95	\$ 2.01	\$ -
		\$42.20	Pell Grant	04/26/05	05/05/05	4/20/2009	06/05/05	1415	1.00%	\$ 42.20	\$ 1.64	\$ -
		\$15.30	Pell Grant	03/21/05	04/08/05	4/20/2009	05/08/05	1443	1.00%	\$ 15.30	\$ 0.60	\$ -
		\$107.72	Pell Grant	02/14/05	03/10/05	4/20/2009	04/09/05	1472	1.00%	\$ 107.72	\$ 4.34	\$ -
		\$409.32	Pell Grant	02/17/05	03/16/05	4/20/2009	04/15/05	1466	1.00%	\$ 409.32	\$ 16.44	\$ -
		\$21.55	Pell Grant	08/27/04	08/30/04	4/20/2009	09/29/04	1664	1.00%	\$ 21.55	\$ 0.98	\$ -
		\$1,308.15	Pell Grant	08/26/04	09/13/04	4/20/2009	10/13/04	1650	1.00%	\$ 1,308.15	\$ 59.14	\$ -
		\$791.77	Pell Grant	07/12/04	01/25/05	4/20/2009	02/24/05	1516	1.00%	\$ 791.77	\$ 32.89	\$ -
		\$336.60	Pell Grant	03/24/05	04/19/05	4/20/2009	05/19/05	1432	1.00%	\$ 336.60	\$ 13.21	\$ -
		\$1,358.77	Pell Grant	09/24/04	10/01/04	4/20/2009	10/31/04	1632	1.00%	\$ 1,358.77	\$ 60.76	\$ -
		\$291.00	Pell Grant	07/02/04	07/13/04	4/20/2009	08/12/04	1712	1.00%	\$ 291.00	\$ 13.65	\$ -
		\$1,746.40	Pell Grant	10/04/04	10/22/04	4/20/2009	11/21/04	1611	1.00%	\$ 1,746.40	\$ 77.09	\$ -
		\$427.00	Pell Grant	11/05/04	12/03/04	4/20/2009	01/02/05	1569	1.00%	\$ 427.00	\$ 18.36	\$ -
		\$980.10	Pell Grant	02/09/05	02/18/05	4/20/2009	03/20/05	1492	1.00%	\$ 980.10	\$ 40.07	\$ -
		\$1,229.17	Pell Grant	10/22/04	05/26/05	4/20/2009	06/25/05	1395	1.00%	\$ 1,229.17	\$ 46.98	\$ -
		\$834.35	Pell Grant	08/19/04	09/03/04	4/20/2009	10/03/04	1680	1.00%	\$ 834.35	\$ 37.95	\$ -
		\$721.00	Pell Grant	05/27/05	06/10/05	4/20/2009	07/10/05	1360	1.00%	\$ 721.00	\$ 27.26	\$ -
		\$222.25	Pell Grant	08/17/04	12/16/04	4/20/2009	01/15/05	1556	1.00%	\$ 222.25	\$ 9.48	\$ -
		\$945.00	Pell Grant	06/27/05	07/29/05	4/20/2009	08/28/05	1331	1.00%	\$ 945.00	\$ 34.46	\$ -
		\$520.82	Pell Grant	11/22/04	12/10/04	4/20/2009	01/09/05	1562	1.00%	\$ 520.82	\$ 22.29	\$ -
		\$252.00	Pell Grant	10/25/04	03/23/05	4/20/2009	04/22/05	1459	1.00%	\$ 252.00	\$ 10.07	\$ -
		\$591.70	Pell Grant	01/19/05	02/16/05	4/20/2009	03/18/05	1494	1.00%	\$ 591.70	\$ 16.03	\$ -
		\$158.00	Pell Grant	07/01/04	07/16/04	4/20/2009	08/15/04	1709	1.00%	\$ 158.00	\$ 7.40	\$ -
		\$994.50	Pell Grant	07/30/04	08/02/04	4/20/2009	09/01/04	1692	1.00%	\$ 994.50	\$ 46.11	\$ -
		\$146.20	Pell Grant	06/17/04	09/04/04	4/20/2009	10/04/04	1659	1.00%	\$ 146.20	\$ 6.65	\$ -
		\$130.20	Pell Grant	09/21/04	10/15/04	4/20/2009	11/14/04	1618	1.00%	\$ 130.20	\$ 5.77	\$ -
		\$1,275.75	Pell Grant	07/08/05	06/24/05	4/20/2009	07/24/05	1386	1.00%	\$ 1,275.75	\$ 47.75	\$ -
		\$136.00	Pell Grant	10/18/04	05/09/05	4/20/2009	06/08/05	1412	1.00%	\$ 136.00	\$ 5.26	\$ -
		\$945.00	Pell Grant	07/15/05	10/21/05	4/20/2009	11/20/05	1247	1.00%	\$ 945.00	\$ 32.29	\$ -
		\$747.27	Pell Grant	06/14/06	07/14/06	4/20/2009	08/13/06	981	4.00%	\$ 747.27	\$ 80.34	\$ -
		\$1,350.00	Pell Grant	08/19/05	09/01/05	4/20/2009	10/01/05	1297	1.00%	\$ 1,350.00	\$ 47.98	\$ -
		\$1,372.05	Pell Grant	01/11/06	02/03/06	4/20/2009	03/05/06	1142	2.00%	\$ 1,372.05	\$ 85.85	\$ -
		\$740.27	Pell Grant	11/01/05	11/21/05	4/20/2009	12/21/05	1216	1.00%	\$ 740.27	\$ 24.66	\$ -
		\$1,057.00	Pell Grant	02/15/06	03/03/06	4/20/2009	04/02/06	1114	2.00%	\$ 1,057.00	\$ 64.52	\$ -
		\$940.95	Pell Grant	08/19/05	08/19/05	4/20/2009	09/18/05	1310	1.00%	\$ 940.95	\$ 33.77	\$ -
		\$139.50	Pell Grant	09/06/05	12/15/05	4/20/2009	01/14/06	1192	2.00%	\$ 139.50	\$ 9.11	\$ -
		\$872.30	Pell Grant	09/23/06	10/06/06	4/20/2009	11/20/06	882	4.00%	\$ 872.30	\$ 84.32	\$ -
		\$316.00	Pell Grant	01/19/06	02/10/06	4/20/2009	03/12/06	1135	2.00%	\$ 316.00	\$ 19.65	\$ -
		\$527.00	Pell Grant	04/17/06	04/28/06	4/20/2009	05/28/06	1058	2.00%	\$ 527.00	\$ 30.55	\$ -
		\$708.57	Pell Grant	05/12/06	05/26/06	4/20/2009	06/25/06	1030	2.00%	\$ 708.57	\$ 39.99	\$ -
		\$121.60	Pell Grant	02/13/06	03/14/06	4/20/2009	04/13/06	1103	2.00%	\$ 121.60	\$ 7.35	\$ -
		\$153.45	Pell Grant	04/27/06	05/01/06	4/20/2009	05/31/06	1055	2.00%	\$ 153.45	\$ 8.87	\$ -
		\$1,593.45	Pell Grant	01/12/06	01/17/06	4/20/2009	02/16/06	1159	2.00%	\$ 1,593.45	\$ 101.19	\$ -
		\$1,603.80	Pell Grant	04/07/06	05/12/06	4/20/2009	06/11/06	1044	2.00%	\$ 1,603.80	\$ 91.74	\$ -
		\$2,244.82	Pell Grant	02/15/06	03/03/06	4/20/2009	04/02/06	1114	2.00%	\$ 2,244.82	\$ 137.01	\$ -
		\$968.00	Pell Grant	08/28/05	09/16/05	4/20/2009	10/16/05	1282	1.00%	\$ 968.00	\$ 34.00	\$ -
		\$2,025.00	Pell Grant	10/18/06	10/25/06	4/20/2009	12/09/06	863	4.00%	\$ 2,025.00	\$ 191.52	\$ -

(b)(6); (b)(7)
(C)

\$78.52	Pell Grant	07/27/05	08/19/05	4/20/2009	09/18/05	1310	1.00%	\$ 78.52	\$ 2.82	\$ -
\$399.10	Pell Grant	01/19/06	02/16/06	4/20/2009	03/18/06	1129	2.00%	\$ 399.10	\$ 24.69	\$ -
\$545.00	Pell Grant	02/24/06	03/07/06	4/20/2009	04/06/06	1110	2.00%	\$ 545.00	\$ 33.15	\$ -
\$528.35	Pell Grant	12/29/05	12/29/05	4/20/2009	01/28/06	1178	2.00%	\$ 528.35	\$ 34.10	\$ -
\$494.00	Pell Grant	03/07/06	04/05/06	4/20/2009	05/05/06	1081	2.00%	\$ 494.00	\$ 29.26	\$ -
\$409.05	Pell Grant	11/02/05	12/01/05	4/20/2009	12/31/05	1206	1.00%	\$ 409.05	\$ 13.52	\$ -
\$1,034.77	Pell Grant	07/17/06	07/28/06	4/20/2009	09/11/06	952	4.00%	\$ 1,034.77	\$ 107.96	\$ -
\$202.40	Pell Grant	03/23/07	04/07/07	4/20/2009	05/22/07	699	4.00%	\$ 202.40	\$ 15.50	\$ -
\$224.72	Pell Grant	04/27/07	05/02/07	4/20/2009	06/16/07	674	4.00%	\$ 224.72	\$ 16.60	\$ -
\$707.00	Pell Grant	07/13/07	07/30/07	4/20/2009	09/13/07	585	4.00%	\$ 707.00	\$ 45.33	\$ -
\$270.90	Pell Grant	03/23/07	03/30/07	4/20/2009	05/14/07	707	4.00%	\$ 270.90	\$ 20.99	\$ -
\$1,350.00	Pell Grant	09/23/06	12/06/06	4/20/2009	01/20/07	821	4.00%	\$ 1,350.00	\$ 121.46	\$ -
\$742.77	Pell Grant	06/13/07	06/13/07	4/20/2009	07/28/07	632	4.00%	\$ 742.77	\$ 51.44	\$ -
\$1,991.25	Pell Grant	09/27/06	12/01/06	4/20/2009	01/15/07	826	4.00%	\$ 1,991.25	\$ 180.25	\$ -
\$832.95	Pell Grant	01/11/07	01/11/07	4/20/2009	02/25/07	785	4.00%	\$ 832.95	\$ 71.66	\$ -
\$540.22	Pell Grant	06/15/07	06/25/07	4/20/2009	08/09/07	620	4.00%	\$ 540.22	\$ 36.71	\$ -
\$129.90	Pell Grant	02/15/07	02/26/07	4/20/2009	04/12/07	739	4.00%	\$ 129.90	\$ 10.52	\$ -
\$1,101.60	Pell Grant	06/01/07	06/01/07	4/20/2009	07/16/07	644	4.00%	\$ 1,101.60	\$ 77.75	\$ -
\$427.22	Pell Grant	03/23/07	04/04/07	4/20/2009	05/19/07	702	4.00%	\$ 427.22	\$ 32.87	\$ -
\$21.32	Pell Grant	03/12/07	03/21/07	4/20/2009	05/05/07	716	4.00%	\$ 21.32	\$ 1.67	\$ -
\$67.22	Pell Grant	05/31/06	06/02/06	4/20/2009	07/02/06	1023	4.00%	\$ 67.22	\$ 7.54	\$ -
\$99.32	Pell Grant	07/27/05	08/19/05	4/20/2009	09/18/05	1310	1.00%	\$ 99.32	\$ 3.56	\$ -
\$86.20	Pell Grant	12/06/05	06/21/06	4/20/2009	07/21/06	1004	4.00%	\$ 86.20	\$ 9.48	\$ -
\$17.82	Pell Grant	06/08/06	05/12/06	4/20/2009	06/11/06	1044	2.00%	\$ 17.82	\$ 1.02	\$ -
\$22.67	Pell Grant	01/11/07	12/21/07	4/20/2009	02/04/08	441	5.00%	\$ 22.67	\$ 1.37	\$ -
\$66.82	Pell Grant	02/08/05	02/18/05	4/20/2009	03/20/05	1492	1.00%	\$ 66.82	\$ 2.73	\$ -
\$26.15	Pell Grant	06/28/06	07/05/06	4/20/2009	08/04/06	990	4.00%	\$ 26.15	\$ 2.84	\$ -
\$24.75	Pell Grant	02/04/06	03/02/06	4/20/2009	04/01/06	1115	2.00%	\$ 24.75	\$ 1.51	\$ -
\$26.22	Pell Grant	01/28/05	03/02/05	4/20/2009	04/01/05	1480	1.00%	\$ 26.22	\$ 1.06	\$ -
\$54.35	Pell Grant	09/01/04	09/17/04	4/20/2009	10/17/04	1645	1.00%	\$ 54.35	\$ 2.45	\$ -
\$35.20	Pell Grant	04/14/05	04/29/05	4/20/2009	05/29/05	1422	1.00%	\$ 35.20	\$ 1.37	\$ -
\$45.00	Pell Grant	03/11/05	05/27/05	4/20/2009	06/26/05	1394	1.00%	\$ 45.00	\$ 1.72	\$ -
\$30.60	Pell Grant	04/18/05	05/13/05	4/20/2009	06/12/05	1408	1.00%	\$ 30.60	\$ 1.18	\$ -
\$56.97	Pell Grant	11/19/04	12/10/04	4/20/2009	01/09/05	1562	1.00%	\$ 56.97	\$ 2.44	\$ -
\$22.32	Pell Grant	10/08/04	10/22/04	4/20/2009	11/21/04	1611	1.00%	\$ 22.32	\$ 0.99	\$ -
\$55.17	Pell Grant	12/12/05	01/06/06	4/20/2009	02/05/06	1170	2.00%	\$ 55.17	\$ 3.54	\$ -
\$35.10	Pell Grant	07/06/04	07/30/04	4/20/2009	08/29/04	1695	1.00%	\$ 35.10	\$ 1.63	\$ -
\$4.45	Pell Grant	05/11/06	05/26/06	4/20/2009	06/25/06	1030	2.00%	\$ 4.45	\$ 0.25	\$ -
\$2.30	Pell Grant	10/08/04	10/22/04	4/20/2009	11/21/04	1611	1.00%	\$ 2.30	\$ 0.10	\$ -
\$4.55	Pell Grant	07/26/04	08/13/04	4/20/2009	09/12/04	1681	1.00%	\$ 4.55	\$ 0.21	\$ -

Total Returns	\$ 56,312.22
Total Campus-Based	\$ -
Totals By Program	
Pell Grant	\$ 56,312.22
FSEOG	\$ -
Perkins	\$ -
ACG	\$ -
SMART	\$ -
TEACH	\$ -
FSEOG-No Match	\$ -
Perkins-No Match	\$ -

Totals \$ 3,144.42 \$ -

Interest Breakdown	
Pell Grant	\$ 3,144.42 \$ -
FSEOG	\$ - \$ -
Perkins	\$ - \$ -
ACG	\$ - \$ -
SMART	\$ - \$ -
TEACH	\$ - \$ -
FSEOG-No Match	\$ - \$ -
Perkins-No Match	\$ - \$ -

Appendix G – FedWire Instructions

Accounting Document – Prior Year Monetary Recovery (AD-PYMR)

Institution: Franklin Career Institute

City, State: Hempstead, NY

640225454

PRCN:

TIN: 113408254

DUNS: 042646963

Reviewer: Christopher Curry

Region: New York

Date: 6/3/13

Section A - Use if no adjustments are being made in COD

Programs	Type	Amount	Funding Code	Object Class
Federal Pell Grant (Closed AY)	Principal	1,162,238	3220RNOYR	69017
	Interest	45,318	1435RNOYR	64020
ACG	Principal		3220RNOYR	69017
	Interest		1435RNOYR	64020
National SMART	Principal		3220RNOYR	69017
	Interest		1435RNOYR	64020
FSEOG (No FISAP Corrections)	Principal	300	3220RNOYR	69017
	Interest	17	1435RNOYR	64020
FWS (No FISAP Corrections)	Principal	1,283	3220RNOYR	69017
	Interest	54	1435RNOYR	64020
Direct Loan and Direct Loan EAL	Principal		4253XNOYR	53020 or 53010
	Interest		4253XNOYR	53040
FFEL and FFEL EAL	Interest/ SA/EAL		4251XNOYR	53020
Federal Perkins	Principal		2915RNOYR	53054

Section B: Use if the Institution is instructed to make adjustments in COD

Add rows if necessary	Program / Award Year	Amount	Funding Code	Object Class	G5 Program Award # *
Pell, ACG, SMART, TEACH	Principal		3875FNOYR	69020	
	Imputed Interest		1435RNOYR	64020	
Direct Loan (do	Award Year	Principal	3875FNOYR	69020	



JUN 19 2013

Randy F. Rock, President
Franklin Career Institute
91 North Franklin Street
Hempstead, NY 11550-3003

Certified Mail Return Receipt Requested
Domestic Return Receipt
7006 2760 0002 1734 8171

RE: **Final Program Review Determination**
OPE ID: 03328300
PRCN: 200640225454

Dear Mr. Rock:

The U.S. Department of Education's (Department's) School Participation Division – New York/Boston issued a program review report on April 20, 2009 covering Franklin Career Institute's (Franklin) administration of programs authorized by Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070 et seq. (Title IV, HEA programs), for the 2004/2005 and 2005/2006 award years. A copy of the program review report (and related attachments) and Franklin's response are attached. Any supporting documentation submitted with the response is being retained by the Department and is available for inspection by Franklin upon request. Additionally, this Final Program Review Determination (FPRD), related attachments, and any supporting documentation may be subject to release under the Freedom of Information Act (FOIA) and can be provided to other oversight entities after this FPRD is issued.

Purpose:

Final determinations have been made concerning all of the outstanding findings of the program review report. The purpose of this letter is to: (1) identify liabilities resulting from the findings of this program review report, (2) provide instructions for payment of liabilities to the Department, (3) notify the institution of its right to appeal, and (4) close the review.

The total liabilities due from the institution from this program review are \$1,209,210.

This final program review determination contains detailed information about the liability determination for all findings.

Protection of Personally Identifiable Information (PII):

PII is any information about an individual which can be used to distinguish or trace an individual's identity (some examples are name, social security number, date and place of birth). The loss of PII can result in substantial harm, embarrassment, and inconvenience to individuals and may lead to identity theft or other fraudulent use of the information. To protect PII, the findings in the attached report do not contain any student PII. Instead, each finding references students only by a student number created by Federal Student Aid. The student numbers were assigned in Appendix A, Student Sample. In addition, Appendices B, C, D and E also contain PII.

Appeal Procedures:

This constitutes the Department's FPRD with respect to the liabilities identified from the April 20, 2009 program review report. If Franklin wishes to appeal to the Secretary for a review of financial liabilities established by the FPRD, the institution must file a written request for an administrative hearing. Please

note that institutions may appeal financial liabilities only. The Department must receive the request no later than 45 days from the date Franklin receives this FPRD. An original and four copies of the information Franklin submits must be attached to the request. The request for an appeal must be sent to:

Ms. Mary E. Gust, Director
Administrative Actions and Appeals Service Group
U.S. Department of Education
Federal Student Aid/PC
830 First Street, NE - UCP3, Room 84F2
Washington, DC 20002-8019

Franklin's appeal request must:

- (1) indicate the findings, issues and facts being disputed;
- (2) state the institution's position, together with pertinent facts and reasons supporting its position;
- (3) include all documentation it believes the Department should consider in support of the appeal. An institution may provide detailed liability information from a complete file review to appeal a projected liability amount. Any documents relative to the appeal that include PII data must be redacted except the student's name and last four digits of his / her social security number (please see the attached document, "Protection of Personally Identifiable Information," for instructions on how to mail "hard copy" records containing PII); and
- (4) include a copy of the FPRD. The program review control number (PRCN) must also accompany the request for review.

If the appeal request is complete and timely, the Department will schedule an administrative hearing in accordance with § 487(b)(2) of the HEA, 20 U.S.C. § 1094(b)(2). The procedures followed with respect to Franklin's appeal will be those provided in 34 C.F.R. Part 668, Subpart H. **Interest on the appealed liabilities shall continue to accrue at the applicable value of funds rate, as established by the United States Department of Treasury, or if the liabilities are for refunds, at the interest rate set forth in the loan promissory note(s).**

Record Retention:

Program records relating to the period covered by the program review must be retained until the later of: resolution of the loans, claims or expenditures questioned in the program review; or the end of the retention period otherwise applicable to the record under 34 C.F.R. §§ 668.24(e)(1), (e)(2), and (e)(3).

The Department expresses its appreciation for the courtesy and cooperation extended during the review. If the institution has any questions regarding this letter, please contact Ebony Foy at 646-428-3882. Questions relating to any appeal of the FPRD should be directed to the address noted in the Appeal Procedures section of this letter.

Sincerely,

(b)(6)

Betty Coughlin
Director

Enclosure:

Protection of Personally Identifiable Information

cc: Paula Jones, Financial Aid Administrator
NY State Department of Education
Council on Occupational Education

bcc: Reading file, Correspondence file, Chris Curry, OCFO Accounts Receivable, Lauren Pope, Don Tanguilig, Denise Morelli, Kathleen Wicks, Sherrie Bell, Betty Coughlin, ERM

PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION

Personally Identifiable Information (PII) being submitted to the Department must be protected. PII is any information about an individual which can be used to distinguish or trace an individual's identity (some examples are name, social security number, date and place of birth).

PII being submitted electronically or on media (e.g., CD-ROM, floppy disk, DVD) must be encrypted. The data must be submitted in a .zip file encrypted with Advanced Encryption Standard (AES) encryption (256-bit is preferred). The Department uses WinZip. However, files created with other encryption software are also acceptable, provided that they are compatible with WinZip (Version 9.0) and are encrypted with AES encryption. Zipped files using WinZip must be saved as Legacy compression (Zip 2.0 compatible).

The Department must receive an access password to view the encrypted information. The password must be e-mailed separately from the encrypted data. The password must be 12 characters in length and use three of the following: upper case letter, lower case letter, number, special character. A manifest must be included with the e-mail that lists the types of files being sent (a copy of the manifest must be retained by the sender).

Hard copy files and media containing PII must be:

- sent via a shipping method that can be tracked with signature required upon delivery
- double packaged in packaging that is approved by the shipping agent (FedEx, DHL, UPS, USPS)
- labeled with both the "To" and "From" addresses on both the inner and outer packages
- identified by a manifest included in the inner package that lists the types of files in the shipment (a copy of the manifest must be retained by the sender).

PII data cannot be sent via fax.

