MEMORANDUM

Date: February 11, 2022

To: U.S. Department of Education

From: Jessica Ranucci and Johnson Tyler, Negotiators for Legal Assistance Organizations That Represent Consumers

Re: Issue Paper 1 – Ability to Benefit

We appreciate that the Department is seeking to establish minimum standards and certification procedures for eligible career pathway programs ("ECP Programs") offered by institutions to students who lack a high school diploma or equivalent. In order to ensure that these students are protected from false certification abuses and are offered high-quality programs that provide the training necessary to succeed in specific in-demand occupations, we propose the following modifications to the Department's most recent proposal.

1) Require Training from Adult Education Providers that Offer Valid High School Diplomas or GEDs: To avoid the fraudulent use of bogus high schools, we propose that the Secretary require that the component of an ECP Program that must enable an ATB student to obtain a high school diploma or equivalent be provided by a public secondary school, a regionally accredited secondary school, or an adult education and literacy provider eligible under 34 CFR §463.1, or a secondary school recognized as providing a valid high school diploma or its equivalent by the state or a public school district in which the student resides. These requirements should apply to all three eligibility processes provided for in proposed 34 C.F.R. § 668.32.

2) ECP Program Must Be an Integrated Education and Training Program: In order to ensure that students receive targeted, high-quality training that will lead to an in-demand occupation, as intended by Congress, we support the February 1, 2022 proposal of David Socolow to limit ATB eligibility to programs that provide coordinated Workforce and Innovation and Opportunity Act of 2014 (WIOA) Title II and Higher Education Act (HEA) Title IV Partnership coursework within an Integrated Education and Training (IET) program. These requirements should apply to all three eligibility processes in proposed 34 C.F.R. § 668.32.

3) Same ECP Program Requirements Should Apply Regardless of Approval Process: Proposed § 668.1157(b) should be clarified to state that the Department shall apply the standards in § 668.157(a) to verify the eligibility of ECP Programs that do not enroll students through a state-approved process.

Introduction

From the 1980s through July 1, 2012, many for-profit institutions engaged in aggressive schemes to falsely certify the ability-to-benefit (ATB) of thousands of students without high school diplomas in order to maximize Title IV revenues. The Department has extensive evidence of common fraudulent schemes, including (1) faking ATB test results; (2) providing test answers to students; and (3) permitting students to retake a test multiple times until they pass.[1] After July 1, 2012, when Congress repealed the ATB eligibility provision, many institutions found fraudulent means to continue to falsely certify these students. They often (1) stated on students' electronic FAFSAs, without their knowledge, that the students had a high school diploma or GED when in fact they did not or (2) facilitated the provision of invalid high school diplomas while falsely representing that these diplomas were valid to both the government and the students.[2]

The ATB provision was reenacted in modified form as of July 1, 2014. It includes a new requirement that ATB students be concurrently enrolled in narrowly defined ECP Programs. Despite the well-documented history demonstrating the for-profit institutions' ability to adapt their fraudulent ATB schemes to changing legal requirements, the Department has allowed institutions to offer ECP Programs with no oversight or minimum standards for over seven years. As a result, legal aid organizations are starting to see for-profit college abuses.

A legal aid client in Los Angeles, Ernesto Alvarez,[3] never finished high school or earned a GED. Starting when he was 29 years old, Mr. Alvarez attempted on two separate occasions, in 2011 and 2014, to earn his high school diploma through adult education programs offered by the public school district. He dropped out of both programs because the classes were too difficult.

In 2016, Mr. Alvarez searched online for an education program that could lead to a new career and better life for himself and his family. He came across an advertisement for a for-profit college chain and entered his contact information. Almost immediately, he began receiving calls from the college and eventually visited the campus.

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[1] In 2017, for example, the Department agreed to group false certification discharges for as many as 36,000 students who attended the Wilfred Academy of Hair and Beauty Culture and Robert Fiance between 1986 and 1994, based on ATB abuses. Patricia Cohen & Emily Rueb, *U.S. To Help Remove Debt Burden for Student Defrauded by For-Profit Chain*, NEW YORK TIMES (Aug. 9, 2017).

[2] In 2016, for example, the Department cut off financial aid to 23 campuses of the Marinello Schools of Beauty after determining that the school had engaged in a scheme to procure invalid high school diplomas for students who were otherwise ineligible for federal financial aid. Samantha Masunaga & Chris Kirkham, *Marinello Schools of Beauty abruptly shut down after federal allegations*, LOS ANGELES TIMES (Feb. 5, 2016). As another example, in 2015, the Department of Justice indicted the owners of FastTrain College in Miami for allegedly obtaining federal financial aid by misrepresenting to the government that 1,300 students were high school graduates. *See* Second Superseding Indictment, *U.S. v. Amor*, U.S. Dist. Ct., S. Dist. of Fla., Case No. 14-20750-CR-LENARD (Sept. 29, 2015).

[3] This name has been changed to protect the privacy of the borrower.

