APR 15 2016

Ms. Julia Lowder
President
Computer Systems Institute
8930 Gross Point Road
Skokie, IL 60077-0000

Sent Overnight Via UPS
Tracking #1ZA8796401922765

Re: Denial of Denial of Recertification Application to Participate in the Federal Student Financial Assistance Programs—Computer Systems Institute, 8930 Gross Point Road, Skokie, IL 48322-3032; OPE-ID: 03416300

Dear Ms. Lowder:

On January 29, 2016, the Chicago School Participation Division (SPD) of the U.S. Department of Education (Department) advised Computer Systems Institute (CSI) that its application for recertification to participate in the student financial assistance 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), had been denied (Denial), and that as a result, CSI's participation would end on January 31, 2016. In its Denial, the Department found that CSI breached its fiduciary duty to the Department by creating and submitting false job placements and misrepresenting its job placement rate to its accreditor, its students, and the Department.

After seeking and receiving two extensions to its February 12, 2016 deadline to respond to the Denial, on March 14, 2016, CSI, through its legal counsel, submitted a 34-page "brief," plus 24 exhibits, which legally and factually challenge the bases for that decision. The Department carefully and thoroughly considered the points raised by that submission. After completing this review, the Department has concluded that the rendition of events provided in CSI's response is without legal merit and is factually inaccurate. CSI is informed that the Department's initial decision to deny CSI's recertification application is hereby affirmed and is the agency's final decision.[1] Each of CSI's legal and factual challenges is addressed in turn below.

[1] *But see* footnote 5, at 9, *infra*.

I. Legal Challenges

1. CSI's claims that the Department failed to provide it with the correct process and unduly delayed in bringing its denial action against CSI are incorrect.

A. The Department had no statutory or regulatory requirement to initiate a revocation proceeding, as opposed to a recertification denial, in response to CSI's eligibility application, in fact, just the opposite is true.

CSI begins its response to the Denial by making the novel claim that, although its most recent program participation agreement (PPA) with the Department had expired, it should have, nonetheless, received the process that the Department provides institutions operating under an active provisional PPA. (CSI's Brief at 6-7.) Such an argument is legally meaningless.[2]

The Department's regulations provide that, in the case of a school such as CSI, if:

> an institution has submitted an application for a renewal of certification that is materially complete at least 90 days prior to the expiration of its current period of participation, the institution's existing certification will be extended on a month to month basis following the expiration of the institution's period of participation until the end of the month in which the Secretary issues a decision on the application for recertification.

34 C.F.R. § 668.13(b)(2).

The words of this regulation specify that "the Secretary issues a decision on the application for recertification". A "decision" is not the foregone conclusion that the institution gets to continue its participation, regardless of what kind of behavior it has engaged in during a prior period of participation, which, of course, has ended. Hence the need for an institution to apply for a decision as to whether it may continue to participate. One searches in vain through the statute, the regulations, and the case law to find anything that suggests that an institution automatically receives some sort of enhanced process before its participation ends that is otherwise reserved for

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[2] CSI also asserts in the "Introduction" section of its brief that I, apparently, cannot be trusted to fairly evaluate its submission because the Denial letter states that given CSI's "willingness to manufacture job placement data" (Denial at 18-19, n.7), all other information CSI provides to the Department is suspect. (CSI's Brief at 2.) That textual footnote was merely intended to state the seemingly self-evident proposition that an institution, acting in the capacity of the Department's fiduciary, which engages in the dissemination of false data, has manifested a degree of untrustworthiness, which will rightfully give the Department pause when considering the reliability of all other information that it provides the Department. The Denial, however, gave the institution the opportunity to demonstrate that the Department's initial conclusion was in error and that no further taint is appropriate. Lest there be any doubt, I hereby state that I have reviewed all information and argument presented by CSI with an open mind and with an absence of any predisposition.

an institution that possesses an existent provisional PPA should the Department decide that its application should be denied.

The Department followed its internal procedures with regard to the operation of this case. As required by regulation, CSI timely (at least 90 days prior to the PPA expiration) submitted an application for recertification upon which the Department was unable to render a decision prior to the PPA expiration. As a result, CSI continued to be certified to participate in the Title IV, HEA programs on a month-to-month basis while the Department reviewed the application.

Once a decision is made to deny an application, the Department sends a letter to the institution notifying it of the decision and ending the institution's Title IV participation on the last day of the month in which the letter is signed. Although not required by regulation, the Department's practice is to allow an institution to submit information to the Department for reconsideration, although the institution is not eligible to receive Title IV funds while the Department reviews the reconsideration request.

Departmental staff who work on a denial notice assist the AAASG Director in preparing a letter responding to the school's request for reconsideration. If the institution's information does not provide evidence that causes the Department to make a different determination, the denial is affirmed and the letter outlining that decision constitutes the final agency action.

The Department's authority to deny recertification to schools participating in the Title IV programs has been consistently sustained against judicial challenge. *See, e.g., New York Institute of Dietetics, Inc. v. Riley,* 966 F. Supp. 1300 (S.D.N.Y. 1997). *See also Ass'n of Accredited Cosmetology Schools v. Alexander*, 979 F.2d 859, 863-66 (D.C. Cir. 1992) (No vested right or entitlement to continue participation in the Title IV programs.)

On the other hand, unlike CSI, if a school is in the midst of participating in the Title IV programs on a provisional basis, and the Department determines that the school has failed to meet statutory and regulatory requirements in a material way, only then does the Department initiate an action to revoke that institution's provisional PPA under which it currently operates in order to cut short its period of participation. *See* 34 C.F.R. § 668.13(d). Also, only in such circumstances does the institution benefit from the enhanced process that is available to institutions whose contract with the Department for Title IV eligibility is prematurely ended prior to its period of expiration.

