

IN THE MATTER OF Webster Career College, Los Angeles, California
Respondent.

Docket No. 91-39-SP
Student Financial Assistance Proceeding

INITIAL DECISION

This is an appeal proceeding resulting from a request for review filed by an educational institution under Subpart H, 34 CFR 668.111 et seq., of the student financial assistance program authorized in section 487(b) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1094 et seq. The Subpart H appeal procedures provide at 34 CFR 668.116 for hearing on the record under a process consisting of the submission of briefs to an administrative law judge, and such submissions were ordered on June 13, 1991, by the assigned judge. Briefs were filed in due course. By an order issued on July 13, 1992, this proceeding was transferred to the undersigned administrative law judge for handling and decision.

PART I. DESCRIPTION OF WEBSTER CAREER COLLEGE

Educational Enterprises of San Diego, Inc., dba Webster Career College (hereinafter referred to as Webster or Respondent) is a for-profit, proprietary vocational institution incorporated and located in Los Angeles, California. In 1982, Respondent became a wholly-owned subsidiary of Charterway Corporation. Respondent has operated as a private career school from 1961 to 1991. From its original school located in Los Angeles, branches were established in Long Beach, California in 1984 and in Bellflower, California in 1985. During the period relevant to this matter, Webster was accredited by the Association of Independent Colleges and Schools (AICS), now the Accrediting Commission of Independent Colleges and Schools of the Career Colleges Association. Its Long Beach location was also recently accredited by the National Association of Trade and Technical Schools (NATTS) now Accrediting Commission of Trade and Technical Schools of the Career Colleges Association. Respondent offers students training in twelve fields that include accounting, computer programmer analyst, data processing, and medical administrative assistant. Since filing its Request for Review dated May 10, 1991, of the Department of Education's (DE) Final Audit Determination (FAD), [See footnote 1](#)¹ Webster has, as a business decision, ceased to enroll new students at all three locations. All students who were enrolled prior to that decision "have been taught out."

PART II. DESCRIPTION OF TITLE IV. HIGHER EDUCATION ACT (HEA) PROGRAMS

The Title IV, HEA Programs involved in this proceeding include the Pell Grant, Stafford Loan, and Supplemental Loans for Students (SLS) Programs.

A. Pell Grant Program

During award years 1984-85 through the present, the Pell Grant Program was authorized under section 411 of the HEA, 20 U.S.C. §1070a, and the Pell Grant Program regulations were codified in 34 CFR Part 690. [See footnote 2](#)² The Pell Grant Program was also subject to the general

provisions relating to the student assistance programs contained in Part F of Title IV of the HEA; the Student Assistance General Provisions regulations, 34 CFR Part 668; and the Institutional Eligibility regulations, 34 CFR Part 600. [See footnote 3](#)³

Under the Pell Grant Program, eligible students receive grant awards to help them pay the costs of their postsecondary education. 34 CFR 690.1. A participating institution is responsible for determining whether students are eligible to receive Pell Grants, and the amount of those grants. 34 CFR 690.75. The institution also disburses the Pell Grants to its students. 34 CFR 690.76 and 690.78.

The amount of each Pell Grant award is determined by strict statutory and regulatory formula. 20 U.S.C. §1070a(a) (1986); and sections 2 through 6 of Public Law 97-301, 20 U.S.C. §1070a, note; 1078, note; and 1089, note (1986), 20 U.S.C. §1070a (198790). Therefore, students with the same expected family contributions and the same costs of attendance receive the same "Scheduled Pell Grant" awards, regardless of the type of institutions in which they enroll, and regardless of the type of programs in which they enroll. [See footnote 4](#)⁴

A student enrolled in a program of less than one academic year receives a percentage of his Scheduled Pell Grant award. Thus, a student enrolled in a 600 clock hour program, where the academic year is 900 clock hours, received 67 percent of his Scheduled Pell Grant award. The actual awards are calculated on a payment period basis.

An institution offering educational programs without academic terms of less than one year must have at least two payment periods. The first payment period is the period during which the student completes the first half of his educational program; the second payment is the period during which the student completes the second half of that program. 34 CFR 600.3. The actual Pell Grant award a student receives for each payment period is determined by the following formula:

Scheduled Pell Grant Award multiplied by a fraction consisting of

the number of credit or clock hours the student is expected to take in a payment period
divided by the number of credit or clock hours in an academic year

34 CFR 690.63.(c) (1985 through 1990). Thus, a full-time student, with a Scheduled Pell Grant award of \$2,100, in a 600 clock hour program in an institution where the academic year is 900 clock hours, [See footnote 5](#)⁵ would receive a \$700 Pell Grant for each payment period in which the student enrolled, determined as follows: $\$2,100 \times 300/900 = \700 .

If the student enrolls for the second 300 clock hour payment period, he would receive another \$700, for a total of \$1,400.

B. Stafford Loan [See footnote 6](#)⁶ and SLS Programs

The Stafford Loan and SLS Programs (formerly called the ALAS Program) are authorized under Title IV-B of the HEA. The program regulations are codified in 34 CFR Part 682. These

programs are also subject to the general provisions relating to the student assistance programs contained in 20 U.S.C. §1088 et seq.; the provisions of the Student Assistance General Provisions regulations; and the Institutional Eligibility regulations, 34 CFR Part 600.

Under the Stafford Loan and SLS Programs, an eligible student applies to a private lender for a loan. The student completes a portion of the loan application and the institution completes a portion of the loan application. The institution also certifies the accuracy of the information included on the application. 34 CFR 682.102 and 682.63.

If the lender decides to make a loan, a guarantee agency guarantees the lender against default on the part of the borrower. If the guarantee agency satisfies certain Federal requirements, ED reimburses the guarantee agency for all or part of the default claims it pays. ED pays the interest that is due on a Stafford Loan to the lender until the loan reaches the repayment stage. 34 CFR 682.300. ED also pays a 'special allowance' to the lender on both Stafford Loans and SLS loans until the loan is repaid or goes into default. 34 CFR 682.303. Interest rates may be higher on an SLS loan than on a Stafford Loan but the borrower may borrow more under the SLS Program than under the Stafford Loan Program.

If a lender makes a loan to a student, the lender sends the check to the institution the student is attending or scheduled to attend. After determining that the student is eligible for the loan proceeds, the institution pays the loan proceeds to the student directly by check or by crediting the student's institutional account. 34 CFR 682.604.

According to the September 1990 Audit Report, for fiscal year ended September 30, 1988, the most recent year for which unaudited Departmental information is available, the following amounts of student loans were guaranteed for Webster students:

Stafford Loans	\$4,917,594	SLS	1,941,946	PLUS	See footnote 7	23,272	TOTAL
GUARANTEED LOANS	\$6,882,812						

Under the Pell Grant program, unaudited Departmental records show that Webster students were awarded \$2,363,137 of Pell Grants for award year 1987-88 and \$3,683,567 for award year 1988-89. Webster also participates in the various campus-based student financial assistance (SFA) programs, namely Perkins Loan, College Work-Study (COOS) and Supplemental Educational Opportunity Grant (SEOG) Programs.

PART III. 1984 CONVERSION BY RESPONDENT

In 1984, Respondent converted its programs from clock hour programs to semester hour programs. No mention was made of outside preparation as part of the formula in the conversion application. According to the Office of Student Financial Assistance (OSFA), Respondent "did not increase the instruction it offered in any of those programs, did not require its students to perform any additional work under any of those programs, and did not increase the length of time a full-time student would take to complete any of those programs." Moreover, while Respondent offers its programs in semester hours, it does not divide its academic year into academic terms, such as semester.

The March 25, 1991 FAD letter notes that the institution did not maintain the same academic year relationships when it converted its clock-hour programs to credit-hour programs. For example, Webster's catalog describes the Clerk-Typist Program as a 20-week course for a full-time student. Completing the course successfully gave the student **credit for 40 semester credit hours**. Since the institution **defines its academic year as 28 semester credits hours**, the student can complete course work **equivalent to 1.43 academic years in only 20 weeks**. [Emphasis added.]

The catalog also defined the course requirements in clock hours, the previous method of measuring course length. Under the clock-hour system, the Clerk-Typist Program required 600 clock hours of course work, which constituted only .67 of an academic year. (The minimum length of an academic year for purposes of awarding full Pell Grants under a clock-hour system is 900 hours.) The auditors noted that this conversion clearly violated the provisions contained in the March, 1979 BSFA Bulletin. The BSFA Bulletin prohibited converting a program of less than 900 clock hours to "...a full academic year merely by changing the means of measurement to semesters, trimesters, or quarters."

The Audit Report specifies that section 481(a)(2)(d) of the (HEA) requires ED to prescribe the academic year for Title IV programs. ED has consistently maintained that an academic year is typically eight or nine months in which a full-time student is expected to complete at least 900 clock hours or 24 semester or 36 quarter hours. A semester is commonly defined as an academic term of 15 to 18 weeks and a quarter as an academic term lasting three months. Reference was also made to an article in the Bureau of Student Financial Assistance (BSFA) Bulletin which stated that "if-an institution converted from clock to credit hours, the new ratio of hours to academic year should be the same as the ratio of hours to academic year as under the previous method...a program of less than 900 clock hours could not be converted to a full academic year solely by changing the means of measurement to semesters, trimesters or quarters."