During the campus tour, the recruiter pitched an 8-month dental assistant program. Mr. Alvarez told the recruiter that he was worried about his ability to successfully complete such a program. He explained his impression that only "smart people" could be dental assistants. He also shared that he did not have a high school diploma and had dropped out of two adult diploma programs because they were too difficult for him. The recruiter and at least four other college staff assured Mr. Alvarez that he was smart enough to succeed in the dental assistant program. Mr. Alvarez felt like these recruiters, and their school, understood his needs and was impressed with the dental facilities, the promises of hands-on training and lab time, and the promises that he would have no problem getting a job as a registered dental assistant upon graduating. After he took an ATB exam, which the college told him he passed, he enrolled immediately. He was happy and proud because he had finally made it to college.

The college enrolled Mr. Alvarez in an ECP Program. The school required him to successfully complete an online GED program offered by a separate busines, called C4L Academy, while attending dental assistant classes. The college provided a room of computers where he and other ECP Program students could drop in at any time, login to the GED program, and work through 19 different modules. They were required to pass a final test once a week for each module, before moving onto the next one. Because the online sessions were limited to one hour, Mr. Alvarez never had enough time to finish the computer assignments, which he often could not understand. Neither the college nor C4L Academy offered him much content-based assistance with his GED program. Instead, one college employee was responsible for making sure that the ECP Program students signed in at the GED computer room and offered assistance when she could. Because this employee was overwhelmed by the number of students she had to attend to, she rarely helped Mr. Alvarez. Although he met occasionally with an advisor, the advisor focused on his attendance, punctuality, and the modules he still needed to complete in order to graduate, rather than on helping him learn from and successfully complete his online modules.

Although Mr. Alvarez was told that he had failed some modules, Mr. Alvarez passed his GED classes according to a transcript for the GED program.[4] Despite this, neither the college nor C4L Academy gave him a GED or high school diploma.

Although Mr. Alvarez found the dental assisting classes extremely difficult, he graduated. Mr. Alvarez then discovered that the dental assistant program did not in fact qualify him to be a registered dental assistance, which requires 15-months of dental assistant work to establish eligibility to take the registration exam. Despite this, he submitted over 20 applications for dental assistant positions at dental offices. Although he was hired for three trial period jobs, all three fired him because he lacked the skills necessary for the job. Other than this, Mr. Alvarez has never worked as a dental assistant. Mr. Alvarez is unemployed and struggling to pay down his student loan debt, which amounts to over $16,000 in federal student loans and a $3,100 private student loan.

[4] A copy of the C4L Academy transcript for Mr. Alvarez, along with a disclosure regarding the ECP Program from the college, is attached hereto as Exhibit A.

1. Require Training from Adult Education Providers that Offer Valid High School Diplomas or GEDs:

According to public records, including from the California Department of Education, C4L Academy is a for-profit sole proprietorship established in 2015. It is not accredited by a regional accrediting agency recognized by the U.S. Department of Education. Because it is not regionally accredited, it is unclear whether C4L Academy diplomas are recognized as valid by public school districts or colleges.

In order to protect vulnerable ATB students from fraud and ensure that their investments in ECP Programs will pay off for themselves and taxpayers, it is incumbent on the Department to ensure that top-notch educational entities provide the high school diploma or GED component of ECP Programs. Colleges with ECP Programs should be required to partner with an entity that has a demonstrated and successful history of (1) evaluating and providing basic skills and literacy training to adults; (2) teaching adult students the skills and knowledge expected of high school graduates; and (3) awarding adult students valid high school diplomas or an equivalent.

Unfortunately, most states do not license or otherwise determine which high schools or adult programs provide valid high school diplomas. For the purpose of evaluating whether a college properly certified a student's eligibility for financial aid, however, the Department applied a policy for determining the validity of a high school diploma. This policy could serve equally well here, with some modifications.

In a Final Program Review Determination from 2015 regarding the closed for-profit college ICDC, the Department determined that high school diplomas from an online school called Century High School were invalid for the purpose of establishing financial aid eligibility. Based on this determination, the Department ordered the college to return the Title IV funds paid on behalf of students with Century High School diplomas who did not pass ATB tests. It stated:

> With respect to a determination that a high school diploma is considered valid, the Department relies on a state's authority in this regard. In the absence of a state's determination that a high school is legitimate, we rely on a local education agency's determination. The State of California is silent on whether specific private high schools are recognized or provide recognized high school credentials. Therefore, the Department, in this case, relies on the Los Angeles Unified School District (LAUSD), in its capacity as the local education agency, to determine whether a high school credential is legitimate. With respect to Century High School (and other select schools), the LAUSD has determined the school does 'not meet the standard of equivalency to a recognized high school diploma . . . .' (from LAUSD website). . . . ICDC either knew or should have known that Century High School diplomas are not valid high school credentials and failed to

> live up to its fiduciary duty to assure that only eligible students received Title IV assistance.[5]

We propose that the language proposed by the Department for 34 C.F.R. § 668.2(b)(6) be modified as follows to include similar requirements for ECP Programs:

> § 668.2 **General definitions**.
>
> . . .
>
> (b) *Eligible career pathway program*: A program that combines rigorous and high-quality education training and other services that –
>
> . . .
>
> (6) Provides training by a secondary school or adult education and literacy provider eligible under 34 C.F.R. § 463.1 that ~~E~~*e*nables an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized postsecondary credential~~;~~. For the purposes of this section, the secondary school or other entity providing the training for a secondary school diploma or its recognized equivalent must be a public secondary school, a private secondary school with regional accreditation, an adult education and literacy provider eligible under 34 C.F.R. § 463.1, or a secondary school recognized as providing valid high school diplomas or their equivalent by the state or the public school district where the student resides. The entity offering the training must have a demonstrated record of providing high school diplomas or a recognized equivalent to students not enrolled in eligible career pathway programs.