B. The Department did not unnecessarily delay its review of CSI's application for recertification of eligibility, and thus CSI's argument that this "delay" somehow caused CSI's expired provisional PPA to revert to a newly-established provisional PPA is specious.

Although precisely what it is alleging is unclear, CSI seems to suggest that because its application was not reviewed with the alacrity it would have preferred, it is entitled to be treated as though its application was provisionally approved. It apparently reaches this conclusion

because of statutory language that states that the Secretary will take "prompt action" on eligibility applications. *See* 20 U.S.C. § 1099c(f); CSI's Brief at 6. This conclusion makes no sense. As referenced above, in implementing this statutory language, the Department created a regulatory provision that permits an institution to continue to participate in the Title IV programs while the review of its application is pending. As such, no institution is disadvantaged in its capacity to receive Title IV funds while its application is being processed, whether it takes the Department five weeks or five years to reach a final decision.[3]

In regard to its pending application, as CSI is now aware, in 2011, a False Claims Act *qui tam* complaint was filed against it by former employees alleging various serious acts of illegal payment of incentive compensation to CSI's recruiters of students, and misrepresentations of job placement data and other false information to entice students to enroll at CSI to their detriment. *United States ex rel. Munoz et al. v. Computer Systems Institute, Inc.*, No. 11-cv-7899 (N.D. Ill.) The Federal government spent approximately two years investigating the matter, and ultimately, for various reasons not relevant here, determined not to intervene, choosing instead to rely on the Department to conduct its own administrative investigation into the allegations.

As a result, as explained in the Powers Declaration, in early January 2014, the Department conducted a program review at CSI, to include a focus on the job placement rate falsification allegations set forth in the *qui tam* lawsuit. *See* Powers Declaration at 2, ¶¶ 6, 7. As pertinent to those allegations, during an in-person interview on January 14, 2014, with Tom Claxton, Vice President of Career Development, Mr. Powers asked him who was in possession of job placement data that CSI presented to its accreditors. Mr. Claxton said that Izabela Shamanva, Director of Records and Registration, could provide this data to him. Upon his request, Ms. Shamanava provided a hard copy spreadsheet that listed employment information for the 2012-2013 cohort of CSI graduates. *Id.* at 3, ¶ 9.

While onsite at CSI, Mr. Powers sent an email to Department employees, Kathleen Hochhalter and Jennifer Woodward, which describes what he learned about CSI's preparation of job placement rates for its accreditors as explained by CSI personnel, and also describes a pattern he noticed in the hard-copy 2012-2013 placement back-up report he received from Ms. Shamanava. In response to direction received from that email, Mr. Powers requested that CSI provide him with electronic searchable and sortable copies of the two most recent years of job placement rate

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[3] Despite what CSI claims in its Brief at 3, and in the "Lowder Declaration," CSI's Ex. 1, at ¶3, CSI did not first become eligible to participate in the Title IV programs in 2007. Rather, CSI has had two periods of Title IV eligibility, both resulting in the Department denying CSI's applications for recertification of that eligibility. In 1999, CSI signed its first PPA with the Department, and on August 14, 2002, CSI's application for recertification was denied for violations of regulations relating to student attendance, placement rates, and loan disbursement/refunds. Only after a subsequent period of almost five years of ineligibility, did CSI enter into a provisional PPA with the Department in March 2007, which expired on June 30, 2009, and then signed another provisional PPA that expired on March 21, 2012. *See* Declaration of Michael Powers, an FSA program reviewer (Powers Declaration), at 2-3, ¶8. (Enclosure A.) That PPA continued on a month-to-month basis while the Department reviewed its application for recertification.

back-up data, which were sent to him via email with spreadsheet files attached by Ms. Shamanava on January 15, 2014. *See* Powers Declaration at 3-4, ¶¶ 9, 10.

Based on the materials CSI provided in response to Mr. Powers' request for the two most recent placement rate back-up files it prepared for its accreditor, it is evident, *see infra* at 13-15, that CSI submitted a spreadsheet for the 2011-2012 cohort of graduates, and another for the 2012-2013 cohort of graduates to the Accrediting Council for Independent Colleges and Schools (ACICS), the accreditor with which it was a candidate for accreditation during the time of the program review. In fact, the 2012-2013 spreadsheet is labeled "12-13 Placement Backup All Campuses Initial CAR ACICS."

Upon Mr. Powers' receipt and review of these electronic spreadsheets, he began to research the pattern described at a high-level in his email. He noticed that two of the employers listed on the spreadsheet for 2012-2013—Home Health Care (HHC) and DTH Healthcare Services (DTH)—allegedly employed a large number of graduates from CSI's Healthcare Career program and Business Career program. Among other things, he performed a "Google" search of HHC and noted that it had no Internet web presence. He then checked the address on Google Maps, and the street view showed a residential block, not a commercial area. Yet according to the spreadsheets provided to him by Ms. Shamanava, this entity employed 42 of 439 graduates in the Healthcare Career program at the Chicago campus. *See* Powers Declaration at 4, ¶ 11.

Mr. Powers also performed a "Google" search of DTH and noted that it had limited Internet web presence, which included a Facebook page with minimal information, and generic search return results. He then checked the address on Google Maps, and the street view showed a vacant lot, with a warehouse and truck rental facility located on the adjacent property. Yet according to the spreadsheets provided to him by Ms. Shamanava for the 2012-2013 award year, this entity employed 13 of 75 graduates in the Business Career program, as well as one graduate of the Healthcare Career program at the Chicago campus. *See* Powers Declaration at 4, ¶ 12.