Prepared for

Franklin Career Institute

Federal Student 
An OFFICE of the U.S. DEPARTMENT of EDUCATION

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OPE ID 033283
PRCN 200640225454

Prepared by
U.S. Department of Education
Federal Student Aid
School Participation Division – New York/Boston

Final Program Review Determination

JUN 19 2013

Table of Contents

	Page
A. Institutional Information.....	2
B. Scope of Review.....	3
C. Findings and Final Determinations.....	3
Resolved Findings	3
Resolved Findings with Comments	
Findings with Final Determinations	
Finding #1: Improper Administration of Ability to Benefit Tests	4
Finding #2: Inadequate Documentation of Student Eligibility for ESL Program	5
Finding #3: Inadequate/Conflicting Attendance Records	7
Finding #4: Incorrect Calculation of Return to Title IV	9
Finding #5: Improper Disbursement of Title IV Funds	11
Finding #6: Incomplete Verification	14
Finding #7: Conflicting Information	15
Finding #9: Documentation of Student Eligibility for FWS Employment	17
Finding #11: Documentation of Eligibility for SEOG Award/Disbursement	18
	20
D. Summary of Liabilities.....	22
E. Payment Instructions.....	
F. <u>Appendices</u>	
Appendix A: Program Review Sample	
Appendix B: Program Review Report	
Appendix C: Institution's Written Response.	
Appendix D: File Review Report – Finding #1	
Appendix E: File Review Report – Finding #4	
Appendix F: Cost of Funds Worksheets	
Appendix G: FedWire Instructions	

A. Institutional Information

Franklin Career Institute
91 North Franklin Street
Hempstead, NY 11550-3003

Type: Private, Nonprofit

Highest Level of Offering: Non-Degree 1 Year (900-1799 hours)

Accrediting Agency: Council on Occupational Education

Current Student Enrollment: 809 (2010/11)

% of Students Receiving Title IV, HEA funds: 56% (2010/11)

Title IV, HEA Program Participation (Source PCNet):

	2011-2012
Federal Pell Grant Program	\$2,694,683
Federal Supplemental Educational Opportunity Grant Program (FSEOG)	\$66,833
Federal Work Study Program	\$46,679

B. Scope of Review

The U.S. Department of Education (the Department) conducted a program review at Franklin Career Institute (Franklin) from August 21, 2006 to August 25, 2006. A follow-up visit was conducted on November 30, 2006. The review was conducted by Christopher Curry, Teresa Martinez, and Jane Eldred.

The focus of the review was to determine Franklin's compliance with the statutes and regulations as they pertain to the institution's administration of the Title IV, HEA programs. The review consisted of, but was not limited to, an examination of Franklin's policies and procedures regarding institutional and student eligibility, individual student financial aid and academic files, attendance records, student account ledgers, and fiscal records.

A sample of 37 files was identified for review from the 2005/06 and 2006/07 award years. The files were selected randomly from a statistical sample of the total population receiving Title IV, HEA program funds for each award year. In addition, 9 files were selected based on an expanded review of students enrolled in the ESL program. Appendix A lists the names and social security numbers of the students whose files were examined during the program review. A program review report was issued on April 20, 2009.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning Franklin's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific practices and procedures. Furthermore, it does not relieve Franklin of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs.

C. Findings and Final Determinations

Resolved Finding

Finding #8

Franklin has taken the corrective actions necessary to resolve Finding #8 of the program review report. Therefore, this finding may be considered closed. The institution's written response to this finding is included in Appendix C. Findings requiring further action by Franklin are discussed below.

Resolved Finding with Comments

The following program review finding has been resolved by the institution, and may be considered closed. This finding is/are included solely for the purpose of discussing resolution of the finding.

Finding #10: Inadequate Monitoring of FWS Employment

Noncompliance:

Title IV regulations require that the student's work must be governed by employment conditions, including pay, that are appropriate and reasonable in terms of any applicable Federal, State, or

local law 34 C.F.R. 675.20(c)(1)(iii). An institution is responsible for ensuring that the student is paid for work performed. 34 C.F.R. 675.16(a)(10).

The reviewers noted situations where students' work periods appeared to exceed New York State Labor Department guidelines concerning meal breaks and consecutive hours of work. For example, **student #11's** timesheets show that she worked periods of more than five consecutive hours numerous times, with as many as eight consecutive hours without a documented break. The student was employed on-campus at Franklin. This office has been informed that New York State Labor Laws require that employees who work shifts of more than four hours during the day be provided a meal break of at least 30 minutes.

It is unclear whether students were actually working extended periods without a break, or were paid for scheduled breaks, which is not allowed under Title IV regulations.

The reviewers also noted that Franklin paid **student #30** for 54.5 hours of work during November 2005. However, the time sheet indicates that the student actually worked a total of 59.5 hours that month.

Directives From Program Review Report:

Franklin was required to take the necessary steps to ensure that all applicable rules and guidelines are followed for students employed and receiving assistance under the FWS program.

Finding Resolution:

In response to this finding, Franklin clarified the circumstances of student #11's work periods. The institution apprised this office of changes that have been implemented as a result of this finding. Franklin also provided the requested clarification for whether Student #30 was paid the correct amount for work performed, and confirmed that additional payments are due to the student. **Franklin mailed a check for \$37.50 to the student for the five hours worked but not paid.**

Franklin stated they used the finding as an opportunity to improve procedures related to monitoring of FWS employment. Franklin revised its sign-in/sign-out sheets to better reflect a break period and instituted new procedures whereby FWS students sign a form acknowledging their understanding of having to take breaks under certain conditions.

Findings with Final Determinations

The program review report findings requiring further action are summarized below. At the conclusion of each finding is a summary of Franklin's response to the finding, and the Department's final determination for that finding. A copy of the program review report issued on April 20, 2009 is attached as Appendix B.

Note: Any additional costs to the Department, including interest, special allowances, cost of funds, unearned administrative cost allowance, etc., are not included in individual findings, but instead are included in the summary of liabilities table in Section D of the report.

Finding #1: Improper Administration of Ability to Benefit Tests

Noncompliance:

Only eligible students may receive Title IV program funds. 20 U.S.C. § 1091; 34 C.F.R. § 668.32. To be eligible, students must be academically qualified to study at a postsecondary level. In this regard, a student must have a high school diploma, a general education development certificate (GED), or be beyond the age of compulsory school attendance and have the ability to benefit from the program of instruction that is being provided. See 20 U.S.C. § 1091; 34 C.F.R. § 668.32(e). A student who does not have a high school diploma or GED must pass an independently administered ability to benefit (ATB) test prior to receiving Title IV funds. 34 C.F.R. § 668.32(e)(2). If a student does not meet one of these criteria, he/she is ineligible to receive Title IV funds.

The Department considers a test to be independently administered if the test is given by a test administrator who —

- (i) Has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the interest obtained through its agreement to administer the test, and has no controlling interest in any other educational institution;
- (ii) Is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals;
- (iii) Is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution or its parent corporation or at any other institution, or a member of the family of any of the above individuals.

34 C.F.R. § 668.151(b)(2)(i)-(iii).

During the review, Department reviewers were informed that Franklin employed Vocational Educational Testing, Inc. (VET) as its independent third-party tester for administration of the ATB tests for students enrolled at the institution, until that entity was dissolved in April 2006. After that, Franklin used Galina Fridman, who had been employed by VET as its independent test administrator before the company dissolved. Reviewers asked for a copy of Ms. Fridman's contract with Franklin, and were told that there was no contract, and that Ms. Fridman was paid through Franklin's payroll. Franklin's records contained a New Employee Data Sheet for Ms. Fridman indicating a 9/1/05 "starting date of employment".

During the course of discussions with school officials, the reviewers were informed that VET was owned by Lydia Rock, the wife of Franklin's president. Further research confirmed that Ms. Rock was also the Chairman of the Board for VET. In addition, Lydia Rock is identified as a member of Franklin's Board of Trustees. Due to the marital relationship between the owner of VET and the President of Franklin, neither VET nor its employees would meet the definition of an independent test administrator. Ms. Rock's position on Franklin's Board of Trustees would also prevent VET from meeting the independence standard outlined above.

Although VET ceased providing ATB testing for Franklin in 2006 when the company dissolved, Ms. Fridman's prior employment by VET would prevent her from meeting the required standards. In addition, Ms. Fridman's subsequent employment directly by Franklin would call into question the independence required by the Title IV regulations. Despite arguments to the contrary by Franklin, the information obtained by the Department suggests that Ms. Fridman was an employee of Franklin and not just an independent contractor for ATB testing.

Directives From Program Review Report:

Franklin was informed that any ATB tests administered to Franklin students by VET or Ms. Fridman are considered invalid due to the lack of an independent relationship. In response to the finding, Franklin was required to provide a list of all Title IV recipients who were admitted and were determined to be eligible for Title IV funds under the ATB provisions for the 2004/05 award year to the date of the report. Franklin was also required to provide documentation for all persons who have administered the ATB tests at the institution since the program review was conducted, including approvals from the testing agency, where applicable. Franklin was to provide certifications regarding whether any of those test administrators met the regulatory criteria described in the above citation, and provide the most current contact information for any of those individuals. In addition, Franklin was required to identify any Title IV funds disbursed to students who were admitted based on ATB tests that were not administered by persons who met the independent tester criteria.

Final Determination:

Franklin disagrees with the Department in this finding. The school contends that at all times, Franklin complied with the federal requirements that an ATB test be independently administered. The school made two general arguments to support its position. First, Franklin argued that its use of VET did not violate the requirement that ATB be independently administered because the company itself did not serve as the test administrator, but only served as a contractor for identifying, recruiting, and contracting independent contractors to give ATB tests at Franklin. Second, Franklin contends that Ms. Fridman was not an employee of the school. To support this position, Franklin argues that her inclusion on the payroll and the issuance of a W-2 do not create an employment relationship between Franklin and Ms. Fridman. In its argument, Franklin also noted that Ms. Fridman did not receive any benefits or vacation leave. Franklin's entire response is included as part of Appendix C.

The Department has reviewed Franklin's response and determined that it does not resolve the ATB finding. The evidence that the Department has obtained establishes that neither VET, nor Ms. Fridman meet the independence standards required under the Title IV ATB regulations.

First, the fact that VET contracted with Ms. Fridman to provide services for Franklin does not change the nature of the relationship between VET and Franklin. Franklin hired VET to perform the ATB testing at its school, and payment was made to VET. The contractual relationship to be reviewed for ATB purposes was between VET and Franklin. The principles of both of these entities are related. This is exactly the type of relationship that is prohibited under regulations. The fact that VET hired Ms. Fridman as a contract employee rather than a salaried employee is simply irrelevant to this issue.

The Department also rejects the argument made by Franklin regarding the time period after VET was dissolved. First, the evidence the Department has obtained establishes that Ms. Fridman became an employee of Franklin after VET dissolved. The school did not have a contract with Ms. Fridman to administer the ATB tests and the reviewers obtained documentation showing that Ms. Fridman became a new employee of Franklin on September 1, 2005. Franklin acknowledges

that (b) (6), (b) received a W-2 but maintains that this does not create an employment relationship. Contrary to Franklin's contention, a W-2 is exactly the tax document that is provided to an employee. Other IRS documents are used if an individual is simply paid as a contractor. Further the absence of leave and benefits, does not in and of itself, establish that (b) (6), (b) was not an employee. Last, (b) (6), (b) previously worked for the company owned by Mr. (b) (6), wife. The regulations also cover an individual's former employment.

The purpose of the independence standard in the ATB regulations was to preclude any type of family or financial relationship between a testing entity and a school from tainting the ATB process. The facts uncovered with Franklin are exactly the types of relationships the Department was trying to prevent when it implemented the Title IV ATB requirements.

All of the factors here establish that the ATB tests administered by Franklin during this time period were not performed by an independent tester. Therefore, students who were administered a test by VET or (b) (6), (b) were ineligible for Title IV funds, and any aid disbursed to the students must be returned. Based on results of the file review conducted by Franklin, attached as Appendix D, Franklin must return \$1,082,584.00 in disbursed federal aid.

Liabilities of \$37,528.14 were established for 69 students in this finding that are also included in the students liabilities established under Finding #4. Those duplicated amounts will be removed in the summary of liabilities table.

Instructions for payment of liabilities are included in the Payment Instruction section of this report.

Finding #2: Inadequate Documentation of Student Eligibility for ESL Program

The finding has been resolved for student 42.

Noncompliance:

For purposes of Title IV participation, an educational program that consists solely of instruction in ESL qualifies as an eligible program only if—

- (1)(i) The institution admits to the program only students who the institution determines need the ESL instruction to use already existing knowledge, training, or skills; and
- (ii) The program leads to a degree, certificate, or other recognized educational credential.
- (2) An institution shall document its determination that ESL instruction is necessary to enable each student enrolled in its ESL program to use already existing knowledge, training, or skills with regard to the students that it admits to its ESL program under paragraph (j)(1)(i) of this section.

34 C.F.R. § 668.1(j).

The reviewers found cases where there was inadequate documentation that students enrolled in the ESL program were pursuing the program to use already existing knowledge, training, or skills. The reviewers did not find any specific notations by institutional officials documenting its determinations for any of the students sampled as required under the regulation.

For example, **student #46** indicated on his Career Interview Application (CIA) form that he was employed in "Cleaning" field. In the section where the student is asked to list the reason why

he/she want to continue education, the student indicated that, "I would like to learn English to help my child with her homework". There was no other documentation in the folder clarifying that the student needed the English to use prior knowledge, skills or training.

Student #45 filled out the employment section of her English as a Second Language Program Application Supplement (ESL-PAS), indicating that she was employed in the Homecare field. She wrote on her CIA form that the reason she wanted to continue her application was "to learn English to help my son".

Student #43 indicated on her ESL-PAS that she had been a family home-keeper for the past year, but she did not list any reason for continuing her education on the CIA form.

Student #41's records did not identify any prior training or employment, only indicating on the CIA form that his reason for continuing his education was to learn English.

The required documentation was also lacking for **student #39**.

When questioned about the lack of specific documentation, institutional officials stated that the implication could be drawn from the student's current employment. However, as set forth in the regulations, Franklin is required to document its determination that ESL instruction is necessary to enable each student enrolling in its ESL program to use already existing knowledge, training, or skills. Furthermore, the information provided by some students discussed in this finding appears to indicate only personal reasons for improving their English skills.

Directives From Program Review Report:

As a result of this finding, Franklin was required to review the files for all Title IV recipients who were enrolled in the ESL program for the 2004/05 and 2005/06 award years. In response, Franklin was instructed to provide copies of all documentation that was collected, at the time students were enrolled, that documents the students' reasons for enrolling in the program, and the institution's evaluation of that information.

Franklin was also instructed to develop and implement procedures for collecting the required information from students as well as documenting the institution's determinations as required in regulations, and provide this office with copies of those procedures.

Final Determination:

Franklin provided the Department with copies of ESL Application Supplements for students #39, 42, 43, 45 and 46, which documented those students employment status at the time they enrolled in the programs at Franklin, asserting that the information on those forms suffices to meet the regulatory requirements.

Franklin acknowledged that the supporting documentation for Student 41 might be insufficient to demonstrate the student's knowledge, skill, and experience.

The Department has reviewed the documentation that was submitted and determined that Franklin did not collect adequate documentation for certain students enrolled in the ESL program. There was not sufficient evidence provided that showed these students were pursuing the program to use already existing knowledge, training, or skills. With the exception of Student #42, the institution has not provided the Department with any additional documentation that would change the findings of the Program Review Report.

The Career Interview Application and the English as a Second Language Program Application Supplement documents are not adequate to document the requirements under the provisions of 34 C.F.R. § 668.1(j). Instead of documenting that ESL instruction is necessary to enable each student enrolled in its ESL program to use already existing knowledge, training, or skills to work in specific fields, the forms rely on the students' employment history and assumes the reviewer would know the basic skills involved in the positions. The forms ask vague open-ended questions that do not always provide the answers needed to meet the regulatory requirements. The Department recommends a revision of The Career Interview Application (CIA) and the English as a Second Language Program Application Supplement (ESL-PAS).

As indicated on the Program Review Report, student #46 indicated on the CIA form that his last place of employment was "Cleaning". The student was also asked to list on that form the reason why he wanted to continue his education and how it will benefit the student's future. The student indicated that, "I would like to learn English to help my child with her homework". The ESL-PAS document only indicated the student was employed in a cleaning position, and had skills in customer service. It did not indicate that the student was pursuing the program to use already existing knowledge, training, or skills. Franklin apparently presumes that the student needed to enhance his English language skills to enhance his ability to perform in his current position. This is an undocumented presumption, as the student's English language skills may be sufficient to allow her to function in her current position. The burden is on Franklin to document that the student meets the regulatory requirement, especially given the student's own expressed reason for wanting to learn English. Franklin has failed to meet the burden of proof in this case.

Similarly, Franklin failed to submit any additional documentation to support its position for students 39, 41, 43 and 45. Based on Franklin's failure to secure adequate documentation to demonstrate that the students were pursuing the program to use already existing knowledge, training, or skills, all Title IV funds disbursed to students #39, 41, 43, 45 and 46 are institutional liabilities.

According to the National Student Loan Data System, the total Pell Grant funds disbursed to these students are as follows:

#39	\$4,000
#41	4,050
#43	4,050
#45	4,050
#46	3,700
Total	\$19,850

Instructions for payment of liabilities are included in the Payment Instruction section of this report.

Finding #3: Inadequate/Conflicting Attendance Records

Noncompliance:

An institution must maintain documentation establishing each student's or parent borrower's eligibility for Title IV funds. At a clock-hour school, required documentation includes attendance records to document that the appropriate number of clock hours were offered or completed. 34 C.F.R. § 668.24(c)(iii).

Regulations define a clock hour as: a period of time consisting of—

- (1) A 50- to 60-minute class, lecture, or recitation in a 60-minute period;
- (2) A 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period.

34 C.F.R. § 600.

The reviewers found numerous questions and conflicts when reviewing the attendance records at Franklin. Students who are absent from class at Franklin are allowed to make-up hours at pre-scheduled make-up sessions. The students are required to fill out Make-Up Reports identifying the date(s) that they were absent, the Subject/Class, and the number of hours that are being made up. An instructor would sign-off on these forms, and assign the appropriate work to the students. However, reviewers noted numerous discrepancies when testing the backup documentation for make-up hours reported on students' computerized Attendance Summary reports. The issues identified are outlined below.

Student #37's records contain a Make-Up Report indicating that she received credit for three hours of make-up in the Medical Billing class for an extra-credit report on 2/14/06. The student also received credit for nine make-up hours in the Microsoft Word class on 1/5/06, for a "Tables Project". Other Make-Up Reports were found for this student for apparent projects were approved on 2/10/06 (2.5 hours), 1/3/06 (4.5 hours), and 1/3/06 again (5 hours). In all, the student received approval for a total of 10 make-up hours on 1/3/06. Also, most of the projects approved on 1/3/06 were identified as make-up for a class absence on 10/8/05 and 10/10/05, apparently for a class the student had completed and received an "A" grade back in October 2005. Based on this information, it is questionable whether most of the make-up hours recorded for this student involved faculty supervised instruction.

Furthermore, the reviewers found two Make-Up Reports, both of them reporting work the student claimed that she performed between 7 PM and 7:30 PM on 1/19/06, receiving credit for half-hour make-up for two different classes on different days.

These make-up hours were added into Franklin's computerized attendance system, and were included in determining the total number of hours the student completed. This student stopped attending Franklin on 3/7/08, after completing 384.5 hours of 560 hour offered in her program. The 50.5 hours of make-up entered into the computerized attendance system were added to the actual recorded hours present, resulting in the student being identified as having completed 436 hours of instruction. The implications of questionable make-up hours relating to disbursements of funds to students and R2T4 calculations are further discussed in findings #4 and 5.

Student #17's records contained a Make-Up Report showing that the student made up one hour of a class he missed in Business English on 1/13/05. However, Franklin's Class Attendance Roster shows the student was present for that class that whole week. In addition, the Make-Up report was issued on 1/12/05, apparently indicating the student was approved to make-up a class that had not yet been offered. Similar discrepancies were also found for this student for make-up hours approved on 12/20/04, 12/21/04, 1/3/05, and 1/14/05.

The records also contained a Make-Up Report for the Business English class the student missed on 12/2/04. This Make-Up Report was issued on 12/6/04. However, the reviewers also found Make-Up reports issued on 12/7/04, 12/8/04, 12/9/04 and 12/10/04, all approved for make-up of the Business English class the student missed on 12/2/04, for a total of five make-up hours. The Class Attendance Roster indicates that the student was absent that date, but that class was only offered for two hours on 12/2/04.

The reviewers also found many examples of conflicting information, as described in the cases above, for **student #25**. In addition, the reviewers found that this student was credited for multiple hours of make-up for the Internet course between 8/9/05 and 8/12/05, when the student didn't begin the Internet class until the week of 8/18/05.

Conflicting information regarding attendance was also found **in student #32's** file.

Interviews with instructors who were assigned to monitor make-up sessions indicate that students would sometimes arrive without specific work assignments. In such cases the instructors indicated that they would assign some work or projects that were applicable to the course the student needed to make-up hours for, although they could not be sure that it had anything to do with the specific part of the coursework the student had missed.

The pervasive nature of this finding in the sample of students tested for this issue calls into question the number of hours completed by students as reported in Franklin's records. For Title IV purposes, this has the greatest possible implications for determining whether returns are due to the programs for students who did not complete their programs.

Directives from Program Review Report:

This issue was discussed with school officials during the program review. Franklin undertook a self-study based on the preliminary discussion to determine the potential impact of the deficiencies. The resulting report submitted by Franklin was not useful, as it did not address all issues discussed in the requirements stated for this finding.

As a result of this finding, Franklin was required to perform a review of files for all Title IV recipients who attended the institution for the 2004/05 and 2005/06 award years, and did not complete their programs. Franklin was directed to evaluate the documentation of the make-up hours based on the issues described above, and to consider any other questionable circumstances not uncovered in our limited review. Franklin was instructed to identify criteria for determining which hours are invalid, and share that information with this office. Franklin was then required to apply the agreed-upon criteria to ascertain the appropriate number of hours completed for this group of students, and determine if there are any resulting funds to be returned to the Title IV programs.

Final Determination:

The institution provided the file review for all Title IV recipients who attended the institution for the 2004/05 and 2005/06 award years, and did not complete their programs. The resulting liabilities associated with this violation are discussed in Finding 4.

Finding #4: Incorrect Calculation of Return to Title IV

Noncompliance:

When a student withdraws prior to the completion of his/her program of study, the school must determine if the amount of Title IV assistance disbursed to the student exceeded the amount of Title IV funds earned as of the date of the student's withdrawal. 34 C.F.R. § 668.22(e). The percentage of Title IV grant or loan assistance that has been earned by the student is equal to the percentage of the payment period or period of enrollment that the student completed as of the student's withdrawal date. 34 C.F.R. § 668.22(e)(2). For a program such as Franklin's that is

measured in clock hours, the percentage completed is determined by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours scheduled to be completed as of the student's withdrawal date. The scheduled clock hours used must be those established by the institution prior to the student's beginning class date for the payment period or period of enrollment and must be consistent with the published materials describing the institution's programs, unless the schedule was modified prior to the student's withdrawal. 34 C.F.R. § 668.22(f)(1)(ii).

As set forth below, the Department found that Franklin failed to accurately account for the number of hours scheduled and completed hours for students who withdrew in their second and subsequent payment periods.

Student #37 stopped attending school on 3/7/06. Franklin's attendance system recorded that the student had been present for 384.5 hours, and had been absent for 175.5 hours, for a total of 560 hours of instruction offered through the last date of attendance. The system also showed that the student had completed 50 make-up hours.

Franklin has a 10% excused absence policy. Based on the combination of hours completed, make-up hours, and excused absences, it was clear the student had entered her second payment period before withdrawing. The issue is the number of hours completed in that second payment period.

Franklin made the determination that the student had completed 110 hours in her second payment period (560 hours offered – 450 hours in first payment period). Based on the 110 hours, Franklin determined that the student was eligible to receive a post-withdrawal disbursement of \$494 in Pell Grant funds for her second payment period. However, a closer evaluation provides a different result. Completion of a payment period is based on clock hours attended, with a reasonable allowance for excused absences. Therefore, Franklin cannot presume in its R2T4 calculations that the first 450 clock hours offered to a student encompasses a complete payment period. Hours that the student was absent in the first payment period, in excess of the number of hours made-up and the number of excused hours for the payment period, should not be considered when determining when the student completed the payment period.