A similar change should be made to the Department's proposal in 34 C.F.R. § 668.157(a)(6). This section, as currently drafted, refers to 34 C.F.R. § 668.16(v) for a definition of a valid high school diploma. There is, however, no 34 C.F.R. § 668.16(v). We therefore propose the following amendment:

> § 668.157(6) **Eligible Career Pathway Program.**
>
> (a) An institution demonstrates to the Secretary that a student is enrolled in an eligible career pathway program, as required under 668.156(a)(3) of this part, by

[5] See pp. 5-6 of the Final Program Review Determination, attached hereto as Exhibit B. Unfortunately, we are not able to provide a more legible copy, as this is what was received from the Department in response to a FOIA request.

documenting a partnership between adult education and a postsecondary institution providing that:

. . .

(6) The program is designed to lead to a valid high school diploma or its equivalent as defined in § 668.2~~16(v) of this part or its recognized equivalent~~.

2. ECP Program Must Be an Integrated Education and Training Program

The ECP Program described in the example above was not the kind of program that Congress intended for ATB students. As described in David Socolow's proposal memo, Congress intended ECP Programs to be narrowly construed as intensive, hands-on IET programs designed to provide adult education and literacy activities together with workforce preparation and training for very specific occupations, along with other workforce preparation activities that are often the first step on low-wage, low literacy workers' career pathways.

It is unlikely the college above did research that led to a determination that the dental care industry in California or the regional economy was in need of, and unable to find, sufficient numbers of skilled dental assistants.[6] While the college provided some counseling, it did not provide the counseling most needed by Mr. Alvarez – tutoring to help him master his on-line high school and dental assistant classes and counseling to help him achieve his career goals.[7] Neither the dental assistant program, nor the GED program offered by C4L Academy, were "organize[d] . . . to meet the particular needs of [Mr. Alvarez] in a manner that accelerates the educational and career advancement"[8] of Mr. Alvarez. Mr. Alvarez received no special tutoring. Neither the college nor 4CL Academy evaluated his literacy or potential learning challenges in order to craft a specialized joint high school diploma and dental assisting program that would allow him to succeed in his programs and as a dental assistant. Indeed, Mr. Alvarez's C4L transcript lists courses such as "Introduction to Literature," "World History and Geography," "Earth and Space Science," and "Physical Education" – none of which addressed Mr. Alvarez's history of difficulty understanding adult high school diploma courses or helped him to attain the basic high school knowledge necessary to successfully stay in a dental assisting job.[9]

High-quality IET programs help adult learners without a high school diploma or equivalency gain college credits and improve basic skills through dual enrollment that allows them to achieve gains faster than if they separately enroll in traditional adult education programs and title IV-eligible postsecondary education.

[6] 20 U.S.C. § 1091(d)(2)(A).
[7] 20 U.S.C. § 1091(d)(2)(C).
[8] 20 U.S.C. § 1091(d)(2)(E).
[9] See Exhibit A.

> IET is a service approach that provides adult education and literacy activities concurrently and contextually with workforce preparation activities and workforce training for a specific occupation or occupational cluster for the purpose of educational and career advancement (34 CFR §463.35). An IET program must include the following three components: adult education and literacy activities, workforce preparation activities, and workforce training (§463.36). In addition, as part of a career pathway (§463.37), the design of an IET program should support the local and state workforce development board plans as required under the Workforce Innovation and Opportunity Act (WIOA).[10]

The Department of Education's Institute for Education Science (IES) What Works Clearinghouse (WWC) confirmed IET as an evidence-based practice with gold standard research in three random control trial studies that meet the WWC criteria. This analysis documented impacts for tens of thousands of students in nine states, with positive effects on industry-recognized credential, certificate, or license completion, and short-term employment gains.[11]

As noted in a Department-sponsored publication,

> [c]entral to a successful IET is [adult education] AE programs' development of well-defined partnerships with service providers who can assist in delivering required IET program services. Successful IET programs also have explicit processes for determining adult learners' skills, interests, and abilities and for matching those learners to technical training that aligns with their skills, interests, and abilities. Successful programs also connect adult learners with professional development and technical assistance. The OCTAE-supported Integrated Education and Training Program Design Toolkit provides guidance on all phases of IET program planning, design, implementation, and evaluation.[12]

3. Same ECP Program Requirements Should Apply Regardless of Approval Process

As currently drafted, the Department's proposed language is not clear about what ECP Program documentation an institution must submit in order to certify ATB student eligibility under the non-state alternative processes (§§ 668.32(b)(2), (5)). Proposed § 668.157(a) states, "An institution demonstrates to the Secretary that a student is enrolled in an [ECP Program], as required under *§ 668.156(a)(3)* of this part, by documenting that . . . ." (emph. added). § 668.156(a)(3) applies only to ECP Programs that enroll ATB students through a state process.