Respondent's conversion resulted in a full-time student completing one academic year in only 14 weeks or 3.5 months, and 1.43 academic years in 20 weeks or 5 months. Under Respondent's conversion formula, without any additional instruction or course work, Respondent's 20 week, 600 clock hour programs were converted to 40 semester hour programs.[See footnote 8](#)⁸ Respondent elected to treat its programs like collegiate programs rather than vocational education, therefore making it different in content.[See footnote 9](#)⁹

According to the Handbook of Accreditation and Policy Manual of the Accrediting Commission for Community & Junior Colleges of the Webster Association of Schools & Colleges, 1990 Ed., at page 132:

Credit, Unit of:

A quantification of student learning. One semester unit represents the time a typical student is expected to devote to learning in one week of full time study (40-45 hours per week including class time and preparation). An alternate norm is one unit for three hours of student work per week (e.g. one hour of lecture and two of study, or three of laboratory) for a full quarter or semester.

Until 1979, the term academic year was defined to mean: (a) a period of time generally not less than 8 months in which a full-time student would normally be expected to complete the equivalent of two semesters, two trimesters, three quarters, or 900 clock hours of instruction. In 1979, the term "academic year" was modified in the Pell Grant Program [See footnote 10](#)¹⁰ as follows:

(1) A period of time generally of not less than 8 months in which a full-time student would normally be expected to complete the equivalent of at least two semesters, two trimesters, or three quarters at an institution which measures academic progress in credit hours and uses a semester, trimester or quarter system; or

(2) A period of time in which a full-time student is expected to complete at least 24 semester hours, 24 trimester hours, or 36 quarter hours at an institution which measures progress in credit hours but does not use a semester, trimester or quarter system; or

(3) At least 900 clock hours of training for each program at an institution which measures academic progress in clock hours.

PART IV. APPROVAL OF CONVERSION BY AICS

Respondent states that AICS has been recognized by the Secretary of Education as a qualified agency to evaluate the quality of education offered by schools since 1956. Respondent notes in its brief that by letter dated January 9, 1984, Respondent first applied to AICS for approval to convert its measurement of student progress from clock to credit hours. Respondent's application to AICS included ED's memoranda regarding the approval process and information describing each course being proposed for conversion to include the methodology used by Respondent for the conversion.

On January 25, 1984, AICS stated in a letter to Respondent that "based on the information you provided [in the letter of January 9, 1984], the Commission would have no objection to your proposed conversion. Therefore, you may proceed with the publication and implementation of this system." On February 24, 1984, AICS reconfirmed the approval in a letter to Respondent.

According to the Audit Report, on April 4, 1988, AICS notified Respondent that the Clerk-Typist with English as a Second Language (ESL) and Data Entry with ESL programs "could be included in its current grant of accreditation. n AICS granted this 'interim inclusion' based on its review of material submitted by Webster on February 24, 1988.

The Audit Report revealed that again in April of 1990, Respondent applied to AICS for approval of its revised clock hour/semester hour conversion. As a result of these approvals since 1984, Respondent received and disbursed a total of \$13,745,284 of Pell Grant Program funds during the 1984-85 through 1988-89 award years and disbursed \$1,531,718 of Pell Grant funds during award years 1989-90.

PART V. ED's INITIAL APPROVAL OF CONVERSION

Respondent acknowledges on brief that "...in one very important respect, ED's policy has been constant and that is the Department's steadfast deferral to the expertise of the accrediting agencies for the analysis and approval of institutional applications to convert the way in which they measure student progress and programs from clock to credit hours."

OSFA agrees with Respondent "that with regard to certain aspects of the clock hour/credit hour conversion issue, ED's efforts have been long and twisted." But at the same time, OSFA states that ED required institutions to obtain the approval of their accrediting agencies for any clock hour to credit hour conversion as a prerequisite to ED's approval of that conversion.

On January 10, 1984, ED advised Respondent that it would approve the conversion if the institution's accrediting agency approved the conversion. On February 24, 1984, as seen, the approval was reconfirmed by AICS in a letter to Respondent. Finally, on February 4, 1988, ED approved Respondent's conversion and on April 4, 1988, ED made its approval retroactive to February 24, 1984, based on AICS' review and approval. [emphasis added.]

In accordance with 34 CFR 602.1(a) and (b), the Secretary of ED relies on accrediting agencies as reliable authorities concerning the quality of education or training offered by the post secondary educational institutions or programs within the agencies' respective scope of operation. Therefore, accreditation of post secondary institutions or programs by agencies, such as AICS, recognized by the Secretary is a prerequisite to eligibility for many types of Federal financial assistance, not only for the institutions or programs, but also for students enrolled in these institutions and programs. **However, ED's reliance on the accrediting agencies conversion approvals was obviously based upon those approvals being properly performed.** [emphasis added.]

Respondent makes reference to various ED officials, for instance, a Robert A. Crummel, who was the Assistant Regional Administrator, Division of Certification and Program Review in the San Francisco region of the OSFA between November 1977 and August 31, 1986. Respondent states that Crummel's first-hand knowledge and recollection in his stated opinion is that ED's policy of deferring to accrediting agencies "is longstanding and firmly supported by the evidence..." Respondent also refers to a July 9, 1979, letter from James Moore, Acting Director, Division of Certification and Program to Peter Voight, Director, Division of Policy and Program Development in which Moore said that the accrediting groups (NATTS, AICS, etc.) have agreed that they use the industry standard for conversion of clock hour course content to include:

A. One unit of semester or trimester credit equals: 1) one hour of classroom lecture per week for 15 full weeks, or 2) two hours of laboratory experiences per week for 15 full weeks, ...

Moore further stated that

"Conversion by an institution from clock hour to 'melter' or quarter systems requires the approval of the accrediting agency under whose auspices the institution has established its eligibility..."

PART VI. FINDING NO. 1 - IMPROPERLY CONVERTED CLOCK HOURS TO CREDIT HOURS AND FINDING NO. 2 - INELIGIBLE PROGRAMS

In an audit report issued in September 1990 by the Inspector General (IG) [Regional Inspector General For Audit, Region IX] under Finding No. 1, the IG stated that "Webster assigned an unreasonable amount of semester hours to its courses when it converted them from clock-hour basis to a credit-hour basis. Further, Webster ignored the academic year equivalences required in ED publications. Webster also failed to comply with its accreditation agency's guidelines for conversion from clock-hour to credit-hour measurement. As a result, Webster improperly increased the amount of Pell Grant funds for which a student could be eligible without increasing the actual length of its programs or changing its procedures for administering them." ED learned about these improper conversions as a result of the audit conducted during the period between May 1989 through March 1990 [See footnote 11](#)¹¹ which covered the period for fiscal year ended June 30, 1988 and 1989 and was further extended to include fiscal years ending June 30, 1985, 1986 and 1987. [See footnote 12](#)¹²

Under Finding No. 2, the Audit Report revealed that Respondent misrepresented two programs in 1988 that were eventually deemed ineligible because Respondent omitted some of the courses from the two programs previously approved by the accrediting agency. Originally, in its application to AICS, Respondent indicated that its Computer Data Entry ESL Program would consist of two ESL courses and nine program courses and the Clerk-Typist with ESL Program would consist of two ESL courses and eight pro-tram courses. [emphasis added.] AICS approved these courses on February 24, 1988. However, on April 4, 1988, Respondent offered two programs that were different than that originally approved by AICS. The Respondent actually offered two ESL courses and five program courses for both the Computer Data Entry with ESL and Clerk-Typist with ESL Programs.

Further, the audit work papers documented that the 38 students who enrolled in these two programs between July 1, 1988 and June 30, 1989, received \$44,264 in Pell Grant Program funds, \$50,346 in Stafford Loan Program funds and \$27,474 in SLS programs funds. [See footnote 13](#)¹³ On Page 3 of the Audit Report, the IG stated that Respondent actually offered 200 hours less than that approved by AICS for the two new programs.

PART VII. AUDIT REVIEW BRANCH'S MARCH 25, 1991, FINAL AUDIT DETERMINATION (FAD) LETTER (ETHELENE R. HUGHEY)

A. Ethelene R. Hughey sent a FAD letter dated March 25, 1991, to Harold Chuang, President of Webster Career College. Hughey, Chief of the Audit Review Branch, explaining the results of the audit performed between May 1989 and March 1990 at Respondent's institutions in Los Angeles and Sacramento, California. [See footnote 14](#)¹⁴ The two findings were discussed as to Respondent's: (1.) improper conversion; and (2) ineligible programs. Finally, Hughey set forth recommendations in the FAD letter for reimbursement of the amounts owed. [See footnote 15](#)¹⁵

I. Issues as posed by ED in the FAD letter

The issues raised by ED in the audit are:

1.) Respondent's conversion of its clock hour programs to semester hours resulted in an unreasonable and excessive number of semester hours for those programs.

- 2.) ED approved Respondent's conversion of its program from clock hours to semester hours under false pretenses, and therefore ED is not bound by that approval.
- 3.) It is appropriate for OSFA to require Respondent to determine the Pell Grant awards that its students were entitled to receive from award years 1984-85 onward in clock hours.
- 4.) Respondent disbursed \$44,264 of Pell Grant Program funds and \$77,783 of loan proceeds under the Stafford Loan and SLS programs to students enrolled in ineligible programs.
- 5.) Ethelene R. Hughey does qualify as a "designated ED official."

II. Relief sought by ED in the FAD letter

ED requests relief with regard to finding number 1, that the administrative law judge (judge) should affirm the findings of the March 22, 1991, final audit determination by finding that Webster's conversion of its programs from clock hours to semester hours resulted in an excessive and unreasonable number of semester hours. The administrative law judge is asked to require Webster to calculate the Pell Grant awards its students would have received if Webster had calculated those awards on the basis of clock hours, from award year 1984-85 to the present. Further the judge is requested to require Webster to pay ED the difference between that amount and the Pell Grant Program funds that Webster actually disbursed during that period.