Mr. Powers explained that at the conclusion of the program review, and contrary to what CSI suggests in the Lowder Declaration, CSI's Ex. 1, at ¶17, the review team conducted an exit conference in which preliminary findings were discussed with Julia Lowder, Executive Vice President, and Sonia Zavala, Senior Vice President of Financial Affairs. The findings discussed included inaccurate record-keeping of student disbursements in Department systems, a minor reporting error on another Department form, the underpayment of one student's Pell Grant, and an error made in returning Title IV funds while one student was on an approved leave of absence. Per program review procedures, matters of suspected or potential fraud are not discussed in the exit conference. *See* Powers Declaration at 6, ¶¶ 15,16. Note also that the program review announcement letter, *see* CSI Ex. 4, contains a list of information that CSI was required to produce to the Department prior to the review. Included in that list were "Policy and procedures concerning: Statements regarding the institution's programs, its financial charges, or *the employability of its graduates*." (*emphasis* added.) The announcement letter, added to the

Department's specific request for the back-up job placement rate data during the review, shows that this area was of obvious concern to the Department.

Mr. Powers declares that FSA, following its standard procedures when FSA personnel discover information about a participating school that appears to be fraudulent, then sent the materials to the Department's Office of Inspector General (IG) at that office's Chicago location, whereby IG agents undertook an investigation into the matter. The results of its investigation are largely incorporated into the Denial. Powers Declaration at 7, ¶ 18.

During the week of November 2, 2015, Mr. Powers declares that he, or one of his FSA colleagues, was present for the interviews of 12 students who voluntarily came in person to the IG's offices to provide declarations to IG special agent, Michael Ewert, and a Department attorney. These students were previously called and/or visited in late October 2015 by Mr. Ewert. Some of these students spoke to Mr. Ewert in person, and they voluntarily agreed to come in, and others called Mr. Ewert in response to him leaving his card at their residences. Many other students were scheduled to come, than the 12 who actually came. Powers Declaration at 7, ¶ 19. A list of the names of the 18 students and the declarations for the 12 who were interviewed in person are attached to Mr. Powers' Declaration as Exhibit 11. Powers Declaration at 7, ¶ 19. The contents of what the six other students stated who were interviewed via the telephone by Mr. Ewert are described in Ewert's Declaration at 6-9, ¶¶ 16-21. (Enclosure B).

Mr. Powers declares that the Department included in its Denial, in summary form, the declarations of every student who came in to the office. When the attorney, FSA members, and Mr. Ewert completed asking all of their questions, and asked each student if she (only female students appeared) wanted to add anything else, a hard-copy draft declaration was completed and provided to each student to review. The declarations used many quotes that came directly from the students. Each student was given the opportunity to make any changes to the draft declaration, and several students made changes before the statements were finalized. If and only if the student was satisfied with the precise words of her declaration, did the attorney print a final copy of the declaration for the student to sign under penalty of perjury. Each student was given a copy of her final declaration. *See* Powers Declaration, at 8, ¶ 20; *see also* Ewert Declaration at ¶ 15.

Thus, the Department hardly drug its feet during the ensuing months after CSI's provisional PPA expired. To the contrary, given the Department's crushing workload, limited personnel, and the difficulty locating students years after they attended CSI, CSI's allegation that the Department "unnecessarily delayed" action on its recertification application is unfounded. Regardless, no meaningful legal argument can be made that this period of review provided CSI with a provisionally-certified agreement that it did not receive. In addition, CSI remained eligible to participate in the Title IV programs throughout the course of the Department's review of its application and received more than $75.3 million in Title IV funds during that time period! As a

result, CSI was not in the least disadvantaged while the Department concluded its thorough analysis of the application.

2. **CSI misstates the law with respect to its argument that the Department is required to provide a hearing if relying upon a misrepresentation charge.**

CSI's second legal argument consists of a claim that it had a statutory right to notice and a hearing because the HEA requires such notice and a hearing before an institution's Title IV eligibility is terminated based on the rendering of a substantial misrepresentation. *See* 20 U.S.C. § 1094(c)(3). (CSI's Brief at 8-9.) CSI apparently also argues that the Department's misrepresentation regulations at 34 C.F.R. § 668.71(a) deny CSI such notice and a hearing prior to initiation of an action to deny its recertification application. (Id.) CSI's claims misstate the applicable law.

As a threshold matter, CSI's argument is deficient because the Department is not "terminating" CSI's Title IV eligibility. As discussed above, CSI has no existing PPA that *could* be terminated, and the Department has repeatedly affirmed that in accordance with section 487(c)(3) of the HEA, 20 U.S.C. §1094(c)(3), the Department will always provide the required hearing before terminating an institution's PPA because of a misrepresentation. (*See* Dear Colleague Letter, GEN-11-05 (Mar. 17, 2011) at 15.) CSI's claim is an unavailing attempt to secure process for itself to which it is unentitled because it lacks the requisite status necessary to generate that process.

CSI also cites language in the decision of the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) in *Ass'n of Private Sector Colleges and Univs. v. Duncan*, 681 F.3d 427, 435 (D.C. Cir. 2012), that "the Misrepresentation Regulations exceed the HEA's limits … by allowing the Secretary to take enforcement actions against schools sans procedural protections." Based upon this language, CSI concludes that "under the terms of 20 U.S.C. §1094(c), CSI was entitled to notice and an opportunity for a hearing before [the Department] terminated its Title IV eligibility." (CSI's Brief at 9.) Again, CSI misunderstands the law.

Initially, the D.C. Circuit Court of Appeals (D.C. Circuit) specifically said that no legal impediment exists to the Department when it denies eligibility applications based upon misrepresentations without the provision of a hearing. In fact, that issue was not even before the D.C. Circuit because, unsurprisingly, the appellant did not contest the Department's indisputable authority in this regard. *Ass'n of Private Sector Colleges and Univs. v. Duncan, supra,* 681 F.3d at 450. Also, to the extent that the D.C. Circuit found that the Department failed to insure that an institution facing revocation would necessarily receive the procedural protections it was due, it remanded the regulation at 34 C.F.R. § 668.71(a) for the Department to make the appropriate adjustment. The Department did as directed.

