



U.S. DEPARTMENT OF EDUCATION

THE WANAMAKER BUILDING
100 PENN SQUARE EAST, SUITE 502
PHILADELPHIA, PA 19107

May 10, 2002

REGIONAL OFFICE OF
INSPECTOR GENERAL

ED-OIG/A03-B0013

Mr. James Kuntz
Executive Director
Lincoln Technical Institute
9191 Torresdale Avenue
Philadelphia, PA 19136

Dear Mr. Kuntz:

This ***Final Audit Report*** (Control Number ED-OIG/A03-B0013) presents the results of our audit of the ability-to-benefit (ATB) testing process at Lincoln Technical Institute, Inc. (LTI), Philadelphia, PA.

A draft of this report was provided to LTI. In its response, LTI disagreed with each of the findings and recommendations in the Draft Audit Report. As a result of reviewing LTI's comments, we have revised Finding No. 2. We summarized LTI's response after each finding and a copy of its response is provided as an attachment to this report.

BACKGROUND

LTI was founded in Newark, NJ, in November 1946 and expanded to include nine campuses and the Cittone Institute schools. The Philadelphia location was established in May 1962. On June 21, 1999, Back-to-School Acquisitions, L.L.C., purchased 90 percent of the stock of LTI. The Accrediting Commission of Career Schools and Colleges of Technology accredits LTI.

LTI provides programs in Automotive Technology and Automotive or Diesel Truck Service Management, for which an Associate in Specialized Technology Degree is awarded, and it also provides Diploma Programs in Automotive or Diesel Truck Mechanics. From July 1, 1997, through June 30, 2000, the Philadelphia location disbursed approximately \$240,000 in campus-based funds (Federal Supplemental Educational Opportunity Grants, Federal Work Study Funds, and Federal Perkins Loans), \$2.7 million in Federal Pell Grants, and \$11.5 million in Federal Family Education Loan (FFEL) and William D. Ford Federal Direct Loan (Direct Loan) program loans.

In order to be admitted as a regular student at LTI, an applicant must be at least 17 years old (beyond the age of compulsory school attendance) and have a high school diploma or its equivalent. Applicants who do not have a high school diploma or its equivalent may also be admitted as regular students provided they can demonstrate they have the ability to benefit from the education or training offered by successfully passing the Wonderlic Basic Skills Test (WBST). The WBST is a short-form measure of adult language and math skills, which are generally learned in high school. The WBST is approved by the U.S. Department of Education

(ED) for use in qualifying non-high school graduates to receive Federal financial assistance for postsecondary training under Title IV of the Higher Education Act of 1965, as amended (HEA).

AUDIT RESULTS

The objective of our audit was to determine whether LTI complied with the ATB testing requirements in the HEA, regulations, and the test publisher's procedures. Our audit disclosed that LTI compromised the test security of the ability-to-benefit tests administered for its students. We also identified other weaknesses in the ATB testing process at the school, as noted below.

Finding No. 1: LTI Compromised the Test Security of Ability-To-Benefit Tests

For all of the ATB tests that were conducted during our audit period, July 1, 1997, through November 7, 2000, the independent test administrator (ITA) did not submit completed WBST answer sheets directly to Wonderlic for official scoring as required. *The ITA submitted the completed answer sheets to LTI, which then forwarded the completed answer sheets to Wonderlic.*

Section 484(d)(1) of the HEA states—

In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible for any [Title IV program] assistance . . . [t]he student shall take an independently administered examination and shall achieve a score, specified by the Secretary, demonstrating that such student can benefit from the education or training being offered. Such examination shall be approved by the Secretary on the basis of compliance with such standards for development, administration, and scoring as the Secretary may prescribe in regulations.

Federal regulations state—

- “An institution may use the results of an approved test to determine a student’s eligibility to receive Title IV, HEA program funds if the test was independently administered and properly administered.” 34 C.F.R. § 668.151(a)(2).
- “The Secretary considers that a test is not independently administered if an institution . . . [c]ompromises test security or testing procedures” 34 C.F.R. § 668.151(c)(1).
- “The Secretary considers that a test is properly administered if the test administrator . . . [s]ubmits the completed test to the test publisher within two business days after test administration in accordance with the test publisher’s instructions” 34 C.F.R. § 668.151(d)(5).
- “An institution shall be liable for the Title IV, HEA program funds disbursed to a student . . . if the institution . . . [c]ompromises the testing process in any way” 34 C.F.R. § 668.154(b).

The *Wonderlic Basic Skills Test User's Manual for Ability-To-Benefit Testing* instructions for official test scoring state—

U.S. Department of Education regulations require that test scores used for A1B determination be provided by the test publisher. These regulations require that a certified ITA personally submits all ATB answer sheets “within two business days after test administration” to the Wonderlic Testing Services Department for scoring. All used ATB answer sheets – even those from incomplete test administrations, or those for applicants who perform poorly on the WBST must be sent to Wonderlic.

We determined that during the period of July 1, 1997, through November 7, 2000, 333 students passed a WBST at LTI and, according to the National Student Loan Data System (NSLDS), received Title IV, HEA funds to attend LTI and did not receive Title IV, HEA funds at other institutions before attending LTI. These 333 students received \$2,411,892 in Title IV, HEA funds to attend LTI. Our review of a sample of 35 students, from the universe of 333, revealed that 26 were admitted to LTI solely on the basis of having passed the WBST. According to NSLDS, the 26 students received \$224,345 in Title IV, HEA funds to attend LTI.

LTI lacked adequate controls to ensure that it did not compromise test security or procedures, specifically to ensure that the ITA submitted answer sheets directly to Wonderlic. WBST answer sheets submitted to Wonderlic for official scoring without Wonderlic's *Reporting Options Form* are processed with Wonderlic's standard three-day reporting service. LTI officials explained that the school submitted the completed ATB answer sheets along with the *Reporting Options Form* to Wonderlic in order to request standard, overnight, or the same-day-fax reporting of official ATB test results, as necessary.

Recommendations:

We recommend that the Chief Operating Officer (COO) for Federal Student Aid (FSA)¹ require LTI to—

- 1.1 Repay to ED and the appropriate lenders the \$224,345 in Title IV funds received by the 26 students in our sample, who were admitted to LTI solely on the basis of having passed the WBST.
- 1.2 Conduct a review of all Title IV recipients' records for the audited period to determine those students without a high school diploma or its recognized equivalent.
- 1.3 Determine and repay to ED and the appropriate lenders the exact amount of all Title IV funds received during the audited period by students at LTI who did not have a high school diploma or its recognized equivalent. Provide the following information for those students identified as improperly awarded:

¹ Student Financial Assistance (SFA) became Federal Student Aid (FSA) on March 6, 2002.

- Student's Name,
- Amount(s) and dates of Title IV disbursements, and
- Refunds already paid to the Title IV programs.