Alternatively, the judge is asked to require Webster to pay ED \$4.5 million that OSFA estimates represents the amount of Pell Grant overpayments that Webster made for award years 1984-85 through 1988-89 as a result of attributing an excessive number of semester hours to its programs and in addition to require Webster to calculate the Pell Grant overpayments it made for the award years subsequent to the 1988-89 award year.

With regard to finding number 2, ED requests that the - administrative law judge should affirm the March 22, 1991, final audit determination that Webster offered two programs that were not eligible programs for purposes of the Title IV, HEA Programs, to require Webster to repay \$122,047 of Pell Grant, Stafford Loan and SLS Program funds that Webster disbursed to students enrolled in those ineligible programs, and to pay ED an additional \$11,000 for the interest and special allowances that ED paid as a result of those ineligible Stafford and SLS Program loans.

PART VIII. WEBSTER REQUEST FOR REVIEW DE NOVO

Respondent submitted a May 10, 1991, pleading entitled "Request for Review" which was a request for review of the same facts and issues that had been previously audited. In this request, Respondent seeks review of each finding identified in the FAD letter and disputes the following threshold matters:

- 1.) The FAD letter is null and void because it was not issued by a "designated ED official" as required by 34 CFR Part 668, Subpart H.

2.) The burden of proof properly rests with ED pursuant to the Administrative Procedure Act (APA), 5 U.S.C. §556(d). Failure to place the burden of proof where it belongs renders the Subpart H appeal procedures unlawful.

3.) Respondent is entitled as a matter of law to submit its supporting documentation after ED meets the initial burden of production which, under the APA, ED must bear.

4.) Respondent is entitled by law to a trial-type hearing, 20 U.S.C. §1094(b)(2), and the Subpart H regulations unlawfully deprive Respondent of such right.

Webster's position is that the Subpart H regulations which govern this appeal are unlawful and defective because they fail to afford the institution the hearing to which it is entitled and because, as a matter of law, they misallocate the burden of proof, including the burden of production.

PART IX. RESPONDENT'S POSITIONS ON CONVERSION AND INELIGIBLE PROGRAMS

Respondent asserts in its Request for Review that the findings of fact and the liabilities asserted in the determination are inaccurate, arbitrary, capricious, an abuse of discretion, not supported by substantial evidence, and otherwise not in accordance with fact or applicable regulatory policy and law. The determination letter is alleged to have been issued in direct violation of ED's own governing regulations, interpretations, published manuals and other written guidance and is therefore defective and unenforceable and should be withdrawn by ED or ruled invalid by an Administrative Law Judge. Further, Webster submits that ED's positions are substantially unjustified, and that upon prevailing Webster is entitled to attorney's fees and costs. Webster asserts that ED has stated no valid basis to revoke approval of its conversion or to impose the revocation retroactively. Respondent cites support for its reasoning as follows:

A. Respondent's position on ED's revocation of initial approval of conversion

Respondent argues that ED asserts that it is not bound by its reliance on AICS' approvals because AICS did not follow its own rules and procedures and because ED approved the conversion under "false pretenses." Respondent claims that ED's argument is "defamatory, absurd, and ridiculous," and points out that false pretenses is conduct used to obtain property by "trickery or deception...a criminal offense requiring intent to defraud or take..." Respondent states that ED cannot cite or point to any evidence of intentional actions by AICS or Webster to deceive or mislead ED in any respect, that the record reflects just the opposite; namely, a completely above board process of application and review, offered and acted on in good faith. Webster contends that ED acted to approve the school's applications after conducting a program review of Webster in 1986 for the purpose of determining the extent of the school's compliance with Title IV rules and regulations. At the conclusion of the review ED issued a letter to Webster stating that no areas of non-compliance were found, Webster's offerings and its method of measurement were no different in 1986 than they were in 1989 when the OIG reviewed them. [emphasis added.] In 1984 ED said it preferred rulemaking to ad hoc actions because it would be fairer to all concerned, but according to Webster, because Ed has not been able to issue a final regulation, the Secretary has apparently concluded that ad hoc actions are possible Webster

contends that even if ED has authority to deny conversions on the grounds asserted herein, it has no authority to act retroactively against the institution after six years of full disclosure and compliance with and approval by the relevant agencies.

B. Respondent's position as to enforcement of retroactive rulemakings

Respondent alleges that ED's action against it attempts to enforce a proposed regulations retroactively and is in violation of the law. Respondent states and cites as its support, that it is clear that retroactive rulemaking is not favored and will be reversed absent clear congressional authorization. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204 (1988). Application of Proposed regulations, retroactively or otherwise, according to Respondent, is clearly in violation of Webster's due process and the APA which defines a rule as having future effect. 5 U.S.C. §551 et seq. On October 1, 1990, ED published its proposed regulations, 55 Fed. Reg. 40148, to "...eliminate a serious abuse of the student financial assistance programs." Since the NPRM was issued, about 4,000 comments have been filed and no final regulation has been issued. One of the commentators was AICS, which said:

To suggest that current credit-hour measurements of undergraduate vocational programs represent serious abuses is to demonstrate a lack of understanding of educational programs offered...Rather than imposing additional requirements on institutions..., the Department should be seeking action through the accrediting agencies and the recognition process. One way to accomplish this would be to include more specificity in the recognition criteria to ensure that accrediting agencies monitor the conversion of clock to credit hours appropriately.

AICS requested a list of schools 'abusing' credit hour management on at least two occasions, but ED did not provide it with any information. AICS pointed out that ED's proposed rule (and its argument in this case) incorrectly assumes that all vocational programs have similar course content and that the mechanistic approach as is advocated by ED is therefore unreasonable. In this instant matter as well as in the regulation, it is alleged that ED seeks to apply a formula to the analysis without regard to the need for outside preparation as appropriate to the programs offered, and that while ED never mentions the NPRM, it clearly is being applied in this action as though it were final, and with unconstitutional retroactive effect.

C. Respondent - de facto compliance

Webster states that it was in substantial compliance with the approvals given and should not be required to repay all title IV funds the students in those programs received. In addition, Webster asserts that the regulation relied upon by ED does not require repayment of all financial assistance received. Webster submits that its substantial compliance together with its prompt action to discontinue the programs once the error was brought to the school's attention justify mitigation of the penalty, since there was minimal negative impact from not teaching the program exactly as approved, and because there is no allegation that this occurred deliberately, rather it is clearly suggested that the occurrence was inadvertent. It is also worth noting, according to Webster, that some of its adjustments in the course measurements were later adopted in the program descriptions sent to AICS in August 1989. Finally, Webster contends

AICS has also concluded that Webster was in de facto compliance with its criteria and, therefore with AICS' approvals.

PART X. WEBSTER'S POSITION AS TO RELIEF SOUGHT BY ED

Respondent avers that its actions "demonstrate that it acted in good faith, that the failure to offer exactly what was approved was inadvertent and a mistake, and that it was in de facto compliance with AICS' criteria." Respondent contends that only a limited number of students were effected because of Webster's quick remediation, and that, therefore, demands should be moderated and repayment ordered of only the applicable proportion of funds.

Respondent contends that as it relates to the overpayments, the regulation cited by ED to support its demand for repayment of all Title IV funds does not require this result. 34 C.F.R. 600.10(c)(2). According to Respondent, "shall be liable," does not mean that each institution in this circumstance must repay all funds received regardless of any benefit conferred on the student. Rather, it is discretionary, that is, depending on the circumstances of the case it may be liable to repay all the funds. Had the regulations intended that every institution which violates this regulation must repay all the funds it received because of its incorrect determination, the regulations would have used the phrase "must repay to ED." ED did not require such an outcome, however, because to do so would have been unfair.

PART XI. ETHELENE R. HUGHEY'S AUTHORITY To ISSUE FAD

Respondent argues that the FAD should be null and void because although the letter was signed by an individual with apparent authority, Hughey was not a "designated ED official" with authority to issue such letters until April 4, 1991, 10 days after she signed the letter addressed to Chuang on March 25, 1991.

According to Subpart H, §668.112, Hughey is a "Designated ED Official" and has the authority to submit letters on behalf of the Audit Review Branch, Division of Audit and Program Review. By virtue of her position, as set forth in the regulation, Hughey is authorized to submit letters that represents the Inspector General, who in turn, is under the Secretary of the Department of Education. It is appropriate and not unusual for an employee to issue correspondence under his or her own signature that represents the supervisor's opinion as well. Title 20 U.S.C. , 3472, Delegation of functions, reads:

"Except as otherwise provided in this chapter, the Secretary may delegate any function to such officers and employees of the Department as the Secretary may designate, and may authorize such successive redelegations of such functions within the Department as may be necessary or appropriate." (Pub. L. 96-88, title IV, § 412, Oct. 17, 1979, 93 Stat. 684.)

The job description for the Chief of the Audit Review Branch under "II. Major Duties" reads as follows: "Signs all letters to institutional Chief Executive Officers involving the review of SFA audits. These documents, which are prepared by subordinate staff, are final letters of determination on the audits and represent the Department's official position with respect to

corrective actions to be taken by institutions as well as outlining reimbursements of any liability to the Federal Government."