Whereas the Department's challenged regulation had stated that if the Secretary determined that an institution had engaged in substantial misrepresentations, the Secretary may "[r]evoke the

eligible institution's program participation agreement," 75 Fed. Reg. 66,958 (Oct. 29, 2010), the Secretary's amended regulation, to comply with the Court's remand, added the words, "if the institution is provisionally certified under §668.13(c)." 78 Fed. Reg. 57,799 (Sept. 20, 2013). As a result, the amended regulation makes clear that the Department will not attempt to "revoke," as opposed to "terminate," an institution's non-provisional PPA.

Of course, once again, none of this serves to expand CSI's process, because it was not provisionally certified when the Department denied its recertification application. Given CSI's status, there was no provisional PPA that the Department *could* have revoked, and CSI's argument is nothing more than a legal *non sequitur*. It does not serve to change the Department's decision to deny CSI continued Title IV eligibility.

3. **CSI received appropriate notice that permitted it to respond to the Department's Denial letter.**

CSI alleges that its ability to respond to the denial of its recertification application was impermissibly restricted because it did not receive adequate notice of the charges that were being brought against it. (CSI's Brief at 9-12.) To the contrary, CSI has been fully apprised of the basis of the Department's action.

Inexplicably, CSI begins its argument by noting that it is in the Seventh Circuit, where the Court of Appeals has adopted the minority view that institutions participating in the Title IV programs have protected liberty and property interests in their continued Title IV participation. *See Continental Training Services, Inc. v. Cavazos*, 893 F.2d 877 (7th Cir. 1990); CSI's Brief at 9. *But cf., Association of Proprietary Colleges v. Duncan,* 107 F. Supp. 3rd 332 (S.D.N.Y. 2015). Yet, the decision in *Continental Training* is inapposite here because the Department is not seeking to terminate CSI's Title IV participation agreement. As previously stated, CSI possesses no PPA for the Department to terminate. Rather, CSI has applied for recertification of its Title IV eligibility, and the Department is denying that application.

As previously stated, there is more than ample case law that supports the Department's legal authority to deny an institution's application to recertify its Title IV eligibility in precisely the manner that it did here. *See, e.g.*, in addition to the cases cited *infra* at 3, *Instituto de Educacion Universal Corp. v. Riley*, 973 F. Supp. 95 (D. PR 1997); *New Concept Beauty Academy, Inc. v. Riley*, 1998 U.S. Dist. LEXIS 17373, at *6 (E.D. Pa. Oct. 29, 1998); *International Junior College of Business and Technology, Inc. v. Duncan,* 2013 WL 5323095 Civil No. 11-2257 (BJM) (D. PR Sept 20, 2013). Nothing in the *Continental Training* decision, or any other decision, provides CSI with rights to more process than it is otherwise entitled when applying for recertification of its Title IV eligibility.

CSI next claims that it is entitled to notice that provides "sufficient factual specificity to permit a reasonable person to understand what conduct is at issue so that it may identify relevant evidence

and present a defense." (CSI's Brief at 9; *citing* Sira v. Morton, 380 F.3d 57 (2nd Cir. 2004)). The Department agrees with that standard, and that is what CSI received.

Upon reading the Denial, no one could possibly be confused as to the "conduct [that] is at issue." The Department initiated its action because CSI presented false job placement data to the Department and to CSI's accrediting agency. (*See* the Denial at 1, and 3-4.) The Department identified two fake employers who CSI claimed employed a significant number of its students, and provided information from 12 students who declared to the Department that they were never effectively employed by these persons, as well as the telephonic statements of an additional six students who said the same thing. Apparently, because the Department did not list the students' names, CSI claims that it received a deficient notice that deprived it of the opportunity to respond. (CSI's Brief at 10.)[4]

Yet, CSI's factual defense is predicated upon the claim that CSI lacked knowledge that the two identified employers were fictitious. It has not claimed that the employers were legitimate, and that students who claimed they did not receive jobs from these grifters were responsible for lying to the Department. If the Department had failed to identify the two employers whose legitimacy it was questioning, then, perhaps, CSI could claim that it was hamstrung in its capacity to "present a defense." Or, perhaps, if CSI's defense was that its students received actual in-field employment from these employers, it would have needed the names of the students to provide evidence that verified their work status. But, because CSI agrees that neither employer was authentic, the names of the students who also state that neither employer provided them with actual job placements, are irrelevant to its defense.[5]

CSI concludes its argument by stating that the process it received "does not even resemble one that could pass due process muster ... [or] meet any minimal sense of fairness." (CSI's Brief at 11-12.) To the contrary, the notice CSI received gave it all the information it needed to defend itself from the findings that the Department reached and gave CSI a fair and proper process to respond to the Department's decision. Under the circumstances, CSI is entitled to nothing more.

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[4] CSI lists additional information that it did not receive with the notice such as, *e.g.*, the names of the interviewer, when and where the interviews took place, and whether they occurred in person or via the telephone (CSI's Brief at 10-11), but the provision of such excruciating detail is never required to satisfy adequate notice. As CSI further acknowledges in citing *Sira v. Morton, supra*, at 72, "due process does not require 'notice that painstakingly details all facts relevant to the date, place, and manner of charged ... misconduct.'" (CSI's Brief at 9.)

[5] As previously mentioned, pursuant to the Powers Declaration, the Department has attached the declarations from the 12 students who the Department interviewed in person, *see* Powers Declaration at 7, ¶ 19, and the Ewert Declaration discusses the interviews with the six students that he conducted telephonically. Ewert Declaration at 6-9, ¶¶ 16-21. Should CSI believe that the names of these students leads it to change its defense, and that it now wishes to claim that the two employers were legitimate and actually employed these students, please advise me within 48 hours of CSI's receipt of this response, and I will consider giving CSI additional time to present further information for my reconsideration in that regard.