- 1.4 Submit auditor verification of the completeness and accuracy of the file review performed.
- 1.5 Ensure the ITA submits completed answer sheets directly to Wonderlic.

LTI's Reply:

LTI did not concur with our finding and recommendations for the following reasons:

- A. There has been no compromise of the testing process or of test security. Indeed, the test score transmittal procedures cited comported with the test publisher's express instructions.

LTI's response states that it was following Wonderlic's express instructions for transmitting the ATB test answer sheets:

The test publisher form ["Reporting Options Form"] instructed LTI to designate those answer sheets that were to be scored on an expedited basis, to enclose all the answer sheets, and to forward the package to Wonderlic.

LTI contends that it should not be responsible for following test transmittal procedures instituted by the test publisher. In addition, LTI states—

The circumstances surrounding LTI's transmittal of the answer sheets confirms [sic] that test security was not compromised. The following circumstances demonstrate that no compromise of test security occurred:

- There has been no suggestion that anyone at LTI ever altered an answer sheet or engaged in any test scoring activity with respect to any answer sheet
- There has been no suggestion that any answer sheet was ever withheld from Wonderlic.
- There has been no suggestion that any answer sheet ever remained in the LTI Director's possession beyond the brief time needed to fill out the Reporting Options Form and delineate the method of reporting.
- There has been no suggestion that any LTI personnel ever sought to review or coordinate completed answer sheets with any WBST test.

- B. OIG conducted a comprehensive audit of Wonderlic's ATB administration procedures and never questioned the publisher's answer sheet transmittal method.

LTI's response states that the OIG's Final Audit Report of Wonderlic's WBST ATB program, dated February 5, 2002, did not include an audit finding relating to the publisher's answer sheet transmittal procedures. LTI claims—

Any assertion that Wonderlic's generic answer sheet submission procedures . . . were noncompliant should have been presented to Wonderlic in the February 2002 Final Audit Report. Finding One does not belong in [LTI's] Draft Audit Report because it pertains to publisher test administration procedures that are generic in nature, and that are within the sole responsibility and purview of Wonderlic and its ITA.

- C. The Department's ATB rules do not prohibit the test transmittal procedure utilized by Wonderlic.

LTI's response asserts that submission of the ATB test answer sheets by the institution does not automatically invalidate the independent administration of the test. Under 34 C.F.R. § 668.151(d)(5), "The Secretary considers that a test is properly administered if the test administrator . . . [s]ubmits the completed test to the test publisher . . ." LTI contends that this requirement is only one indicator of proper test administration, and that it does not disallow the answer sheet transmittal method used by Wonderlic and LTI.

LTI further states that, under 34 C.F.R. § 668.151(c), the method used to transmit answer sheets is not one of the four automatic indicators that a test was not independently administered because "the ATB rules do not contain any outright prohibition against the procedure utilized by Wonderlic and LTI."

- D. The ATB regulations preclude any imposition of liabilities upon LTI for the matters cited in Finding No. 1. The finding should be eliminated or returned to its original form.

LTI's response states that, "the Department can not, and will not, impose liabilities based upon ATB issues where, as here, there is no evidence that the institution interfered with the independence of the testing process." Under 34 C.F.R. § 668.154—

- An institution shall be liable for the Title IV, HEA program funds disbursed to a student whose eligibility is determined under this subpart only if the institution—
- (a) Used a test administrator who was not independent of the institution at the time the test was given;
 - (b) Compromises the testing process in any way; or
 - (c) Is unable to document that the student received a passing score on an approved test.

LTI claims that because Finding No. 1 is based upon test submission provisions, and not on any proven compromise of test security, it fails to justify the proposed recommendation of liabilities.

LTI further states—

The Secretary of Education has long since rejected the contention that purported noncompliance with a test publisher requirement presumptively constitutes a compromise of the testing process and a basis for institutional liability. *In the Matter of Waukegan School of Hair Design*, Dkt. No. 96-66-SP, Decision of the Secretary, September 8, 1997, at 2. In that case, the Secretary stated that, before monetary assessments may be imposed, there must be actual evidence that an institution has tampered with the testing process in a manner that has a substantive impact upon the reliability of the examination administered. Where, as here, no such evidence has been presented, the Secretary has made clear that institutions will not be held liable for awarding Title IV funds to students who received passing scores on approved tests given by an independent test administrator.

E. The dollar figure cited in draft Finding No. 1 with respect to the sampled students is inaccurate.

LTI disagrees with the amount of the repayment liability recommended in the finding and states that its “review of the data associated with the 26 students cited yielded a total Title IV funding amount of \$203,037.63.”

LTI also states that the repayment liability is overstated because the finding did not apply the Department’s Actual Loss Formula.

LTI objects to the finding’s proposed recommendation regarding a file review of ATB students. LTI contends that, as no liabilities are justified, no need exists for a file review.

OIG’s Response:

We have not changed our finding and recommendations. Under 34 C.F.R. § 668.151(d)(5), as previously cited, by accepting the test answer sheets from the test administrator, LTI compromised test security or testing procedures. As a result, under 34 C.F.R. § 668.151(c)(1), the tests of these students were not independently administered. Under 34 C.F.R. § 668.154, using tests that were not independently administered and compromising the testing process are grounds for institutional liability.

There is no requirement that specific security incidents (for example, evidence that a test sheet was altered or withheld) be documented in order to assess a liability. As cited in LTI’s Reply, under 34 C.F.R. § 668.154 an institution is liable for Title IV, HEA funds if it “[u]sed a test administrator who was not independent of the institution at the time the test was given” or “[c]ompromises the testing process in any way”

Since the ITA forwarded the tests to LTI, the ITA was not independent. In addition, by receiving test sheets from the ITA and forwarding them to the test publisher, LTI compromised the testing process. Therefore, LTI is liable for the funds disbursed.

LTI asserts it followed the "Request Form For Special ATB Reporting" instructions, which state, "Submit this completed form along with your ATB answer sheets to request *standard, overnight, or the same-day-fax* reporting of official ATB test results." LTI's interpretation of this language is inconsistent with the clear instructions in the *Wonderlic Basic Skills Test User's Manual for Ability-To-Benefit Testing*. In describing requirements in the Federal regulations, the Manual states, "These regulations require that a certified ITA personally submits all ATB answer sheets 'within two business days after test administration' to the Wonderlic Testing Services Department for scoring." The Manual's statement is consistent with 34 C.F.R. § 668.151(d)(5).

Wonderlic's answer sheet transmittal method was not questioned in our Final Audit Report for Wonderlic (*Audit of Wonderlic's Ability-to-Benefit Program*, Control No. ED-OIG/A03-B002) because the guidance in the *Wonderlic Basic Skills Test User's Manual for Ability-To-Benefit Testing* is clear and complies with regulations and the HEA. Our rationale for including the liability in this audit report is discussed in full in this audit report.