PART XII. DENIAL OF DUE PROCESS

Respondent argues that it is entitled by law to a trial-type hearing, as provided in 5 U.S.C. §556 and 557, and that the denial of this right violates its due process under law. The judge does not dispute that Respondent is allowed a trial-type hearing if the judge determines that oral argument is necessary to clarify the issues and positions of the parties. In this case, however, the written evidence presented by both parties is sufficient. See 34 C.F.R. 668.116(g)(1).

PART XIII. GENERAL DISCUSSION OF THE ISSUES AND FACTS AS SET

FORTH IN PARTS III THROUGH VII ABOVE

PART III. Despite Respondent's claims that its records have been open for review by Ed on numerous occasions since 1984, and that ED has no basis at all to argue that AICS has surprised the Secretary by its actual practice in reviewing and approving Respondent's conversion, it is nevertheless evident that Respondent ignored and did not comply with the academic equivalences set forth in the AICS and ED publications when converting from clock hours to credit hours. Respondent's academic year equaled only .67 of an academic year as being completed in 20 weeks or 5 months.

PART IV. The failure of the accrediting agency to fully perform its function of reviewing and approving clock to credit hour conversions is supported by the fact that on February 24, 1984, AICS approved the conversion but did not evaluate whether Webster's programs required outside preparation for classroom lectures in each program because Webster's application provided no information or documentation demonstrating any such outside preparation. The record also shows that this happened on three occasions when it applied with AICS in 1984, 1988, and 1989. The apparent failure of AICS to thoroughly examine or evaluate this oversight did not conform with its own written standard.

In its brief, Respondent notes that "ED asserts that it learned, as a result of the audit of Webster, that the actual procedures that AICS used in approving Webster's conversion of its clock hours to credit hours...did not support AICS's original policy..." Respondent regards this as a "specious and disingenuous argument." The AICS' evaluation procedures and criteria state that when exercising their professional judgment to determine a credit recommendation, review team members consider the following factors...

c. ... Normally academic credit is assigned on the basis of one semester credit hour for each 15 classroom contact hours plus 30 hours of outside preparation or equivalent; one semester credit hour for each 30 hours of laboratory work plus necessary outside preparation or equivalent ..."

Respondent also asserts that ED has the means to ensure that accrediting agencies have appropriate criteria in place to accredit institutions and that they are following their own rules. Furthermore, ED has a means to enforce its view of what appropriate criteria are and can deny

renewal of recognition to an agency which is not in compliance with the Secretary's criteria. Respondent notes that recently several accrediting agencies received renewals from ED for less than full terms because of concerns regarding the agencies' performance. Respondent contends that ED is treating some institutions on an "ad hoc basis." However, whether other schools abuse the SFA program by improperly converting clock hour to credit hour courses does not excuse Respondent from doing what is required of it.

PART V. OSFA agrees with Respondent that with regard to certain aspects of the clock hour/credit hour conversion issue, ED's efforts have been long and twisted. But at the same time, OSFA states that ED required institutions to obtain the approval of their accrediting agency for any clock hour to credit hour conversion as a prerequisite to ED's approval of that conversion.

On January 10, 1984, ED advised Respondent that it would approve the conversion if the institution's accrediting agency approved the conversion. On February 24, 1984, the approval was reconfirmed by AICS in a letter to Respondent. Finally, on February 4, 1988, ED approved Respondent's conversion and on April 4, 1988 made its approval retroactive to February 24, 1984 based on the AICS review and approval. [See footnote 16](#)¹⁶ ED does not deny that it relied on the accrediting agency's advice and approval by AICS of Respondent's clock-hour to credit-hour conversions. However, ED and not the accrediting agency makes the final decision with regard to such conversions under the HEA, and Ed must treat the accrediting agency as an advisor rather than as a delegate. In accordance with 34 CFR 602.1(a) and (b), there are procedures for the Secretary of ED to rely on accrediting agencies as reliable authorities concerning the quality of education or training offered by the post secondary educational institutions or programs within the agency's respective scope of operation. Under the regulations, therefore, accreditation of postsecondary institutions or programs by agencies. such as AICS. recognized by the Secretary is a prerequisite to eligibility for many types of Federal financial assistance. not only for the institutions or programs. but also for students enrolled_ in these institutions and programs. [emphasis added.]

Respondent asserts that ED cannot point to any evidence of intentional actions by AICS or Respondent to deceive or mislead ED in any respect. Respondent avers it acted on good faith throughout the entire process. Respondent claims it sought guidance and provided detailed information to ED on its conversion on at least three occasions: In 1984, on the process of obtaining approval and facts for its application; in 1989 when it provided information to ED on Form 1059 after the moratorium; and in 1989 when it applied for two former branches seeking approval as free standing institutions. After each submission ED acted to approve the school's application. Respondent states in its initial brief that the fact that ED did not deny the applications is highly significant and the reasons for not acting between 1984 and 1990 are equally applicable now.

ED alleges that the reason it did not act between 1984 and 1990 was stated earlier in its brief where it cited the statute in section 602.1(a) and (b) as to its reliance on accrediting agencies as the authorities for monitoring the quality and the choosing of education and the programs within the agencies' respective scopes of operation which in turn qualifies the institutions for many types of Federal financial assistance. After February 4, 1988, ED subsequently learned as a result of the audit that the actual procedures AICS used in approving Respondent's conversion of its

clock hours into semester hours did not support AICS' policy as expressed in its manuals and other documents. Lastly, Ed contends that it is not bound by its reliance on AICS' approvals because AICS did not follow its own rules and procedures. I conclude that, based on the evidence, ED is not estopped from asserting a claim against Respondent for improper conversion.

PART VI. In Finding No. 1, AICS failed to approve the program courses according to its own written standards as relates to "credit with term" nomenclature. On page 3 of AICS' February 19, 1988, memorandum (Ex. G-24) it is stated that "...there is no provision in the Commission's procedures for institutions to convert to 'credit without term' measurement. The Commission will not in the future recognize such measurement." In other words, AICS would recognize institutions that convert to "credit with term" measurement only or semester credit hours offered with reference to a period of time or term. By memorandum dated February 19, 1988, AICS (Exh. G-24) notified all institutions that "...it believes than any course or program of study is for a predetermined amount of time or a predetermined level of skill accomplishment, and that such accomplishment can be recorded in standard term units. All institutions now utilizing 'credit with term' nomenclature must define their academic units in standard units by January 1, 1989." The evidence demonstrates that because of the FAD, ED discovered that Respondent "assigned an unreasonable amount of semester hours to its courses when it converted them for clock-hour basis to credit-hour basis." Respondent thus chose to ignore the academic year equivalence required in ED publications.

Under Finding Number 2, Respondent misrepresented two programs in 1988 that were eventually deemed ineligible because Respondent omitted some of the courses under the programs previously approved by the accrediting agency. Respondent assigned an unreasonable amount of semester hours to its courses when it converted them from a clock-hour basis to a credit-hour basis. As a result, Respondent improperly increased the amount of Pell Grant funds for which a student could be eligible without increasing the actual length of its programs or changing its procedures for administering them. In turn, this resulted in "overawards which totaled about \$4.5 million for Pell Grant years 1984-85 through 1988-89."

Another point is demonstrated in the evidence that goes as far back as 1983 pointing to a misrepresentation in January 1984, when the Respondent submitted its request for conversion, it represented the same 615 clock hour, clerk typist program as a 41 credit-hour program, which is a 50 percent increase in credit hours, and later this same program was revised to a 600 clock hour, 40 credit hour program.

AICS' Accreditation Criteria, Policies, Procedures and Standards (Standards) requires that new programs be submitted to AICS for evaluation and approval before the programs are included in an institution's current grant of accreditation. AICS may approve new programs for 'interim inclusion' in the institution's accreditation based on a review of submitted information. However, the programs must be implemented as presented to AICS. Specifically, paragraph 2-2-105 of AICS' Standards states:

If a new program, upon examination of information submitted, is found to be complementary to the general and occupational objectives upon which the institution previously has been evaluated

and accredited, and the program is being presented to the public and students as it was being presented to the Commission, ordinarily no further evaluation will be required at the time of approval.

PART VII.A.I.1.) - Respondent's conversion did result in an unreasonable and excessive number of semester hours for its programs because it did not increase the instruction it offered in those programs, did not require its students to perform additional work, and did not increase the length of time a fulltime student would take to complete any of those programs.

PART VII.A.I.2.) - The evidence indicates that Respondent's conversion was done without proper regard to accrediting agency and ED requirements

PART VII.A.I.3.) - As previously stated in the FAD letter, the Institutional representatives refused to provide a management representative letter. This refusal prevented the auditors from completing one of the required audit steps, and caused auditors to draw their own conclusions based on data available. [See footnote 17](#)¹⁷ However, Webster's executive vice president agreed that once he receives the final ED decision, he will analyze the students' files to determine the exact amount of Pell Grants overawards owed to ED.

PART VII.A.I.4.) - The \$44,264 of Pell Grant funds and \$77,783 of loan proceeds under the Stafford and SLS programs given to the 38 students enrolled in the ineligible programs must be reimbursed to ED.

PART VII. A.I.5.) - Hughey is a "designated ED official" as required in Subpart H, §668.112 and has the authority to submit letters on behalf of the Audit Review Branch. As Chief of the Audit Review Branch, Hughey had already been delegated authority to issue FAD letters as evidenced by her job description.

PART VII.A.II. - Respondent did not comply with its accreditation agency's guidelines on conversions which resulted in overpayments amounting to \$4.5 million for awards 1984-85 through 1988-89 and \$1.2 million for award year ended June 30, 1990. For the period between June 1, 1988 and June 30, 1988, a total of 38 students were enrolled in ineligible programs who did not later transfer to regular programs. These 38 students received a total of \$122,047 in SFA program funds, as shown in Appendix A. The audit estimated the interest and special allowance charges at approximately \$11,000 as of June 1, 1990. The auditor's determination is that all the SFA and other ED programs funds be reimbursed to ED.