4. **The Department had no obligation to seek CSI's input before denying its recertification application; CSI received an appropriate opportunity to respond.**

CSI argues that because the Department based, in part, its denial of CSI's recertification application upon findings it made during a program review, the Department was supposedly compelled to let CSI respond to those findings before it issued the Denial. (CSI's Brief at 12-14.) Yet again, CSI seriously misstates the applicable law.

CSI purportedly relies upon section 498a(b) of the HEA, 20 U.S.C. § 1099c-1(b)(6) & (7), to support its manufactured contention. (CSI's Brief at 12.) Those provisions have no relevance whatsoever to this case. Instead, the statutory language that CSI cites states that an institution must receive a copy of a program review *report*, and an opportunity to respond to that *report*, before the Department issues an action establishing liabilities from that *report*. And, as CSI knows, the Department has not issued any program review report regarding CSI. When it does, CSI will be given its statutory right to respond to that report, and its response will be given appropriate consideration before the Department identifies any possible liabilities that flow from the report. Such an action involving CSI awaits another day.

Instead, in the normal course, and consistent with all standard policy and practice, the Department conducted a program review as part of an investigation of CSI. That program review generated evidence of CSI's fraudulent manipulation of its placement rate. The Department's IG used that evidence to further its investigation, and a number of students confirmed the bogus nature of CSI's placements. When the Department had seen enough, it moved to deny CSI's continued Title IV eligibility, eligibility that CSI enjoyed unencumbered throughout the entirety of that investigation. And nothing in the HEA provides CSI with greater process than all other institutions have enjoyed when they applied for recertification of their Title IV eligibility.

Factual Issues:

1. **CSI's claim that the Department cannot establish that CSI had the requisite knowledge for a substantial misrepresentation charge is legally incorrect.**

CSI initially claims that the Department "present[ed] no evidence" to support the occurrence of a substantial misrepresentation, which as a threshold matter, it seems to suggest requires either intentional misbehavior or affirmative misconduct. (See CSI's Brief at 14-17.) Once again, CSI misunderstands the law.

There is no "specific intent" element necessary to support a finding of substantial misrepresentation. On this point, the law could not be clearer. As the D.C. Circuit Court of Appeals stated without equivocation, when examining this precise regulation, an argument that the misrepresentation regulations exceed the HEA by defining 'substantial misrepresentation' without an intent requirement is "untenable." *Ass'n of Private Sector Colleges and Univs. v.*

Duncan, supra, 681 F.3d at 453. Instead, the Court affirmed that "allowing the Secretary to sanction schools for making substantial, negligent or *inadvertent*, false statements is consistent with the HEA's goals." *Id. (emphasis* added.) In line with this holding, the Denial stated, "[i]f the Department determines that an institution has not met the fiduciary standard of conduct, *either* through its failure to comply with applicable Title IV, HEA program standards and requirements, *or* through acts of affirmative misconduct, a denial of the institution's recertification application is warranted." (Denial at 18, *emphasis* added.)

Nonetheless, the Department believes that CSI either knew, or should have known, that what it was representing to the Department and its accrediting agency contained untrue information.

For example, while CSI states that the Department did not "provide any indication that any of the students interviewed complained to CSI" (CSI Brief at 17), the Department is aware that students, in general, expressed to CSI their dissatisfaction with their fictitious employers. In an interview conducted by Agent Ewert on April 5, 2016, with Alyssa Weel, CSI Career Development Coordinator from April 2013 to January 2016, Ms. Weel affirmed that students came to the small office space she shared with four other Career Development Coordinators in late 2013 to complain about the lack of meaningful employment they received from Mr. Quinn and HHC. *See* Ewert Declaration at 9, 10, ¶¶ 22, 26. As such, CSI had knowledge, long before the Department's program review, and the supposed conduct of its own internal investigation in mid-2014, that employers it was using to inflate its placement rate were suspect.

2. **CSI maintains that the interview summaries contain errors.**

CSI argues that the student interviews upon which the Department relies were conducted in an "unprofessional" manner and contain inaccuracies in three general areas. (CSI's Brief at 17, 18-23.) To the contrary, as previously explained, the interviews were expertly undertaken, and the declarations obtained reflect a remarkably accurate recitation of what each former student had to say. *See* Powers Declaration at 8, ¶ 20. The fact that each and every one of the CSI students who the Department found and subsequently interviewed voiced such unmitigated contempt for the school is hardly the fault of the interview process. And it is the students' own words, as evident by the students' declarations, which were repeated in the Denial.

In particular, CSI voices its dismay that the Denial references statements from students who attended CSI and were awarded Title IV funds, yet did not possess a high school diploma or General Education Development (GED) certificate. CSI suggests that all these students were Title IV eligible because they either passed an Ability to Benefit (ATB) test or did not receive Title IV aid until after successfully completing six credit hours of instruction. (CSI's Brief at 18-19.) Perhaps these claims are true, and the Department will evaluate those contentions within the context of the program review. And, if indeed the evidence that CSI provided in its response can be verified, then the Denial was in error when it said that these students were not Title IV eligible. But, the most important point that is drawn from the students' statements is that they could not get jobs in their field of study, because they did not have a high school diploma or a

GED. No employer recognizes a passing score on an ATB test as the equivalent of possessing either of these credentials.

And, CSI's marketing materials, provided to the program reviewers while onsite, *see* Powers Declaration at 6-7, ¶ 17, were aggressively targeting a potential student base that did not have either of these credentials. Advertisements set forth in bold headlines: "NO DIPLOMA, NO PROBLEM!" The students' declarations convey that they took these words quite literally, and those who failed to possess a high school diploma or a GED did not know until they began their job searches that the lack of these credentials alone hamstrung them in their ability to find employment in their fields of study. This constitutes evidence of yet another possible misrepresentation by CSI to its students. And that is what the Denial is about—the rendering of misrepresentations—and not an attempt to establish liabilities if, in fact, CSI were to have admitted students without the requisite secondary credential or its equivalent.