Considering the 384.5 clock hours student #37 completed, 45 excused absences (10% of 450 hours in payment period), and 50 make-up hours, the student would have completed her first payment period during the week of 2/13/06. Determining the exact date is difficult because Franklin's computerized attendance system only records the total number of make-up hours, it does not record the detail of the day the hours were completed. Based on this approximation, the student only attended into the third week of her second payment period, encompassing a total of 53.5 clock hours of instruction offered.

Based on the student's enrollment for 53.5 clock hours in the second payment period, she would have been eligible to receive a post-withdrawal disbursement of \$129.60 in Pell Grant funds for her second payment period, instead of the \$494 disbursed by Franklin.

Similar errors were found with post withdrawal disbursements made for **students #6, 18, and 39** that did not account for the actual point at which the student started their second payment periods.

In addition, Franklin's records show that it determined on 10/8/04 that **Student #1** had dropped out of school, with a 9/20/04 last date of attendance (LDA). An R2T4 calculation was performed using the hours offered through 9/20/04. However, the computerized attendance summary for

this student indicates the last date of program attendance during the week of 9/6/04. The summary shows only 25 absent hours the week of 9/20/04, and 5 absent hours on 2/20/04. Therefore, it appears as though hours of non-attendance after the student's actual LDA were improperly included in the R2T4 calculation.

Directives From Program Review Report:

Franklin's process for performing R2T4 calculations involved the use of a privately-developed automated worksheet. As described in this finding, it appears that this spreadsheet would automatically use the bottom-line total hours in the system, instead of performing the analysis required to identify the specific point at which a student completed a payment period. This calls into question whether accurate R2T4 calculations were performed for students who Franklin determined had completed their first payment period.

In response to this finding, Franklin was required to provide clarification of the process that has been used for determining the completion percentages of students who withdrew from school, from the 2004/05-award year to the present.

Due to the systemic and material nature of this finding, Franklin was required to perform a review of all Title IV recipients who withdrew from the school to determine whether additional returns of funds are due to the Title IV programs. Franklin also needed to consider the issues related to make-up hours discussed in finding #3 to ensure complete and accurate determinations are made.

Franklin was also required to apprise this office of procedures implemented to ensure the regulatory requirements will be met in the future.

Final Determination:

Franklin disagreed with the finding that it failed to accurately account for the number of hours scheduled and completed for the students who withdrew in the second and subsequent payment periods. Franklin believes that at all times its policies have complied with the statutory and regulatory requirements for Return to Title IV calculations. In its response, Franklin stated that "When determining when a student has completed a payment period for purposes of disbursing aid to an enrolled student is governed by a separate set of rules and calculation than those governing the determination of how much aid a student who has withdrawn has earned."

The Department agrees that each process is governed by a separate set of rules and calculations, however, the two processes are related to one another; and an institution must determine how much of a payment period the student completed before it can calculate the Return to Title IV funds.

Franklin provided the required file review. The results are attached as Appendix E.

Based on this information the school is required to repay \$93,840.00 to the Title IV programs.

Liabilities of \$37,528.14 were established for 69 students in this finding that are also included in the students liabilities established under Finding #1. Those duplicated amounts will be removed in the summary of liabilities table.

Instructions for payment of liabilities are included in the Payment Instruction section of this report.

Finding #5: Improper Disbursement of Title IV Funds

Noncompliance:

An institution must disburse Title IV funds on a payment period basis. The first payment period for an eligible program that measures programs in clock hours, and is one academic year or less in length, equals the period of time in which the student completes the first half of the number of clock hours in the program. The second payment period is the period of time in which the student completes the program. 34 C.F.R. § 668.4(c)(1). For a student enrolled in an eligible program that is more than one academic year in length, the first payment period for the first academic year and any subsequent full academic year is the period of time in which the student successfully completes half of the number of credit hours or clock hours, as applicable, in the academic year and half of the number of weeks of instructional time in the academic year. The second payment period is the period of time in which the student successfully completes the academic year. 34 C.F.R. § 668.4(c)(1).

An institution may disburse funds to a student for a payment period only if the student enrolled in classes for that payment period, and is eligible to receive those funds. 34 C.F.R. § 668.164(b)(1). A school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence. 34 CFR 668.604(c)(4).

The reviewers found that Franklin was not complying with Title IV disbursement provisions.

Franklin disbursed \$2025 in Pell Grant funds to **student #28** for her second payment period on 1/20/06. However, the student was on a leave of absence (LOA) that began 12/15/05. The student never returned from the LOA, and Franklin subsequently returned the funds to the program on 7/10/06.

In addition, the student had completed only 321.5 hours at the time of the disbursement. Even allowing for a maximum of 10% excused absences (45 hours), the student had not completed her first payment period of 450 hours. It appears that the disbursement was paid based on the total number of hours offered, instead of the hours completed.

Student #30 stopped attending school on 4/17/06, after completing 397.5 clock hours, including make-up hours. Franklin performed an R2T4 calculation and determined that, because the student had been offered a total of 567 hours of instruction before he withdrew, he was entitled to a partial disbursement of Pell Grant funds for a second payment period. However, even allowing for excused absences, the student had not completed his first payment period, and was not eligible for any further disbursements.

Directives From Program Review Report:

Franklin was informed that this issue was related to those discussed in findings # 3 and 4. Therefore, the resolution of this finding was addressed in the requirements for those findings.

Final Determination:

Franklin acknowledged the error in disbursing aid to the two students cited in this finding. Students #28 and #30 withdrew before completing their first payment period and should not have received their second disbursement. Franklin also asserted that the examples noted in this finding were individual instances of miscalculation, and claimed that there was no relation between these cases and Finding #4, which documented that the institution failed to consider whether students had completed their payment periods when performing R2T4 calculations.

Franklin is liable for a \$527 ineligible Pell Grant disbursement paid to student #30.

Liabilities of \$527 were also established for student #30 in Finding #4; that amount is included in the student liabilities for this finding, however, those duplicated amounts will be removed in the summary of liabilities table.

Finding #6: Incomplete Verification

The finding has been resolved for student 26.

Noncompliance:

An institution is responsible for verifying all required information submitted by applicants for student financial assistance in connection with the calculation of their expected family contributions (EFC) for Title IV assistance. See 34 C.F.R. §§ 668.51(a), 668.56(A)(1)(2)(3)(4), 668.57(a)(b)(c)(d). An institution is responsible for ensuring that applicant information is updated when changes occur, for resolving conflicting information discovered during verification, and for using corrections to data originally reported to determine whether student eligibility would be impacted. 34 C.F.R. §§ 668.55(a)(1)(i)(ii), 668.59(a)-(e).

The reviewers found cases where Franklin failed to complete verification requirements for students.

Student #15's ISIR for the 2004/05 award year was selected for verification. The file contained a copy of her parents' 2003 tax return, which identified \$9,325 in pensions and annuities on line 16a that were not taxed. This amount should have been reported on the ISIR at line 79, unless the amount on line 16a was a pension rollover. However, there was no documentation in the file indicating a rollover, and there was no income reported on line 79.

Student #37's 2005/06 ISIR was selected for verification. Franklin collected a copy of her parent's tax return, and a verification worksheet that confirmed the members of the parent's household reported on the ISIR. However, Section C of the verification worksheet was blank. Section C is where the student would confirm whether they filed a tax return, and also report any income or benefits they received in 2004.

Directives From Program Review Report:

In response to this finding, Franklin was instructed to apprise this office of procedures implemented to ensure the regulatory requirements will be met in the future. In addition, Franklin was required to review the files for the students discussed in this finding to determine whether the students were eligible for all Title IV funds disbursed. Franklin was informed that it could attempt to collect any missing documentation and perform all required need analyses to confirm students' eligibility if information was revised as a result of verification. The institution was also informed that it would be liable for the amounts of any awards in excess of students' revised need, and for all Title IV funds awarded to the student in the applicable award year if the required documentation was not collected. Franklin was to provide copies of all documentation collected and all recalculations performed. In cases where information on verification worksheets was revised, the changes were to be initialed and the worksheets signed again by the required persons. Franklin was required to report the total amount of ineligible Title IV funds disbursed to the students.

Final Determination:

Student 15 - Franklin agreed there was an error in regard to the verification process for Student 15. Franklin corrected the error and conducted a needs analysis with the correct information. The result was a change in the Expected Family Contribution from \$1847 to \$3677. The Federal Pell Grant award decreased from \$1467 to \$400. Franklin is responsible for the \$1067 overaward.

Student 37 - The Department found that section C of Student 37's verification worksheet was left blank. Section C confirms whether the student filed a tax return and reported any income or benefits for the previous year. Franklin noted that during the verification process they confirmed the student did not earn any income and the student inadvertently failed to check the box indicating that no tax return was filed, and that no recalculation of the award was required.

Franklin stated that it determined that the student did not earn any income for the year in question, but it failed to provide any documentation from the student to verify that fact. Therefore, the institution's assertion that it had confirmed the student did not earn any income cannot be documented. Without the required verification, student #37 is not eligible for any of the funds disbursed, in the following amounts:

Pell Grant – 1 st Disbursement	\$2,025
Pell Grant – 2 nd Disbursement	494

The reviewers noted that the \$494 2nd disbursement was identified as a liability in the file review performed for Finding #4.

The total liability for this finding is \$3,586.

Liabilities of \$494 were established for student #37 in Finding #4, and liabilities of \$2,519 were established in Finding #7. Pell Grant liabilities of \$1,467 were established for student #15 in Finding #7. These amounts are included in the student liabilities for this finding however, those duplicated amounts will be removed in the summary of liabilities table.

Finding #7: Conflicting Information

The finding has been resolved for students 28 and 31.

Noncompliance:

An institution is required to develop and apply an adequate system to identify and resolve discrepancies in the information that the institution receives from different sources with respect to the student's application for financial aid under Title IV programs. 34 C.F.R. § 668.16(f).

The reviewers found instances where Franklin failed to resolve conflicting information in students' records relating to the eligibility for Title IV funds.

Student #15 completed her Student Profile Form indicating that she was employed in 2004, but she reported that she had no income in 2004.

Student #37's ISIR, based on a FAFSA signed on 9/7/05, indicates that she was an unmarried student, and dependent on her parent. However, the student reported on her Career Interview

Application, which was completed on 9/6/05, that she was married. If the student were actually married at the time she completed the FAFSA, she would have been considered independent, and would have been required to report her spouse's income.

Directives From Program Review Report:

In response to this finding, Franklin was required to apprise this office of procedures implemented to ensure the regulatory requirements would be met in the future. Franklin was also instructed to provide documentation confirming the resolution of the issues identified for the students discussed, including any required need analysis recalculations of the students' Title IV eligibility, and any impact on awards.

Final Determination:

Franklin confirmed that the conflicting information for students # 15 and #37 could not be resolved, and accepted the liability for these students.

The liabilities for this finding are as follows:

Student #15	\$1467 Pell Grant, 1019 FWS (75% of \$1359)
Student #37	\$2519 Pell Grant

Total liabilities for this finding is \$3,986 Pell Grant, \$1,019 FWS

Pell Grant liabilities of \$494 were established for student #37 in Finding #4, and liabilities of \$2,519 were established in Finding #6. Pell Grant liabilities of \$1,467 were also established for student #15 in Finding #6. These amounts are included in the student liabilities for this finding, however, those duplicated amounts will be removed in the summary of liabilities table.

Instructions for payment of liabilities are included in the Payment Instruction section of this report.

Finding #9: Documentation of Student Eligibility for FWS Employment

Noncompliance:

A student at an institution of higher education is eligible to receive part-time employment under the FWS program for an award year if the student meets student eligibility requirements and is enrolled or accepted for enrollment as an undergraduate, graduate or professional student at the institution. 34 C.F.R. § 675.9.

Franklin's records indicated that **student #25** completed her program on 3/24/06, with the end of her externship. However, the student continued to work in her position at Franklin from 4/4/06 through 4/28/06. Unless the student's program of study was extended beyond 3/24/06, the student was not eligible to receive FWS funds for work performed beyond that date. Franklin was asked to clarify the date the student completed the program, but the school only provided a copy of a diploma, indicating that it was issued in April 2006.

Directives From Program Review Report:

In response to this finding, Franklin was required to confirm the date that the student completed her program of study.

Final Determination:

Franklin stated that Student #25 officially graduated on April 7, 2006, with her last scheduled day of attendance being March 31, 2006. She was offered full time employment beginning May 1, 2006 and asked to continue to work at the school through the month of April. The school stated that the student's request for FWS was granted without realizing the student had officially graduated. The student continued to be compensated with FWS funds in error.

Franklin is liable for the federal share of the FWS funds disbursed after the student had completed their program of study. The calculated liability is based on 75% of the \$ 352.50 the student received for the month of April, 2006, or \$264.38. Franklin is also liable for \$14.85 interest for a total of \$280.23.

Instructions for payment of liabilities are included in the Payment Instruction section of this report.

Finding #11: Documentation of Eligibility for SEOG Award/Disbursement

This finding has been resolved for students 15 and 35.

Noncompliance:

A student is eligible to receive an FSEOG for an award year if the student meets the relevant student eligibility requirements, and is enrolled or accepted for enrollment as an undergraduate student at the institution. 34 C.F.R. § 676.9. In selecting among eligible students for FSEOG awards in each award year, an institution shall select those students with the lowest expected family contributions who will also receive Federal Pell Grants in that year. 34 C.F.R. § 676.10 (a)(1).

Reviewers were not able to find documentation supporting FSEOG awards to some students in the program review sample.

Student #32 dropped out of school on 5/3/06. Franklin made two FSEOG disbursements of \$200 each on 5/15/06. The latest award letter found in the student's file was dated 5/1/06, and did not indicate any FSEOG awards for this student.

Directives From Program Review Report:

In response to this finding, Franklin was required to provide documentation to show that the FSEOG funds were awarded to the students identified while they were still enrolled and attending classes in their programs of study. Franklin was also required to provide documentation of its awarding FSEOG awarding procedures, including the timeframes when awards are made to students.

Final Determination:

Franklin agrees with Finding 11 as it relates to Student 32. Student 32 was mistakenly awarded \$400 in FSEOG after her last date of attendance. Franklin is therefore liable for the federal share of the award, or \$300.

Franklin stated that they have updated their data processing system. FSEOG is now disbursed to students at the beginning of each award year. Franklin believes the new data processing system is an asset in ensuring all awards have been made while the students were still in school.

Franklin included copies of its FSEOG awarding procedures as well as its overall packaging procedures.

Instructions for repayment are provided in the Payment Instructions Section of this FPRD.

D. Summary of Liabilities

The total amount calculated as liabilities from the findings in the program review determination is as follows. The liability amount in the first chart below reflects duplicated, and unduplicated, liabilities because some students appear in more than one finding. This information is provided so that the institution understands the liabilities associated with each finding. Duplicate liabilities have been removed in the second chart. The payment instructions in Section E have been adjusted to reflect the unduplicated liabilities.

Liabilities	Pell (Closed Award Year)	FSEOG	FWS
Finding 1	\$1,082,584		
Finding 2	\$19,850		
Finding 4	\$93,840		
Finding 5	\$527		
Finding 6	\$3,586		
Finding 7	\$3,986		\$1,019
Finding 9			\$264.38
Finding 11		\$300	

Unduplicated Liabilities	Pell (Closed Award Year)	FSEOG	FWS	
Finding 1	\$1,082,584			
Finding 2	\$19,850			
Finding 4	\$56,312			
Finding 7	\$3,492		\$1,019	
Finding 9			\$264.38	
Finding 11	\$300	\$300		
Subtotal 1	\$1,162,238	\$300	\$1,283.38	
Interest/SA	\$45,318.74	\$16.85	\$53.67	
Subtotal 2	\$45,318.74	\$16.85	\$53.67	
TOTAL	\$1,207,556.74	\$316.85	\$1,337.05	
Payable To:				Totals
Department	\$1,207,556.74	\$316.85	\$1,337.05	\$1,209,210.64

Duplicate Liabilities:

The Actual Liabilities table above contains duplicate liabilities. The Established Liabilities table reflects adjustments made to remove all duplicate liabilities as described in Findings # 1, 4, 5 and 7.

E. Payment Instructions

1. Liabilities Owed to the Department

Liabilities Owed to the Department \$100,000 or More

Franklin owes to the Department \$1,209,210. This liability must be paid using an electronic transfer of funds through the Treasury Financial Communications System, which is known as FEDWIRE. Franklin must make this transfer within **45 days of the date of this letter**. This repayment through FEDWIRE is made via the Federal Reserve Bank in New York. If Franklin bank does not maintain an account at the Federal Reserve Bank, it must use the services of a correspondent bank when making the payments through FEDWIRE.

Any liability of \$100,000 or more identified through a program review must be repaid to the Department via FEDWIRE. The Department is unable to accept any other method of payment in satisfaction of these liabilities.

Payment and/or adjustments made via G5 will not be accepted as payment of this liability. Instead, the school must first make any required adjustments in COD as required by the applicable finding(s) and Section II – Instructions by Title IV, HEA Program (below), remit payment, and upon receipt of payment the Department will apply the funds to the appropriate G5 award (if applicable).

Instructions for completing the electronic fund transfer message format are included on the attached FEDWIRE form.

Terms of Payment

As a result of this final determination, the Department has created a receivable for this liability and payment must be received by the Department within **45 days of the date of this letter**. If payment is not received within the 45-day period, interest will accrue in monthly increments from the date of this determination, on the amounts owed to the Department, at the current value of funds rate in effect as established by the Treasury Department, until the date of receipt of the payment. Franklin is also responsible for repaying any interest that accrues. If you have any questions regarding interest accruals or payment credits, contact the Department's Accounts Receivable Group at (202) 245-8080 and ask to speak to Franklin's account representative.

If full payment cannot be made within **45 days** of the date of this letter, contact the Department's Accounts Receivable Group to apply for a payment plan. Interest charges and other conditions apply. Written request may be sent to:

U.S. Department of Education
OCFO Financial Management Operations
Accounts Receivable Group
550 12th Street, S.W., Room 6114
Washington, DC 20202-4461

If within 45 days of the date of this letter, Franklin has neither made payment in accordance with these instructions nor entered into an arrangement to repay the liability under terms satisfactory to the Department, the Department intends to collect the amount due and payable by administrative offset against payments due Franklin from the Federal Government. Franklin **may object to the collection by offset only by challenging the existence or amount of the debt.** To challenge the debt, Franklin must **timely appeal** this determination under the procedures described in the "Appeal Procedures" section of the cover letter. The Department will use those procedures to consider any objection to offset. **No separate appeal opportunity will be provided.** If a timely appeal is filed, the Department will defer offset until completion of the appeal, unless the Department determines that offset is necessary as provided at 34 C.F.R. § 30.28. This debt may also be referred to the Department of the Treasury for further action as authorized by the Debt Collection Improvement Act of 1996.

2. Pell Grant – Cancelled Award Year

Finding(s): #1, 2, 4, and 7
 Appendices: D, E & F

Franklin must repay:

Pell Grant Cancelled Award Year			
Amount (Principal)	Amount (Interest)	Title IV Grant	Award Year
\$403,189	\$15,446	Pell Grant	2004/05
\$750,484	29,188	Pell Grant	2005/06
\$ 8,565	684	Pell Grant	2006/07
Total Principal	Total Interest		
\$1,162,238	\$45,318		

The liability above is for award years 5 years or older and student adjustments in the Common Origination and Disbursement (COD) system are no longer possible. Instead, the funds will be returned to the general program fund for the applicable Title IV program.

Appendix A – Program Review Sample

Appendix A: Student Sample

2004/05

Student's Name	Student's SSN (last four digits only)
(b)(6); (b)(7)(C)	

's SSN (last four
digits only)

(b)(6); (b)(7)(C)



SSN (last four
y)



APR 20 2009

Randy Rock, President
Franklin Career Institute
91 North Franklin Street
Hempstead, NY, 11550-3003

Overnight Mail, Tracking # 8693 2081 9943

RE: **Program Review Report**
OPE ID: 033283
PRCN: 200640225454

Dear Mr. Rock:

From August 21, 2006 through November 30, 2006, Christopher Curry, Jane Eldred, and Teresa Martinez conducted a review of Franklin Career Institute's (Franklin's) administration of the programs authorized pursuant to Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070 et seq. (Title IV, HEA programs). The findings of that review are presented in the enclosed report.

Findings of noncompliance are referenced to the applicable statutes and regulations and specify the action required to comply with the statute and regulations. Please review the report and respond to each finding, indicating the corrective actions taken by Franklin. The institution's response should be sent directly to Christopher Curry of this office within 30 calendar days of receipt of this letter. Please see the enclosure Protection of Personally Identifiable Information (PII) for instructions regarding submission of required data / documents containing PII.

Record Retention:

Program records relating to the period covered by the program review must be retained until the later of: resolution of the loans, claims or expenditures questioned in the program review; or the end of the retention period otherwise applicable to the record under 34 C.F.R. § 668.24(e).

Federal Student Aid, School Participation Team – New York/Boston
32 Old Slip, 25th Floor, New York, NY 10005
www.FederalStudentAid.ed.gov

FEDERAL STUDENT AID  START HERE. GO FURTHER.

Franklin Career Institute
OPEID 033283
PRCN 200640225454
Page 2

We would like to express our appreciation for the courtesy and cooperation extended during the review. Please refer to the above Program Review Control Number (PRCN) in all correspondence relating to this report. If you have any questions concerning this report, please contact Christopher Curry at 646-428-3738 or Christopher.Curry@ed.gov.

Sincerely,

(b)(6)

Betty Coughlin
Team Leader

cc: Paula Jones, Financial Aid Administrator

Enclosure:
Protection of Personally Identifiable Information

bcc: Reading file, Correspondence file, Betty Coughlin, Christopher curry, ERM

Franklin Career Institute
OPEID 033283
PRCN 200640225454
Page 1



START HERE
GO FURTHER
FEDERAL STUDENT AID

Prepared for

Franklin Career Institute

OPE ID: 033283
PRCN: 200640225454

Prepared by
U.S. Department of Education
Federal Student Aid
School Participation Team – New York/Boston

Program Review Report

April 20, 2009

Table of Contents

Table of Contents		Page
A.	Institutional Information.....	3
B.	Scope of Review.....	4
C.	Findings	4
	Finding #1: Improper Administration of Ability to Benefit Tests	5
	Finding #2: Inadequate Documentation of Student Eligibility for ESL Program.	6
	Finding #3: Inadequate/Conflicting Attendance Records	8
	Finding #4: Incorrect Calculation of Return to Title IV	10
	Finding #5: Improper Disbursement of Title IV Funds	13
	Finding #6: Incomplete Verification	14
	Finding #7: Conflicting Information	15
	Finding #8: Missing Authorization to Credit Federal Work Study Funds..	16
	Finding #9: Documentation of Student Eligibility for FWS Employment.	17
	Finding #10: Inadequate Monitoring of FWS Employment	17
	Finding #11: Documentation of Eligibility for SEOG Award/ Disbursement	18
	Appendix A: Student Sample.....	20

B. Scope of Review

The U.S. Department of Education (the Department) conducted a program review at Franklin Career Institute (Franklin) from August 21, 2006 to November 30, 2006. The review was conducted by Christopher Curry, Jane Eldred, and Teresa Martincz.