The decision cited by LTI (from *In the Matter of Waukegan School of Hair Design*, Docket No. 96-66-SP) is not applicable to LTI's case. The circumstances in *Waukegan* were significantly different than the circumstances at LTI. In *Waukegan*—

- There was "no allegation or suggestion that the test . . . was not independently administered"; and
- There was no support for a liability "other than [an] interpretive statement appearing in the Federal Register in 1990."

Neither of these statements is true for LTI's case: (1) we found that the test was not independently administered, and (2) our recommendation for a liability is clearly supported by Federal regulations.

Finding No. 2: Ability-To-Benefit Retesting Requirements Were Not Always Met

Our review revealed that LTI's ITA did not always comply with Wonderlic's procedures for administering retests of the WBST. We found that during the period July 1, 1997, through November 7, 2000, four students, who received \$27,210 in Title IV, HEA funds to attend LTI, were improperly admitted to the institution after passing a WBST that was not conducted in accordance with the publisher's established procedures for retesting.²

² We identified seven students who were admitted to LTI after passing a WBST that was not conducted in accordance with the publisher's retesting procedures. Three of the seven students certified on their FAFSAs that they would be high school graduates upon enrollment at LTI, and were eligible for Title IV, HEA funds.

Section 484(d)(1) of the HEA, quoted previously for Finding No. 1, is also applicable to this finding. Federal regulations state—

- “An institution may use the results of an approved test to determine a student’s eligibility to receive Title IV, HEA program funds if the test was independently administered and properly administered.” 34 C.F.R. § 668.151(a)(2).
- “The Secretary considers that a test is properly administered if the test administrator . . . [a]dministers the test in accordance with instructions provided by the test publisher, and in a manner that ensures the integrity and security of the test” 34 C.F.R. § 668.151(d)(2).
- “An institution shall maintain a record for each student who took [an ATB test] of—
 - “(1) The test taken by the student;
 - “(2) The date of the test; and
 - “(3) The student’s scores, as reported by the test publisher, assessment center, or State.” 34 C.F.R. § 668.151(g).

The *Wonderlic Basic Skills Test User’s Manual for Ability-To-Benefit Testing* instructions for conducting retests of the WBST states—

When an applicant has already taken both verbal and quantitative forms 1 & 2 of the WBST, but you believe that he or she has not been accurately assessed, you may retest the applicant again on either form in accordance with the following rules:

1. The applicant must have already taken both forms of the WBST once.
2. The applicant may be retested on the same test form once, and only once.
3. The applicant must not have been told in advance that there would be an opportunity to take the same test form again.
4. The applicant may be retested on the same form only if at least 60 days have passed since he or she was initially tested on that form.

Of the four students who passed an improperly administered WBST retest, we found that one student was retested more than once on the same WBST form and three students were retested on the same WBST form that they were initially administered without testing on the alternate form. Two of the four students who were not appropriately retested by LTI’s ITA successfully completed their courses and graduated.

LTI lacked adequate management controls to ensure that proper Title IV, HEA eligibility determinations were made in cases in which its ITA did not conduct WBST retests in accordance with the guidance provided by the test publisher. This resulted in invalid ATB determinations,

improper admission of students, and the receipt of \$27,210 of Title IV, HEA funds by ineligible students.

Recommendations:

We recommend that the COO for FSA require LTI to—

- 2.1 Strengthen its management controls to ensure proper Title IV, HEA eligibility determinations are made when WBST retests are not conducted in accordance with publisher procedures.
- 2.2 Repay the Title IV funds received by the four students who were improperly admitted to LTI after passing a retest of the WBST that was not conducted in accordance with publisher procedures, if the funds were not repaid under Recommendation 1.3. Repay \$6,388 in Federal Pell Grant funds, \$133 in Federal Supplemental Educational Opportunity Grants, and \$6,625 in Direct Loan funds to ED, and repay \$14,064 in Federal Stafford Loan funds to the appropriate lenders.

LTI's Reply:

LTI did not concur with the finding and recommendations. The reasons for LTI's disagreement are as follows:

- A. The Secretary's explicit guidance, and the applicable regulations, make it plain that test administration issues such as retesting are the responsibility of the test publisher and ITA, and not the school.

LTI's response states, that when the ATB rules were published in 1995, the Secretary "stated in published commentary that 'The purpose of the regulatory scheme regarding test administration is to remove institutions from giving or scoring tests.'" LTI further states that according to the Federal regulations at 34 C.F.R. § 668.151(d)(2) the ITA is responsible for conducting tests in accordance with the publisher's procedures.

- B. Wonderlic's written standards and procedures confirm that the publisher and the ITAs are responsible for retesting issues.

LTI asserts that according to *Wonderlic's User's Manual* retesting issues are the responsibility of the ITA, not the institution. LTI contends Wonderlic regularly reviews its ITAs for compliance with retesting procedures, and that it states in its User's Manual, "This review process has been mandated by the U.S. Department of Education and is intended to protect ATB applicants from the improper use of testing materials."

LTI's response also notes that "the Wonderlic User's Manual delineates the standards for retesting and states, 'You [the ITA] are responsible for conducting retests in accordance with these rules. Therefore, you should maintain a record of all test forms administered to an

applicant and the specific dates on which they were administered.” LTI contends that the *User's Manual* does not suggest that institutions are responsible for retesting concerns.

- C. The OIG's recent audit of Wonderlic confirms that retesting concerns are the responsibility of the test publisher and the ITAs, and notes deficiencies.

LTI's response states that the OIG's Final Audit Report of Wonderlic's ATB program, dated February 5, 2002, holds Wonderlic and the ITAs, rather than schools, responsible for test administration and retesting. LTI notes that the OIG's report recommends that Wonderlic “[i]mprove its process for identifying and reporting retest errors, to ensure that institutions have accurate and timely information at the time that eligibility determinations are made” and that the OIG report states—

Wonderlic's response appears to confirm that it lacks the internal controls needed to ensure that its approved procedures are followed and that institutions have accurate and timely information when eligibility determinations are made. Because Wonderlic, not its ITA's, maintains the entire testing history of its applicants, only Wonderlic can determine for certain whether a retest was administered in compliance with its retesting procedures.

- D. The ATB regulations preclude imposition of liabilities upon LTI for the matters cited in Finding No. 2.

LTI's response asserts that the finding does not meet the situations required to assess a liability under 34 C.F.R. § 668.154. LTI's response states—

Liability may be imposed only if the institution compromises the testing process. The OIG and the test publisher have acknowledged that retesting issues are the responsibility of the publisher/ITA, not the institution. LTI is not responsible – or liable – for alleged compromises in the testing process for which it bore no responsibility.

- E. The recommended liabilities cited in Finding No. 2 are overstated because several of the students certified on their FAFSAs that they would be high school graduates upon enrollment, and others graduated and were placed in relevant occupations.