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[10] U.S. Dep't of Educ., Office of Career, Tech. and Adult Educ., "Integrated Education and Training (IET) Guide."

[11] Inst. of Educ. Sciences, Nat'l Center for Educ. Evaluation, What Works Clearinghouse, *Designing and Delivering Career Pathways at Community College: A Practice Guide for Educators* (Mar. 2021).

[12] J.A Alamprese. & I-F. Cheng, *Compendium of innovative practices: Adult education bridge programs and integrated education and training (IET) programs* (Dec. 2020). *See also* U.S. Dep't of Educ. Office of Career, Tech., and Adult Educ., "Integrated Education and Training Design Toolkit" (Oct. 2021).

Proposed § 668.157(b), on the other hand, applies to ECP Programs that do not enroll ATB students through a state process. The Department, however, does not state that these ECP Programs must also document the criteria specified in § 668.157(a).

We hope that the Department intended that the documentation requirements of § 668.157(a) apply to all ECP Programs, regardless of whether they enroll ATB students through a state or federal process. All ECP Programs should be subject to the same minimum federal requirements to avoid confusion caused by different documentation requirements and standards. In addition, all ATB students (who have no say in whether their financial aid eligibility is certified through a state or federal process) should be protected from low-quality ECP Programs by the same minimum requirements.

We therefore propose the following amendment to § 668.157(b):

> § 668.157 **Eligible Career Pathway Program.**
>
> . . .
>
> (b) For eligible career pathway programs that do not enroll students through a State process as defined in § 668.156 of this part, the Department will verify the eligibility of eligible career pathway programs pursuant to subsection (a) of this section for title IV, HEA program purposes. The Secretary provides an institution with the opportunity to appeal any adverse eligibility decision.

Exhibit A

C4L Academy

Official Transcript

Student Name: [redacted]
DOB: [redacted]
Gender: Male

Student ID: [redacted]
Campus: CA-El Monte
Graduation Date: 05/22/2017

Academic Record

Course	Units Earned	Grade	Grade Points
Reading Language Arts			
Introduction to Literature	10.00	C	2
Fiction	10.00	C	2
Non-Fiction	10.00	C	2
Written Composition	10.00	A	4
Mathematics			
Basic Math	10.00	C	2
Algebra	10.00	C	2
Geometry	10.00	C	2
Statistics and Data Analysis	10.00	C	2
Social Studies			
World History and Geography	10.00	C	2
United States History	10.00	C	2
Government	10.00	C	2
Economics	10.00	A	4
Science			
Biology	10.00	B	3
Physical Science	10.00	B	3
Human Body	10.00	C	2
Earth and Space Science	10.00	A	4
Electives			
Physical Education: Knowledge and Application	10.00	C	2
Physical Education: Nutrition and Health	10.00	C	2
Elective: Art, Language, Career	0.00	No Credit	NA
Cumulative Totals	**180.00**		**2.4**

Headmaster

Exhibit B

OCT 15 2010

Ms. Anna Berger, President
International Career Development Center
5422 Sunset Boulevard
Hollywood, CA 90027

Certified Mail
Return Receipt Requested
#7007 0710 0001 0560 1135

RE: **Final Program Review Determination**
OPE ID: 03395300
PRCN: 200840926738

Dear Ms. Berger:

The U.S. Department of Education's (Department's) School Participation Team – San Francisco/Seattle issued a program review report on December 18, 2009 covering International Career Development Center (ICDC)'s administration of 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), for the 2006-2007 and 2007-2008 award years. ICDC's final response was received on July 28, 2010. A copy of the program review report (and related attachments) and ICDC's response are attached. Any supporting documentation submitted with the response is being retained by the Department and is available for inspection by ICDC 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 said 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 $7,872.73. 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. The appendix was encrypted and sent separately to the institution via e mail.

Appeal Procedures:

This constitutes the Department's final program review determination with respect to the liabilities identified from the December 18, 2009 program review report. If ICDC wishes to appeal to the Secretary for a review of monetary liabilities established by the final program review determination, the institution must file a written request for an administrative hearing. The Department must receive the request no later than 45 days from the date ICDC receives this final program review determination. An original and four copies of the information ICDC 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 Division
U.S. Department of Education
Federal Student Aid/PC/SEC
830 First Street, NE - UCP3, Room 84F2
Washington, DC 20002-8019

ICDC'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. 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 final program review determination. 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 ICDC's appeal will be those provided in 34 C.F.R. Part 668, Subpart H.

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 Rick Allen, Program Review Specialist at (415) 486-5601. Questions relating to any appeal of the final program review determination should be directed to the address noted in the Appeal Procedures section of this letter.

Sincerely,

(b)(6)

for Martina Fernandez-Rosario
Area Case Director

Enclosures:
Protection of Personally Identifiable Information
Final Program Review Determination
Program Review Report
ICDC Response to the Program Review Report

cc: (b)(6)

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.