It appears a bit "after the fact" on the part of Respondent who has taken corrective action as of July 1, 1989, when the institution ceased to offer the Clerk-Typist with ESL and Data Entry with ESL programs. It is not shown that funds received through improper conversion and ineligible programs have been paid back to ED, however.

Lastly, the Government does not address the issue of a proposed regulation being made retroactive in its brief of August 9, 1991 or its reply brief of October 16, 1991. It is apparent, however, that one cannot violate a "proposed" regulation that, in essence, doesn't exist at the time other established existing regulations are in effect.

FINDINGS

As outlined in the attached Appendix B, I adopt the findings of fact submitted by OSFA in numbers 1 through 8 and 10 through 100. I do not adopt number 9 because there was no page 27 included in the 1985-87 catalog for comparison. As to the statement in number 10, although there was no way to compare with number 9 which has been excluded, this statement was in the 198688 catalog.

CONCLUSION

- 1.) I find that the final audit determination issued by the designated ED official is supportable, in whole. The findings of fact are based on the evidence properly presented before me.
- 2.) I find that exhibits 45 through 50 as presented in Respondent's September 23, 1991, initial brief are inadmissible in accordance with section 668.113(b) which reads
"The institution shall file its request for review and any records or materials admissible under the terms of §668.116(e) and (f) Of this Subpart, no later than 45 days from the date it receives the final audit determination..."
- 3.) I find that Respondent's conversion of its program from clock hours to semester hours resulted in an excessive and unreasonable number of semester hours.
- 4.) Respondent is directed to pay \$4.5 million to ED that OSFA estimates represents the amount of Pell Grant overpayments for award years 1984-85 through 1988-89 for calculating an excessive number of semester hours to its program. The additional estimated amount for \$1.2 million for the year 1989-1990 must also be paid to ED. I find no justification for mitigation in this regard. The regulations provide otherwise.
- 5.) The school's executive vice-president is directed to follow through with the agreement he made with the auditors that once he receives the final ED decision, he will analyze students' files to determine the exact amount of Pell Grant overawards it owes. (See Page 11 of the Audit Report.)
- 6.) Additionally, inasmuch as there were a total of 38 students who were enrolled in the ineligible programs between 1988 and 1989 who did not transfer to the regular Clerk-typist and Data Entry programs. Respondent is directed to pay ED an additional \$44,264 in Pell grants, \$50,346 in Stafford loans and \$27,437 in SLS loans for the years June 1, 1988 to June 30, 1989. The interest calculated is \$11,000 on the total of \$122,047 in SFA funds as of June 1, 1990. Respondent must pay ED all of these funds, including the calculated interest.
- 7.) Respondent must establish procedures to ensure that future new programs are implemented as presented to its accreditation commission.
- 8.) Respondent must compute equitable credit hour conversion in accordance with regulations and guidelines established for SFA programs.

9.) An appeal may be filed by Respondent within 15 days of its receipt of this initial decision of the administrative law judge. A party wishing to appeal the decision shall submit a brief or other written material to the Secretary explaining why the decision of the administrative law judge should be overturned or modified.

10.) The party appealing the initial decision shall, simultaneously with its filing of the appeal, provide the opposing party with a copy of its brief or other written material.

11.) In its brief to the Secretary, the party appealing the initial decision may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by (1) the admissible evidence already in the record; (2) matters that may be given official notice; or (3) stipulations of the parties.

12.) The opposing party shall, simultaneously with the filing of any response, provide a copy of its response to the appeal to the party appealing the initial decision.

13.) Neither party may introduce new evidence on appeal, and

14.) In the event the initial decision is not appealed within the time limit specified in section 668.119(a), the initial decision automatically becomes the final decision.

By Administrative Law Judge Paul J. Clerman on October 29, 1992, at Washington, D.C.

UNITED STATES DEPARTMENT OF EDUCATION BEFORE THE OFFICE OF HIGHER
EDUCATION APPEALS WASHINGTON, D.C.

IN THE MATTER OF Webster Career College,
Respondent.

Student Financial Assistance Proceeding
Los Angeles, California

CERTIFICATE OF SERVICE

The undersigned Administrative Law Judge does hereby certify that on October 29, 1992, a copy of the Initial Decision in the above-captioned proceeding was served upon Peter Leyton of the law firm of White, Fine & Verville, 1156 Fifteenth Street, N.W., Washington, D.C. 20005, counsel to Respondent, and a copy of the initial decision was served upon Stephen M. Kraut, Office of the General Counsel, Department of Education.

/ Paul J. Clerman

/ Administrative Law Judge

United States Department of Education before the Office of Higher Education Appeals

APPENDIX A

#	Name	Pell Grant	Stafford	SIS
1.	[student name]		\$2,362.50	
2.	[student name]	\$1,100	52,415.00	\$1,667.00
3.	[student name]	\$1,102.50	\$1,175.00	
4.	[student name]	\$2,200	\$1,207.49	
5.	[student name]	\$1,100	\$1,102.50	\$406.00
6.	[student name]	\$1,100	\$1,102.50	\$1,175.00
7.	[student name]	\$1,100	\$1,102.50	\$1,175.00
8.	[student name]	\$1,100	\$1,207.49	
9.	[student name]	\$1,100	\$1,207.49	
10.	[student name]	\$1,100	\$1,207.49	
11.	[student name]	\$1,100	\$1,102.50	\$1,175.00
12.	[student name]	\$2,415.00	\$1,137.00	
13.	[student name]	\$1,102.50		
14.	[student name]	\$1,100	\$1,102.50	\$1,175.00
15.	[student name]	\$2,200	\$2,415.00	\$666.00
16.	[student name]	\$1,207.49		
17.	[student name]	\$1,102.50		
18.	[student name]	\$1,100		
19.	[student name]	\$2,200	\$2,415.00	\$2,098.00
20.	[student name]	\$1,100	\$1,207.49	
21.	[student name]	\$2,415.00	\$2,425.00	
22.	[student name]	\$2,200	\$2,415.00	\$2,198.00
23.	[student name]	\$2,200	\$2,415.00	\$1,431.00
24.	[student name]	\$1,175.00		
25.	[student name]	\$1,100	\$1,102.50	
26.	[student name]	\$1,100	\$1,102.50	
27.	[student name]	\$2,200	\$1,893.00	\$1,903.50
28.	[student name]	\$1,100	\$1,102.50	
29.	[student name]	\$1,100		
30.	[student name]	\$1,100	\$1,102.50	
31.	[student name]	\$1,023.86		
32.	[student name]	\$2,200		

33.	[student name]	\$1,100	\$995.46	
34.	[student name]	\$1,100	\$1,069.62	\$726.38
35.	[student name]	\$1,100	\$1,001.53	\$953.84
36.	[student name]	\$2,142	\$2,415.00	\$2,425.00
37.	[student name]	\$1,813.50	\$1,102.50	\$1,175.00
38.	[student name]	\$1,808.50	\$1,102.50	\$1,175.00

IN THE MATTER OF Webster Career College,
Respondent.

Docket No. 91-39-SP Student Financial Assistance Proceeding

PROPOSED FINDINGS OF FACT

The Office of Student Financial Assistance proposes the following findings of fact.

1. In 1984, Webster converted its programs from clock hour programs to semester hour programs.
2. Webster did not increase the instruction it offered in any of those programs, did not require its students to perform any additional work under any of those programs, and did not increase the length of time a full-time student would take to complete any of those programs.
3. After the conversion, Webster offered its programs in semester hours, but did not divide its academic year into academic terms, such as semesters.
4. Webster has identified in its catalogs the courses that it offers in terms of clock hours, semester hours, and weeks.
5. Each of Webster's 600 clock hour programs takes 20 weeks to complete.
6. Each of Webster's programs is given only during the week, i.e., Monday through Friday. A student enrolled in those programs takes 6 clock hours of instruction a day, 30 clock hours of instruction a week.
7. Simple division reveals that Webster determined the number of semester hours in each program by dividing the number of clock hours in that program by 15. Thus, in its 1986-88 and 1988-90 catalogs, each 600 clock hour program, with one exception, was assigned 40 semester hours.
8. According to Webster's catalog, Webster should have divided the number of clock hours by 16.

9. On page 27 of Webster's 1985-87 catalog, Webster stated that:

Credits for the successful completion of each course are indicated following the discussion of each subject included on ensuing pages of this catalog.

Such credits are based on a ratio of 1 unit: approximate 16 class/lecture hours; 1 unit equals to 32 let hours.

10. A similar statement was made on page 15 of Webster's 1986-88 catalog.

11. Before the conversion, Webster's academic year was 900 clock hours, and each 600 clock hour program equaled .67 of an academic year ($600/900$).

12. After it converted its programs to semester hours, Webster considered that its academic year consisted of 28 semester hours.

13. After the conversion, each of these 600 clock hour programs consisted of 40 semester hours.

14. After the conversion, each 40 semester hour program equaled 1.43 academic years ($40/28$).

15. As a result of the conversion, the quantity of education in those 600 clock hour programs more than doubled.

16. Webster also offered a 946 clock hour "Cardiovascular Technician Program" between 1986 and 1988 that it converted to 42.47 semester hours.

17. Between 1988 and 1990, Webster offered a 900 clock hour "Computer and Electronics Technology Program" that it converted to 46.67 semester hours.