LTI states that the recommended liability should exclude Title IV, HEA funds received by—

- Four students who certified on their FAFSAs that they would be high school graduates upon enrollment, and
- Three students who demonstrated their ability to benefit by graduating from the institution.

Two of the three students who graduated from LTI certified on their FAFSAs that they would be high school graduates upon enrollment at LTI. LTI provided photocopies of selected pages of the

four students' FAFSAs as an attachment to its reply. LTI also stated that the recommended liability is overstated because the recommendation did not apply the Department's Actual Loss Formula.

OIG's Response:

We initially reported that seven students were not eligible for Title IV, HEA program funds because their eligibility was based solely upon receiving a passing score on an improper ATB test. Based on the documentation the school provided, we concluded that three of the seven students were eligible to receive Title IV, HEA funds because they had certified on their FAFSAs that they would be high school graduates upon enrollment at LTI. We changed our finding and recommended liability to reflect four ineligible students. For the remaining recipient, for whom LTI stated, had certified on their FAFSA that they would be a high school graduate upon enrollment, the documentation submitted did not indicate that such a certification was made.

Under 34 C.F.R. § 668.151(a)(2), an ATB test may only be used to determine a student's eligibility for Title IV, HEA funds if the test was "independently administered and properly administered."

In addition, 34 C.F.R. § 668.151(g) requires institutions to maintain records documenting—

- (1) The test taken by the student;
- (2) The date of the test; and
- (3) The student's scores as reported by the test publisher, assessment center, or State.

The "Individual ATB Score Report" that Wonderlic uses to report the results of its ATB test clearly identifies the test forms upon which each score is based. In addition, for 3 of the 4 students in question, the "Individual ATB Score Report" included a notification that "[t]his score report may be used in making Title IV determinations if and only if the test was administered in full compliance with Wonderlic's published ATB testing procedures, including those governing retests."

LTI had adequate information in its student files to determine that the students' tests had not been properly administered. Therefore, LTI was required to determine that the students in question were ineligible to receive Title IV, HEA funds based on those tests. LTI is correct in asserting that it is not responsible for errors in administering the ATB test; however, LTI's error was not an error in the ATB test administration, it was an error in its eligibility determination. Under its program participation agreement, LTI, not the test publisher or the ITA, is responsible for identifying eligible students.

Under 34 C.F.R. § 668.154(c), an institution is liable for Title IV, HEA program funds disbursed to a student if the institution is "unable to document that the student received a passing score on an approved test." The WBST was approved for use in retesting in accordance with Wonderlic's instructions. Unless the proper retest form was used, or the required 60-day time period had passed, a student did not receive a passing score on a test approved by the Secretary. Since LTI is required by 34 C.F.R. § 668.151(g) to maintain records documenting each students' test

information, its records should have shown that the students did not take the approved version of the test that was applicable to their circumstances. Therefore, LTI is liable for the funds disbursed.

Finding No. 3: Students Did Not Meet Eligibility Requirements

Three students who did not have a high school diploma, or its recognized equivalent, and who did not meet the minimum passing score on the WBST, received \$5,391 in Title IV, HEA funds to attend LTI.

Section 484(d)(1) of the HEA, quoted previously for Finding No. 1, is also applicable to this finding. Among other requirements, under 34 C.F.R. § 668.32(e)(1) and (e)(2)—

A student is eligible to receive title IV, HEA program assistance if the student . . .
[h]as a high school diploma or its recognized equivalent [or] has obtained . . . a
passing score specified by the Secretary on an independently administered test

LTI's failure to properly admit students on the basis of their ability to benefit resulted in three ineligible students receiving \$5,391 in Title IV, HEA funds. The institution provided no explanation for the receipt of Title IV funds by these three ineligible students.

Recommendations:

We recommend that the COO for FSA require LTI to—

- 3.1 Return \$3,724 in Federal Pell Grant funds and \$178 in Federal Supplemental Educational Opportunity Grants to ED and \$657 in Federal Stafford Loan funds and \$832 in Federal PLUS Loan funds to the appropriate lenders.
- 3.2 Strengthen its management controls to ensure school staff follow the requirements for determining the eligibility of students for Title IV aid.

LTI's Reply:

LTI disagreed with the amount of the repayment liability recommended in the finding.

The institution disagrees with the liabilities recommended in Finding Three, which references three isolated instances where students allegedly failed to achieve the WBST passing score. The repayment of the FSEOG funds listed at section 3.1 is inaccurate because it proposes repayment of \$178 which includes \$44 of institutional waiver funds. This figure should be reduced. Moreover, even though the loan dollars cited here are smaller, the objection with regard to principal loan amounts, and the failure to apply the Actual Loss Formula stated in response to Findings One and Two are equally applicable here.

OIG's Response:

We did not change our finding or recommendation. LTI's reply did not dispute that the three students were ineligible to receive Title IV funding but argued that the asserted liability for the finding is overstated.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of our audit was to determine whether LTI complied with the ATB testing requirements in the HEA, regulations, and the test publisher's procedures.

To accomplish our objective we randomly selected a sample of 25 WBST administrations for LTI from the universe of 823 during our audit period of July 1, 1997, through November 7, 2000. We determined if LTI maintained a record for each test administration of (1) the student's name and social security number, (2) the version of the WBST on which the student tested, (3) the test date, and (4) the official test score. We also verified whether LTI's records were in agreement with the records maintained by Wonderlic.

We compared Wonderlic's data to data in the National Student Loan Data System (NSLDS) and identified 20 Title IV recipients at LTI who, during the period of July 1, 1997, through November 7, 2000, either did not receive a passing score on the WBST (13) or were apparently not tested in accordance with Wonderlic's retesting procedures (7). For the 20 Title IV recipients, we reviewed the student files at LTI that included admission, academic, financial aid, and fiscal information.

We also compared Wonderlic data to data in the NSLDS and identified 333 students who passed a WBST at LTI. According to NSLDS, none of these students received Title IV, HEA funds at other institutions, before attending LTI. For a random sample of 35 students selected from the universe of 333 we reviewed LTI's admission file documentation.

During our review at Wonderlic we tested the reliability of computerized WBST data by comparing selected data records with the completed WBST answer sheets. We concluded that the computerized information was sufficiently reliable for the purposes of our audit at LTI. We did not rely on any computer data processed by LTI.

We reviewed LTI's contract with its WBST ITA, and its accounting records for compensation paid to the ITA. We interviewed LTI's personnel and ITA to obtain an understanding of the ATB testing process. We also reviewed LTI's SFA audit reports, prepared by Dixon Odom PLLC, for the years ended December 31, 1998 and 1999.

We conducted our fieldwork at LTI's campus in Philadelphia, PA, from January 2, 2001, through January 5, 2001, and from April 18, 2001, through April 23, 2001. Our exit conference was held on April 23, 2001. After our exit conference, we performed additional fieldwork on January 16, 2002, and we informed LTI of the results of our additional fieldwork on February 11, 2002. We also conducted fieldwork at Wonderlic, Inc., in Libertyville, IL, from November 13, 2000,

through November 17, 2000. Our audit was performed in accordance with government auditing standards appropriate to the scope of the audit described above.