START HERE
GO FURTHER
FEDERAL STUDENT AID

Prepared for

International Career Development Center

OPE ID 03395300
PRCN 200840926738

Prepared by:
U.S. Department of Education
Federal Student Aid
School Participation Team – San Francisco/Seattle

Final Program Review Determination

Table of Contents

A. Institutional Information

International Career Development Center
5422 Sunset Boulevard
Los Angeles, CA 90027-5794

Type: Proprietary

Highest Level of Offering: Non-Degree 1 Year

Accrediting Agency: Accrediting Commission of Career Schools and Colleges

Current Student Enrollment: Approximately 1300 (2007-2008)

% of Students Receiving Title IV: 91% (2007-2008)

Title IV Participation (Source: Postsecondary Education Participants System):

	2006-2007	2007-2008
Federal Pell Grant (FPell)	$4,520,177	$5,122,940
Federal Supplemental Educational Opportunity Grant (FSEOG)	$ 0	$ 271,901
Federal Family Education Loan (FFEL)	$7,168,573	$8,873,418

Default Rate FFEL:	2007	8%
	2006	3%
	2005	4%

B. Scope of Review

The U.S. Department of Education (the Department) conducted a program review at International Career Development Center (ICDC) from July 28, 2008 to August 1, 2008. The review was conducted by Rick Allen, Marcia Clark, and Shane Dunne.

The focus of the review was to address concerns regarding possible invalid High School Diplomas and violation of the 90/10 rule. The review consisted of an examination of ICDC's data and records.

A sample of 30 files was identified for review from the 2006-2007 and 2007-2008 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. Appendix A lists the names of the students whose files were examined during the program review. A program review report was issued on December 18, 2009.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning ICDC'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 ICDC 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 Findings

ICDC has taken the corrective actions necessary to resolve findings ## 1, 3 and 5-11 of the Program Review Report (PRR). Therefore, these findings may be considered closed.

Finding #1	Failure to Ensure Accuracy/Consistency of Records
Finding #3	Satisfactory Academic Progress (SAP) Policy Not Followed
Finding #5	Failure to Comply with Verification Requirements
Finding #6	Incorrect Reporting on Fiscal Operations Report and Application to Participate (FISAP) Income Grid
Finding #7	Return to Title IV (R2T4) Calculation Errors
Finding #8	Federal Pell Grant Underpayment
Finding #9	Improper Use of Professional Judgment
Finding #10	Crime Awareness Requirements Not Met
Finding #11	Credit Balance Deficiencies

The consequences of the program violations identified in the remaining findings are discussed below.

Findings with Final Determinations

The program review report findings, as written in the Department's December 18, 2009 Program Review Report, is quoted verbatim below in italics. At the conclusion of the program review finding is a summary of ICDC's response to the finding, and the Department's final determination for that finding.

Finding 2. Failure to Comply with Student Eligibility (Admissions) Requirements

Citation: *A student is eligible to receive Title IV, HEA program assistance if the student, among other criteria, has a high school diploma or its recognized equivalent or has obtained a passing score on an independently administered test. 34 C.F.R. § 668.32(a) and (e)(1).*

Noncompliance: *The following students had copies of invalid High School Diplomas on file. The files also did not have proof that any of the students had a valid GED certificate or took an independently administered test approved by the Secretary, commonly referred to as an Ability to Benefit (ATB) test. Each of these students had a copy of a high school diploma on file from Century High School, Los Angeles, a school noted on the Los Angeles Unified School District's web site as not meeting the standard of equivalency to a recognized high school diploma due to lack of accreditation from one of six regional accrediting agencies or their affiliates: #2, #8, #15, #19, #30.*

In addition, there was no evidence of receipt of a high school diploma, GED certificate or ATB test on file for student #12.

Required Action: *In order to be eligible to receive Title IV, HEA program funds, a student must have a valid high school diploma, a GED certificate, or have taken and passed an approved ATB test. The students cited in this finding do not have the required credential. Without such documentation, these students are not eligible for Title IV, HEA program funds.*

Students noted above who were admitted to ICDC and received Title IV, HEA assistance on the basis of having high school diplomas from unrecognized high schools may need to be reported to the Department and to the National Student Loan Data System (NSLDS) in accordance with instructions for reporting overpayments provided in Volume 3 of the Federal Student Aid Handbook. However, ICDC should not do so until instructions are provided in the FPRD, particularly since these students may also have received Title IV aid for which the institution (as opposed to the student) is liable. The institution is also advised, however, that future occurrences of this finding may result in the establishment of liabilities to the school and/or additional administrative actions taken against ICDC.

In addition, evidence of student #12's high school diploma, GED certificate, or official ATB test results must be submitted with ICDC's response to this report. In the absence of eligible admissions documentation, all Title IV, HEA disbursements made to this student are liabilities due to the Department from ICDC. Information on disbursements made to this student, by award year and type of Title IV program, must be provided.

ICDC's Response: ICDC indicated that students ## 2, 8, 12, and 30 had successfully completed valid Ability to Benefit (ATB) tests prior to their enrollment at ICDC, and the institution provided documentation of their start dates and ATB test results. These ATB tests were not in the student files when the team was on-site conducting the review.