18. Accordingly, the conversion increased the quantity of education offered in the 900 clock hours programs by 50 percent.

19. During 1988-90, Webster offered a 300 clock hour "Microcomputer Specialist Program" that it converted to 20 semester hours.

20. Three hundred clock hours is .33 of an academic year measured in clock hours ($300/900$), while 20 semester hours is .71 of an academic year measured in semester hours ($20/28$).

21. The conversion of the Microcomputer Specialist Program more than doubled the quantity of education offered in that program.

22. Prior to its conversion of its programs from clock hours to semester hours, Webster applied to its accrediting association, the Association of Independent Colleges and Schools (AICS) for approval of the conversion.

23. Webster's application was dated January 9, 1984.

24. Webster's application provided no information or documentation demonstrating any outside preparation.

25. AICS approved that conversion on February 24, 1984.

26. However, AICS did not and could not evaluate whether Webster's programs required any outside preparation for the classroom lecture hours in each program, because Webster's application provided no information or documentation demonstrating any such outside preparation.

27. In a notice dated February 4, 1988, ED approved Webster's conversion of its clock hour program to semester hours, and made its approval retroactive to February 24, 1984. Exhibit G-9

28. In April 1990, Webster applied to AICS again for AICS's approval of its revised clock hour/semester hour conversion.

29. AICS again approved that conversion.

30. Webster's application provided no information or documentation demonstrating any outside preparation.

31. AICS did not and could not evaluate whether Webster's programs required any outside preparation for the classroom lecture hours in each program, because Webster's application provided no information or documentation demonstrating any such outside preparation.

32. In its 1990 application Webster indicated that it was still offering its programs without using academic terms.

33. As a result of measuring its educational programs in semester hours, Webster received and disbursed \$13,745,284 of Pell Grant Program funds during the 1984-85 through 1988-89 award years, and disbursed \$1,531,718 of Pell Grant Program funds during award year 1989-90.

34. Up to 1979, the Secretary defined the term "academic year" to mean:

(a) a period of time generally of not less than 8 months in which a full-time student would normally be expected to complete the equivalent of two semesters, two trimesters, three quarters, or 900 clock hours of instruction.

35. In 1979, the Secretary modified that definition in the Pell Grant Program, as follows:

(a) A period of time generally of not less than 8 months in which a full-time student would normally be expected to complete the equivalent of at least 2 semesters, 2 trimesters, or 3 quarters at institutions using credit hours, or

(b) At least 900 clock hours of training for each program at institutions using clock hours.

36. In 1983, the definition was again slightly modified under the Pell Grant Program, as follows:

(1) A period of time generally of not less than 8 months in which a full-time student would normally be expected to complete the equivalent of at least two semesters, two trimesters, or three quarters at an institution which measures academic-progress in credit hours and uses a semester, trimester or quarter system; or

(2) A period of time in which a full-time student is expected to complete at least 24 semester hours, 24 trimester hours, or 36 quarter hours at an institution which measures progress in credit hours but does not use a semester, trimester or quarter system; or

(3) At least 900 clock hours of training for each program at an institution which measures academic progress in clock hours.

37. If an institution used semester or trimester hours and divided its academic year into semesters or trimesters, a fulltime student was defined as one who took at least 12 semester hours or 12 trimester hours per semester or trimester.

38. If an institution divided its academic year into quarters, a full-time student was defined as one who took at least 12 quarter hours per quarter.

39. A semester hour is a term of art that has a commonly understood meaning in the postsecondary education community.

40. Under the traditional, commonly understood meaning of the term "semester hour, n one semester hour involves one hour of classroom instruction a week for the length of a semester, which is generally at least 15 weeks. Therefore, one semester hour requires at least 15 hours of classroom instruction. In addition, one semester hour generally includes two hours of outside preparation for each hour of classroom instruction, i.e. 30 hours. Thus, one semester hour generally requires 45 hours of work involving both classroom instruction and outside preparation.

41. The Handbook of Accreditation and Policy Manual of the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges, 1990 Ed. defines a unit of credit, as follows:

Credit. Unit of: A quantification of student learning. one semester unit represents the time a typical student is expected to devote to learning in one week of full time study (40-45 hours per week including class time and preparation). An alternate norm is one unit for three hours of student work per week e.g. one hour of lecture and two of study, or three of laboratory) for a full quarter or semester.)

42. The Accreditation Handbook of the Northwest Association of Schools and Colleges , 1988 Ed, defines a unit of credit, as follows:

Credit. Unit of: A quantification of student learning. One semester unit represents the time a typical student is expected to devote to learning in one week of full time study (40-45 hours per week including class time and preparation). An alternate norm is one unit for three hours of student work per week (e.g one hour of lecture and two of study, or three of laboratory) for a full quarter or semester.)

43. The 1982-83 and 1987 editions of the National Guide To

Educational Training Programs of the American Council On Education/MacMillan Series on Higher Education define a semester hour, as follows

... Normally academic credit is assigned on the basis of one semester credit hour for each 15 classroom contact hours plus 30 hours of outside preparation or equivalent; one semester credit hour for each 30 hours of laboratory work plus necessary outside preparation or equivalent ..."

44. In a March, 1979 BSFA Bulletin, ED stated that:

The regulations define an "academic year" as the period of time in which a fulltime student is expected to complete the equivalent of 2 semesters, 2 trimesters, 3 quarters, or 900 clock hours, depending upon the unit of measurement the institution uses. These minimums are intended to establish relatively equivalent periods of time for institutions using different units to measure program length. Thus, if an institution currently measuring a program in clock hours were to convert that program to semester, trimester, or quarter hours, the program itself should still constitute the same portion of an academic year as it did under the previous method of measuring it. For example, a 900 clock hour program could be converted to a program of two semesters or three quarters, i.e. another means of measuring the minimum period of time for a full academic year. However, a program of less than 900 clock hours could not be converted to a full academic year merely by changing the means of measurement to semesters, trimesters, or quarters.

45. In the Federal Register of Nov. 19, 1986, the Secretary of Education stated that 900 clock hours is the "appropriate equivalent of two semesters, two trimesters, or three quarters," i.e. one academic year.

46. Class work in a traditional semester hour provides only one-third of the work required for that semester hour.

47. A formula that converts clock hours to semester hours that equates one semester hour solely to 15 class hours, i.e., clock hours, without taking into account any outside preparation, clearly overstates the number of semester hours in a program converted under that formula.

48. Webster's conversion formula equated one semester hour solely to 15 class hours.

49. Measured in clock hours, Webster's 20 week, 600 clock hour programs equaled .67 of an academic year.

50. It is not unreasonable to view .67 of an academic year as being completed in 20 weeks or five months.

51. It is not unreasonable for a student to attend classes six hours a day, five days a week for 20 weeks and thereby absorb 600 clock hours of instruction.

52. Under Webster's conversion formula, without any additional instruction or course work, Webster's 20 week, 600 clock hour programs were converted into 40 semester hour programs.

53. Under Webster's definition of an academic year, 28 semester hours, Webster's 20 week, 40 semester hour programs were thus equal to 1.43 academic years of postsecondary instruction.

54. Under Webster's conversion formula, Webster was providing one academic year of postsecondary education in only 14 weeks, or 3.5 months.

55. Prior to 1990, Webster determined that all its 600 clock hour programs consisted of lecture hours.

56. Since a semester hour generally includes two hours of outside preparation for each classroom lecture hour, the 600 clock hours of classroom lecture hours would generally require 1,200 hours of outside preparation in order to legitimately convert the 600 clock hour program to a 40 semester hour program.

57. Webster's 600 clock hour programs took 20 weeks to complete, with students attending classes Monday through Friday. Thus, students received 30 clock hours of instruction per week, 6 clock hours of instruction per day.

58. If the students performed the necessary outside preparation to legitimately convert those clock hours to semester hours, the students would need to perform 60 hours of outside preparation a week, every week, for 20 weeks.

59. Assuming that the students performed the necessary outside preparation over a seven day period, that outside preparation would require 8.5 hours a day, every day, for 20 weeks, or 140 days.

60. Five days of each week the students would also be attending 6 hours of classes. Thus, for those 5 days, 100 days over the 20 week period, the students would be putting in 14.5 hours of classes and outside preparation. These students for 20 weeks would have no time to do anything except eat, sleep, travel to and from school, and school work.

61. Webster's Clerk Typist Program offered "a basic secretarial background including data entry, typing, management of the office and basic office procedures. n

62. Webster did not claim that the successful completion of the program qualified the graduate to be a secretary. Webster stated that the successful completion of the program allowed graduates to be "qualified for entry level positions as typists, or as general personnel in offices, banks, industry and civil service positions."

63. Webster claimed that this 20 week, clerk typist program, which qualified a graduate to be a typist or general office worker, consisted of 40 semester hours of postsecondary education. That means that Webster claimed that the quantity of postsecondary education offered in that program was equal to the quantity of education provided in 1.43 academic years of postsecondary work.

64. A student does not need to undertake 1.43 academic years of postsecondary education and training to become a clerk typist.

65. AICS's written standards with regard to an academic year were consistent with ED's academic year relationships and requirements.

66. In the AICS Policies Procedures and Standards Manual, 1985 Ed., AICS defined the term "Credit hour semester," with regard to the time it takes to complete an academic year of work in semester hours, as follows:

CREDIT HOUR SEMESTER-- A credit hour based on the semester calendar which is usually divided into terms of 15 to 17 weeks including final examination periods but excluding registration periods.