The focus of the review was to determine Franklin's compliance with the statutes and federal regulations as they pertain to the institution's administration of Title IV programs. The review consisted of, but was not limited to, an examination of Franklin's policies and procedures regarding institutional and student eligibility, individual student financial aid and academic files, attendance records, student account ledgers, and fiscal records.

A sample of 37 files was identified for review from the 2004/05 and 2005/06 award years. The files were selected randomly from a statistical sample of the total population receiving Title IV, HEA program funds for each award year. In addition, nine files were selected based on an expanded review of Title IV recipients enrolled in the ESL program. Appendix A lists the names and partial social security numbers of the students whose files were examined during the program review.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning Franklin's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific practices and procedures. Furthermore, it does not relieve Franklin of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs.

This report reflects initial findings. These findings are not final. The Department will issue its final findings in a subsequent Final Program Review Determination letter.

C. Findings

During the review, several areas of noncompliance were noted. Findings of noncompliance are referenced to the applicable statutes and regulations and specify the actions to be taken by Franklin to bring operations of the financial aid programs into compliance with the statutes and regulations.

Finding #1: Improper Administration of Ability to Benefit Tests

Citation: The Title IV regulations at 34 C.F.R. § 668.151 establish that:

(a)(1) To establish a student's eligibility for Title IV, HEA program funds under this subpart, if a student has not passed an approved state test, under §668.143, an institution must select a certified test administrator to give an approved test.

(b) The Secretary considers that a test is independently administered if the test is—

(2) Given by a test administrator who—

(i) Has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the interest obtained through its agreement to administer the test, and has no controlling interest in any other educational institution;

(ii) Is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals;

(iii) Is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution or its parent corporation or at any other institution, or a member of the family of any of the above individuals.

Noncompliance: The reviewers were informed that Franklin employed Vocational Educational Testing, Inc. as its independent third-party tester for administration of the ability to benefit (ATB) tests for students enrolled at the institution, until that entity was dissolved in April 2006. After that, Franklin used Galina Fridman, who had been an employee of Vocational Educational Testing, Inc before it dissolved, as its independent test administrator.

Reviewers asked for a copy of Ms. Fridman's contract with Franklin, and were told that there was no contract, and that Ms. Fridman was paid through Franklin's payroll. Franklin's records contained a New Employee Data Sheet for Ms. Fridman indicating a 9/1/05 "starting date of employment".

During the course of discussions with school officials, the reviewers were informed that Vocational Educational Testing, Inc. was owned by Lydia Rock, the wife of Franklin's president. Further research confirmed that Ms. Rock was the Chairman of the Board for Vocational Educational Testing, Inc. In addition, Lydia Rock is identified as a member of Franklin's Board of Trustees. As such, any employee or former employee of Vocational Educational Testing, Inc. would not meet the criteria of an independent test administrator as specified in regulation.

Additionally, Franklin submitted information arguing that the inclusion of a person on the payroll would not make Ms. Fridman an employee of Franklin, since they claim that she was not eligible for any benefits of a "regular" employee, such as health insurance, paid

holidays, etc. However, this office has confirmed with the Department's Office of General Counsel that this argument is not sufficient to demonstrate Ms. Fridman's independence.

Required Action: Any ATB tests administered to Franklin students by Vocational Educational Testing, Inc, and former employees of that entity are considered invalid due to the lack of an independent relationship.

In response to this finding, Franklin must provide a list of all Title IV recipients who were admitted and were determined to be eligible for Title IV funds under the ATB provisions for the 2004/05 award year to the present. Franklin must also provide documentation for all persons who have administered the ATB tests at the institution since the program review was conducted, including approvals from the testing agency, where applicable. Franklin must also provide certifications whether any of those test administrators met the regulatory criteria described in the above citation, and provide the most current contact information for any of those individuals.

Franklin will be required to identify any Title IV funds disbursed to students who were admitted based on ATB tests that were not administered by persons who met the independent tester criteria. The required format and timeframes will be provided upon review of the institution's response to this finding.

Finding #2: Inadequate Documentation of Student Eligibility for ESL Program

Citation: Under the provisions of 668.1(j), in addition to satisfying the relevant provisions of this section, an educational program that consists solely of instruction in ESL qualifies as an eligible program if—

- (1)(i) The institution admits to the program only students who the institution determines need the ESL instruction to use already existing knowledge, training, or skills; and
 - (ii) The program leads to a degree, certificate, or other recognized educational credential.
- (2) An institution shall document its determination that ESL instruction is necessary to enable each student enrolled in its ESL program to use already existing knowledge, training, or skills with regard to the students that it admits to its ESL program under paragraph (j)(1)(i) of this section.

Noncompliance: The reviewers found cases where there was inadequate documentation that students enrolled in the ESL program was pursuing the program to use already existing knowledge, training, or skills. The reviewers did not find any specific notations by institutional officials documenting its determinations for any of the students sampled, as specified in regulation.

For example, **student #46** indicated on his Career Interview Application (CIA) form that he was employed in "Cleaning" field. In the section where the student is asked to list the reason why they want to continue their education, the student indicated that, "I would like to learn English to help my child with her homework". There was no other documentation in the folder clarifying any other knowledge, skill or training for which the student wanted to improve his English.

Student #45 filled out the employment section of her English as a Second Language Program Application Supplement (ESL-PAS), indicating that she was employed in the Homecare field. She wrote on her CIA form that the reason she wanted to continue her application was "to learn English to help my son".

Student #43 indicated on her ESL-PAS that she had been a family home-keeper for the past year, but she did not list any reason for continuing her education on the CIA form.

Student #41's records did not identify any prior training or employment, only indicating on the CIA form that his reason for continuing his education was to learn English.

Student #42's file did not contain any information about employment history, and there was only a Student Profile form that listed some of the subjects she studied in high school in Russia. Therefore, it is unclear what existing knowledge, training, or skills the student possessed.

The required documentation was also lacking for **student #39**.

When questioned about the lack of specific documentation, institutional officials stated that the implication could be drawn from the student's current employment. However, as noted in the above citation, Franklin is required to document its determination that ESL instruction is necessary to enable each student enrolling in its ESL program to use already existing knowledge, training, or skills. Furthermore, the information provided by some students discussed in this finding appears to indicate personal reasons for improving their English skills.

Required Action: As a result of this finding, Franklin must review the files for all Title IV recipients who were enrolled in the ESL program for the 2004/05 and 2005/06 award years. In response, Franklin must provide copies of any documentation that was collected, at the time students were enrolled, that documents the students' reasons for enrolling in the program, and the institution's evaluation of that information. The response must also include the most current contact information for these students. Franklin will be apprised of any additional requirements upon review of the response to this finding.

Franklin must also develop and implement procedures for collecting the required information from students as well as documenting the institution's determinations as required in regulations, and provide this office with copies of those procedures.

Franklin will be apprised of any additional requirements upon review of the response to this finding.

Finding #3: Inadequate/Conflicting Attendance Records

Citation: The records that an institution must maintain in order to comply with the provisions of this section include but are not limited to documentation of each student's or parent borrower's eligibility for Title IV funds. At a clock-hour school, this includes attendance records to document that the appropriate number of clock hours were offered or completed. 34 C.F.R. § 668.24(c)(iii)

Regulations define a clock hour as: a period of time consisting of—

- (1) A 50- to 60-minute class, lecture, or recitation in a 60-minute period;
- (2) A 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period. 34 C.F.R. § 600.2

Noncompliance: The reviewers found numerous questions and conflicts when reviewing the attendance records at Franklin.

Students who are absent from class at Franklin are allowed to make-up hours at pre-scheduled make-up sessions. The students are required to fill out Make-Up Reports identifying the date(s) that they were absent, the Subject/Class, and the number of hours that are being made up. An instructor would sign-off on these forms, and assign the appropriate work to the students. However, reviewers noted numerous discrepancies when testing the backup documentation for make-up hours reported on students' computerized Attendance Summary reports.

Student #37's records contain a Make-Up Report indicating that she received credit for three hours of make-up in the Medical Billing class for an extra-credit report on 2/14/06. The student also received credit for nine make-up hours in the Microsoft Word class on 1/5/06, for a "Tables Project". Other Make-Up Reports were found for this student for apparent projects were approved on 2/10/06 (2.5 hours), 1/3/06 (4.5 hours), and 1/3/06 again (5 hours). In all, the student received approval for a total of 10 make-up hours on 1/3/06. Also, most of the projects approved on 1/3/06 were identified as make-up for a class absence on 10/8/05 and 10/10/05, apparently for a class the student had completed and received an "A" grade back in October 2005. Based on this information, it is questionable whether most of the make-up hours recorded for this student involved direct faculty supervision.

Furthermore, the reviewers found two Make-Up Reports, both of them reporting work the student claimed that she performed between 7 PM and 7:30 PM on 1/19/06, receiving credit for half-hour make-up for two different classes on different days.

These make-up hours were added into Franklin's computerized attendance system, and were included in determining the total number of hours the student completed. This student stopped attending Franklin on 3/7/08, after completing 384.5 hours of 560 hours offered in her program. The 50.5 hours of make-up entered into the computerized attendance system were added to the actual recorded hours present, resulting in the student being identified as having completed 436 hours of instruction. The implications of questionable make-up hours relating to disbursements of funds to students and R2T4 calculations are further discussed in findings #4 and 5.

Student #17's records contained a Make-Up Report showing that the student made up one hour of a class he missed in Business English on 1/13/05. However, Franklin's Class Attendance Roster shows the student was present for that class that whole week. In addition, the Make-Up report was issued on 1/12/05, apparently indicating the student was approved to make-up a class that had not yet been offered. Similar discrepancies were also found for this student for make-up hours approved on 12/20/04, 12/21/04, 1/3/05, and 1/14/05.

The records also contained a Make-Up Report for the Business English class the student missed on 12/2/04. This Make-Up Report was issued on 12/6/04. However, the reviewers also found Make-Up reports issued on 12/7/04, 12/8/04, 12/9/04 and 12/10/04, all approved for make-up of the Business English class the student missed on 12/2/04, for a total of five make-up hours. The Class Attendance Roster indicates that the student was absent that date, but that class was only offered for two hours on 12/2/04.

The reviewers also found many examples of conflicting information, as described in the cases above, for **student #25**. In addition, the reviewers found that this student was credited for multiple hours of make-up for the Internet course between 8/9/05 and 8/12/05, when the student didn't begin the Internet class until the week of 8/18/05.

Conflicting information regarding attendance was also found in **student #32's** file.

Interviews with instructors who were assigned to monitor make-up sessions indicate that students would sometimes arrive without specific work assignments. In such cases the instructors indicated that they would assign some or projects that were applicable to the course the student needed to make-up hours for, although they could not be sure that it had anything to do with the specific part of the coursework the student had missed.

Required Action: The pervasive nature of this finding in the sample of students tested for this issue calls into question the number of hours completed by students as reported in Franklin's records. For Title IV purposes, this has greatest possible implications for determining whether returns are due to the programs for students who did not complete their programs.

This issue was discussed with school officials during the program review. Franklin undertook a self-study based on the preliminary discussion to determine the potential impact of the deficiencies. The resulting report submitted by Franklin was not useful, as it did not address all issues discussed in the requirements stated for this finding.

As a result of this finding, Franklin must perform a review of file for all Title IV recipients who attended the institution for the 2004/05 and 2005/06 award years, and did not complete their programs, evaluating the documentation of the make-up hours based on the issues described herein, as well as considering any other questionable circumstances not uncovered in our limited review. Franklin must then identify criteria for determining which hours are invalid, and share that information with this office. Franklin will then apply the agreed-upon criteria to ascertain the appropriate number of hours completed for this group of students, and determine if there are any resulting funds to be returned to the Title IV programs.

The specific format for reporting program liabilities will be provided at a later date.

In immediate response to this finding, Franklin must apprise this office of procedures implemented to ensure the regulatory requirements will be met in the future.

Due to the other possible implications of this finding on the students' academic programs, this issue is being referred to Franklin's licensing and accrediting bodies.

Finding #4: Incorrect Calculation of Return to Title IV

Citation: According to 34 C.F.R. § 668.22(e)(1), the amount of Title IV grant or loan assistance that is earned by the student is calculated by—

- (i) Determining the percentage of Title IV grant or loan assistance that has been earned by the student, as described in paragraph (e)(2) of this section; and
- (ii) Applying this percentage to the total amount of title IV grant or loan assistance that was disbursed (and that could have been disbursed, as defined in paragraph (l)(1) of this section) to the student, or on the student's behalf, for the payment period or period of enrollment as of the student's withdrawal date.

The percentage of Title IV grant or loan assistance that has been earned by the student is—

(i) Equal to the percentage of the payment period or period of enrollment that the student completed (as determined in accordance with paragraph (f) of this section) as of the student's withdrawal date, 34 C.F.R. § 668.22(e)(2)

Additionally, 34 C.F.R. § 668.22(f) specifies that, for purposes of paragraph (e)(2)(i) of this section, the percentage of the payment period or period of enrollment completed is determined—

(ii)(A) In the case of a program that is measured in clock hours, by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours scheduled to be completed as of the student's withdrawal date.

(B) The scheduled clock hours used must be those established by the institution prior to the student's beginning class date for the payment period or period of enrollment and must be consistent with the published materials describing the institution's programs, unless the schedule was modified prior to the student's withdrawal.

Noncompliance: Franklin failed to accurately account for the number of hours scheduled and completed for students who withdrew in their second and subsequent payment periods.

Student #37 stopped attending school on 3/7/06. Franklin's attendance system recorded that the student had been present for 384.5 hours, and had been absent for 175.5 hours, for a total of 560 hours of instruction offered through the last date of attendance. The system also showed that the student had completed 50 make-up hours.

Franklin has a 10% excused absence policy. Based on the combination of hours completed, make-up hours, and excused absences, the student had obviously entered her second payment period before withdrawing.

Franklin made the determination that the student had completed 110 hours in her second payment period (560 hours offered – 450 hours in first payment period). Based on the 110 hours, Franklin determined that the student was eligible to receive a post-withdrawal disbursement of \$494 in Pell Grant funds for her second payment period. However, a closer evaluation provides a different result. Completion of a payment period is based on clock hours attended, with a reasonable allowance for excused absences. Therefore, Franklin cannot presume in its R2T4 calculations that the first 450 clock hours offered to a student encompasses a complete payment period. Hours that the student was absent in the first payment period, in excess of the number of hours made-up and the number of excused hours for the payment period, should not be considered when determining when the student completed the payment period.

Considering the 384.5 clock hours student #37 completed, 45 excused absences (10% of 450 hours in payment period), and 50 excused absences, the student would have completed her first payment period during the week of 2/13/06. Determining the exact

date is difficult because Franklin's computerized attendance system only records the total number of make-up hours, it does not record the detail of the day the hours were completed. Based on this approximation, the student only attended into the third week of her second payment period, encompassing a total of clock 53.5 hours of instruction offered.

Based on the student's enrollment for 53.5 clock hours in the second payment period, she would have been eligible to receive a post-withdrawal disbursement of \$129.60 in Pell Grant funds for her second payment period, instead of the \$494 disbursed by Franklin.

Franklin also made disbursements after performing R2T4 calculations for **students #6, 18, and 39** that did not account for the actual point at which the student started their second payment periods.

Franklin's records show that it determined on 10/8/04 that **Student #1** had dropped out of school, with a 9/20/04 last date of attendance (LDA). An R2T4 calculation was performed using the hours offered through 9/20/04. However, the computerized attendance summary for this student indicates the last date of program attendance during the week of 9/6/04. The summary shows only 25 absent hours the week of 9/20/04, and 5 absent hours on 2/20/04. Therefore, it appears as though hours of non-attendance after the student's actual LDA were improperly included in the R2T4 calculation.

Required Action: Franklin's process for performing R2T4 calculations involved the use of a privately-developed automated worksheet. As described in this finding, it appears that this spreadsheet would automatically use the bottom-line total hours in the system, instead of performing the analysis required to identify the specific point at which a student completed a payment period. This calls into questions whether accurate R2T4 calculations were performed for students who Franklin determined had completed their first payment period.

Therefore, in response to this finding, Franklin must provide clarification of the process that has been used for determining the completion percentages of students who withdrew from school, from the 2004/05 award year to the present.

Due to the systemic and material nature of this finding, Franklin will be required to perform a review of all Title IV recipients who withdrew from the school to determine whether additional returns of funds are due to the Title IV programs. Franklin will also need to consider the issues discussed in finding #3 to ensure complete and accurate determinations are made. Once Franklin has provided the required information, further instructions will be provided for the completion of the file review and determination of the results.

In immediate response to this finding, Franklin must apprise this office of procedures implemented to ensure the regulatory requirements will be met in the future. Franklin will be apprised of any additional requirements upon review of the response to this finding.

Finding #5: Improper Disbursement of Title IV Funds

Citation: An institution must disburse Title IV funds on a payment period basis. An institution may disburse funds to a student for a payment period only if the student enrolled in classes for that payment period, and is eligible to receive those funds. C.F.R. § 668.164(b)(1)

Regulations define how an institution must define its payment periods for purposes of awarding and disbursing Title IV funds. 34 CFR § 668.4(c) specifies that the first payment period for an eligible program that measures programs in clock hours, and is one academic year or less in length, equals the period of time in which the student completes the first half the number of clock hours in the program. The second payment period is the period of time in which the student completes the program.

For a student enrolled in an eligible program that is more than one academic year in length, for the first academic year and any subsequent full academic year—the first payment period is the period of time in which the student successfully completes half of the number of credit hours or clock hours, as applicable, in the academic year and half of the number of weeks of instructional time in the academic year; and the second payment period is the period of time in which the student successfully completes the academic year;

A school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence (34 CFR 668.604(c)(4)).

Noncompliance: Franklin disbursed \$2025 in Pell Grant funds to **student #28** for her second payment period on 1/20/06. However, the student was on a leave of absence (LOA) that began 12/15/05. The student never returned from the LOA, and Franklin subsequently returned the funds to the program on 7/10/06.

In addition, the student had completed only 321.5 hours at the time of the disbursement. Even allowing for a maximum of 10% excused absence (45 hours), the student had not completed her first payment period of 450 hours. It appears that the disbursement was paid based on the total number of hours offered, instead of the hours completed.

Student #30 stopped attending school on 4/17/06, after completing 397.5 clock hours, including make-up hours. Franklin performed an R2T4 calculation and determined that, because the student had been offered a total of 567 hours of instruction before he withdrew, he was entitled to a partial disbursement of Pell Grant funds for a second

payment period. However, even allowing for excused absences, the student had not completed his first payment period, and was not eligible for any further disbursements.

Required Action: This issue appears to be related to those discussed in findings # 3 and 4. Therefore, the resolution of this finding should be addressed in the requirements for those findings.

Franklin will be apprised of any additional requirements upon review of the response to those findings.

Finding #6: Incomplete Verification

Citation: An institution is responsible for verifying all required information submitted by applicants for student financial assistance in connection with the calculation of their expected family contributions (EFC) for Title IV assistance. 34 C.F.R. §668.51(a), 34 C.F.R. §668.56 (A)(1)(2)(3)(4), and C.F.R. 34 §668.57 (a)(b)(c)(d). An institution is responsible for updating information and resolving conflicting information under 34 C.F.R. §668.55(a)(1)(i)(ii) and using corrections to data originally reported to determine whether student eligibility would be impacted, 34 C.F.R. 668.59 (a)(b)(c)(d)(e).

Noncompliance: The reviewers found cases where Franklin failed to complete verification requirements for students.

Student #15's ISIR for the 2004/05 award year was selected for verification. The file contained a copy of her parents' 2003 tax return, which identified \$9,325 in pensions and annuities on line 16a that were not taxed. This amount should have been reported on the ISIR at line 79, unless the amount on line 16a was a pension rollover. However, there was no documentation in the file indicating a rollover, and there was no income reported on line 79.

Student #37's 2005/06 ISIR was selected for verification. Franklin collected a copy of her parent's tax return, and a verification worksheet that confirmed the members of the parent's household reported on the ISIR. However, Section C of the verification worksheet was blank. Section C is where the student would confirm whether they filed a tax return, and also report any income or benefits they received in 2004.

Student #26 also failed to complete Section C on her 2005/06 verification worksheet when she had reported on her FAFSA/ISIR that she had not filed an income tax return in 2004.

Required Action: In response to this finding, Franklin must apprise this office of procedures implemented to ensure the regulatory requirements will be met in the future.

In addition, Franklin must review the files for the students discussed in this finding to determine whether the students were eligible for all Title IV funds disbursed. Franklin may attempt to collect any missing documentation and perform all required need analyses to confirm students' eligibility if information was revised as a result of verification. The institution is liable for the amounts of any awards in excess of students' revised need.

Franklin is liable for all Title IV funds awarded to the student in the applicable award year if the required documentation cannot be collected. Franklin must provide copies of all documentation collected and all recalculations performed. Please note, in cases where information on verification worksheets is revised, the changes must be initialed and the worksheets must be signed again by the required persons.

In response to this finding, Franklin must report the total amount of ineligible Title IV funds disbursed to the students.

Instructions for the repayment of any liabilities will be provided in the Final Program Review Determination (FPRD) letter.

Finding #7: Conflicting Information

Citation: An institution is required to develop and apply an adequate system to identify and resolve discrepancies in the information that the institution receives from different sources with respect to the student's application for financial aid under Title IV programs. 34 C.F.R. § 668.16(f).

Noncompliance: The reviewers found instances where Franklin failed to resolve conflicting information in students' records relating to the eligibility for Title IV funds.

Student #28 completed her Student Profile Form indicating that she was employed from 7/04 through 8/05, but she reported that she had no income in 2004.

A similar issue was noted for **student #15**.

Student #37's ISIR, based on a FAFSA signed on 9/7/05, indicates that she was an unmarried student, and dependent on her parent. However, the student reported on her Career Interview Application, which was completed on 9/6/05, that she was married. If the student were actually married at the time she completed the FAFSA, she would have been considered independent, and would have been required to report her spouse's income.

Student #31's 2005/06 ISIR indicated that she was unmarried; the ISIR was based on a FASFA that was completed 4/24/06. She also checked that she was single on her Career Interview Application, although it appears that she had originally checked that she was married, but that mark was removed. However, the Certification of Naturalization that she submitted to document her citizenship identified that she was married. That document was dated 2/18/06.

Required Action: In response to this finding, Franklin must apprise this office of procedures implemented to ensure the regulatory requirements will be met in the future.

Franklin must also provide documentation confirming the resolution of the issues identified for the students discussed above, including any required need analysis recalculations of the students' Title IV eligibility, and any impact on awards.

Any Title IV funds disbursed in excess of the students' actual eligibility will be institutional liabilities. Instructions for the repayment of any liabilities will be provided in the Final Program Review Determination (FPRD) letter.

Franklin will be notified of any additional requirements after this office has reviewed the response to this finding.

Finding #8: Missing Authorization to Credit Federal Work Study Funds

Citation: Under the provisions of 34 C.F.R. § 675.16(a)(3)(iii), an institution may pay Federal Work Study (FWS) funds to a student by crediting the student's account at the institution after obtaining the authorization described in paragraph (a)(4)(i).

675.16(a)(4)(i) specifies that an institution must obtain a separate written authorization from the student if the student is paid FWS compensation by—
(A) Crediting the student's account at the institution; or (B) Initiating an EFT to a bank account designated by the student.