ICDC further asserted that students ## 15 and 19 had high school diplomas that satisfy current federal regulations. ICDC argued that although students are required to have high school diplomas or their equivalents in lieu of passing an ATB test in order to be considered eligible students, the word "valid" does not appear in the current regulations and "some states do not have a means of recognizing even all the legitimate high schools operating in their state…" In addition, ICDC stated the Program Review Report indicates that only high school diplomas meeting the standard of equivalency to those recognized by the Los Angeles School District are valid in the State of California. Per ICDC, "The Los Angeles Unified School District has exercised its discretion to not accept high school diplomas from high schools that are not regionally accredited. However, regional accreditation of a high school is not required by either California or the U.S. Department of Education in order for a high school diploma to be valid." Therefore, argues ICDC, Century High School's accreditation status has no bearing on its validity as a high school in California. With regard to the students noted above, ICDC claims it exercised its discretion and accepted their Century High School diplomas.

Final Determination: The Department is satisfied that students ## 2, 8, 12, and 30 have passed an approved ATB test and, therefore, meet this particular eligibility criterion. However, disbursements to students ## 15 and 19 are a liability and must be paid back to the Department for the following reasons. The students do not meet the definition of an eligible student by virtue of the fact that they do not have valid high school diplomas, or their equivalents, and they did not pass an approved ATB test. While the Department does not use the specific word "valid" in the regulations, implicit in the term "high school diploma" is the fact that it is a valid diploma. The Department assumes there is an understanding that invalid documents are not acceptable for any purposes in administering Title IV, HEA assistance. There is, therefore, no need to specify, in the regulations, that valid documents are the only acceptable documents.

With respect to a determination that a high school diploma is considered valid, the Department relies on a state's authority in this regard. In the absence of a state's determination that a high school is legitimate, we rely on a local education agency's determination. The State of California is silent on whether specific private high schools are recognized or provide recognized high school credentials. Therefore, the Department, in this case, relies on the Los Angeles Unified School District (LAUSD), in its capacity as the local education agency, to determine whether a high school's credential is legitimate. With respect to Century High School (and other select

schools), the LAUSD has determined this school does "not meet the standard of equivalency to a recognized high school diploma ..." (from LAUSD web site). The reasons, including lack of regional accreditation, are noted in the LAUSD web page, but are immaterial to the fact that the high schools listed do not provide recognized credentials.

ICDC either knew or should have known that Century High School diplomas are not valid high school credentials and failed to live up to its fiduciary duty to assure that only eligible students received Title IV assistance. Therefore, the Department has determined the two students noted above received improper disbursements of aid, the liability for which is the school's responsibility.

Pell	FSEOG	Subsidized	Unsubsidized	Comment
$2,025		$1,273.12	$1,940	Student #15
$4,180	$200	$2,546.24	$3,880	Student #19
$6,205	$200	$3,819.36	$5,820	TOTAL

The estimated actual loss for the ineligible loans is based on ICDC's most recent cohort default rate available. As a result, the estimated actual loss that ICDC must pay to the Department for the ineligible loans is $640.36. A copy of the results of that calculation is included as Appendix E. Payment instructions may be found in Section F of this Final Program Review Determination (FPRD).

Finding 4. Failure to Comply with Leave of Absence (LOA) Requirements

Citation: *An institution's leave of absence policy is a "formal policy" if the policy (A) is in writing and publicized to students, and (B) requires students to provide a written, signed, and dated request, that includes the reason for the request, prior to the leave of absence. However, if unforeseen circumstances prevent a student from providing a prior written request, the institution may grant the student's request for a leave of absence if the institution documents its decision and collects the written request at a later date. 34 C.F.R. § 668.22(d)(3)(iii).*

Noncompliance: *ICDC did not have appropriate LOA documentation on file for the following students for the reasons stated below:*

Student #1 The student listed "personal reasons" as the reason for the request. Students must list the actual reason(s) for requesting an LOA.
Student #11 – The student did not sign either of the two LOA requests.
Student #14 The student did not sign the request.
Student #16 The student did not sign the request for an LOA

Required Action: *ICDC must enforce the procedures for obtaining student signatures on LOA requests and for ensuring students identify the reasons for the LOA on the request. In response to this PRR, the enforcement steps that will be taken must be described.*

In addition, ICDC must report on the above-noted students and whether they returned to school after their LOAs. If they did return to school, no further action is required on these individuals' Title IV, HEA disbursements. If the students did not return to school, ICDC must complete a Return to Title IV (R2T4) worksheet for each student who did not return, using the date the LOA began as the withdrawal date, and pay any refund due to the Department. ICDC must report, in response to this PRR, on whether these students returned to school or a R2T4 calculation was performed. If a R2T4 calculation was performed, information on the amount of refund due and paid to the Title IV HEA programs must be provided. Evidence of payment of the refunds must be provided in the form of copies of cancelled checks (front and back) or proof of electronic payment.

ICDC's Response: Per ICDC's response, student #1 submitted and signed an LOA form which was approved by school officials. Although the student included "personal reasons" on the form, she talked with a counselor who annotated in the counselor notes what the personal reasons were. Student #11 was granted an emergency LOA by telephone. She did not return from the LOA as expected, and a R2T4 calculation was performed. Student #14 did sign her LOA form when she returned to school. Student #16 couldn't sign the LOA form because she did not return from the LOA so she was withdrawn as of the first day of the LOA.