67. In the AICS Policies Procedures and Standards Manual, 1985 Ed., in the defined term "calendar" AICS indicates that a semester calendar is one in which a "school year" i.e., academic year, is divided into two semesters of 15 to 17 weeks of classes each, including final examinations.

68. In the AICS Policies Procedures and Standards Manual, 1985 Ed., AICS defined a "Credit hour" as including, as a minimum, one hour of classroom study per week times the number of weeks in the term.

69. In the AICS Policies Procedures and Standards Manual, 1985 Ed., AICS further stated in the definition of the term "lecture" that "in order to obtain the maximum benefit from classroom instruction, a student is assumed to have done outside preparation. Two hours of preparation for each hour of lecture instruction is generally assumed."

70. AICS's definitions in its Manual relating to an academic year were consistent with ED's definition of an academic year and the commonly understood definition of an academic year, both in terms of the length of time needed to legitimately complete an academic year and the amount of work required in a legitimate academic year.

71. In a memorandum from the AICS Accrediting Commission to all its member schools dated February 19, 1988, AICS slightly rephrased its definition of a "credit hour semester" from the one included in its 1985 manual.

72. In that February 19, 1988 memorandum, AICS defined a semester hour as follows:

CREDIT HOUR SEMESTER-- a minimum of 15 classroom lecture periods of not less than 50 minutes each and which assumes outside reading and/or preparation; 30 laboratory clock hours

where theory is applied and explored, or manipulative skills are enhanced; 45 hours of external discipline related work experience with indirect instructor supervision or employer assessment; or an appropriate combination of all three.

73. In its Glossary of Definitions in its 1989 Manual, AICS still defined a "lecture" as assuming two hours of preparation for each classroom lecture hour.

74. Since the assumed outside hours of preparation or reading for each classroom lecture period was two hours, AICS's definition of a semester hour remained consistent with the traditional definition of a semester hour, and thus AICS's written standards were in accord with ED's definition of an academic year and the commonly understood definition of that term.

75. In its February 19, 1988 memorandum, AICS stated that

Please note, also, that there is no provision in the Commission's procedures for institutions to convert to "credit without term" measurement. The Commission will not in the future recognize such measurement. The Commission believes that any course or program of study is for a predetermined amount of time or a predetermined level of skill accomplishment, and that such accomplishment can be recorded in standard term units. All institutions now utilizing "credit with term" nomenclature must define their academic units in standard units by January 1, 1989.

Therefore, regardless of whether a school starts classes every week, every month, or every "module," the academic measurement can and should be recorded in standard quarter-hour or semester-hour units based on definitions and calculations explained in this document....

The Commission does not believe or accept, for example, that all skills courses are properly recorded in credit hours strictly on a 1:1 classroom lecture basis. Neither does the Commission accept that an average student can participate in five classroom lectures per week over a 10 week term and educationally earn 25 quarter hours. That is "over-awarding" and probably "under teaching, as well.

76. AICS's February 19, 1988 memorandum was drafted to reflect its concern, as well as ED's concern, about the outrageous and unreasonable clock hour to credit hour conversions:

The Commission understands the concern of the Department of Education with those institutions that "pack" enough credit hours into a short calendar time frame to legitimize an academic year (based upon credit hours), thus making the student eligible for more financial aid and, particularly, a greater loan indebtedness. This can be a real disservice to many students.

77. ED relied on AICS's written statements when it approved Webster's clock hour to semester hour conversion.

78. AICS's actual practice with regard clock hour/semester hour conversions did not conform to its own written standards.

79. In 1984, AICS never examined or evaluated whether Webster required any outside preparation for the classroom lectures hours it included in its conversion application. Moreover, AICS could not have made such an examination because Webster never provided any information with its application on that matter.

80. In its April 24, 1990 letter approving Webster's revised conversion, AICS enclosed the documents on which it based its approval.

81. None of those documents provided one iota of information concerning the amount of outside preparation required for any of Webster's courses in any of Webster's programs.

82. AICS never made Webster change its "credit without term" system to academic terms.

83. AICS approved Webster's 1990 conversion request even though Webster continued to list its programs as credits without terms, notwithstanding AICS's ban of that practice in AICS's February 19, 1988 memorandum.

84. It was impossible for OSFA or the OIG to determine the appropriate number of semester hours in Webster's programs from award year 1984-85 to the present since no evidence is available with regard to the amount of outside preparation required for any of those programs, and since January 1, 1989, Webster has persisted in measuring its programs in semester hours without using academic terms, such as semesters, despite the directive from AICS to convert credit without terms programs to standard academic terms.

85. The only true measure of the quantity of education provided by Webster in those programs, for the purpose of calculating Pell Grant awards, is the admitted number of clock hours in those programs.

86. On February 24, 1988, Webster applied to AICS for approval to offer two new programs, a "Computer Data Entry with ESL Program" and a "Clerk Typist with ESL Program."

87. AICS's Policies, Procedures, and Standards Manual, 1985 Ed. sets forth the procedures and standards AICS used for evaluating and approving new programs of institutions it accredits.

88. The AICS manual provides in pertinent part that: 2-2-104. Initiation of New Programs.

* * * * *

An institution initiating new programs must notify the the [Accrediting]Commission of [AICS]. Supporting data and information must be submitted on forms supplied by the Commission. The information required covers the general areas of student enrollment, program and general objectives, instruction, instructional resource materials, facilities and equipment, admissions, graduation and placement, and publication.

2-2-105. Evaluation of New Programs. If a new program, upon examination of information submitted, is found to be complementary to the general and occupational objectives upon which

the institution previously has been evaluated and accredited, and the program is being presented to the public and students as it was presented to the Commission, ordinarily no further evaluation will be required at the time of approval. However all program offerings of an institution are appropriately evaluated during an institution's regular evaluation for a new grant of accreditation.

89. In its application to AICS, Webster indicated that its "Computer Data Entry with ESL Program" would consist of two ESL courses and nine program courses, as follows:

Course No.	Course Name	Clock hours	Semester	hours
EL 100	ESL I 100	6.67	EL 101	ESL II 100 6.67
SS 502	Business Communications	90	6.00	AC 301 Mathematics
50	3.33	SS 301	Basic Keyboarding	90
6.67	SS 401	Intermediate Keyboarding	90	6.67
AC 450	Electronic Calculator	40	2.67	CS 321
Introduction to Computers	60	4.00	DE 201	Key-to-Disk Operation
90	6.00	DE 202	Format Design and	50
				3.33

Programming Date Entry Group Project

SS 600 Personal Development/ 40 2.67 Job Campaign 90. Webster further indicated to AICS that its "Clerk Typist with ESL Program" would consist of two ESL courses and eight program courses as follows:

Course No.	Course Name	Clock hours	Semester	hours
EL 100	ESL I 100	6.67	EL 101	ESL II 100 6.67
AC 301	Mathematics	50	3.33	SS 301
Basic Keyboarding	90	6.67	SS 401	Intermediate Keyboarding
90	6.67	AC 402	Calculators	40
2.67	SS 502	Business Communications	90	6.00
SS 507	Administrative Office	90	6.00	Procedures
SS 600	Personal Development/	40	2.67	Job Campaign
WP 504	Word Processing Concepts/	40	2.66	Techniques
Electives	70	4.67		

(The electives consisted of 70 clock hours of instruction in Word Processing, Computer Data Entry, or Data Processing.)

91. AICS approved these two new programs on April 4, 1988.

92. Webster offered to its students a Computer Data Entry with ESL Program, but the program that it offered was not the program approved by AICS. The program Webster actually offered included the two ESL courses but only five program courses, as follows:

EL 100	ESL I 100	6.67	-17	EL 101	ESL II	100	6.67	SS 301	Basic Keyboarding
90	6.67	SS 401	Intermediate Keyboarding	90	6.67	AC 450	Electronic Calculator	40	2.67
SS 502	Business Communications	40	6.00	SS	600/	Personal Development/	30	2.67	601
Job Campaign	10								

(In addition to these 500 clock hours of instruction, students could choose 100 clock hours of instruction from elective courses in Word Processing, Computer Data Entry, or Data Processing.)

93. Webster offered to its students a Clerk Typist with ESL Program but the program that it offered was not the program approved by AICS. The Clerk Typist with ESL Program that Webster actually offered included the two ESL courses but only five program courses, as follows:

EL 100	ESL I100	6.67	EL 101	ESL II100	6.67	SS 301	Basic
Keyboarding90	6.67	SS 401	Intermediate	Keyboarding90	6.67	AC	
450	Electronic Calculator40	2.67	SS 502	Business			
Communications40	6.00	SS 600/	Personal Development/30	2.67	601	Job	
Campaign10							

(In addition to these 500 clock hours of instruction, students could choose 100 clock hours of instruction from elective courses in Word Processing, Computer Data Entry, or Data Processing.) Thus, the Computer Data Entry with ESL Program that Webster actually offered was identical to the Clerk Typist with ESL Program that Webster actually offered.

94. The reduced "Clerk Typist With ESL Program" that Webster actually offered its students was exactly the same as the reduced "Computer Data Entry with ESL Program" that Webster actually offered its students.