Noncompliance: Franklin failed to provide reviewers with specific authorizations for students who had Federal Work Study (FWS) funds credited directly to their account at the school. In response to requests for the authorization, Franklin provided copies of Financial Aid Status & Waiver Forms. That form is used for students to authorize retention of credit balances for students. There is no mention on that document of specific authorizations by the student to credit FWS funds directly their account.

Required Action: In response to this finding, Franklin must immediately develop and utilize an appropriate authorization form for the credit of FWS funds directly to students'

accounts at the institution. Franklin must provide a copy of the authorization in its response to this report.

Finding #9: Documentation of Student Eligibility for FWS Employment

Citation: Regulations at 34 C.F.R. § 675.9 specify that a student at an institution of higher education is eligible to receive part-time employment under the FWS program for an award year if the student meets the relevant eligibility requirements contained in 34 CFR 668.32, and is enrolled or accepted for enrollment as an undergraduate, graduate or professional student at the institution.

Noncompliance: Franklin's records indicated that student #25 completed her program on 3/24/06, with the end of her externship. However, the student continued to work in her position at Franklin from 4/4/06 through 4/28/06. Unless the student's program of study was extended beyond 3/24/06, the student was not eligible to receive FWS funds for work performed beyond that date. Franklin was asked to clarify the date the student completed the program, but only provided a copy of a diploma, indicating that it was issued in April 2006.

Required Action: In response to this finding, Franklin must confirm the date that the student completed her program of study.

Franklin will be apprised of any additional requirements upon review of the response to this finding.

Finding #10: Inadequate Monitoring of FWS Employment

Citation: Regulations require that the student's work must be governed by employment conditions, including pay, that are appropriate and reasonable in terms of any applicable Federal, State, or local law. 34 C.F.R. 675.20(c)(1)(iii)

An institution is responsible for ensuring that the student is paid for work performed. 34 C.F.R. 675.16(a)(10)

Noncompliance: The reviewers noted situations where students' work periods appeared to exceed New York State Labor Department guidelines concerning meal breaks and consecutive hours of work. For example, student #11's timesheets show that she worked periods of more than five consecutive hours numerous times, with as many as eight consecutive hours without a documented break. The student was employed on-campus at Franklin. This office has been informed that New York State Labor Laws require that

employees who work shifts of more than four hours during the day be provided a meal break of at least 30 minutes.

It is unclear whether students were actually working extended periods without a break, or were paid for scheduled breaks, which is not allowed under Title IV regulations.

The reviewers also noted that Franklin paid **student #30** for 54.5 hours of work during November 2005. However, the time sheet indicates that the student actually worked a total of 59.5 hours that month.

Required Action: Franklin must take steps to ensure that all applicable rules and guidelines are followed for students employed and receiving assistance under the FWS program.

In response to this finding, Franklin must clarify the circumstances of student #11's work periods. The institution must also apprise this office of changes that have been implemented as a result of this finding.

Franklin must also confirm whether Student #30 was paid the correct amount for work performed, and confirm to this office if additional payments are due to the student. Franklin will be apprised of any additional requirements upon review of the response to this finding.

Finding #11: Documentation of Eligibility for SEOG Award/Disbursement

Citation: Regulations at 34 C.F.R. § 676.9 specify that a student is eligible to receive FSEOG for an award year if the student meets the relevant eligibility requirements contained in 34 CFR 668.32, and is enrolled or accepted for enrollment as an undergraduate student at the institution.

In selecting among eligible students for FSEOG awards in each award year, an institution shall select those students with the lowest expected family contributions who will also receive Federal Pell Grants in that year. 34 C.F.R. § 676.10 (a)(1)

Noncompliance: Reviewers were not able to find documentation supporting FSEOG awards to some students in the program review sample.

Student #15 finished her program on 11/28/05. The student's ledger showed two FSEOG disbursements of \$1000 each were paid to the student's account on 12/2/05 and 5/15/06. The reviewers did not find any documentation in the student's file showing whether the funds were awarded to the student while she was still enrolled and eligible. Further information was requested during the program review, but not was provided.

The student also had an EFC that was higher than other students who were not awarded FSEOG funds.

Student #32 dropped out of school on 5/3/06. Franklin made two FSEOG disbursements of \$200 each on 5/15/06. The latest award letter found in the student's file was dated 5/1/06, and did not indicate any FSEOG awards for this student.

Student #35 completed her program on 5/29/06. The only documentation in her file indicating an FSEOG award was an Award Notification dated 7/19/06.

Required Action: In response to this finding, Franklin must provide documentation to show that the FSEOG funds were awarded to the students identified while they were still enrolled and attending classes in their programs of study. Franklin must also provide documentation of its awarding FSEOG awarding procedures, including the timeframes when awards are made to students.

Franklin will be apprised of any additional requirements upon review of the response to this finding.

Appendix C – Institution's Written Response

Franklin Career Institute
Response to Program Review Report: 200640225454

Submitted to:
Mr. Christopher Curry
Federal Student Aid
School Participation Team – New York/Boston
U.S. Department of Education
32 Old Slip, 25th Floor
New York, NY 10005

During August 21, 2006-November 30, 2006, the United States Department of Education conducted a program review at Franklin Career Institute (Franklin) to determine Franklin's compliance with the statutes and federal regulations as they pertain to the institution's administration of Title IV programs. A randomly selected statistical sample of 37 files was reviewed from the 2004-2005 and 2005-2006 award years. Additionally nine files were selected based on an expanded review of Title IV recipients enrolled in the ESL program and included, resulting in a total of 46 student files included in the review.

The Program Review Report, PRCN 200640225454, (Report), issued April 20, 2009, includes eleven initial findings. As detailed below, Franklin disagrees with nearly all of the reviewers' findings—many of the findings reflecting a limited review of the available documentation and/or a misunderstanding or misapplication of the law at issue. Each of the initial findings is discussed in turn.

FINDING #1: Administration of Ability to Benefit Tests

At all times, Franklin has complied with federal requirements that an ability to benefit (ATB) test be "independently administered". The Report cites Franklin as failing to comply with the independently administered requirement on the grounds that (i) a company Franklin used to identify test administrators, Vocational Educational Testing, Inc. (VET), was allegedly not independent of Franklin and that (ii) a test administrator Franklin used, Galina Fridman, was not independent of Franklin because she had been an employee of VET and was later an employee of Franklin while continuing to serve as an ATB test administrator. Franklin strongly disagrees with this entire finding as demonstrated below.

A. Franklin's Use of VET Did Not Violate the Requirement that the ATB Test Be Independently Administered

The Report fails to identify any reason Franklin's relationship with VET created to a violation of the independently administered requirements. The regulation governing the administration of

ATB tests, including the requirement that they be "independently administered", is 34 CFR 668.151 and reads in pertinent part:

- (b) The Secretary considers that a test is independently administered if the test is—
 - (1) Given at an assessment center by a test administrator who is an employee of the center; or
 - (2) Given by a test administrator who—
 - (i) Has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the interest obtained through its agreement to administer the test, and has no controlling interest in any other educational institution;
 - (ii) Is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals.
 - (iii) Is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution or its parent corporation or at any other institution, or a member of the family of any of the above individuals; and
 - (iv) Is not a current or former student of the institution.

34 CFR 668.151(b)(2). The focus, then, in examining whether a test given at a location *other than* an assessment center qualifies as "independently administered", is on the independence of the test administrator *giving* the test.¹ VET never served as Franklin's test administrator but rather as a contractor for identifying, recruiting, and contracting independent contractors to give ATB tests at Franklin. The test administrators identified through VET that gave ATB tests at Franklin were never employees of either VET or Franklin—rather, these three test administrators were independent contractors through VET. At all times throughout their relationship with VET, they remained independent contractors. Please see Attachments 1-A and 1-B, copies of the test administrators' 1099 tax forms reflecting their independent contractor relationship with VET during the years at issue, 2004 and 2005 respectively.

Accordingly, the Report's finding that "any employee or former employee of VET would not meet the criteria or [sic.] an independent test administrator" is irrelevant because no employees or former employees of VET ever administered any tests for Franklin. Test administrators identified through VET were independent contractors, never employees, of VET. The Report fails to identify or explain any rationale for how these independent contractors would fail to meet the independence requirements.

*B. Ms. Fridman is Not an Employee of Franklin Under any Reasonably Applied Standard—
She at All Times Met the Independence Criteria*

¹ While the independence of the test administrator is not the sole factor in determining whether an ATB test was "independently administered", it is the sole issue raised under Finding #1. 34 CFR 668.151(c) addresses certain conditions in which the Secretary will consider a test to not be independently administered, but none of these conditions are at issue in this case.

Beyond the Report's erroneous finding that (b) (6), (b) (7) did not meet the independence criteria because of her former relationship with VET, the Report's finding that (b) (6), (b) (7) was also ineligible because she was an employee of Franklin is factually incorrect. The Report's rationale for finding (b) (6), (b) (7) to have been an "employee" of Franklin is based solely on two facts: (1) she was paid by W-2 instead of 1099² and (2) her file includes a "New Employee Data Sheet" indicating her "starting date of employment". In the complete context of the relationship between (b) (6), (b) (7) and Franklin, these facts are insufficient to establish (b) (6), (b) (7) as an "employee" as opposed to an "independent contractor".

At all times, (b) (6), (b) (7) was approved by the test publisher. The only services which she performed for Franklin were those as an ATB test administrator: maintaining control over ATB test and answer materials, meeting testees, administering tests at institution facilities under conditions required by the test publisher and the regulations, securing answer sheets and submitting answer sheets to the appropriate testing entities for scoring. She performed no other services for Franklin. At all times, these limited services were identical to the services which she performed for other institutions. Indeed, Franklin was one of several institutions for which (b) (6), (b) (7) provided these identical services. Whether inadvertently placed on the payroll (as at Franklin) or subject to 1099 tax reporting (as, at VET, and perhaps elsewhere) at all times consistent with her test administrator obligations, she performed these services independent of any control by Franklin.

Applying the proper legal analysis, the facts clearly establish that (b) (6), (b) (7) was an independent contractor, *not an employee*, of Franklin. When determining whether a worker is an employee or an independent contractor, numerous factors are weighed and considered in evaluating the entire relationship and ultimately the degree or extent to which the business directs and controls the worker. According to the Internal Revenue Service (IRS), the facts that provide evidence as to the degree of control and independence fall within three categories: (1) behavioral control, (2) financial control, and (3) the type of relationship between the parties. IRS Publication 1779.³ In addition to the summary provided in IRS Publication 1779, the IRS has adopted a 20 factor test to guide the analysis. As demonstrated on Attachment 1-C, the application of these 20 factors further supports (b) (6), (b) (7) status as an independent contractor.⁴

1. Behavioral Control

² The decision to pay (b) (6), (b) (7) as an employee (withholding taxes and issuing a year-end W-2) was made in error. As discussed below, she does not meet the essential indicia of employee status and the form of her compensation is not dispositive.

³ *Independent Contractor or Employee...*, Publication 1779, Department of Treasury, Internal Revenue Service, (Rev. 8-2008), located online at: <http://www.irs.gov/pub/irs-pdf/p1779.pdf>; *See also Employer's Supplemental Tax Guide*, Publication 15-A, Circular E, at p. 6, Department of Treasury, Internal Revenue Service (2009), located online at: <http://www.irs.gov/pub/irs-pdf/p15a.pdf>.

⁴ Many of these 20 factors also apply under one of the three prongs of the degree of control and independence test. Therefore, in order to avoid repetitiveness, the 20 factor test is not discussed separately within the body of this response.

Behavioral control looks to the “right to direct or control how the worker does the task for which the worker is hired.”⁵ When reviewing the behavioral control standard, one must consider the type and degree of instructions, trainings, and oversight the business gives the worker. While an employee is generally trained on how to perform the required services and tasks because the employer wants them executed in a particular manner, independent contractors ordinarily use their own methods.

When (b) (6), (b) initially came to Franklin’s premises as an independent contractor working through VET, after introductions, Franklin staff showed her where the testing materials were stored, showed her the testing room, and established a testing schedule that was mutually convenient. There was no follow-up instruction, training or oversight. Thereafter, she came in, met with the testees, administered the tests, completed the necessary procedures after the testing ended, and secured and mailed the answer sheets as required by the test publisher.

In the latter part of 2005, when VET discontinued its operations, (b) (6), (b) agreed to provide services directly to Franklin as she had previously provided through VET. Franklin required no training, provided no additional instructions on how her work should be performed, and exercised no additional control on when, where, or how her work would be performed.⁶ Franklin entered into no formal written agreement with her and orally agreed to continue the pre-existing arrangement. There was simply no change in the utter absence of behavioral control. Under the behavioral control analysis—undoubtedly the most critical—(b) (6), (b) clearly remained an independent contractor.

2. Financial Control

The facts that must be explored when determining the extent of the business’ financial control are the extent of the worker’s: (1) unreimbursed business expenses, (2) investment, (3) method of payment, and (4) opportunity for profit or loss.⁷ Franklin did not pay for any expenses related to (b) (6), (b) (7) certification by the test publisher as an ATB test administrator and did not restrict her ability to serve as a test administrator for other schools. (b) (6), (b) was free to provide her services to other institutions at all times and, in fact, served as a test administrator for several other institutions. Attachment 1-E includes a signed statement from (b) (6), (b) attesting to the fact that she served as an independent tester at other institutions during the period she served as an independent tester at Franklin as well as two letters from ACT, the test publisher, certifying her to administer ATB tests at multiple locations during the period at issue.

⁵ *Employer’s Supplemental Tax Guide*, Publication 15-A, Circular E, at p. 6; See also *Independent Contractor or Employee, Training Materials*, at page 2-8, Department of Treasury, Internal Revenue Service (1996), located online at: <http://www.irs.gov/pub/irs-utl/emporind.pdf>.

⁶ Upon entering this agreed arrangement, (b) (6), (b) was not given an orientation or any of the items Franklin employees receive during their mandatory employee orientation such as an employee handbook. Upon completion of the mandatory employee orientation, a completed employee orientation checklist is included in each Franklin employee’s file. See Attachment 1-D for a copy of Franklin’s employee orientation checklists. Because she was not an employee, (b) (6), (b) never received this orientation, and accordingly, her file does not include an employee orientation checklist.

⁷ *Independent Contractor or Employee, Training Materials*, at 2-16.

In terms of method of payment, while payment per project is common for independent contractors, hourly compensation is a common form of payment for test administrators and others.⁸ Payment in such fashion does not preclude an independent contractor finding. Even though she was paid hourly, unlike Franklin's employees, she was not required to record her time electronically; rather she simply reported her hours and was paid accordingly. At all times, she retained the ability to profit from her certification by the test publisher, by securing as many clients as she chose.

3. Type of Relationship Between the Parties

Facts showing the type of relationship between the parties include: (1) written contracts; (2) benefits the business provides the worker; (3) permanency of the relationship; and (4) performed services as part of the company's regular business.⁹ (b) (6), (b) (7) did not have a written contract prior to 2005 while she was plainly an independent contractor working through VET or thereafter while performing the same services under the same conditions directly for Franklin.

Critically, (b) (6), (b) (7) did not receive any of the benefits that employees of Franklin received, such as holiday pay, personal days, vacation, sick days or health insurance. Unlike Franklin's employees, she was never given an employee orientation or an employee handbook and was not required to swipe an electronic time card to record her time. Moreover, (b) (6), (b) (7) duties as ATB test administrator were not part of Franklin's regular business. Rather, she performed a service required by the regulations as part of the admissions process. Since the regulations themselves require that the testing be independently administered, by definition, these services cannot reasonably be viewed as a part of Franklin's regular business. Finally, there is no permanency to the relationship between Franklin and (b) (6), (b) (7) each retains the right to terminate the relationship, as they did when (b) (6), (b) (7) was indisputably an independent contractor working through VET.

Finally, because of the nature of her services, (b) (6), (b) (7) work was not "full time" and she only provided services when there were ATB testees to be tested, perhaps averaging approximately 10 hours per month. While she normally provided her services on a set schedule, a schedule was set to allow Franklin to coordinate the presence of testees. Nevertheless, (b) (6), (b) (7) always had the right to change or adjust the schedule to meet her own needs. Plainly, then, the totality of the circumstances demonstrate an independent contractor, rather than employee, relationship.

4. The Law is Clear: A W-2 is Not Dispositive in Establishing an Employer-Employee Relationship

Where the totality of the circumstances support independent contractor status, such status is not altered by a W-2 relationship or even a contract explicitly identifying the worker as an

⁸ *Independent Contractor or Employee, Training Materials*, at 2-20; See also *Employer's Supplemental Tax Guide, Publication 15-A, Circular E*, at p. 6.

⁹ *Employer's Supplemental Tax Guide, Publication 15-A, Circular E*, at p. 7.

employee.¹⁰ Even where a W-2 is filed, the focus of the analysis to determine whether an individual is an employee or an independent contractor must remain on “the actual relationship existing between the contracting parties, and that a contract purporting to establish an employer/employee relationship is not controlling where application of the common law factors to the facts and circumstances of a particular case establishes no such relationship exists.”¹¹

In addition the letter of the law’s support of (b) (6), (b) (7) independence, the spirit of the law regarding independent test administration supports (b) (6), (b) (7) independence as well. The regulations aim to ensure a separation between the test administrator and the business to eliminate internal business pressures that could interfere with fair and conflict free test administration. The intent is similar to that requiring Administrative Law Judges with the Office of Hearing and Appeals at the United States Department of Education or members of the Office of the Inspector General to be independent of the Department. Payment via W-2 has no bearing on such workers abilities to maintain their independence.

C. Finding #1 Conclusion

In light of the information provided above, Franklin strongly disagrees with the Report’s finding that that there was a violation of the independently administered requirements. All test administrators selected by Franklin, including (b) (6), (b) (7)(C) met the independent test administrator requirements. Accordingly, Franklin should not be required to provide file review like information regarding Title IV recipients who were admitted under the ATB provisions.

FINDING #2: Documentation of Student Eligibility of ESL Program

The Report cites cases where the reviewers felt there was inadequate documentation that students enrolled in the ESL program were pursuing the program to use already existing knowledge, training or skills. In these cases (Students #39, #41, #42, #43, #45, #46), the Report seems to mistakenly treat any statement by a student that they had an interest beyond solely improving upon “already existing knowledge, training, or skills” as making them ineligible for the ESL program. Recognizing that a desire to learn English for a reason beyond improving upon existing knowledge, training or skills does not disqualify an applicant’s eligibility to participate in the ESL program, in conjunction with a more complete review of the underlying documents, reflects that Franklin maintained sufficient documentation to support the eligibility for all but possibly one of the students cited in the Report.

Before addressing the supporting documentation for each student, it is helpful to review Franklin’s admissions process for students applying to the ESL program. Franklin uses a Career Interview Application Form to provide the Admissions interviewer with insight and talking points to prepare for interviewing the given student. The reviewers seemed to rely heavily, if not exclusively, on this document in reaching their finding. While this form may provide supporting documentation used in the eligibility determination process, this form is only one portion of the

¹⁰ *Butts v. Commissioner*, T.C. Memo. 1993-478, at 9, *aff’d per curiam* 49 F.3d (11th Cir. 1995); *See also Smithwick v. Commissioner*, T.C. Memo. 1993-582.

¹¹ *Id.*

application process. Each applicant then undergoes an interview and must also complete an ESL Application Supplement. A major portion of the ESL program admissions interview process is focused on the advantages of learning English as it relates to existing employment positions.

Student #39's ESL Application Supplement (Attachment 2-A) documents the student's knowledge, skill, and experience as a licensed beautician and nail technician.

For Student #42, the ESL Application Supplement (Attachment 2-B) documents the student's knowledge, skill, and experience as a licensed Personal Care Assistant with job-related skills that include "insuring a healthy environment; preparing meals; assisting with lifting and positioning; performing bed bath, dressings; monitoring health statuses & medication intake."

Student #43's ESL Application Supplement (Attachment 2-C) documents her knowledge, skill, and experience as in the home care field. As reflected therein, the student was employed with a company called Family Home Care, and according to our placement records for Student #43 (Attachment 2-D), she continued working for Family Home Care Services following her graduation from the program.

The ESL Application Supplement for Student #45 (Attachment 2-E) documents her knowledge, skill, and experience as a licensed Home Health Aid with job-related skills including "performing bed bath, shaving, mouth care; assisting with lifting, positioning; applying comfort devices; preparing meals, measuring I & O." Attachment 2-E also lists employment experience in both homecare and factory work.

The reviewers recognize that Student #46's Career Interview Application form documented his employment experience in the cleaning field, but they then proceed to cite the student's statement that he would like to learn English to help his child with homework. As discussed above, an interest in learning English for any reason beyond using ESL instruction to use already existing knowledge, training, or skills does not disqualify a student's eligibility for the ESL program. While the information provided on the Career Interview Application by itself should be sufficient to document existing knowledge, training, or skills, Franklin notes that Student #46's ESL Application Supplement (Attachment 2-F) also documents the student's experience in the cleaning field and additionally documents his customer service skills.

Franklin acknowledges that supporting documentation for Student #41 may be insufficient to demonstrate the student's existing knowledge, skill, or experience at the time of application. This student was employed as a jeweler with a company named "EMA" as reflected in his Application Supplement (Attachment 2-G). Franklin tracks post-program employment placement of its students, and its placement records for Student #41 (Attachment 2-H) reflect that he continued his employment with EMA Jewelry following the program. Franklin is confident that the proper determination was made with regard to this student's eligibility prior to admitting Student #41 into the ESL Program, however the school recognizes the documentation supporting this determination is somewhat lacking. This is the only student cited in the Report where the reviewers' initial finding may be appropriate. As demonstrated above, the Supplemental Applications clearly establish "already existing knowledge, training, or skills" for all other students cited in this finding.

In light of the supporting documentation discussed above, Franklin respectfully disagrees with the reviewers' finding. While Franklin recognizes it may not have provided sufficient documentation regarding one of the cited student's eligibility, this is not sufficient to require the institution to complete a full file review of all Title IV recipients enrolled in the ESL program for the 2004-2005 and 2005-2006 award years. Accordingly, Franklin asks that this required action be reconsidered. Additionally, Franklin notes that it has not offered the ESJ Program since award year 2005-2006.

FINDING #3: Attendance Records

Under New York State Education Department regulations, a school may permit make-up sessions to count for attendance purposes. Specifically, NYSED 126.4(e)(5) reads:

Any make-up session for attendance purposes shall be approved by the licensed school director, and shall consist of instruction in that portion of the course or curriculum which was not received by the student as a result of absences. A record of make-up sessions shall be maintained in the attendance register. Any charge for make-up sessions shall be expressed on the enrollment agreement and in the school's catalog.

Franklin has at all times complied with these regulations with its policies allowing students to "make-up" work for absences. The reviewers raise concerns with Franklin's documentation of make-up hours and had questions regarding make-up records for 4 of the 46 students included in their review. Following an overview of Franklin's make-up policy at the time in question and currently, the questions raised regarding the four students are addressed student by student.

A. Franklin's Make-Up Process

Franklin requires that make-up time be completed during scheduled make-up sessions and always under the supervision of a make-up instructor who, as well as being a facilitator for the work being made-up, verifies that the student did spend the appropriate amount of time in completing the make-up assignment. This has always been Franklin's policy including during the review period through to current day.

During the period at issue in the program review, handwritten make-up reports were the means for Franklin's collection and recording of make-up hours. These make-up reports included the student's name, the "date issued" (which reflects the date the student actually made-up work for the absence), the class for which the work is being made up, the assignment, the amount of make-up time completed, a signature of the make-up instructor verifying the student spent the reported time on the reported assignment, the date(s) of the absence(s) for which the make-up work was being completed, and a dated signature by the course instructor accepting the make-up report. It is critical to note the varying dates that appear on the report, because as discussed below, the reviewers seem to have had some confusion in properly interpreting the different

dates on the make-up reports. Several make-up reports are included as attachments for this finding as referenced further below.