Final Determination: The counselor's notes for student #1 submitted by the institution are different than the notes copied by the review team while on-site. However, the Department accepts the notes as "revised," assuming it was an oversight on the part of the student's counselor that this particular note was not made originally.

ICDC has satisfactorily responded to Finding #4.

D. Summary of Liabilities

Initial Liabilities	Pell (Closed Award Year)	FSEOG	DL / FFEL	EALF FFEL	
Finding 2	$6,205	$200	$9,639.36	$640.36	
Sub Total	$6,205	$200	$9,639.36	$640.36	
Interest/SA	$807.84	$19.53			
Sub Total	$807.84	$19.53			
TOTAL	$7,012.84	$219.53			
Payable To:					**Total**
Department	$7,012.84	$219.53		$640.36	$7,872.73

E. Estimated Actual Loss

In lieu of requiring the institution to assume the risk of default by purchasing ineligible loans from the holder, the Department has asserted a liability not for the loan amount, but rather for the estimated actual or potential loss that the government may incur with respect to the ineligible loan or loan amount. The estimated actual loss to the Department that has resulted or will result from those ineligible loans is based on ICDC's most recent cohort default rate available.

The Estimated Actual Loss Formula (EALF) is used for only certain types of findings on ineligible FFEL and Direct Loan liabilities. The EALF estimates (1) the principal amount that has or will default; and (2) the interest and special allowance on the entire ineligible loan amount.

The EALF uses an institution's applicable cohort default rate (CDR) to estimate the amount of defaults from the ineligible principal amount. This is usually the institution's latest published CDR. Draft CDRs are not used unless there is no prior CDR.

Example:	Ineligible Principal Loan Amount	$100,000
	Cohort Default Rate	10.0%
	Estimated Default Amount Due	$ 10,000

The EALF calculates interest and special allowance (SA), where applicable, on the entire amount of ineligible loan principal. The number of days used to calculate interest and special allowance is based on average historical data for various time periods for different types of schools.

Period	School Type	One-Year	Two-Year	Four-Year	Rate Types
Disbursement to Repayment		584	774	969	Interest & SA
Repayment to Default		418	498	619	SA
Repayment to Paid In Full		1659	1580	1712	SA

The EALF uses the actual interest rates in effect when the ineligible loans were disbursed and an annualized average of the quarterly special allowance rates in effect. The EALF divides the number of days in each time period so that changes in interest and special allowance rates are considered. The EALF also assumes that the ineligible loans were made in two disbursements after a 30-day delay.

Example for the Disbursement to Repayment Period for a Two Year Institution (2004-05)

Variable Rate Ineligible Loans: $40,000 subsidized and $60,000 unsubsidized
Interest Rates: 04-05 (2.77), 05-06 (4.70), 06-07 (6.54)

SA Rates: 04-05 (1.45), 05-06 (1.55), 06-07 (0.53)

Subsidized Loan Amount (Interest and Special Allowance)
$40,000/2 x (451 x (.0422/365))
+ $40,000/2 x (730 x (.0625/365))
+ $40,000/2 x (367 x (.0707/365)) = $4,964.61
Unsubsidized Loan Amount (Special Allowance Only)
$60,000/2 x (451 x (.0145/365))
+ $60,000/2 x (730 x (.0155/365))
+ $60,000/2 x (367 x (.0053/365)) = $1,627.36

NOTE: The number of days of 774 for this time period is doubled to 1548 (451+730+367) because the principal amount is divided by two.

Similar calculations are made for the other two periods. The total liability is the sum of the default amount with the interest and special allowance calculations for all three periods.

F. Payment Instructions

Liabilities Owed to the Department More Than $1,000 but Less than $100,000

ICDC owes to the Department $7,872.73. Payment must be made by forwarding a check made payable to the "U.S. Department of Education" to the following address within 45 days of the date of this letter:

U.S. Department of Education
P.O. Box 979026
St. Louis, MO 63197-9000

Remit checks only. Do not send correspondence to this address. **Payment must be made via check and sent to the above Post Office Box; payment and/or adjustments made via GAPS/G5 will not be accepted as payment of this liability.**

The following identification data must be provided with the payment:

Amount:	**$7,872.73**
DUNS:	**019780311**
TIN:	**954554343**
PRCN:	**200840926738**

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. ICDC 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) 377-3843 and ask to speak to ICDC'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 Accounts Receivable Group
Attn: Nancy Hoglund
830 First Street, NE
Union Center Plaza, Room 22C7
Washington, DC 20202-4461

If within 45 days of the date of this letter, ICDC 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 ICDC from the Federal Government. ICDC **may object to the collection by offset only by challenging the existence or amount of the debt.** To challenge the debt, ICDC 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.

G. Appendices

Appendix A, Student Sample contains personally identifiable information and will be emailed to ICDC as an encrypted WinZip file using Advanced Encryption Standard, 256-bit. The password needed to open the encrypted WinZip file will be sent in a separate email.