STATEMENT ON MANAGEMENT CONTROLS

As part of our review, we assessed LTI's management control structure, as well as its policies, procedures, and practices applicable to the scope of the audit. We did not rely on management controls to determine the extent of our substantive testing.

For the purpose of this report, we assessed and classified the significant controls into the following category:

- Compliance with ATB Testing Requirements

Because of inherent limitations, a study and evaluation made for the limited purpose described above would not necessarily disclose all material weaknesses in the management controls. However, our assessment disclosed significant management control weaknesses that adversely affected LTI's ability to comply with ATB test requirements. These weaknesses included deficient WBST answer sheet submission procedures and inadequate procedures for making Title IV, HEA eligibility determinations. These weaknesses and their effects are fully discussed in the Audit Results section of this report.

ADMINISTRATIVE MATTERS

Statements that management practices need improvements, as well as other conclusions and recommendations in this report represent the opinions of the Office of Inspector General. Determination of corrective action to be taken will be made by the appropriate Department of Education officials.

If you have any additional comments or information that you believe may have a bearing on the resolution of this audit, you should send them directly to the following Department of Education official, who will consider them before taking final Department action on the audit:

Mr. Greg Woods
Chief Operating Officer
Federal Student Aid
Union Center Plaza Building, Rm. 112G1
830 1st Street, NE
Washington, DC 20202

Office of Management and Budget Circular A-50 directs Federal agencies to expedite the resolution of audits by initiating timely action on the findings and recommendations contained therein. Therefore, receipt of your comments within 30 days would be greatly appreciated.

In accordance with the Freedom of Information Act (5 U.S.C. § 552), reports issued by the Office of Inspector General are available, if requested, to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

We appreciate the cooperation given us in the review. Should you have any questions concerning this report please contact me at 215-656-6279.

Sincerely,

Handwritten signature of Bernard Tadley in cursive script.

Bernard Tadley
Regional Inspector General for Audit

Attachment



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215 335-0800
FAX: 215 335-1443

March 27, 2002

VIA FEDERAL EXPRESS

Mr. Bernard Tadley
Regional Inspector General for Audit
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 502
Philadelphia, PA 19107

Re: Draft Audit Report - ED-OIG/AO3-B0013

Dear Mr. Tadley:

This letter responds to the Draft Audit Report issued on February 26, 2002 to Lincoln Technical Institute of Philadelphia, Pennsylvania ("LTI"), by the United States Department of Education ("ED"), Office of the Inspector General (the "OIG") under audit control number AO3-B0013 (the "Draft Report"). Thank you for agreeing to extend our response date to 30 days from the date of the Draft Report.

The Draft Report, which revises a prior version dated August 27, 2001, cites three proposed findings for consideration by the Department's Chief Operating Officer. Each finding alleges noncompliance with requirements pertaining to the administration of ability-to-benefit ("ATB") tests to non-high school graduates that attended LTI. The report acknowledges that the test utilized for this purpose by LTI, the Wonderlic Basic Skills Test,¹ is an ED-approved ATB test and that, in accordance with the Department's ATB regulations, LTI relied exclusively upon a publisher-certified independent test administrator ("ITA") to administer and score the WBST. Despite LTI's strict adherence to these ATB testing requirements, the report proposes to cite LTI for purportedly compromising the security of the ATB testing process.

LTI respectfully disagrees with the findings and recommendations set forth in each of the three draft findings presented by the Draft Report. LTI did not compromise the ATB testing process, and the draft report points to no such instance. As will be shown, the ED Secretary has expressly ruled that no liability attaches in these circumstances. Therefore, we request that the OIG revise its findings to accord with the information presented in these comments. Our comments respecting each of the three findings follow.

¹ We will refer to the test itself as the "WBST," and to the publisher of that test as either, "Wonderlic," or, simply, the "test publisher."

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To provide context for the comments that follow, please refer to Attachment I, which is a compendium of pertinent ATB regulations delineating the standards for test administration and for identifying whether ATB-related liabilities can be imposed upon participating institutions.

Response to OIG Finding One: LTI Did Not Compromise ATB Test Security, And The Applicable ED Regulations And Rulings Preclude Any Imposition Of Liabilities.

OIG Finding One proposes to recommend wholesale disallowances for all ATB tests conducted during the audit period² because the ITA submitted completed WBST answer sheets to LTI, which then forwarded the completed answer sheets to Wonderlic. Although the Draft Report concedes that LTI “submitted the completed ATB answer sheets along with the *Reporting Options Form* to Wonderlic in order to request standard, overnight, or same-day-fax reporting of official ATB test results...” (Draft Report at 3), the draft finding presumes that this routine, publisher-sanctioned method for ordering expedited scoring breached and compromised test security and thereby justifies a blanket disallowance of all funds. The Draft Report does not identify or allude to any instance of test score manipulation or to any irregularity in the scoring process.

Finding One departs from the prior version of this finding set forth in the draft report issued to LTI on August 27, 2001. That version treated this matter as a technical compliance issue not triggering any recommendations regarding disallowances or liabilities. Although the OIG did conduct interim fieldwork at LTI during the interim between the two draft reports, the new proposed finding points to no new facts or different rationale to explain the change in approach.

LTI disagrees with Finding One, for numerous reasons, including those detailed in the discussion that follows.

A. **There Has Been No Compromise of the Testing Process or of Test Security. Indeed, the Test Score Transmittal Procedures Cited Comported with the Test Publisher’s Express Instructions.**

The Draft Report does not identify any facts or specific instances to support Finding One’s assertion that LTI compromised ATB test security. The finding instead relies generally upon LTI’s use of the Wonderlic “Reporting Options” procedures to conclude that the test process was compromised. However, LTI’s utilization of a publisher-designated method of transmitting the ATB answer sheets serves only to affirm

² July 1, 1997, through November 7, 2000.

that LTI was acting in compliance with the ATB rules. The audit established that LTI used an ED-approved ATB test and a certified ITA, and the draft finding is incorrect in assuming that a compromise of test security resulted from the use of a publisher-designated test score transmittal procedure.

Key governing principals determine whether a particular practice may be deemed to have compromised test security. These signposts are especially important where, as here, the audit did not reveal any instance where an answer sheet or test score was purportedly altered, mishandled, lost, or in any respect compromised. These signposts include the following:

- Did the purportedly questionable practice in fact violate test publisher procedures?
- Did the practice cause LTI to interfere with test scoring and administration – the two areas that ED expressly sought to keep within the exclusive control of the ITA?
- To the extent that technical nonconformance to the ATB procedures occurred, were they LTI's fault and responsibility, even though the test publisher and ITA were solely responsible for ATB test administration?
- Where there is no evidence of even one breach of test security, and the overall factual circumstances prove that any such breach was highly unlikely, is it fair or reasonable to disallow funds based upon mere assumption that a particular procedure may compromise the testing process?