B. Explanation of Questioned Files

In reviewing the files of the students cited in Finding #3, Franklin staff matched the questioned make-up slips to the corresponding dates of absences. As explained in detail below, student by student, the far majority of the concerns raised in the Report are easily explained. Where we were unable to match a make-up report to an absence, it is noted. Franklin acknowledges that there were some human errors due to carelessness that lead to some of the questions raised by the reviewers; however, Franklin rests assured that the improvements made to its record keeping system in 2006, as they relate to make-up hours, should prevent such minor errors from going undetected as they may have during the review period.¹²

The specific concerns raised under Finding #3 are discussed below, in turn, by student.

1. Student #37

The Report highlights multiple concerns regarding the attendance and make-up records for Student #37. The report raises a variety of concerns—each concern is addressed in turn.

First, as noted in the Report, Student #37 received credit for three hours of make-up in the Medical Billing class for an extra-credit report approved by her instructor on 2/14/06. The student was absent for two consecutive days, February 2 and 3, 2006, representing four missed hours of class. On the make-up slip, she should have noted her dates of absence as 2/2/06 and 2/3/06, but she inadvertently listed only 2/2/06. Because the student missed information regarding insurance fraud during those two classes, the instructor assigned a report on the topic which was done during this make-up period under the supervision of an instructor. The attendance records for this student in the class at issue for 2/2/06 and 2/3/06, as well as the referenced make-up report matching these absences, are included at Attachments 3-A.

Second, the Report notes that Student #37 received credit for nine make-up hours in the Microsoft Word class on 1/5/06 for a "Tables Project". This student regularly attended Franklin's Evening Division, between the hours of 5:30 pm and 10:30 pm, Monday through Friday. During the period of 12/5/05-1/4/06, Student #37 was absent from the scheduled Advanced Microsoft Word for a total of 23 hours. In order to allow her to complete much of the work covered in the course during her absences, the teacher arranged for the student to commit an entire 9 hour day to make-up work for this course. The "Tables Project" assigned by the instructor consisted of instruction in the portion of the course that was missed due to her absences. The student's nine hour make-up day was supervised as required under Franklin's policies and made up for 9 of the 23 hours missed.

Next, the Report questions make-up reports for this student dated 2/7/06 and 2/10/06 (Attachment 3-B). During the module running 1/16/06-2/17/06, Student #37 was absent 9 hours

¹² Improvements to the make-up system are discussed following the explanation of the specific student files that were questioned.

from Anatomy and Physiology. Attachment 3-B also includes the relevant attendance records. On 2/7/06, the student made up one of those hours for a test missed during class on 2/3/06. As for the rest of the make-up time for this period, the instructor determined the student would be best served academically by assigning a research project and a report for the work missed. This work was completed during a 2.5 hour make-up session on 2/10/06. The make-up report inadvertently lists only one date of absence for which this work corresponds but should have listed the multiple days of class missed for which this work was assigned. Accordingly, all three make-up hours are properly accounted for.

The Report also references three make-up reports signed by the course instructor on 1/3/06 for 5, 0.5, and 4.5 hours, which are included at Attachment 3-C. The Report questions these make-up reports as to whether a total number of ten hours were truly made-up in one day and suggests the projects approved for these make-up sessions were for a class the student had already completed and received a grade. First, the Report errs in its statement that these three reports reflect time made up on 1/3/06. Although the reports were signed by the course instructor on 1/3/06, the make-up reports clearly reflect that the make-up work was completed on 12/21/05 (for a total of 5.5 make-up hours) and 12/22/05 (for a total of 4.5 hours). Second, the Report mistakenly assumes that these reports reflect work made-up for Keyboarding, a course that the student had already completed and received a grade when actually the course at issue, Microsoft Word, was on-going at the time the work was made up.

The class at issue in these make-up reports, Microsoft Word, was offered over two modules, running 10/27/05-1/13/06. As mentioned above, during the second half of this class, Student #37 was absent for 23 hours. For the first half (10/27/05-12/2/05), the student was absent 20 hours from class. The hours made up on the reports signed by the instructor on 1/3/06 were for absences during the first half of this course. The class dates listed as the relevant absences on the make-up reports are incorrect, however the correct course is listed on those reports ("Adv. Word"). The Report mistakenly assumes this make-up work occurred for the class offered during the dates that were listed, Keyboarding, as opposed to the actual course correctly listed on those reports, Microsoft Word. As such, the Report's assertion that this make-up work was for a class that the student had already completed and received a grade is incorrect.

Finally with regard to Student #37, the reviewers were also mistaken in their finding that two make-up reports corresponded to work the student performed between 7:00 pm and 7:30 pm on the same day, 1/19/06, leading to her receiving double credit for a half-hour of make-up work for two different classes on different days. Similar to one of the reviewers' errors noted above, these two make-up reports were for work made up on two different dates. Although both signed by the instructor on 1/19/06, these reports clearly reflect that the make-up work was done *not* on the same day but rather 0.5 hours on 1/11/06 and 0.5 hours on 1/19/06.¹³ These make-up reports are included at Attachment 3-D.

2. Student #17

¹³ The student accidentally listed the date for the make-up work as 1/11/05 instead of 1/11/06—a common error at the beginning of a new year. Considering the date of absence this make up work for was 12/6/05 and that the instructor signed off on the make-up report on 1/19/06, it is obvious that the student intended to write 1/11/06.

The Report is incorrect in its implication that a make-up report for Student #17 for one hour of class missed in Business English on 1/13/05 should not count because the student was present for Business English that entire week. In fact, the student did miss an hour of instruction in Business English that week. The Business English class met two times per day, and attendance for each hour meeting was recorded on separate attendance rosters. Attachment 3-E includes both the questioned make-up report and the attendance roster reflecting the hour of Business English class that Student #17 missed on 1/13/05.

The Report also challenges a series of make-up reports of Student #17 as being approved for make-up in a class that had not yet been offered. Franklin agrees with the Report that Student #17 may have been permitted to make-up a few classes in advance of anticipated absence.

Finally with regard to Student #17, the Report questions multiple make-up reports listed as being for a missed Business English class on 12/2/04. Franklin recognizes there was an error with these make-up reports—the wrong class absence date was inadvertently listed. These make-up hours were for the course Introduction to the Medical Office, not Business English. Student #17 was absent for the second day of the Introduction to the Medical Office Program, held on 12/2/04, which was a five hour class. Student #17 made up these five hours the next week, one hour each day, those hours reflected in the make-up reports at issue. Student #17 did not actually even begin Business English until 12/6/04. The make-up reports and the attendance records reflecting this absence are included at Attachment 3-F.¹⁴

3. Student #25

Regarding Student #25, the Report states that the reviewers found examples of conflicting information, as described in the cases discussed above. The only specific example the Report cites is that the reviewers found that this student was credited for multiple hours of make-up for the internet course between 8/9/05 and 8/12/05, when the student didn't begin the internet class until the week of 8/18/05.

Franklin recognizes that there may have been some conflicting information on the make-up reports due to human error and carelessness by the student and/or instructor involved in ensuring the accuracy of each piece of information contained on the make-up reports. Franklin is confident that the improvements it has made to its system for recording make-up hours has had a profound impact on eliminating such inconsistencies due to carelessness and/or simple human error.¹⁵ Despite inconsistencies that may have occurred in the individual make-up report slips during this period, Franklin at all times required and ensured that make-up reports were only completed and accepted where an instructor ensured the time was in fact made-up for a missed class and that the work completed during the make-up time was directly related to the instruction missed due to absence.

¹⁴ The attendance record included at Attachment 3-F is a print out of the weekly attendance recorded in the system for that week (the week of 11/29). In order to be entered into the attendance system, a Franklin attendance officer had to review the manual attendance sheets completed by the instructors, which would have indicated the student's absences. The attendance record for the week of 11/29 shows that the student should have been in attendance for 10 hours that week, but that she was only present for 5 hours reflecting the student's absence.

¹⁵ These improvements to the system are discussed following the explanation of the specific student files that were questioned.

Specific to Student #25, who successfully graduated, this student made up many more hours than necessary during her program. Although she made-up a much larger number of hours during her attendance, she needed to make-up only 19 hours in total to have met Franklin's 80% attendance rate requirement which is necessary to graduate. Student #25 exceeded the attendance requirements and was not required to have made-up all the time she did in order to graduate or to qualify for Title IV. Copies corresponding make-up reports and attendance records for Student #25 for at least 19 hours of make-up time are included at Attachment 3-G.

4. Student #32

As the reviewers did not specify individual questions or concerns for this student, we conducted an overall review of this student's file in an effort to connect each make-up report to the respective absence for which the make-up was completed. As indicated in other responses, we found some errors in the hand-written completion of information on some of the make-up reports such as date of absence, missing assignments, etc. However, we were able to match virtually all make-up slips with their correct corresponding absence for all but an insignificant number of make-up hours. Make-up slips and corresponding attendance rosters for Student #32 are included at Attachment 3-H.

C. Updates to Make-Up System since Program Review Period

In July 2006, Franklin adopted a new computerized student record keeping system. One of the features of this new system is that it records individual absences by subject, period, and module, and will only accept make-up hours if the information reported on the make-up report directly corresponds to an actual absence. We have attached a sample copy of the information contained in our new system for your review at Attachment 3-I. On the "Daily Attendance Sheet", the instructor crosses out the student's bar code for all students present. If the bar code is not crossed out, the student is recorded as absent. The system can produce a "Make Up Attendance Report" for each student, which lists all absences including absence date, courts, and hours missed. The attachment demonstrates this capacity—reflecting a student's absence on 5/27/09 on her "Make Up Attendance Report" that was scanned into the system from the corresponding "Daily Attendance Sheet".

Since the implementation of this new system, whenever a make-up report is submitted, the computer will not accept the make-up information unless it fully matches to an actual absence. As such, the opportunity for errors on make-up reports has dramatically decreased. Franklin also implemented minor changes to the format of the make-up report and revised the training provided to its students during orientation regarding the make-up process in accordance with the changes to its system and its procedures.

A second change to note in Franklin's approach to recording make-up hours since the period of time at issue in the program review is the manner in which instructor's attendance records are reviewed and maintained. During the review period, each attendance sheet included a week's worth of classes. At the beginning of each week, the attendance sheet from the prior week was removed from the instructors' attendance binder and submitted to administration. This practice

may have made the instructor's ability to formally check and verify the accuracy of information on each make-up report more challenging and may have lead to some of the human errors detected on certain make-up reports (e.g., wrong date of absence listed on a make-up report). Since implementation of the new computerized student record keeping system, instructors submit attendance sheets daily while simultaneously maintaining a "white book" in which they maintain the entire module's attendance and a cumulative record of grades attained for each class they teach that module, as well. The instructor maintains this book the entire module and turns it in when the grades are submitted. Use of the white books improves the instructors' ability to ensure accuracy when approving make-up reports.

D. Finding #3 Conclusion

For all these reasons, Franklin believes it should not be required to conduct a complete file review related to this finding. Additionally, please note, Franklin's response to Finding #4 resolves concerns raised in this finding with regard to the reviewers' concerns of implications upon R2T4 calculations.

FINDING #4: Return to Title IV

Franklin respectfully disagrees with the Report's finding that Franklin failed to accurately account for the number of hours scheduled and completed for students who withdrew in their second and subsequent payment periods. At all times, Franklin's policies have complied with the statutory and regulatory requirements regarding the calculation of return to Title IV. Accordingly, Franklin disagrees with the cited cases and does not believe a file review of all Title IV recipients who withdrew from the school is necessary in that its return to Title IV calculations are supported by the statute and regulations.

Determining when a student has completed a payment period for purposes of disbursing aid to an enrolled student is governed by a separate set of rules and calculation than those governing the determination of how much aid a student who has withdrawn has earned. However, the Report appears to conflate the two processes at times, for example, delving into the 10% allowance for excused absences which applies only in determining the correct timing for purposes of disbursing aid and not for calculating return to title IV.

The treatment of title IV funds when a student withdraws requires the institution to calculate the amount of title IV assistances earned by the student. 34 CFR 668.22(e). Federal regulation defines the percent a student has earned based on whether the student completed more than 60% of the scheduled payment period. 34 CFR 668.22(e)(2). Where the student has completed more than 60% of the entire payment period, the student has earned 100% of the aid. 34 CFR 668.22(e)(2)(ii)(B). If the student has completed 60% or less of the payment period, however, the "percentage of payment period completed" as defined in 668.22(f) governs.

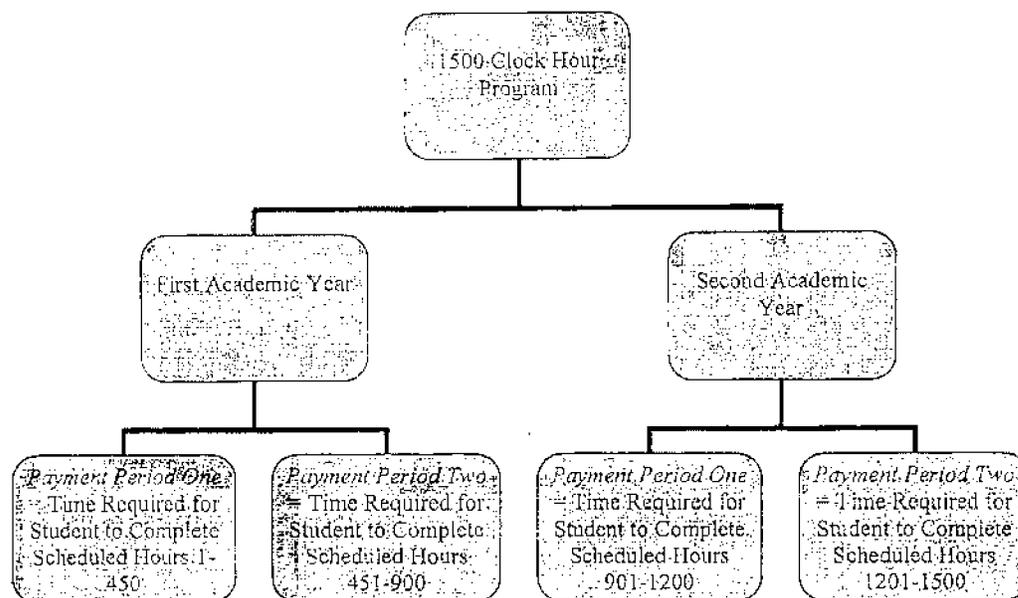
In the case of a program that is measured in clock hours, 34 CFR 668.22(f)(ii)(a) instructs that the applicable percentage of the payment period completed is determined:

...by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours scheduled to be completed as of the student's withdrawal date.

Mathematically, this would be expressed as follows:

$$\frac{\text{Number of clock hours scheduled to be completed as of the student's withdrawal date}}{\text{Total number of clock hours in the payment period or period of enrollment}}$$

When applying this calculation in a second, or subsequent, payment period (i.e., a payment period other than the first payment period), this calculation is not to include hours scheduled for which a student has already earned and received aid. Certainly, the definition of this regulation makes that much clear ("percentage of payment period completed"—as opposed to percentage of program completed for example). Accordingly, where a student has been determined to have earned aid for the first payment period already, the first 450 scheduled clock hours must be disregarded from this calculation—in both the numerator and the denominator. The regulations further specify that the scheduled clock hours to be used "must be those established by the institution". For example, Franklin's 1500 clock hour program is divided into scheduled payment periods as such:



This perfectly mirrors the examples provided in the Financial Student Aid Handbook for scheduling payment periods for clock-hour programs longer than an academic year with a remaining portion. See, e.g., 2005-2006 Handbook p. 3-8.

Where a student has successfully completed 450 hours and then withdraws in the second payment period, the institution must determine the amount of title IV assistance subsequently earned by the student using the above fraction established by the regulation. The student has

already earned and received aid connected to the first 450 scheduled hours, so for purposes of determining how much a student has earned subsequently, the critical timeframe is looking at the program's clock hours scheduled thereafter until the withdrawal. The numerator will be the total number of program hours scheduled as of the student's withdrawal date minus the previously earned 450. Further, because the regulations also specify that the scheduled clock hours to be used "must be those established by the institution", the denominator for this calculation in a program with a schedule such as the one explained above should be 450. As further support for the denominator being 450, consider an email from (b) (6), (b) (7) United States Department of Education Office of Postsecondary Education, responding to a question from Paul Pari, an employee of Educational Compliance Management (ECM). This email exchange is included as Attachment 4-A. The underlying question therein addresses the exact principle at issue here—if a student does not successfully complete the first payment period until sometime after the 450th scheduled hour of a 900 hour program or first academic year, how many scheduled hours are included in the second payment period? (b) (6), (b) (7) answers that the second payment period will still include 450 scheduled hours, and that any scheduled hours past the 451st hour that the student used to complete the first payment period are "brought over" into the second payment period. For all these reasons, Franklin is using the correct calculation in its R2T4 procedures.

The Report erroneously focuses on how many hours students actually *completed* in their second payment period as opposed to the number of scheduled hours, as required under the regulations. The Report states, "It appears that the disbursement was paid based on the total number of hours offered, instead of the hours completed." Compare this with the language of the regulation: "dividing...into the number of clock hours *scheduled* to be completed as of the student's withdrawal date" (emphasis added).

The Report appears to confuse the process used for determining when an enrolled student completes a payment period with the process used for determining how much aid a student who has withdrawn has earned. The regulations are clear—it is not what percentage of the subsequent payment period the student has successfully "completed" (or attended) but what percentage of the subsequent period was "scheduled" through, or offered as of, the student's date of withdrawal.¹⁶

How much a student has "completed" can be seen as a preliminary part of the calculation—for if a student has "completed" more than 60% of the "scheduled" hours, that student is deemed to have earned 100% of the aid. 34 CFR 668.22(e)(2)(ii)(B). Clearly, this would be in any institution's interest to point out. Where this condition is not reached, however, the critical number is the number of hours scheduled—not completed as stated and apparently confused in the Report.¹⁷

¹⁶ There is one caveat—a student must have a 70% attendance record in order to use scheduled hours in the R2T4 computation. In no case did Franklin use scheduled hours in determining aid earned for a student who completed less than 70% of the scheduled hours as of the student's date of withdrawal.

¹⁷ As discussed in the prior footnote, where a student has completed, or attended, less than 70% of the scheduled hours through the date of withdrawal, the student's actual hours completed as opposed to the hours scheduled are used in the calculation. Franklin's policies comply with this rule, and this situation is not at issue in any of the cases cited in the Report.

As explained above, Franklin's policy for calculating how much aid a student withdrawing in a subsequent payment period had earned is completely consistent with the governing regulation, 34 CFR 668.22. Nonetheless, Franklin notes that by letter dated February 9, 2009, Franklin notified Region II of its intent to switch back to measuring progress in credit hours as opposed to clock hours. Regardless of this change, Franklin continues to ensure that the governing regulatory requirements are met.

FINDING #5: Disbursement of Title IV Funds

Franklin acknowledges there appear to have been errors made in disbursing aid for the two students cited in this finding (Students #28 and #30), however it is unclear what general or continuing violation this finding intends to establish. Rather this finding appears to involve two students who did not complete sufficient hours to warrant a second disbursement. We agree that as to these two students the disbursement was in error.

As Franklin has established in responding to earlier findings in this report, Franklin's policies at all times have complied with the statutory and regulatory requirements regarding the calculation of disbursements and return to Title IV. While individual instances of miscalculations may have occurred on occasion due to human error, as in the cited cases of Student #28 and #30, Franklin ensures that governing regulatory requirements are met through its policies under and participation in the Title IV program. Unlike the students included in Finding #4, these two students withdrew before completing their first payment period and therefore should not have received second disbursements.

FINDING #6: Verification

The reviewers cited three cases where Franklin failed to complete verification requirements. Franklin responds to each cited case (Students #15, #26, and #37) in turn.

Franklin agrees that there was an error with regard to Student #15 during the verification process. Accordingly, a needs analysis with the verified information was conducted, resulting in a change of this student's EFC from 1841 to 3677. A recalculation was conducted based on this revised EFC. The results of the recalculation indicate that her award should have been decreased from \$1467 to \$400. The revised S.N.A.P for this student is included at Attachment 6-A. The corrected information for line 79 appears on the S.N.A.P. and the resulting EFC and Award appear in the upper right hand section of the page.

The reviewers point out that Section C of the verification worksheet for Student #37 was left blank. This is the section where the student would confirm whether they filed a tax return and report any income or benefits the student received during 2004. During the verification process, it was confirmed that the student did not earn any taxable or non-taxable income during 2004 but the student inadvertently failed to check the box indicating that no tax return was filed. Accordingly, no recalculation of Student #37's award is required—the student was eligible for all Title IV funds disbursed.

The reviewers noted the same issue discussed regarding Student #37 for Student #26. Franklin notes that Student #26 had not been selected for verification. The verification worksheet was used with Student #26 for a purpose other than verification. As such, Franklin was not required to complete the verification worksheet for Student #26. The student was eligible for all Title IV funds disbursed.

As such, Franklin has determined the total Title IV aid at issue under Finding #6 is \$1,167. A copy of Franklin's Verification Procedures are included at Attachment 6-B for your reference.

FINDING #7: Conflicting Information

For Finding #7, the reviewers believed Franklin failed to resolve conflicting information in the records of four students (Students # 15, 28, 31, and 37) relating to Title IV eligibility. Franklin agrees with the reviewers in three of the instances and disagrees with the reviewers' finding with regard to one of the students cited.

Franklin acknowledges that there was conflicting information in the records of Students #15, #28, and #37 relating to their eligibility for Title IV. Franklin was able to complete a corrected needs analysis for Student #28, which resulted in the student's EFC remaining at zero. The revised needs analysis (S.N.A.P.) is included with this response at Attachment 7-A. Accordingly, no recalculation of this student's PELL Grant is required, and there was no impact on this student's award. As for Students #15 and #37, however, due to the amount of time that has passed and the challenge in now trying to resolve the conflicting information, Franklin has determined it will not be able to conduct a revised needs analysis for these two students. As such, Franklin accepts liability for the funds awarded to Students #15 and #37.

With regard to Student #31, Franklin disagrees with the reviewers' finding. For this student, the reviewers pointed to a Certification of Naturalization that the student submitted to document her citizenship that indicated that she was married as contradicting the student's 2005-2006 ISIR, based on her FASFA completed in April 2006, which indicated she was unmarried. The student separated from her husband in 2004. As per the Financial Student Aid Handbook's Application and Verification Guide, where an applicant is married but separated, the income of the spouse is not to be included in calculating EFC. See e.g., 2005-2006 FSA Handbook, AVG pages 59, 61, 86. Attachment 7-B is a signed statement from Student #31 attesting to her separation and the fact that she receives no support from her husband.

In sum, for Finding #7, Franklin has determined it owes no liability with regard to Students #28 and #31 and accepts liability for Students #15 and #37. Franklin will continue to comply with the verification requirements, including its Verification Procedures, referenced in Finding #6 and included at Attachment 6-A.