CSI also claims that, contrary to the students' statements, it did not fail to timely pay tuition credit balances. (CSI's Brief at 19-21.) Rather, it states that stipends it promised to its students were paid with private funds and thus did not implicate Title IV credit balance issues. Again, this may be true, and even if CSI reneged on paying stipends that it had promised students, this may not have created a commensurate failure to pay credit balances. But, also again, the Denial merely offered the language of the students who were voicing their overall dissatisfaction with CSI's operation within the context of the misrepresentations that were rendered to the Department and CSI's accrediting agency. The Denial was not based at all on the failure to pay credit balances.

CSI also notes that several students misstated the requirements of their licensing examinations (CSI's Brief at 21-23), and that '[t]hese errors reflect a level of disregard for accuracy that is not acceptable." (*Id.* at 23.) This claim is remarkably meaningless, as nothing in the Denial suggests that the Department is acting upon claims that CSI misled students about the make-up of their licensing examinations. Rather, the Denial recounted what the students said. To the extent that the students did not understand the license testing requirements has no significance other than, perhaps, to suggest how unprepared CSI students were to understand the test components. Most likely, when describing the testing process, the students were merely separating out in their minds the various parts of the test that had to do with a particular topic of study, such as, for instance, as stated by Student #9, that she had to pass four tests--in phlebotomy, clinical medical assistance, CPR, and customer service, to be certified. Those were apparently the topics that she recalled. Of course, these students' interviews took place in November 2015—in most cases at least two and one-half years after the students graduated. In any event, to hold these layperson students to an exact understanding of the licensing test requirements would be unrealistic and unfair. What is important is that they did not pass the test that would have enabled them to become certified—in many cases, despite having made good grades, and in some cases, being on the "honor roll."

CSI's conclusion that the student statements were filled with allegations that it believes are inaccurate is a testament to the authenticity of the statements. The Department could have cleansed the student statements of all uncorroborated claims, but the Department chose to allow the students to speak freely. Most important, these statements were not offered for the truth of the ancillary matters asserted, but to support the Department's conclusion that these students did not receive the in-field employment that CSI claimed on their behalf to the Department and CSI's accrediting agency. Because CSI apparently takes no issue with that conclusion, all of its assaults upon these statements are of no import whatsoever.[6]

3. **CSI's claims that it did not provide job placement data to either of its two accrediting agencies are patently false.**

CSI claims that "CSI never presented the 2012-2013 data to either NCA-CASI or ACICS. (CSI's Brief at 23; *see also* Lowder Dec. at ¶ 28.) This statement is untrue.

The Department requested and received documentation from both of these accreditors. The response from NCA-CASI is unclear as to whether CSI provided job placement data to that accreditor, *see* Enclosure C at 2, a letter in response to the Department's request for information.[7] Yet the placement disclosures on CSI's website for the 2012-2013 time period, that were available on that web site at various period of time – the Wayback Machine captured these placement disclosures on August 16, 2014 and December 2, 2014 -- provide that CSI's job placement rate of 66% for its Healthcare Career program "were created for NCA-CASI." The same is true for the Business Career program. The Wayback Machine captured disclosures on December 2, 2014 for CSI's job placement rate of 82% for its Business Career program that were "[c]reated for NCA-CASI." The disclosure page also says: "Who is included in the calculation of this rate? All students who completed between July 1, 2012 and June 30, 2013." And, "[w]hat types of jobs were these students placed in? The job placement rate includes completers hired for: Jobs within the field." *See id.* This statement is false when compared to the 2012-2013 spreadsheet provided to the Department, which shows that more than half of the alleged placed graduates were placed not in "jobs within the field," but rather in "jobs in a related field." (*See* Enclosure D.)

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[6] The Lowder Declaration notes the Denial's supposedly negative portrayal of one student who said she worked at a "Professional Eye Center" for 180 hours without pay and performing tasks unrelated to her field of study. (*See* Lowder's Declaration at ¶ 19; Denial at 8.) She states that "CSI offers externship opportunities to Healthcare Career Program students [which] can serve as a valuable part of the students' training." (*Id.*) But, in CSI's response to ACICS' "Evaluation Team Report- Initial Grant Evaluation Report" (Enclosure E), CSI stated that "[t]he programs [including the Healthcare Career and Business Career Programs] do not include an internship/externship." (Enclosure F at 9.)

[7] NCA-CASI's response included Annual Reports for 2012 for the Skokie, Elgin, and Gurnee campuses, yet oddly, not for the Chicago campus. Those reports include student achievement data related to placement. Requests to NCA-CASI to clarify why such a report was not included for the Chicago campus have not been answered as of the date of this letter.

CSI's claims that the 2012-2013 data were never presented to ACICS also are untrue. Lowder's Declaration at ¶ 31 also says that "CSI's first [Campus Accountability Report] CAR is not due to be submitted to ACIS (sic) until November of this year [2016]." Nonetheless, as CSI well knows, both the 2011-12 and 2012-13 data was presented by CSI to ACICS during the course of its candidacy with ACICS. The ACICS team paid visits to CSI during the course of the candidacy period. As noted in a February 24, 2014 letter from ACICS to Yvette Zavala, the Interim Campus President for CSI's Chicago campus, the ACICS "Evaluation Team Report-Initial Grant Evaluation Report" for the Chicago campus, ACICS' site visit took place during the time period of January 27-29, 2014. (Enclosure E.) That letter enclosed the below-styled report, which on page 4 included the chart that lists statistics for each Title IV-eligible program at the Chicago campus:

PROGRAMS OFFERED BY
COMPUTER SYSTEMS INSTITUTE
CHICAGO, IL

CREDENTIAL EARNED (As defined by the institution)	ACICS CREDENTIAL	APPROVED PROGRAM TITLE	Clock Hrs.	Qtr. Hrs.	Enroll: Full-time/ Part-time	CAR Retention & Placement			
						2013		2012	
						Ret.	Pla.	Ret.	Pla.
Diploma	Diploma	Business Career Program		36	79/10	**66%**	79%	65%	89%
Diploma	Diploma	Healthcare Career Program		36	309/42	**68%**	**67%**	71%	**47%**
Diploma	Diploma	Networking Career Program		36	115/34	73%	72%	71%	61%
Diploma	Diploma	Business English Customer Service Specialist	860		13/0	81%	N/A	91%	N/A
Diploma	Diploma	Hospitality Industry Professional	860		19/0	88%	N/A	N/A	N/A
		TOTAL ENROLLMENT			621				

The placement rates listed in this chart show "CAR Retention & Placement" rates for 2012 and 2013. For the Healthcare Career Program, the placement rates for 2012 and 2013 were 47% and 67%, respectively.[8] For the Business Career Program, the placement rates for 2012 and 2013 were 89% and 79%, respectively. Also of note in this ACICS report is the finding that:

> The campus does not keep adequate records related to contact information for graduates and employers. The majority of the contact information provided to the [ACICS] team to verify employment for graduates reported as placed on the 2013 [CAR] is inaccurate and not current.[9]

[8] Nowhere in any of the ACICS documentation did the accreditor question how CSI's Chicago campus was able to raise its job placement rate 20 percentage points between 2011-2012 and 2012-2013.

[9] Curiously, ACICS's report says that it performed verification of graduates or employers (which one is not specified), and for the Chicago Healthcare Career Program, made 15 calls to graduates or employers (which one is

(*See* Enclosure E at 9.)

In response to this finding, CSI provided in its Chicago Response to Site Visit Report to ACICS, that, "[i]n 2014 surveys will be sent to employers and graduates after 30 days of hire." (Enclosure F at 10.) Included after this statement is a blank survey form, *see id.* at 12-13 and then 10 survey forms that were purportedly sent to 10 graduates. All 10 forms are dated "3/3/14," and all 10 forms are in the same handwriting, but purport to be filled out by 10 different graduates. (*See id.* at 14-33.)[10]

Also, CSI's job placement disclosures for 2013-2014, that were created by CSI on December 4, 2014, and that were available on CSI's web site as early as February 12, 2015, provide that its placement rates for the Healthcare Career program of 72% were "*created for ACICS.*" (*See* Enclosure G.)

Given the above, there can be little doubt that CSI actively engaged with its accrediting agency and presented the false placement data that is at the crux of the Denial. CSI's claim to the contrary rings hollow.[11]

4. **CSI's claims that it had a compliance program in place to verify placement data are unimpressive, given that this program failed to detect HHC and DTH as fake employers.**

CSI devotes almost a third of its brief (CSI's Brief at 23-33), to its claims of having "a placement verification process in place during the relevant time period and [that] it had verified the 2011-12 placement data it submitted to ACICS and to ED program reviewers in good faith." (*Id.* at 23-24.) The evidence, however, shows that these processes were most certainly deficient. In addition, even after CSI determined that its placement data was false—unrelated to its

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not specified), and noted that all 15 calls were "successful," presumably meaning the site visit team's calls were answered. The report then notes that all 15 of the graduates or employers (which one is not specified) "confirmed the employment of the graduates as reported on the 2013 CAR." (*See* Enclosure E at 33.) But note that, according to the CAR spreadsheets provided by CSI during the January 2014 program review, this program allegedly had 255 placed graduates. 15 of 255 graduates is only 5.8%, an exceedingly low verification percentage. Perhaps, as quoted above, this is a result of ACICS' observation that "the majority of the contact information provided to the [ACICS] team to verify employment for graduates reported as placed on the 2013 [CAR] is inaccurate and not current." The verification done by ACICS of the Chicago Business Career Program is even more sparse. The ACICS team made six calls to graduates or employers (which one is not specified), only four of which were "successful," but all four "confirmed the employment of the graduates as reported on the 2013 CAR." (*See id.* at 36.) According to the CAR 2013 spreadsheet provided by CSI, there were 56 placed graduates, so again, the "success" touted by ACICS is only 7% of those 56 graduates.

[10] Despite these glaring anomalies, ACICS granted CSI full accreditation in August 2014!

[11] See also the Powers Declaration at 4-6 ¶¶ 13-14 for a detailed discussion of FSA's independent analysis of CSI's provision of placement data to ACICS.

verification process—it still continued to submit the false data to the Department and to ACICS. As a result, CSI's "good faith" is a fiction.

Specifically, after touting the supposed depth of its processes, as initially implemented and as subsequently enhanced, CSI provided the Department with its exhibits accompanying its brief. These were offered to show the effectiveness of the "verification process" as it related to Zoharel Quinn, who supposedly independently ran HHC, and Samuel Hunter, who supposedly independently ran Dream Team Hope Health Care Services (DTH). The only common thread between Mr. Quinn and Mr. Hunter was their willingness to serve as sham employers. Nonetheless, in the 13 forms that CSI provided to the Department regarding DTH to demonstrate the thoroughness of its practices in verifying students employed by Mr. Hunter on behalf of DTH, two of them, instead, bear the signature of Mr. Quinn, establishing that CSI could not keep straight which miscreant was supposedly responsible for which bogus company. (*See* CSI Ex. 11.) In both instances, apparently neither the "Career Services Member Completing Verification," nor the "Director of Career Services [Providing] Review & Approval," had any difficulty authenticating this wholly inauthentic employment verification. A comparison of the two documents further shows that they are merely Xeroxed-copies of one another, with only the student's name and identifying data differing. (*Id.*) When 15% of the documents a school submits to the Department to tout the effectiveness of its procedures regarding verification of a particular employer are transparently fraudulent, further claims lauding the virtues of those procedures are insincere. *See also* Ewert Declaration at 12, ¶ 34.