As is shown below, each of these questions can only be answered in the negative. LTI did not compromise the ATB testing process, and, as a matter of regulation and ED guidance, the institution is not liable.

LTI followed the tests publisher's express instructions. Wonderlic's own forms prove that LTI was following the test publisher's written procedures when it forwarded the WBST answer sheets after they were received from the ITA. As the Draft Report observes at page 3, it was LTI, and not the ITA, that sent in the answer sheets because that procedure was consistent with the "Reporting Options Form" supplied by Wonderlic. This test publisher form instructed LTI to designate those answer sheets that were to be scored on an expedited basis, to enclose all the answer sheets, and to forward the package to Wonderlic.

The Wonderlic form plainly reflects that LTI acted pursuant to the publisher's express instructions. Please refer to Attachment II, which is a copy of the same Wonderlic "Request Form For Special ATB Reporting" that was examined by the auditors, placed in the audit workpapers, and referenced at page 3 of the report. This document instructed LTI to "submit this completed form along with your ATB answer

sheets to request standard, overnight, or the same-day-fax reporting of official ATB test results." (emphasis added). The document contains a column heading titled, "Number of Answer Sheets Enclosed," and requires the signature of the School Director.

The form proves that Wonderlic instructed LTI to fill out the form and send it in "along with your ATB answer sheets." The document explicitly told LTI (and, presumably, others), in more than one place, to enclose the answer sheets and to sign the document. Wonderlic's instructions for the processing of its completed answer sheets presupposes that the institution will handle and "enclose" the answer sheets. LTI could not have followed the *Wonderlic instructions regarding the identification and enclosure of answer sheets* without performing some ministerial role in the handling and forwarding of answer sheets. Finding One's assertion that LTI's handling of the answer sheets in the precise manner directed by the test publisher somehow compromised test security is incorrect.³

LTI was completely removed from test administration and scoring. When the new ATB rules requiring ITAs and approved tests were published in 1995, the Secretary emphasized that "[t]he purpose of the regulatory scheme regarding test administration is to remove institutions from giving or scoring tests." 60 Fed. Reg. 61830, 61837 (Dec. 1, 1995). The draft finding contains no assertion or suggestion that LTI somehow interfered with the test-taking or test-scoring process. Instead, the report affirms that LTI relied upon the services of a certified ITA to administer and proctor the exams and that it was Wonderlic, not LTI that scored the WBST answer sheets (Draft Report at 2-3). No compromise of test security occurred in these circumstances.

If Wonderlic's procedures were somehow in error, that is not LTI's fault or responsibility. The ATB testing rules place the sole responsibility for test administration and scoring upon the test publishers and their certified ITAs. In this case, LTI followed the express instructions of those two parties but is now being faulted for a test administrative procedure implemented at the behest of the publisher. The procedure at issue afforded LTI no role whatsoever in the actual administration or scoring of the tests. As is further detailed at pages 7-10 and 11-12 below, LTI bears no responsibility for a procedure instituted by the test publisher.

The fact that the test transmittal procedure cited in the finding was instituted by Wonderlic, not LTI, is further proof that LTI has not compromised test security or the

³In fact, other published Wonderlic materials also establish that the mere handling of the answer sheets by an appropriate school representative does not compromise the security of the test. The User's Manual, p. 35, states, "Used answer sheets may be photocopied for school records as a safeguard against forms being lost or destroyed." For the school to photocopy the answer sheets, it would have to handle the answer sheets.

testing process. LTI cannot be presumed to have harmed the testing process when the procedure was instituted to comply with Wonderlic's express written instructions and with the routine practices of the publisher's certified ITA. LTI was told to delineate which reporting options applied to the various answer sheets that the publisher was scoring, and it did so in the manner prescribed by the test publisher.

The circumstances surrounding LTI's transmittal of the answer sheets confirms that test security was not compromised. The following circumstances demonstrate that no compromise of test security occurred:

- There has been no suggestion that anyone at LTI ever altered an answer sheet or engaged in any test scoring activity with respect to any answer sheet.
- There has been no suggestion that any answer sheet was ever withheld from Wonderlic.
- There has been no suggestion that any answer sheet ever remained in the LTI Director's possession beyond the brief time needed to fill out the Reporting Options Form and delineate the method of reporting.
- There has been no suggestion that any LTI personnel ever sought to review or coordinate completed answer sheets with any WBST test.

Finding One does not examine this factual context, and the audit produced no fact, theory, or even speculation to justify the finding's presumption that Wonderlic's reporting options procedures compromised test security. LTI respectfully states that there is no basis for that presumption.

B. OIG Conducted A Comprehensive Audit Of Wonderlic's ATB Administration Procedures And Never Questioned the Publisher's Answer Sheet Transmittal Method.

The OIG's February 5, 2002 Final Audit Report (A03-B0022) presents the results of extensive fieldwork and audits encompassing Wonderlic's "procedures for WBST administration, scoring, and reporting." The report notes that the audit "disclosed that Wonderlic generally administered its ATB program in accordance with its agreement with ED for the approved use of the WBST, and with applicable laws and regulations." Although the report cites two findings, neither pertains to answer sheet transmittal procedures or to any concern about institutional mishandling of answer sheets pursuant to the instructions in the generic "Request Form For Special ATB Reporting." Apart from the two findings, the audit report endorses Wonderlic's method of ATB test administration.

Any assertion that Wonderlic's generic answer sheet submission procedures (as reflected in the Wonderlic "Request Form" and in the test publisher and ITA's established practices for having LTI, and presumably others, handle and transmit answer sheets) were noncompliant should have been presented to Wonderlic in the February 2002 Final Audit Report. Finding One does not belong in the Draft Audit Report because it pertains to publisher test administration procedures that are generic in nature, and that are within the sole responsibility and purview of Wonderlic and its ITA.

C. The Department's ATB Rules Do Not Prohibit the Test Transmittal Procedure Utilized By Wonderlic.

Draft Finding One concludes that the WBST was not "independently administered" by LTI based solely upon the answer sheet transmittal process. The finding interprets the ATB regulations to signify that submission of the answer sheets by the institution instead of by the ITA violates an absolute prohibition and automatically nullifies the independent administration of the test. LTI disagrees with this interpretation of the regulations.

The full relevant text of 34 C.F.R. § 151(b), (c), and (d) can be found in Attachment I. The pertinent provision at subsection (d)(5), referring to the ITA's submission of the test results to the test publisher, must be read in concert with the heading to that regulation. The rule states:

- (d) The Secretary considers that a test is properly administered if the test administrator –
.....
(5) Submits the completed test to the test publisher...