FINDING #8: Authorization to Credit Federal Work Study Funds

Under 34 C.F.R. §675.16(a), an institution may pay Federal Work Study (FWS) compensation to a student by crediting the student's account at the institution after obtaining a specific written authorization from the student. The reviewers cited that Franklin's Financial Aid Status & Waiver Form, which is used to authorize retention of credit balances for students, does not mention authorization by the student to credit FWS funds directly to their account. While that form may not specifically authorize the credit of FWS directly to student accounts, Franklin has always obtained such an authorization in advance of crediting FWS to a student's account. During the period of time at issue, this authorization was included on its Estimated Financial Aid Work Sheet (EFAWS). Furthermore Franklin recently took steps to improve upon its established process of obtaining such authorization.

Along with its Estimated Financial Aid Work Sheet (EFAWS), Franklin now includes an additional, separate, authorization form for obtaining a student's permission for FWS payroll to be credited to the student's ledger account. Franklin's independent auditor found its EFAWS to be sufficient but suggested Franklin create an additional authorization form beyond the language in the EFAWS. Franklin incorporated this suggestion by creating an additional form that solely addresses the authorization of crediting FWS compensation to a student's account. Franklin began use of this additional form in 2006-2007 and has continued use of this form through the present time. A copy of the current EFAWS and accompanying form is included at Attachment 8-A.

FINDING #9: Student Eligibility for FWS Employment

The reviewers found that one student continued to work in her Federal Work Study (FWS) position after completion of her program of study. Franklin agrees with the Reviewers finding.

Student #25 officially graduated on April 7, 2006, with her last scheduled day of attendance at her externship being March 31, 2006. She was offered full time employment beginning May 1, 2006 and asked to continue working at the school through the month of April. Her request was granted without realizing the student had officially graduated, the student continued to be compensated with FWS funds in error.

FINDING #10: Monitoring of FWS Employment

In Finding #10, a finding that student work periods appeared to exceed New York State Labor Department (NYSLD) guidelines concerning meal breaks and consecutive hours of work, the Report misstates the NYSLD guidelines as requiring employees who work shifts of more than four hours during the day to be provided a meal break of at least 30 minutes. Actually, NYSLD guidelines entitle employees working shifts of more than *six* hours, *not four* hours, to a meal break of at least 30 minutes. The state labor law is more detailed than simply entitling an employee to a break of at least 30 minutes when working a shift of 6 or more hours, but there is no requirement under state law or NYSLD guidelines that entitles employees to a break for a shift of less than 6 hours. Copies of Section 162 of the NYS Labor Law and the NYSLD guidelines are included at Attachment 10-A.

The Report asks Franklin to respond to clarify the circumstances regarding reviewers' concerns relating to two FWS students (Students # 11 and #30). The reviewers raised concerns that the timesheets for Student #11 worked periods of more than five consecutive hours numerous times, with as many as eight consecutive hours without a documented break. First, as discussed above, NYS labor law does not require an employee be provided with a break for any shift lasting up to, but not more than, six hours. For shifts of more than six hours, Franklin's policy has always been in accordance with state labor laws and guidelines. Franklin has always treated such breaks as unpaid. During orientation for FWS students selected for employment, Franklin trains its student employees on its sign-in/sign-out procedures and the reporting processes, among other orientation topics.

Although Franklin already had procedures in place to ensure students, including Student #11, were not paid for breaks, Franklin has used this finding as an opportunity to improve its procedures related to monitoring of FWS employment. In particular, Franklin has revised its sign-in/sign-out sheet to better reflect a break period and instituted new procedures whereby FWS students sign a form acknowledging their understanding of having to take breaks under certain conditions. The revised sign-in/sign-out sheet and the acknowledgement form are included at Attachment 10-B.

With regard to Student #30, Franklin agrees with the reviewers concern that the student may not have been paid for all hours worked during a given month. It appears five hours were inadvertently omitted when the November FWS hours were being summarized, leading the student to be paid for 54.5 hours of work as opposed to the 59.5 hours worked. In recognition of this error, Franklin has prepared and mailed a check to the student for the five hours worked but not paid. A copy of the check is included at Attachment 10-C.

FINDING #11: Eligibility for SEOG Award/Disbursement

Finding #11 questions the documentation supporting FSEOG awards to three students in the program review sample (Students #15, #32, and #35). For all three students, the report says the reviewers did not find any documentation as to when the students were awarded their FSEOG. As such, the Report questions whether there is documentation to support that the students received their FSEOG awards while enrolled and eligible.

Franklin agrees with Finding #11 as it relates to Student #32 only. Franklin acknowledges that Student #32 was awarded FSEOG mistakenly after her last day of attendance; however, neither Student #15 nor Student #35 was awarded FSEOG following their last days of attendance.

Student #15 was awarded \$2,000 in FSEOG on 12/2/05 and received one disbursement of \$1,000 that same day. This student's last day of attendance was 12/3/05, not 11/28/05 as mistakenly stated in the Report. Attachment 11-A includes Student #15's attendance records for her

externship, reflecting that she attended her externship on Saturday 12/3/05.¹⁸ Near the end of the year, it was determined that the student was owed her second disbursement, which was made on 5/15/06.

Student #35 was awarded \$500 in FSEOG on 5/15/06. Her last day of attendance was after that time, as reflected in her externship attendance records, included at Attachment 11-B. As reflected therein, her last marked attendance for her externship was on May 26, 2006, the Friday of the "Week of May 22, 2006".

During 2006, Franklin changed Data Processing systems to the Diamond D System. Since that time all students are awarded FSEOG at the beginning of the Award Year at the same time that PELL and NY State TAP Grants are scheduled. The schedules of all of these disbursements are on a Payment Period basis within each Award Year. The new computer system is an asset in ensuring all awards have been made while students were still in school.

Franklin's packaging procedures are included at Attachment 11-C, and a summary of Franklin's FSEOG awarding procedures are included at Attachment 11-D.

CONCLUSION

In closing, Franklin respectfully disagrees with a majority of the findings and required actions issued in the Report and requests that they be reconsidered and revised accordingly. With regard to the findings with which Franklin agrees, Franklin will await further instructions from the Department on how to proceed.

¹⁸ The Report erroneously states that this student's last day of attendance was 11/28/05. This error may be due to a quick reading of the attendance report, which records attendance by week. For the "Week of November 28, 2005", the student was clearly in attendance through that Saturday, which was December 3, 2005.

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July 7, 2011

Mr. Stephen Podeszwa
Institutional Review Specialist
U.S. Department of Education
32 Old Slip, 25th Floor
New York, NY 10005

Re: Requirement to Resubmit Program Review Response

**OPE ID: 033283
PRCN 200640225454**

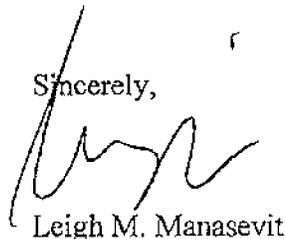
Dear Mr. Podeszwa:

Please be advised that Brustein & Manasevit, PLLC represents Franklin Career Institute ("Franklin") in this matter. Attached you will find Franklin's response to your April 8, 2011 letter requesting a resubmission of the program review response and request for additional information.

As noted in the resubmitted response, Franklin does not concur with the Findings set forth in the Original Program Review Report or the Requirement to Resubmit Program Review Response letter. We maintain Franklin's understanding of, and policies related to, the requirements of 34 CFR § 668.151 and 34 CFR § 668.22 to be correct. Nonetheless, to comply with your request for resubmission, Franklin has prepared and is herein submitting the requested documentation for Findings # 1 and #4. Where appropriate, documents previously provided as attachments are referenced as such.

As designated counsel for Franklin in this matter, we request that all further communications on this matter be directed to our office. If you have any questions, please do not hesitate to contact me.

Sincerely,



Leigh M. Manasevit

Franklin Career Institute
Program Review Response Resubmission
OPE ID: 033283
PRCN 200640225454

Submitted to:
Mr. Stephen Podeszwa
Institutional Review Specialist
U.S. Department of Education
32 Old Slip, 25th Floor
New York, NY 10005

The Program Review Report, PRCN 200640225454, issued April 20, 2009 included eleven initial findings. Franklin Career Institute ("Franklin"), in its July 13, 2009 Response to Program Review Report ("Response"), disagreed with nearly all of the findings and detailed its disagreement therein. On April 8, 2011 the United States Department of Education ("Department") sent a letter detailing Franklin's Requirement to Resubmit Program Review Response. The Department's letter addressed only Findings #1 and #4 and requested additional responses and documentation with regard to those findings. Franklin reserves its disagreements with the original Program Review Report and cross references them herein as they apply to the Requirement to Resubmit Program Review Response letter. As reflected in its Response, Franklin maintains that all policies were compliant with the appropriate regulation. The requested documentation has been attached and addressed below.

Finding #1: Administration of Ability to Benefit Tests

In its Requirement to Resubmit Program Review Response letter, the Department claimed Franklin failed to comply with the federal requirements that an ability to benefit (ATB) test be "independently administered" under 34 CFR § 668.151. The Department's position is that ATB test administrator (b) (6), (b) (7)(C) was a former employee of Vocational Educational Testing (VET) and did not meet the criteria of an independent test administrator as specified in section 34 CFR § 668.151(b)(2) of the regulation.

Franklin reserves and reasserts the position that (b) (6), (b) (7) qualified at all times as an 'independent test administrator'. (b) (6), (b) (7), not VET, was the test administrator giving the test. Moreover, (b) (6), (b) (7) was an Independent Contractor, and not an employee, of VET. VET, in a contractor role, identified, recruited and contracted independent contractors who would administer ATB tests at Franklin. At no time were the ATB administrators' employees of either VET or Franklin. (b) (6), (b) (7)'s independent contractor status with VET is reflected in the 1099 forms she filed in 2004 and 2005, which were included in Franklin's July 2009 Response as Attachments 1-A and 1-B.

In its Program Review Report, the Department had also claimed that (b) (6), (b) (7) was ineligible as she was a former employee of Franklin. While this is not addressed in the Requirement to Resubmit Program Review Response letter, we reiterate our position that (b) (6), (b) (7) was an independent contractor throughout the use of her services and never an employee of Franklin. This argument is supported by the Internal Revenue Services (IRS) principles regarding independent contractors including behavioral control, financial control and the relationship between the parties.

During her work as an ATB test administrator, Franklin provided no training or instruction, and exercised no control on the performance of her work beyond providing testees and a space for administering the ATB test. Franklin never paid any expense related to her certification by the test publisher as an ATB test administrator and did not restrict her ability to secure or serve other clients. As to the type of relationship between Franklin and Ms. Fridman, there was no written contract of employment, Ms. Fridman did not receive any employee benefits, and she remained free to adjust her schedule throughout the pertinent time period. Finally, the law has made clear that the use of a W-2 form for tax purposes is not dispositive of an employee/employer relationship.¹

While Franklin continues to disagree with the Department's position on Finding # 1, in an effort to fully cooperate with the Department's request, Franklin is providing herein at Attachment A, a list of all Title IV recipients who were admitted under the ATB provisions for the award years 2004/2005 through 2006/2007. During this period there were two ATB administrators, Galina Fridman and Lesma Miller-Drummond. Franklin maintains that both qualified as independent testers.

Additionally, at Attachment B, Franklin is providing documentation for the three individuals who have administered the ATB tests since the program review was conducted, Galina Fridman, Elena Coman and Lesma Miller-Drummond. Included in Attachment B are current contact information for these individuals and copies of testing agency approval and certification.

Additionally, for students admitted based on ATB tests administered during this period, there is an extremely compelling reason that no significant interest of the Department has been harmed—even assuming that there was noncompliance regarding the ATB testing. On October 29th 2010, the Department issued Program Integrity Rules. The Department has since created an alternative to the ATB test allowing students who satisfactorily complete 6 semester, trimester or quarter credit hours, or 225 clock hours, applicable toward a degree or certificate offered by the institution to establish their Title IV, HEA eligibility.² While these regulations were enacted after the years in question, they reflect a significant change in the Department's view of the

¹ *Independent Contractor or Employee...*, Publication 1779, Department of Treasury, Internal Revenue Service, (Rev. 8-2008), located online at: <http://www.irs.gov/pub/irs-pdf/p1779.pdf>

² Department of Education Program Integrity Issues; 75 Fed. Reg. 66919 (Oct. 29, 2010)

importance of the ATB test. Under the current approach, students who would otherwise be required to pass an ATB test to qualify for Title IV assistance would become eligible after successfully completing 6 credit hours or 225 clock hours. Thus, even if there had been an ATB violation, then these new regulations would be the appropriate guide for determining liability as they reflect an important policy shift that is equally applicable to the situation at hand as it is to new enrollees.

Finding #4: Return to Title IV

The Program Review Report claimed that Franklin failed to accurately account for the number of hours scheduled and completed for the students who withdrew in the second and subsequent payment periods. As stated in the Response, Franklin respectfully disagrees and believes that its policies have complied with the statutory and regulatory requirements regarding the calculation of return to Title IV.

Franklin performed the calculation as directed by 34 CFR § 668.22(f)(ii)(a) by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours scheduled to be completed as of the students withdrawal date.

For the purposes of a Return to Title IV calculation, a school must determine how much aid has been earned during a scheduled payment period. In order to complete the calculation, a payment period must be defined. Under 34 CFR § 668.4 (c)(2)(i), the payment period for a clock hour program of one year or more is defined as

(A) The first payment period is the period of time in which the student successfully completes half of the number of credit hours or clock hours, as applicable, in the academic year and half of the number of weeks of instructional time in the academic year; and

(B) The second payment period is the period of time in which the student successfully completes the academic year.

As noted in our initial response, Franklin's 1500 hour program was defined in accordance with this provision; during the first academic year, the first payment period was 450 hours, the second 451-900 hours. During the second academic year, the first payment period was 901-1200 hours, the second 1201-1500 hours.

Franklin has used the correct calculation its return to Title IV procedures, and has relied on the language of the regulations as well as statements from the Department, previously attached with Franklin's Response at 4-A. Franklin cross references herein the entire argument made in its initial Response to the Program Review Report for finding #4. In its Requirement to Resubmit Program Review Response Letter, the Department states that there appears to be a "disagreement

in the interpretation of the phrase the number of clock hours scheduled to be completed as of the student's withdrawal date." Franklin's interpretation is based on its reading of the regulation. The Department points to Part B of 34 CFR § 668.22 (f) as support for their understanding, but as noted above, Franklin was and has remained in compliance with that provision.

While continuing to respectfully disagree, Franklin has reviewed all Title IV recipients who withdrew from the school for the award years 2004/2005 through 2006/07 as requested. A recalculation of Return to Title IV has been conducted using the understanding of the formula reflected in the Requirement to Resubmit Program Review Response. At Attachment C, Franklin has attached a spreadsheet containing the requested information, including:

- 1) Student's name
- 2) The amount of late, under-funded, or unmade refunds identified by program
- 3) The date the school determined the student withdrew
- 4) The last date of attendance
- 5) The date the refund was made.

Please note, with reference to the three requested dates associated with the review of R2T4 calculations, the following explanation explains why some of the dates might appear at first glance to be either late (Date of Refund greater than 45 days after the Date of Determination) or impossible (Date of Refund before the Date of Determination).

1. In many instances, the student's final PELL payment was a Post Withdrawal Disbursement (PWD). In all cases, the students met the requirements for a Late Disbursement and the PWD was made within the statutory deadline of 120 days (for the time period under review). In those cases the Date of Refund is actually the date of the PWD so time frames greater than the 45 days after the Date of Determination for refunds are correct.
2. In other instances, the Refund Date is prior to the Date of Determination. In this instance, the date listed does not reflect a "refund date" but the date of last disbursement of Title IV funds. At the time the original calculation was made, there was no refund due as the student had earned the full disbursement based on the attendance information in the school's recordkeeping system and the methodology (which is the basis for FCI's response to this finding) used at the time. As a result of the subsequent review of makeup hours as well as a recalculation of the R2T4 using the methodology described in the Program Review report, a refund has been calculated and that newly calculated refund amount appears on the attached spreadsheet.

Appendix D – File Review Report – Finding #1

(b)(6); (b)(7)(C)

Appendix E – File Review Report – Finding #4

Franklin Career Institute-Program Review
Student Information

Last	First	Additional Refund	Date of Determination	LDA	Date of Refund
(b)(6); (b)(7)(C)		188.15	12/16/2005	11/23/2005	1/20/2006
X		52.75	4/7/2006	4/5/2006	5/1/2006
		945.00	10/21/2005	7/15/2005	10/31/2005
		202.40	4/7/2007	3/23/2007	5/15/2007
		747.27	7/14/2006	6/14/2006	7/19/2006
		382.00	5/13/2005	1/14/2005	5/27/2005
		1,033.00	6/12/2005	5/30/2005	7/20/2005
		4.45	5/26/2006	5/11/2006	6/8/2006
		3.55	7/30/2004	7/15/2004	8/13/2004
		2.30	10/22/2004	10/8/2004	10/28/2004
X		939.50	5/19/2006	5/2/2006	6/8/2006
X		133.75	3/18/2005	3/16/2005	4/7/2005
X		210.32	6/23/2006	6/15/2006	7/19/2006
		1,350.00	9/1/2005	8/19/2005	9/13/2005
X		20.35	2/1/2005	1/19/2005	4/7/2005
		21.32	3/21/2007	3/12/2007	4/18/2007
		254.65	9/13/2004	8/30/2004	9/30/2004
		1,354.72	8/31/2004	9/23/2004	2/3/2004
		888.97	3/4/2005	3/4/2005	3/4/2005
X		362.30	3/31/2006	3/23/2006	5/1/2006
X		133.65	2/24/2006	2/7/2006	3/1/2006
X		698.25	8/26/2005	8/9/2005	9/1/2005
		913.27	9/27/2004	9/14/2004	3/8/2004
X		10.57	8/19/2005	8/4/2005	8/24/2005
		67.22	6/2/2006	5/31/2006	6/8/2006
X		0.72	11/12/2004	9/21/2004	11/12/2004
X		757.75	4/7/2006	4/6/2006	5/1/2006
		1,372.05	2/3/2006	1/11/2006	3/1/2006
X		1,474.10	7/29/2005	6/28/2005	8/8/2005
		332.27	12/16/2004	11/22/2004	8/13/2004
X		1,316.25	1/11/2007	1/11/2007	1/11/2007
		1,030.00	11/4/2005	5/3/2005	11/9/2005
X		14.50	1/13/2006	12/13/2005	1/20/2006
		500.00	9/9/2005	5/20/2005	9/13/2005
X		584.55	9/7/2006	8/24/2006	3/1/2006
		99.32	8/19/2005	7/27/2005	8/24/2005
X		702.00	5/1/2006	3/24/2006	5/1/2006
		517.00	1/20/2005	12/7/2004	2/1/2005
X		14.40	6/3/2005	5/4/2005	6/22/2005
		945.77	2/16/2005	1/31/2005	3/2/2005
		740.27	11/21/2005	11/1/2005	1/20/2006
X		1,723.27	8/14/2006	7/31/2006	7/19/2006
		1,079.00	8/13/2004	7/27/2004	5/14/2004
X		945.00	7/21/2006	10/28/2005	1/20/2006
		1,057.00	3/3/2006	2/15/2006	4/3/2006
X		895.05	5/5/2006	4/24/2006	5/1/2006

X = Students duplicated at Finding #1

Franklin Career Institute-Program Review
Student Information

Last	First	Additional Refund	Date of Determination	LDA	Date of Refund
(b)(6); (b)(7(C))		339.97	4/25/2006	4/20/2006	5/15/2006
		1,066.50	11/3/2006	11/2/2006	10/26/2006
		44.95	10/1/2004	9/24/2004	10/6/2004
		42.20	5/6/2005	4/26/2005	5/10/2005
		940.95	8/19/2005	8/19/2005	9/13/2005
		139.50	12/15/2005	9/6/2005	1/24/2006
		2,061.45	8/7/2006	7/10/2006	8/3/2006
		15.30	4/8/2005	3/21/2005	5/10/2005
		675.00	5/31/2007	5/24/2007	7/9/2007
		872.30	10/6/2006	9/23/2006	12/6/2006
		2,025.00	7/21/2006	7/14/2006	8/4/2006
		994.60	4/5/2006	3/24/2006	5/1/2006
		107.72	3/10/2005	2/14/2005	4/7/2005
		949.32	8/5/2005	7/20/2005	8/9/2005
		1,246.95	4/28/2006	4/11/2006	5/15/2006
		316.00	2/10/2006	1/19/2006	3/1/2006
		316.00	2/10/2006	1/19/2006	3/1/2006
		996.30	6/24/2005	6/15/2005	6/22/2005
		247.00	4/28/2005	3/28/2005	5/10/2005
		325.85	6/23/2006	6/6/2006	7/10/2006
		409.32	3/16/2005	2/17/2005	4/7/2005
		630.00	4/20/2006	3/31/2006	5/1/2006
		527.00	4/28/2006	4/17/2006	5/15/2006
		152.10	4/13/2006	4/3/2006	5/1/2006
		13.95	6/10/2005	5/23/2005	6/22/2005
		469.90	2/17/2006	2/8/2006	3/1/2006
		22.50	4/18/2005	4/12/2005	6/22/2005
		21.55	8/30/2004	8/27/2004	9/9/2004
		86.20	6/21/2006	12/6/2005	7/10/2006
		708.57	5/26/2006	5/12/2006	6/8/2006
		439.52	4/10/2006	3/24/2006	5/1/2006
		1,046.92	10/26/2006	2/17/2007	10/26/2006
		1,174.50	4/19/2006	3/24/2006	5/1/2006
		91.17	5/6/2005	3/25/2005	5/10/2005
		17.82	5/12/2006	5/8/2006	5/23/2006
		1,308.15	9/13/2004	8/26/2004	12/19/2003
		805.95	10/27/2006	10/20/2006	11/17/2006
		791.77	1/25/2005	7/12/2004	1/28/2005
		822.47	6/10/2005	5/25/2005	6/22/2005
		336.60	4/19/2005	3/24/2005	5/10/2005
		224.72	5/2/2007	4/27/2007	5/15/2007
		1,358.77	10/1/2004	9/24/2004	4/14/2004
		707.00	7/30/2007	7/13/2007	7/30/2007
		291.10	7/13/2004	7/2/2004	7/26/2004
		270.90	3/30/2007	3/23/2007	4/20/2007
		1,350.00	12/6/2006	9/23/2006	12/6/2006