Appendix 1 & 2	Estimated Actual Loss Worksheets Finding 2
Appendix 3	Cost of Funds and Administrative Cost Allowance Non-Loans

Appendix I 2006-2007 Estimated Actual Loss

ICDC
OPE ID 03395300
PRCN 200820926738

Appendix D Estimated Actual Loss Worksheet

Name of Institution: ICDC - Funding 2

1. *Select* Type	Two-Year	
2. *Select* Award Year	2006-07	
3. *Enter* Cohort Default Rate and/or Perkins Default Rate	0.8%	
4. *Enter* Ineligible Principal	*Ineligible Principal*	*Estimated Defaults*
a. DL Subsidized		$ -
b. DL Unsubsidized		$ -
c. FFEL Subsidized	$ 1,273.12	$ 10.18
d. FFEL Unsub	$ 1,940.00	$ 15.52
e. PLUS (DL, FFEL)		$ -
f. Perkins		$ -

Disb to Repayment	774
Repayment to Default	498
Repayment to PIF	1580

Estimated Actual Loss Interest and Special Allowance Breakdown	*Disb to Repayment*	
	DL Subsidized	$ -
	FFEL Sub	$ 48.27
	FFEL Unsub	$ 8.63
	Repayment to Default	
	FFEL Subsidized	$ -
	FFEL Unsub	$ -
	Repayment to PIF	
	FFEL Subsidized	$ -
	FFEL Unsub	$ -
	Perkins Interest	$ -
Totals - Estimated Actual Loss By Program (Including Interest and Special Allowance)	DL Subsidized	$ -
	DL Unsubsidized	$ -
	FFEL Subsidized	$ 297.46
	FFEL Unsub	$ 21.15
	PLUS (DL, FFEL)	$ -
	Perkins	$ -
Total Estimated Actual Loss Liability		**$ 218.61**

The "Total Estimated Liability" shown on this worksheet is the Department's estimate of the "actual loss" to the Department that has or will result from the ineligible FFEL and Direct Loan program loans made by your institution. Estimated defaults are calculated using the most appropriate cohort default rate published by the Department.

The Department's loss for interest subsidies paid to lenders for ineligible loans is estimated by using the average number of days from

disbursement to entering repayment
repayment to default, and
repayment to paid in full

The averages used are from historical information supplied to the Department from all guarantee agencies

Appendix 2 2007-2008 Estimated Actual Loss

ICDC
OPE ID 03395300
PRCN 200820926738

Appendix D Estimated Actual Loss Worksheet

Name of Institution: ICDC - Finding 2

1. *Select* Type	Two-Year
2. *Select* Award Year	2007-05
3. *Enter* Cohort Default Rate and/or Perkins Default Rate	6.8%

4. *Enter* Ineligible Principal	*Ineligible Principal*	*Estimated Defaults*
a. DL Subsidized		$ -
b. DL Unsubsidized		$ -
c. FFEL Subsidized	$ 2,548.24	$ 20.37
d. FFEL Unsub	$ 3,880.00	$ 31.04
e. PLUS (DL, FFEL)		$ -
f. Perkins		$ -

Disb to Repayment	774
Repayment to Default	498
Repayment to PIF	1560

Estimated Actual Loss Interest and Special Allowance Breakdown		
	Disb to Repayment	
	DL Subsidized	$ -
	FFEL Sub	$ 385.42
	FFEL Unsub	$ 1.92
	Repayment to Default	
	FFEL Subsidized	$ -
	FFEL Unsub	$ -
	Repayment to PIF	
	FFEL Subsidized	$ -
	FFEL Unsub	$ -
	Perkins Interest	$ -

Totals - Estimated Actual Loss By Program (Including Interest and Special Allowance)	
DL Subsidized	$ -
DL Unsubsidized	$ -
FFEL Subsidized	$ 388.79
FFEL Unsub	$ 32.96
PLUS (DL, FFEL)	$ -
Perkins	$ -
Total Estimated Actual Loss Liability	$ 421.75

The Total Estimated Liability shown on this worksheet is the Department's estimate of the "actual loss" to the Department that has or will result from the ineligible FFEL and Direct Loan program loans made by your institution. Estimated defaults are calculated using the most appropriate cohort default rate published by the Department.

The Department's loss for excess subsidies paid to lenders for ineligible loans is estimated by using the average number of days from

- disbursement to entering repayment
- repayment to default, and
- repayment to paid-in-full

The averages used are from historical information supplied to the Department from all guarantee agencies.

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Appendix 3 Cost of Non-Loan Funds

Ineligible Disbursements (Non-Loan) - Cost of Funds and Administrative Cost Allowance

Name of Institution: ICDC Appendix 3

No	Description/Name	Ineligible Disbursmnt	Program	Disbursement or Date	Return Paid Date	No. of Days	CVFR or Interest	Federal Share	To ED	To Inst Accounts
2	Federal Pell Grant	$6,205.00	Pell Grant	5/30/2007	9/30/2010	[illegible]	4.00%	$ 6,205.00	$ 804.84	$
2	Federal SEOG	$200.00	SEOG	5/30/2007	9/30/2010	[illegible]	4.00%	$ 150.00	$ 19.53	$ -