34 C.F.R. § 151(d)(5).

The foregoing provision does not signify that the test results must be submitted by the ITA in order for the Secretary to consider the test to be properly administered. Instead, what it says is that ITA transmittal of answer sheets is one indicator of proper test administration. Nowhere does the regulation prohibit the alternative transmittal method utilized by Wonderlic and LTI.

The absence of any such prohibition becomes all the more clear from the parallel regulation at 34 C.F.R. § 151(c). This provision is a counterpart to the above-quoted subsection (d), and identifies the four indicators that the Secretary considers as automatic proof that a test was not independently administered. Transmittal of answer sheets from the ITA to the school is not one of those four indicia of noncompliance, because the ATB

rules do not contain any outright prohibition against the procedure utilized by Wonderlic and LTI.

Finding One seeks to read into the ATB rules an outright prohibition that does not exist. The rule cites ITA answer sheet transmittal as one of several factors that may lead to a presumption of proper test administration, but it does not make institutional transmittal a disqualifying or prohibited event. And, as explained below, the applicable ATB liability provisions further underscore the absence of any outright prohibition of the practice complained of in Finding One.

D. The ATB Regulations Preclude Any Imposition of Liabilities Upon LTI for the Matters Cited in Finding One. The Finding Should be Eliminated or Returned to its Original Form.

The governing regulations and the Secretary's accompanying remarks make it absolutely clear that the Department can not, and will not, impose liabilities based upon ATB issues where, as here, there is no evidence that the institution interfered with the independence of the testing process.

The liability regulation states as follows:

Institutional accountability.

An institution shall be liable for the Title IV, HEA program funds disbursed to a student whose eligibility is determined under this subpart **only if** the institution—

- (a) Used a test administrator who was not independent of the institution at the time the test was given;
- (b) Compromises the testing process in any way; or
- (c) Is unable to document that the student received a passing score on an approved test.

34 C.F.R. § 668.154 (emphasis added).

This narrowly drawn regulation affirms two key points. First, the "only if" language makes it clear that liabilities are impossible only where one of the three stated violations occurs. The rule plainly states that the Department will not impose liabilities based upon provisions drawn from elsewhere in the ATB regulations. Therefore, proposed Finding One, which is premised upon the test submission provisions, and not on any substantiated

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compromise of test security,⁴ fails to justify the proposed recommendation of liabilities. That recommendation should be removed from any final audit report.

The liability regulation also affirms a second key point made by LTI in these comments. The provisions pertaining to test submission that serve as one indicator of proper test administration pursuant to 34 C.F.R. § 668.151(d) are not an absolute prohibition or liability trigger. If the opposite were true, the test submission requirements would have been included in the liability provisions. Instead, the Secretary required actual proof that the testing process was compromised as a precursor to liabilities. No such proof exists here.

It is worth noting that the August 2001 version of this finding endorsed LTI's comments by citing the ATB test submission provisions without reference to any potential liabilities or to any purported compromise of the testing process. The audit workpapers do not justify or explain why the finding was subsequently rewritten to recommend disallowances. The auditors did conduct additional fieldwork in between the two draft reports, but no new facts are cited in support of the rewrite of the finding. The sole reference to the shift in the scope and focus of Finding One is found at the end of a Record of Discussion (OIG workpapers at D-2-1), wherein a handwritten comment states:

Upon further consideration since LTI compromised the test security of all ATB tests conducted during our audit period we will report all Title IV SFA aid received by students to attend LTI who were admitted solely on the basis of passing the WBST as a questioned cost.

Without explaining its "further consideration," and without any substantive revisions to its analysis or its statement of the facts, the finding shifted from a reminder concerning recommended test transmittal procedures, to a substantial proposed monetary sanction. Yet, by all accounts, the students took and passed the federally approved test, which was administered and scored by a publisher-certified ITA. LTI respectfully disagrees with the present version of Finding One.

The Secretary of Education has long since rejected the contention that purported noncompliance with a test publisher requirement presumptively constitutes a compromise of the testing process and a basis for institutional liability. *In the Matter of Waukegan School of Hair Design*, Dkt. No. 96-66-SP, Decision of the Secretary, September 8, 1997, at 2. In that case, the Secretary stated that, before monetary assessments may be imposed,

⁴ Although the draft finding seeks to rely upon the criterion in 34 C.F.R. § 668.154(b) (compromise of the testing process), it points to no basis or evidence of any such violation. Instead, the finding is based exclusively upon the test result submission provision found elsewhere in the regulations. See discussion at pages 6-7 above.

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there must be actual evidence that an institution has tampered with the testing process in a manner that has a substantive impact upon the reliability of the examination administered. Where, as here, no such evidence has been presented, the Secretary has made clear that institutions will not be held liable for awarding Title IV funds to students who received passing scores on approved tests given by an independent test administrator.

Because the case constitutes a formal final agency action in the form of an appellate ruling by the Secretary, *Waukegan* deserves more detailed explanation. In *Waukegan*, the Student Financial Assistance Programs ("SFAP") alleged that, in violation of Wonderlic requirements, the institution used exam results that had not been reported to Wonderlic and used an ITA that had not registered with Wonderlic. SFAP claimed that, without full and total compliance with Wonderlic requirements, all examinations could not be considered independently administered. SFAP sought to disallow all Title IV funds disbursed to students whose eligibility was determined via the Wonderlic examinations.

The Secretary rejected SFAP's contention that noncompliance with test publisher rules creates a basis for the disallowance of Title IV funds disbursed to students admitted based on test results:

Title IV does not mandate liability for those institutions which fail to fully comply with publisher requirements. By complying with all of the publisher's procedures an institution can avoid questions regarding the examination's integrity. It does not follow, however, that any failure to comply with publisher procedures renders the test unreliable so that it may not be considered independently administered.

Waukegan at 3. In short, noncompliance with test publisher requirements does not in and of itself create a presumption that the testing process has been compromised.

Instead, the Secretary has made clear that, to establish a compromise of the testing process, the Department must present actual evidence that an institution has "tampered with the testing process in any way," *Id.* at 2, and in a manner that has "substantive impact upon the reliability of the examination administered." *Id.* at 3. In particular, the Secretary accords significance to evidence of the alteration of examinations or the interference with the independent administration of the examination. No such evidence is present in this case. Instead, the facts here are similar to those found by the Secretary in *Waukegan*:

Respondent did not compromise the testing security or testing procedures used by [the ITA]. Further, SFAP does not allege that Respondent paid any bonuses or commission to [the ITA]. Without evidence of either of the breaches described in

34 CFR section 668.151(c) the ability to benefit examination in question should be deemed independently administered. Moreover, the Secretary 'will not hold institutions financially responsible if they award Title IV, HEA program funds to ability to benefit students who present evidence that they passed approved tests, as long as the institutions did not interfere with the independence of the testing process and were not involved in the testing.' 60 Fed. Reg. section 61836. It is undisputed that the students in the case at hand passed approved tests without any interference from Respondent. Therefore, Respondent should not be held financially responsible for the disbursed awards.