Franklin Career Institute-Program Review
Student Information

Last	First	Additional Refund	Date of Determination	LDA	Date of Refund
(b)(6); (b)(7)(C)		267.47	6/10/2005	5/17/2005	6/22/2005
		22.67	12/21/2006	1/11/2007	1/11/2007
		1,746.40	10/22/2004	10/4/2004	11/12/2004
		66.82	2/18/2005	2/8/2005	3/4/2005
		742.77	6/13/2007	6/13/2007	6/13/2007
		121.60	3/14/2006	2/13/2006	4/3/2006
		61.20	10/6/2005	9/23/2005	10/25/2005
		168.17	3/14/2006	2/13/2006	4/3/2006
		427.00	12/3/2004	11/5/2004	12/29/2004
		140.05	2/3/2006	1/30/2006	3/1/2006
		6.35	3/9/2005	2/3/2005	4/7/2005
		26.15	7/5/2006	6/28/2006	7/10/2006
		34.02	2/25/2005	2/1/2005	3/4/2005
		980.10	2/18/2005	2/9/2005	5/14/2004
		279.05	2/24/2006	2/1/2006	3/1/2006
		0.10	3/14/2006	2/28/2006	4/3/2006
		1,991.25	12/1/2006	9/27/2006	12/8/2006
		1,229.17	5/26/2005	10/22/2004	10/6/2004
		834.35	9/3/2004	8/19/2004	9/9/2004
		24.75	3/2/2006	2/4/2006	4/3/2006
		721.00	6/10/2005	5/27/2005	6/22/2005
		222.25	12/16/2004	8/17/2004	12/28/2004
		321.92	8/12/2005	7/22/2005	8/22/2005
		221.40	8/26/2005	8/2/2005	9/1/2005
		824.17	7/1/2005	6/29/2005	6/22/2005
		945.00	7/29/2005	6/27/2005	9/13/2005
		26.22	3/2/2005	1/28/2005	4/7/2005
		236.60	6/9/2006	5/23/2006	7/10/2006
		153.45	5/1/2006	4/27/2006	5/15/2006
		54.35	9/17/2004	9/1/2004	9/30/2004
		844.42	6/2/2006	5/19/2006	5/15/2006
		180.00	1/19/2005	1/10/2005	2/1/2005
		1,093.50	5/9/2005	5/5/2005	5/10/2005
		35.20	4/29/2005	4/14/2005	5/10/2005
		3.77	2/3/2005	2/2/2005	4/7/2005
		427.77	4/28/2006	4/12/2006	5/15/2006
		1,593.45	1/17/2006	1/12/2006	1/26/2006
		520.82	12/10/2004	11/22/2004	12/29/2004
		449.50	8/19/2005	8/8/2005	8/24/2005
		832.95	1/11/2007	1/11/2007	1/11/2007
	1,603.80	5/12/2006	4/7/2006	5/23/2006	
	1,125.00	12/16/2005	12/3/2005	1/20/2006	
	2,244.82	3/3/2006	2/15/2006	4/3/2006	
	968.00	9/16/2005	8/26/2005	10/25/2005	
	252.00	3/23/2005	10/25/2004	4/7/2005	
	45.00	5/27/2005	3/11/2005	6/22/2005	

Franklin Career Institute-Program Review
Student Information

Last	First	Additional Refund	Date of Determination	LDA	Date of Refund
(b)(6); (b)(7)(C)		391.70	2/16/2005	1/19/2005	3/2/2005
		2,025.00	10/25/2006	10/18/2006	8/1/2006
		30.60	5/13/2005	4/18/2005	5/27/2005
		158.00	7/16/2004	7/1/2004	8/13/2004
		269.00	3/24/2006	2/21/2006	4/3/2006
		56.97	12/10/2004	11/19/2004	12/29/2004
		540.22	6/25/2007	6/15/2007	7/25/2007
		994.50	8/2/2004	7/30/2004	8/13/2004
		22.32	10/22/2004	10/8/2004	10/28/2004
		78.52	8/19/2005	7/27/2005	8/24/2005
		129.90	2/26/2007	2/15/2007	3/14/2007
		12.05	5/12/2006	4/20/2006	5/23/2006
		1,101.60	6/1/2007	6/1/2007	4/20/2007
		654.40	12/16/2005	11/22/2005	1/20/2006
		146.20	9/4/2004	8/17/2004	9/9/2004
		130.20	10/15/2004	9/21/2004	11/12/2004
		4.55	8/13/2004	7/26/2004	8/13/2004
		399.10	2/16/2006	1/19/2006	3/1/2006
		55.17	1/6/06	12/12/2005	1/20/2006
		917.32	5/5/2006	4/26/2006	5/1/2006
		545.00	3/7/2006	2/24/2006	4/3/2006
		528.35	12/29/2005	12/29/2005	1/20/2006
		494.00	4/5/2006	3/7/2006	5/1/2006
		409.05	12/1/2005	11/2/2005	1/20/2006
		1,034.77	7/28/2006	7/17/2006	5/15/2006
		1,275.75	7/8/2005	6/24/2005	5/10/2005
		427.22	4/4/2007	3/23/2007	4/18/2007
		35.10	7/30/2004	7/6/2004	8/13/2004
		136.00	5/9/2005	10/18/2004	5/27/2005
		842.40	11/11/2005	10/17/2005	8/24/2005
		58.40	1/12/2005	1/10/2005	2/1/2005
		93,840.45			

Appendix F – Cost of Funds Calculations

Late or Unmade Returns (Non-Loan) - Cost of Funds

complete

Name of Institution: Franklin Career Institute - Finding #4

Note: The withdrawal date is necessary to determine if an institution has 30 (default) or 45 days to return funds

No.	Description/Name	Return Amount	Program	WD Date	Institution Del Date	Return Paid Date	Return Due Date	Days Late	Imputed CVFR	Federal Share	To ED	To Inst Accounts
(b)(6); (b)(7)(C)		\$382.00	Pell Grant	01/14/05	5/13/2005	4/20/2009	06/12/05	1408	1.00%	\$ 382.00	\$ 14.74	\$ -
		\$1,033.00	Pell Grant	05/30/05	6/12/2005	4/20/2009	07/12/05	1378	1.00%	\$ 1,033.00	\$ 39.00	\$ -
		\$3.55	Pell Grant	07/15/04	7/30/2004	4/20/2009	08/29/04	1695	1.00%	\$ 3.55	\$ 0.16	\$ -
		\$254.65	Pell Grant	08/30/04	9/13/2004	4/20/2009	10/13/04	1650	1.00%	\$ 254.65	\$ 11.51	\$ -
		\$1,354.72	Pell Grant	08/31/04	9/23/2004	4/20/2009	10/23/04	1640	1.00%	\$ 1,354.72	\$ 60.88	\$ -
		\$888.97	Pell Grant	03/04/05	3/4/2005	4/20/2009	04/03/05	1478	1.00%	\$ 888.97	\$ 38.00	\$ -
		\$913.27	Pell Grant	09/14/04	9/27/2004	4/20/2009	10/27/04	1636	1.00%	\$ 913.27	\$ 40.94	\$ -
		\$332.27	Pell Grant	11/22/04	12/16/04	4/20/2009	01/15/05	1556	1.00%	\$ 332.27	\$ 14.17	\$ -
		\$1,030.00	Pell Grant	05/03/05	11/04/05	4/20/2009	12/04/05	1233	1.00%	\$ 1,030.00	\$ 34.80	\$ -
		\$500.00	Pell Grant	05/20/05	09/09/05	4/20/2009	10/09/05	1289	1.00%	\$ 500.00	\$ 17.66	\$ -
		\$517.00	Pell Grant	12/07/04	01/20/05	4/20/2009	02/19/05	1521	1.00%	\$ 517.00	\$ 21.55	\$ -
		\$945.77	Pell Grant	01/31/05	02/16/05	4/20/2009	03/18/05	1494	1.00%	\$ 945.77	\$ 38.72	\$ -
		\$1,079.00	Pell Grant	07/27/04	08/13/04	4/20/2009	09/12/04	1681	1.00%	\$ 1,079.00	\$ 49.70	\$ -
		\$44.95	Pell Grant	09/24/04	10/01/04	4/20/2009	10/31/04	1632	1.00%	\$ 44.95	\$ 2.01	\$ -
		\$42.20	Pell Grant	04/26/05	05/05/05	4/20/2009	06/05/05	1415	1.00%	\$ 42.20	\$ 1.64	\$ -
		\$15.30	Pell Grant	03/21/05	04/08/05	4/20/2009	05/08/05	1443	1.00%	\$ 15.30	\$ 0.60	\$ -
		\$107.72	Pell Grant	02/14/05	03/10/05	4/20/2009	04/09/05	1472	1.00%	\$ 107.72	\$ 4.34	\$ -
		\$409.32	Pell Grant	02/17/05	03/16/05	4/20/2009	04/15/05	1466	1.00%	\$ 409.32	\$ 16.44	\$ -
		\$21.55	Pell Grant	08/27/04	08/30/04	4/20/2009	09/29/04	1664	1.00%	\$ 21.55	\$ 0.98	\$ -
		\$1,308.15	Pell Grant	08/26/04	09/13/04	4/20/2009	10/13/04	1650	1.00%	\$ 1,308.15	\$ 59.14	\$ -
		\$791.77	Pell Grant	07/12/04	01/25/05	4/20/2009	02/24/05	1516	1.00%	\$ 791.77	\$ 32.89	\$ -
		\$336.60	Pell Grant	03/24/05	04/19/05	4/20/2009	05/19/05	1432	1.00%	\$ 336.60	\$ 13.21	\$ -
		\$1,358.77	Pell Grant	09/24/04	10/01/04	4/20/2009	10/31/04	1632	1.00%	\$ 1,358.77	\$ 60.76	\$ -
		\$291.00	Pell Grant	07/02/04	07/13/04	4/20/2009	08/12/04	1712	1.00%	\$ 291.00	\$ 13.65	\$ -
		\$1,746.40	Pell Grant	10/04/04	10/22/04	4/20/2009	11/21/04	1611	1.00%	\$ 1,746.40	\$ 77.09	\$ -
		\$427.00	Pell Grant	11/05/04	12/03/04	4/20/2009	01/02/05	1569	1.00%	\$ 427.00	\$ 18.36	\$ -
		\$980.10	Pell Grant	02/09/05	02/18/05	4/20/2009	03/20/05	1492	1.00%	\$ 980.10	\$ 40.07	\$ -
		\$1,229.17	Pell Grant	10/22/04	05/26/05	4/20/2009	06/25/05	1395	1.00%	\$ 1,229.17	\$ 46.98	\$ -
		\$834.35	Pell Grant	08/19/04	09/03/04	4/20/2009	10/03/04	1680	1.00%	\$ 834.35	\$ 37.95	\$ -
		\$721.00	Pell Grant	05/27/05	06/10/05	4/20/2009	07/10/05	1360	1.00%	\$ 721.00	\$ 27.26	\$ -
		\$222.25	Pell Grant	08/17/04	12/16/04	4/20/2009	01/15/05	1556	1.00%	\$ 222.25	\$ 9.48	\$ -
		\$945.00	Pell Grant	06/27/05	07/29/05	4/20/2009	08/28/05	1331	1.00%	\$ 945.00	\$ 34.46	\$ -
		\$520.82	Pell Grant	11/22/04	12/10/04	4/20/2009	01/09/05	1562	1.00%	\$ 520.82	\$ 22.29	\$ -
		\$252.00	Pell Grant	10/25/04	03/23/05	4/20/2009	04/22/05	1459	1.00%	\$ 252.00	\$ 10.07	\$ -
		\$591.70	Pell Grant	01/19/05	02/16/05	4/20/2009	03/18/05	1494	1.00%	\$ 591.70	\$ 16.03	\$ -
		\$158.00	Pell Grant	07/01/04	07/16/04	4/20/2009	08/15/04	1709	1.00%	\$ 158.00	\$ 7.40	\$ -
		\$994.50	Pell Grant	07/30/04	08/02/04	4/20/2009	09/01/04	1692	1.00%	\$ 994.50	\$ 46.11	\$ -
		\$146.20	Pell Grant	06/17/04	09/04/04	4/20/2009	10/04/04	1659	1.00%	\$ 146.20	\$ 6.65	\$ -
		\$130.20	Pell Grant	09/21/04	10/15/04	4/20/2009	11/14/04	1618	1.00%	\$ 130.20	\$ 5.77	\$ -
		\$1,275.75	Pell Grant	07/08/05	06/24/05	4/20/2009	07/24/05	1386	1.00%	\$ 1,275.75	\$ 47.75	\$ -
		\$136.00	Pell Grant	10/18/04	05/09/05	4/20/2009	06/08/05	1412	1.00%	\$ 136.00	\$ 5.26	\$ -
		\$945.00	Pell Grant	07/15/05	10/21/05	4/20/2009	11/20/05	1247	1.00%	\$ 945.00	\$ 32.29	\$ -
		\$747.27	Pell Grant	06/14/06	07/14/06	4/20/2009	08/13/06	981	4.00%	\$ 747.27	\$ 80.34	\$ -
		\$1,350.00	Pell Grant	08/19/05	09/01/05	4/20/2009	10/01/05	1297	1.00%	\$ 1,350.00	\$ 47.98	\$ -
		\$1,372.05	Pell Grant	01/11/06	02/03/06	4/20/2009	03/05/06	1142	2.00%	\$ 1,372.05	\$ 85.85	\$ -
		\$740.27	Pell Grant	11/01/05	11/21/05	4/20/2009	12/21/05	1216	1.00%	\$ 740.27	\$ 24.66	\$ -
		\$1,057.00	Pell Grant	02/15/06	03/03/06	4/20/2009	04/02/06	1114	2.00%	\$ 1,057.00	\$ 64.52	\$ -
		\$940.95	Pell Grant	08/19/05	08/19/05	4/20/2009	09/18/05	1310	1.00%	\$ 940.95	\$ 33.77	\$ -
		\$139.50	Pell Grant	09/06/05	12/15/05	4/20/2009	01/14/06	1192	2.00%	\$ 139.50	\$ 9.11	\$ -
		\$872.30	Pell Grant	09/23/06	10/06/06	4/20/2009	11/20/06	882	4.00%	\$ 872.30	\$ 84.32	\$ -
		\$316.00	Pell Grant	01/19/06	02/10/06	4/20/2009	03/12/06	1135	2.00%	\$ 316.00	\$ 19.65	\$ -
		\$527.00	Pell Grant	04/17/06	04/28/06	4/20/2009	05/28/06	1058	2.00%	\$ 527.00	\$ 30.55	\$ -
		\$708.57	Pell Grant	05/12/06	05/26/06	4/20/2009	06/25/06	1030	2.00%	\$ 708.57	\$ 39.99	\$ -
		\$121.60	Pell Grant	02/13/06	03/14/06	4/20/2009	04/13/06	1103	2.00%	\$ 121.60	\$ 7.35	\$ -
		\$153.45	Pell Grant	04/27/06	05/01/06	4/20/2009	05/31/06	1055	2.00%	\$ 153.45	\$ 8.87	\$ -
		\$1,593.45	Pell Grant	01/12/06	01/17/06	4/20/2009	02/16/06	1159	2.00%	\$ 1,593.45	\$ 101.19	\$ -
		\$1,603.80	Pell Grant	04/07/06	05/12/06	4/20/2009	06/11/06	1044	2.00%	\$ 1,603.80	\$ 91.74	\$ -
		\$2,244.82	Pell Grant	02/15/06	03/03/06	4/20/2009	04/02/06	1114	2.00%	\$ 2,244.82	\$ 137.01	\$ -
		\$968.00	Pell Grant	08/28/05	09/16/05	4/20/2009	10/16/05	1282	1.00%	\$ 968.00	\$ 34.00	\$ -
		\$2,025.00	Pell Grant	10/18/06	10/25/06	4/20/2009	12/09/06	863	4.00%	\$ 2,025.00	\$ 191.52	\$ -

(b)(6); (b)(7)
(C)

\$78.52	Pell Grant	07/27/05	08/19/05	4/20/2009	09/18/05	1310	1.00%	\$ 78.52	\$ 2.82	\$ -
\$399.10	Pell Grant	01/19/06	02/16/06	4/20/2009	03/18/06	1129	2.00%	\$ 399.10	\$ 24.69	\$ -
\$545.00	Pell Grant	02/24/06	03/07/06	4/20/2009	04/06/06	1110	2.00%	\$ 545.00	\$ 33.15	\$ -
\$528.35	Pell Grant	12/29/05	12/29/05	4/20/2009	01/28/06	1178	2.00%	\$ 528.35	\$ 34.10	\$ -
\$494.00	Pell Grant	03/07/06	04/05/06	4/20/2009	05/05/06	1081	2.00%	\$ 494.00	\$ 29.26	\$ -
\$409.05	Pell Grant	11/02/05	12/01/05	4/20/2009	12/31/05	1206	1.00%	\$ 409.05	\$ 13.52	\$ -
\$1,034.77	Pell Grant	07/17/06	07/28/06	4/20/2009	09/11/06	952	4.00%	\$ 1,034.77	\$ 107.96	\$ -
\$202.40	Pell Grant	03/23/07	04/07/07	4/20/2009	05/22/07	699	4.00%	\$ 202.40	\$ 15.50	\$ -
\$224.72	Pell Grant	04/27/07	05/02/07	4/20/2009	06/16/07	674	4.00%	\$ 224.72	\$ 16.60	\$ -
\$707.00	Pell Grant	07/13/07	07/30/07	4/20/2009	09/13/07	585	4.00%	\$ 707.00	\$ 45.33	\$ -
\$270.90	Pell Grant	03/23/07	03/30/07	4/20/2009	05/14/07	707	4.00%	\$ 270.90	\$ 20.99	\$ -
\$1,350.00	Pell Grant	09/23/06	12/06/06	4/20/2009	01/20/07	821	4.00%	\$ 1,350.00	\$ 121.46	\$ -
\$742.77	Pell Grant	06/13/07	06/13/07	4/20/2009	07/28/07	632	4.00%	\$ 742.77	\$ 51.44	\$ -
\$1,991.25	Pell Grant	09/27/06	12/01/06	4/20/2009	01/15/07	826	4.00%	\$ 1,991.25	\$ 180.25	\$ -
\$832.95	Pell Grant	01/11/07	01/11/07	4/20/2009	02/25/07	785	4.00%	\$ 832.95	\$ 71.66	\$ -
\$540.22	Pell Grant	06/15/07	06/25/07	4/20/2009	08/09/07	620	4.00%	\$ 540.22	\$ 36.71	\$ -
\$129.90	Pell Grant	02/15/07	02/26/07	4/20/2009	04/12/07	739	4.00%	\$ 129.90	\$ 10.52	\$ -
\$1,101.60	Pell Grant	06/01/07	06/01/07	4/20/2009	07/16/07	644	4.00%	\$ 1,101.60	\$ 77.75	\$ -
\$427.22	Pell Grant	03/23/07	04/04/07	4/20/2009	05/19/07	702	4.00%	\$ 427.22	\$ 32.87	\$ -
\$21.32	Pell Grant	03/12/07	03/21/07	4/20/2009	05/05/07	716	4.00%	\$ 21.32	\$ 1.67	\$ -
\$67.22	Pell Grant	05/31/06	06/02/06	4/20/2009	07/02/06	1023	4.00%	\$ 67.22	\$ 7.54	\$ -
\$99.32	Pell Grant	07/27/05	08/19/05	4/20/2009	09/18/05	1310	1.00%	\$ 99.32	\$ 3.56	\$ -
\$86.20	Pell Grant	12/06/05	06/21/06	4/20/2009	07/21/06	1004	4.00%	\$ 86.20	\$ 9.48	\$ -
\$17.82	Pell Grant	06/08/06	05/12/06	4/20/2009	06/11/06	1044	2.00%	\$ 17.82	\$ 1.02	\$ -
\$22.67	Pell Grant	01/11/07	12/21/07	4/20/2009	02/04/08	441	5.00%	\$ 22.67	\$ 1.37	\$ -
\$66.82	Pell Grant	02/08/05	02/18/05	4/20/2009	03/20/05	1492	1.00%	\$ 66.82	\$ 2.73	\$ -
\$26.15	Pell Grant	06/28/06	07/05/06	4/20/2009	08/04/06	990	4.00%	\$ 26.15	\$ 2.84	\$ -
\$24.75	Pell Grant	02/04/06	03/02/06	4/20/2009	04/01/06	1115	2.00%	\$ 24.75	\$ 1.51	\$ -
\$26.22	Pell Grant	01/28/05	03/02/05	4/20/2009	04/01/05	1480	1.00%	\$ 26.22	\$ 1.06	\$ -
\$54.35	Pell Grant	09/01/04	09/17/04	4/20/2009	10/17/04	1645	1.00%	\$ 54.35	\$ 2.45	\$ -
\$35.20	Pell Grant	04/14/05	04/29/05	4/20/2009	05/29/05	1422	1.00%	\$ 35.20	\$ 1.37	\$ -
\$45.00	Pell Grant	03/11/05	05/27/05	4/20/2009	06/26/05	1394	1.00%	\$ 45.00	\$ 1.72	\$ -
\$30.60	Pell Grant	04/18/05	05/13/05	4/20/2009	06/12/05	1408	1.00%	\$ 30.60	\$ 1.18	\$ -
\$56.97	Pell Grant	11/19/04	12/10/04	4/20/2009	01/09/05	1562	1.00%	\$ 56.97	\$ 2.44	\$ -
\$22.32	Pell Grant	10/08/04	10/22/04	4/20/2009	11/21/04	1611	1.00%	\$ 22.32	\$ 0.99	\$ -
\$55.17	Pell Grant	12/12/05	01/06/06	4/20/2009	02/05/06	1170	2.00%	\$ 55.17	\$ 3.54	\$ -
\$35.10	Pell Grant	07/06/04	07/30/04	4/20/2009	08/29/04	1696	1.00%	\$ 35.10	\$ 1.63	\$ -
\$4.45	Pell Grant	05/11/06	05/26/06	4/20/2009	06/25/06	1030	2.00%	\$ 4.45	\$ 0.25	\$ -
\$2.30	Pell Grant	10/08/04	10/22/04	4/20/2009	11/21/04	1611	1.00%	\$ 2.30	\$ 0.10	\$ -
\$4.55	Pell Grant	07/26/04	08/13/04	4/20/2009	09/12/04	1681	1.00%	\$ 4.55	\$ 0.21	\$ -

Total Returns	\$ 56,312.22
Total Campus-Based	\$ -
Totals By Program	
Pell Grant	\$ 56,312.22
FSEOG	\$ -
Perkins	\$ -
ACG	\$ -
SMART	\$ -
TEACH	\$ -
FSEOG-No Match	\$ -
Perkins-No Match	\$ -

Totals \$ 3,144.42 \$ -

Interest Breakdown

Pell Grant	\$ 3,144.42	\$ -
FSEOG	\$ -	\$ -
Perkins	\$ -	\$ -
ACG	\$ -	\$ -
SMART	\$ -	\$ -
TEACH	\$ -	\$ -
FSEOG-No Match	\$ -	\$ -
Perkins-No Match	\$ -	\$ -

Appendix G – FedWire Instructions

Accounting Document – Prior Year Monetary Recovery (AD-PYMR)

Institution: Franklin Career Institute

City, State: Hempstead, NY

640225454

PRCN:

TIN: 113408254

DUNS: 042646963

Reviewer: Christopher Curry

Region: New York

Date: 6/3/13

Section A - Use if no adjustments are being made in COD

Programs	Type	Amount	Funding Code	Object Class
Federal Pell Grant (Closed AY)	Principal	1,162,238	3220RNOYR	69017
	Interest	45,318	1435RNOYR	64020
ACG	Principal		3220RNOYR	69017
	Interest		1435RNOYR	64020
National SMART	Principal		3220RNOYR	69017
	Interest		1435RNOYR	64020
FSEOG (No FISAP Corrections)	Principal	300	3220RNOYR	69017
	Interest	17	1435RNOYR	64020
FWS (No FISAP Corrections)	Principal	1,283	3220RNOYR	69017
	Interest	54	1435RNOYR	64020
Direct Loan and Direct Loan EAL	Principal		4253XNOYR	53020 or 53010
	Interest		4253XNOYR	53040
FFEL and FFEL EAL	Interest/ SA/EAL		4251XNOYR	53020
Federal Perkins	Principal		2915RNOYR	53054

Section B: Use if the Institution is instructed to make adjustments in COD

Add rows if necessary		Amount			G5 Program Award # *
Pell, ACG, SMART, TEACH	Program / Award Year	Principal		3875FNOYR	69020
	Program / Award Year	Imputed Interest		1435RNOYR	64020
Direct Loan (do	Award Year	Principal		3875FNOYR	69020