95. The following 38 students were enrolled in Webster's Clerk Typist with ESL Program or Computer Data Entry with ESL Program between July 1, 1988 and June 30, 1989, did not later transfer to Webster's regular Clerk Typist Program or Computer Data Entry Program, and withdrew from those programs before July 1, 1989. These students received \$44,264 of Pell Grant Program funds, \$50,346 in Stafford Loan Program funds, and \$27,474 in SLS Program funds, as follows:

#Name	Pell Grant	Stafford	SLS	1. [student name]	\$2,362.50	2. [student name]	
	\$1,100	\$2,415.00	\$1,667.00	3. [student name]			
	\$1,102.50	\$1,175.00		4. [student name]	\$2,200	\$1,207.49	5. [student name]
	\$1,100	\$1,102.50	\$406.00	6 [student name]			
	\$1,100	\$1,102.50	\$1,175.00	7. [student name]			
	\$1,100	\$1,102.50	\$1,175.00	8. [student name]	\$1,100	\$1,207.	
49	9. [student name]	\$1,100	\$1,207.49	10. [student name]			
	\$1,100	\$1,207.49		11. [student name]			
	\$1,100	\$1,102.50	\$1,175.00	12. [student name]			
	\$2,415.00	\$1,137.00		13. [student name]	\$1,102.50		14. [student name]
	\$1,100	\$1,102.50	\$1,175.00	15. [student name]			
	\$2,200	\$2,415.00	\$666.00	16. [student name]	\$1,207.49		17. [student name]
	\$1,102.50						

18. [student name] \$1,100

19. [student name]	\$2,200	\$2,415.00	\$2,098.00	20. [student name]			
	\$1,100	\$1,207.49		21. [student name]	\$2,415.00	\$2,425.00	22. [student name]
	\$2,200	\$2,415.00	\$2,198.00	23. [student name]			

name] \$2,200 \$2,415.00 \$1,431.00 24. [student
name] \$1,175.00 25. [student name] \$1,100 \$1,102.50 26. [student
name] \$1,100 \$1,102.50 27. [student
name] \$2,200 \$1,893.00 \$1,903.50 28. [student name] \$1,100 \$1,102.50

29. [student name] \$1,100 30. [student name] \$1,100 \$1,102.50 31. [student
name] \$1,023.86 32. [student name] \$2,200

33. [student name] \$1,100 \$995.46 34. [student
name] \$1,100 \$1,069.62 \$726.38 35. [student
name] \$1,100 \$1,001.53 \$953.84 36. [student
name] \$2,142 \$2,415.00 \$2,425.00 37. [student
name] 51,813.50 \$1,102.50 \$1,175.00

38. [student name] \$1,808.50 \$1,102.50]

96. The ED Administrative Communications System Departmental Directive, A:Gen 1-105, sets forth a Departmental Directive concerning "Delegations of Authority."

97. The purpose of the directive was to set forth ED's " policy and procedures governing delegations and redelegations of authority."

98 The Directive stated the policy as follows:

The policy of the Department of Education is to delegate decision-making authority to the lowest organizational level at which prompt and effective administration of education programs and management activities is possible. A delegation of authority is required for taking action and making decisions which have legal significance.- The sources of authority are: (1) delegations issued by the Secretary or his delegates; (2) departmental directives approved by the Secretary, the Under Secretary, the Deputy Under Secretary for Management, or the issuing officer with authority directly from a statute; (3) classified position descriptions (see VII.-D.); and (4) approved functional statements.

99. The referenced VII.D provides in pertinent part that:

Position descriptions may be used to redelegate authority in cases where the supervisor of the delegatee holds the authority to be delegated and where the authority delegated is an essential part of the duties of the position....

100. The job description for the Chief of the Audit Review Branch, provides in pertinent part, under the heading "II. Major Duties. as follows:

Signs all letters to institutional chief executive officers involving the review of SFA audits. These documents, which are prepared by subordinate staff, are final letters of determination on the audits and respect the Department's official position with respect to corrective actions to be

taken by institutions as well as outlining reimbursements of any liability to the Federal Government.

Respectfully submitted,

Stephen M. Kraut
Counsel, Office of Student Financial Assistance

Dated: August 9, 1991

CERTIFIED MAIL

Peter Leyton, Esq.
White, Verville, Fulton & Saner
1156 15th Street, NW
Washington, DC 20005

Stephen M. Kraut, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-2110

[Footnote: 1](#)¹ 1 Respondent requested that discovery be made available and that an oral hearing be convened as part of this proceeding. Respondent claims that "a trial-type" evidentiary hearing is mandated under section 487(b) of the (HEA) as well as under the Administrative Procedure Act (APA), and is consistent with the authority of the administrative law judge as set forth at 34 CFR 668.116(b), and (g) and that an oral hearing is necessary to clarify the issues and the positions of the parties as presented in the parties' written submissions. The judge has determined, however, that the issues herein may be resolved on the basis of the parties' written submissions and that oral hearing is not required. Subpart H, at 34 CFR 668.117(b) does not permit the judge to compel discovery.

[Footnote: 2](#)² 2 The regulations cited were applicable from the 1984-85 award year to the present, unless otherwise noted.

[Footnote: 3](#)³ 3 34 CFR Part 600 became effective on May 21, 1988.

[Footnote: 4](#)⁴ 4 A "Scheduled Pell Grant" is the award a full-time student would receive for a full academic year. 34 CFR 690.2. Awards to individual students could differ depending on a student's enrollment status. i.e. full-time, three-quarter-time, or halftime, whether the educational program in which the student enrolled was less than a full academic year, and the length of time the student was enrolled during an academic year. See 34 CFR 690.63 (1985 through 1990).

[Footnote: 5](#)⁵ 5 An institution can have an academic year of greater than 900 clock hours but not less than 900 clock hours.

[Footnote: 6](#)⁶ 6 Robert B. Stafford Student Loan Program was established to: (A) to encourage States and nonprofit private institutions and organizations to establish adequate loan insurance programs for students in eligible institutions (as defined in section 1085 of this Title); (B) to provide a Federal program of student loan insurance for students or lenders who do not have reasonable access to State or private nonprofit programs.

[Footnote: 7](#)⁷ 7 This loan program is authorized by Title IV-B of the HEA (authority 20 U.S.C. 1078-2) similar to the Stafford and SLS loan programs.

[Footnote: 8](#)⁸ 8 By converting, Respondent increased the amount of Pell Grant Program funds its students could receive. For example, the maximum Pell Grant award for the award year was \$2,100. A student enrolled in a 600 clock hour program would be eligible to receive a maximum grant of only \$1,400 for that year. However, a student enrolled in a 40 hour program would be eligible for \$2,100 plus an additional \$840 in the next award year.

[Footnote: 9](#)⁹ 9 In October 1984, as a result of growing discussion about policies and procedures for converting from clock to credit hours as the unit of course measurement, ED announced a moratorium on further approvals pending the "imminent" issuance of a Notice of Proposed Rulemaking (NPRM) on the subject.

[Footnote: 10](#)¹⁰ 10 Up to 1979, the Pell Grant Program defined an "academic year" as what is now an "award year," a period of time between July 1 of one calendar year and June 30 of the subsequent calendar year. See, for example, 45 C.F.R. 190.2 (1975 and 1978). See also the definition of the term "award year" in 34 C.F.R. 668.2 (1990).

[Footnote: 11](#)¹¹ 11 According to 20 u.s.c. 1094(c)(1)(A)(i), the Secretary is authorized to prescribe such regulations as may be necessary to provide for...a financial and compliance audit of an eligible institution, with regard to any funds obtained by it under this subchapter at least once every two years and covering the period since the most recent audit, conducted by a qualified, independent organization or person...for the audit of governmental organizations, programs and functions as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary.

[Footnote: 12](#)¹² 12 In February 1989, because of Respondent's noncompliance in submitting timely audits since 1982 award year, the Audit Review Branch proposed a \$9,000 fine which Respondent paid to the Department. In November 1989, the Audit Review Board proposed an additional fine of \$6,000 due to late submittal of audit reports. Respondent also paid this fine. (See the Audit Report, page 21.)

[Footnote: 13](#)¹³ 13 A breakdown of the names and amounts are found in the attached Appendix A to this initial decision.

[Footnote: 14](#) ¹⁴ 14 Hughey explained that institutional representatives refused to provide a management representation letter to the auditors...from the officials of the entity being audited. The letter acknowledges management's responsibility for the fair presentation of records and reports...It also states...there have been no irregularities or violations of law or regulation...The institution's refusal to provide the auditors with a management representation letter raises questions as to the completeness of the information provided to the auditors. In addition, this refusal prevented the auditors from completing one of the required audit steps, and caused the auditors to qualify any conclusions drawn on the basis of the data made available.

[Footnote: 15](#) ¹⁵ 15 Hughey explained the reimbursement procedures for the \$44,264 in Pell Grants and \$11,000 of interest and special allowance charges. The amounts of \$77,783 of Stafford and SLS loans were also requested. The total amounts represented the awards given to 38 students who did not return to the two ineligible programs. OSFA estimated that \$4.5 million represented overpayments in Pell Grants between 1984 and 1989.

[Footnote: 16](#) ¹⁶ 16 Under the Pell Grant program, unaudited Departmental records show that Respondent's students were awarded \$2,363,173 for award year 1987-88 and \$3,683,567 for award year 1988-89. Respondent's students also participates in the various campus-based SFA programs, e.g., Perkins Loan, College Work-Study (COOS) and Supplemental Educational Opportunity Grant programs (SEOG).

[Footnote: 17](#) ¹⁷ 17 As shown in the March 1991 FAD, Respondent's institutional representative refused to accept responsibility for the fair presentation to the auditors of records and reports. This raised questions as to the completeness of the information that provided. The basis for the review is that the Respondent asserts the liabilities "are inaccurate, arbitrary, capricious, an abuse of discretion, not supported by substantial evidence, and otherwise not in accordance with fact or applicable regarding policy and law."