In addition, CSI fails to mention two other deficient parts of its verification process. First, CSI paid bonuses to the Career Development staff based on the numbers of placement verifications they could complete. *See* Ewert Declaration at 5, 9, 10, ¶¶ 12, 22, 27. As with the scourge of abusive practices that resulted from the payments of incentives to recruiters of students, promises of extra financial remuneration for additional employment verifications creates an environment conducive for the sort of fraudulent misrepresentation that occurred in CSI's practices. Second, CSI maintained the remarkable practice of allowing employers to verify placements on the first day a student was hired, and even sometimes permitted verifications before a student had actually graduated! *See* Ewert Declaration at 9-10, ¶¶ 24, 25, and 11, ¶ 29. Obviously, when a student has yet to complete a single day of employment, one cannot claim to have verified that the student was actually placed in a job in his or her field. No one really knows at that point of what the employment will actually consist. Such practices cast substantial doubt on any claims that CSI engaged in worthwhile employment verification.

CSI's additional claims that it had no notice of any verification irregularities when it shared the false data with the Department (CSI's Brief at 29) are also untrue. As previously mentioned, Ms. Weel advised the Department that students came to CSI to complain about Mr. Quinn as early as 2013. Ewert Declaration at 10, ¶ 26. In addition, in another interview, conducted on April 6, 2016, with former career services representative, Erin Roth, who was employed at CSI from 2009 or 2010 until January 2016, she said that Mr. Claxton began raising concerns about Mr.

Quinn shortly after he assumed the position of vice President of Career Development in October or November 2013. Ewert Declaration at 10, 11, ¶¶ 27, 20.

Perhaps most important, the Department's grueling investigation would have been largely unnecessary had CSI promptly told the Department what it claims it found out about the falsity of the two "employers." And it had an absolute legal obligation to do so. *See* 34 C.F.R. § 668.16(g). This regulation requires that "to begin and to continue to participate in any Title IV, HEA program, an institution shall demonstrate to the Secretary that the institution is capable of adequately administering that program under each of the standards established in this section. The Secretary considers an institution to have that administrative capability if the institution—

> (g) Refers to the Office of Inspector General of the Department of Education for investigation—
>
> > (2) Any credible information indicating that any employee, third-party servicer, or other agent of the institution that acts in a capacity that involves the administration of the Title IV, HEA programs, or the receipt of funds under those programs, may have engaged in fraud, misrepresentation, conversion or breach of fiduciary responsibility, or other illegal conduct involving the Title IV, HEA programs. The type of information that an institution must refer is that which is relevant to the eligibility and funding of the institution and its students through the Title IV, HEA programs."

CSI knew that the Department had concerns about its job placement data during the January 2014 program review, during which Ms. Shamanava provided the Department with the spreadsheets containing fraudulent data. In addition, Mr. Claxton told IG agents in November 2014-- but only after they tracked him down at his residence during an unannounced visit-- that "CSI had already conducted an internal investigation of HHC and DTH" and stated that he "offered to turn over the results of its internal investigation of the employers to the OIG...." Of course, this was many months after CSI allegedly learned of the fraud. Mr. Claxton also claimed in his declaration that:

> "[d]uring the spring and summer of 2014, in the process of carrying out an informal audit of its placement data, CSI selected HHC and later DTH for additional scrutiny because of the volume of CSI placements with them. As a result of that internal review, we concluded that the representatives of HHC and DTH, Mr. Quinn and Mr. Hunter respectively, were not placing students in the kind of marketing and home health aide positions they had represented to CSI and CSI stopped referring students to those two employers."

Declaration of Tom Claxton, CSI Ex. 5 at ¶¶ 14, 15, and 19. Yet, if this is true, contrary to its duties as the Department's fiduciary, CSI did absolutely nothing with this information until the Department independently reached its own conclusions regarding the fraudulent data CSI shared with it, CSI's accrediting agency, and as the Department has now discovered, with its students through its website disclosures. This behavior, standing alone, provides further reasons why CSI

cannot be trusted to fulfill its regulatory obligations and why the Department cannot recertify CSI's application for eligibility to participate in the Title IV programs.

CSI has therefore not provided the Department with a basis to rescind its decision to deny the school's recertification application.[12] Consequently, the denial is now a final agency decision and CSI is therefore ineligible to participate in the Title IV programs, unless CSI chooses to supply the Department with rebuttal evidence of the documentation that is explained at footnote 5. The Chicago/Denver School Participation Division will contact CSI regarding the proper procedures for closing out its Title IV, HEA participation.

In the event that CSI submits an application to participate in the Title IV, HEA programs in the future, that application must address the deficiencies noted in this letter.

If you have any questions, please contact Kathleen Hochhalter of my staff at (303) 844-4520 or via email at Kathleen.Hochhalter@ed.gov.

Sincerely,

[redacted]

Susan D. Crim
Director
Administrative Actions and Appeals Service Group

Enclosures

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[12] Although CSI concludes its brief by suggesting that denial of its recertification application is excessive, while comparing itself to another fully-certified Title IV eligible-institution (*see* CSI's Brief at 32-33), I disagree. For the federal agency responsible for protecting the integrity of the Title IV programs to award Title IV eligibility to an institution that has previously presented false data to it and the institution's accrediting agency would be the height of folly. The presentment of accurate data on a topic of utmost importance to students goes to the core of the behavior that must be required from all institutions that are given the opportunity to act as the Department's fiduciary.