Waukegan at 4. As in *Waukegan*, the draft audit report does not contain any evidence that LTI compromised the testing security or testing procedures used by its ITA, nor interfered with or involved itself in the testing process. In the absence of such evidence and for the same reasons articulated by the Secretary in *Waukegan*, the draft audit finding does not provide a basis for the disallowance of Title IV funds.

E. The Dollar Figure Cited In Draft Finding One With Respect To The Sampled Students Is Inaccurate.

LTI disagrees that any liabilities are imposable in connection with Draft Finding One. However, for the sake of completeness of our comments, we note our disagreement with the \$224,335 figure cited on page 3 of the Draft Report. Our review of the data associated with the 26 students cited yielded a total Title IV funding amount of \$203,037.63. Our calculations are as follows:

162,001.56	loans for 26 students in question
(26,844.66)	loan refunds
61,112.00	pell/seog
(704.00)	pell/seog refunds
<u>722.66</u>	Waiver
<u>196,287.56</u>	total received for 26 students in question
203,037.63	includes 4% loan fees, for total amount disbursed per LEMS records
224,335.00	IG dollar amount, per 2-26-02 draft audit report
21,297.38	Difference between IG & LTI

LTI is unable to discern from the OIG workpapers the reason for the \$21,297.38 differential in the figures cited.

LTI disagrees with the proposed OIG recommendation pertaining to a requirement that LTI "repay to ED and the appropriate lenders the \$224,335..." Draft Report at 3, for three reasons. First, as demonstrated above, there is no factual, regulatory, or legal basis for any monetary assessment. Second, as shown immediately

above, LTI disagrees with the figure cited in Finding One. Lastly, any such repayment obligation would seek to significantly overstate any potential basis for determining liabilities because any liabilities associated with FFEL loan funds must be determined based upon the Department's well established Actual Loss Formula. Administrative and case law precedents support mandatory utilization of this formula in lieu of the outright repayment approach proposed in the finding. LTI reserves its right and opportunity to present those authorities in greater detail in the event that such should become necessary at a later date.

Lastly, LTI objects to the finding's proposed recommendation regarding a file review of ATB students. No liabilities are justified; accordingly, no need exists for a file review.

Response to OIG Finding No. 2: The Ability-To-Benefit Retesting Requirements Were The Responsibility of the ITA and of Wonderlic, Not LTI.

Draft Finding Two proposes to hold LTI liable because the test publisher and its certified ITA purportedly failed to abide by the publisher's standards for retesting. The finding asserts that "LTI's ITA did not always comply with Wonderlic's procedures for administering retests of the WBST," and that, "...seven students, who received \$47,212 in Title IV Student Financial Aid (SFA) funds to attend LTI were improperly admitted to the institution after passing a WBST that was not conducted in accordance with the publisher's established procedures for retesting." (Draft Report at page 4-5).

LTI disagrees with Draft Finding Two, which seeks to hold LTI accountable for matters that are within the exclusive domain and responsibility of Wonderlic and the ITA. If any of the seven cited students were retested in a manner inconsistent with the rules that Wonderlic promulgated for its ITAs, that is not LTI's fault or responsibility. The reasons for LTI's disagreement with Finding Two include the following:

The Secretary's explicit guidance, and the applicable regulations, make it plain that test administration issues such as retesting are the responsibility of the test publisher and ITA, and not the school. When the ATB rules were published in 1995, one commenter suggested that the Department should require institutions to "keep complete records of all testing activity conducted by a test administrator on its behalf...". The Secretary rejected that suggestion, stating in published commentary that "The purpose of the regulatory scheme regarding test administration is to remove institutions from giving or scoring tests. Therefore, the Secretary disagrees with the commenter's recommendation." 60 Fed. Reg. 61830, 61837 (December 1, 1995). The Secretary rejected any notion that the schools must document ITA compliance or otherwise take responsibility for test scoring or administration. The Secretary's quoted statement accords with the language of the rules themselves, at 34 C.F.R. 668.151(d)(2), which

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expressly state that it is the responsibility of the ITA to “[a]dminister... the test in accordance with instructions provided by the test publisher. . . .”

Wonderlic’s written standards and procedures confirm that the publisher and the ITAs are responsible for retesting issues. Wonderlic certifies test administrators for their familiarity with proper test administration procedures. Moreover, the publisher regularly reviews its ITAs for compliance with those procedures, stating in its User’s Manual at page 18 that, “[t]his review process has been mandated by the U.S. Department of Education and is intended to protect ATB applicants from the improper use of testing materials.”

The test publisher’s directives to its ITAs regarding retesting reaffirm that these issues are the responsibility of the ITA, not the institution. The Wonderlic User’s Manual delineates the standards for retesting and states, “You [the ITA] are responsible for conducting retests in accordance with these rules. Therefore, you should maintain a record of all test forms administered to an applicant and the specific dates on which they were administered.” User’s Manual at page 43. Nowhere in that User’s Manual is there any suggestion that institutions are responsible for retesting concerns.

The OIG’s recent audit of Wonderlic confirms that retesting concerns are the responsibility of the test publisher and the ITAs, and notes deficiencies. On February 5, 2002, the OIG issued a Final Audit Report to Wonderlic recommending that the test publisher,

“Improve its process for identifying and reporting retest errors, to ensure that institutions have accurate and timely information at the time that eligibility determinations are made.”

February 5, 2002 Final Audit Report of Wonderlic at page 3.

The report confirms that any retesting issues cited with respect to LTI in Finding Two were the fault of the test publisher and ITA, not LTI. The OIG report states,

“Wonderlic’s response appears to confirm that it lacks the internal controls needed to ensure that its approved procedures are followed and that institutions have accurate and timely information when eligibility determinations are made. Because Wonderlic, not its ITAs, maintains the entire testing history of its applicants, only Wonderlic can determine for certain whether a retest was administered in compliance with its retesting procedures.”

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OIG Final Report at page 4 (emphasis added). Significantly, the OIG's audit of Wonderlic covers the same three years covered by the draft audit of LTI. Clearly, Finding Two, which seeks to blame LTI, cannot be repeated in a final report without contradicting the OIG's final audit findings stating that Wonderlic and the ITAs, rather than the schools, are responsible for test administration and retesting.

The ATB regulations preclude imposition of liabilities upon LTI for the matters cited in Finding Two. The express limitations on liability set forth in the liability regulation, 34 C.F.R. § 668.154, and the clear guidance issued by the Secretary in a final agency ruling on this subject are discussed at pages 7-10 above and are of equal application here. Liability may be imposed only if the institution compromises the testing process. The OIG and the test publisher have acknowledged that retesting issues are the responsibility of the publisher/ITA, not the institution. LTI is not responsible – or liable – for alleged compromises in the testing process for which it bore no responsibility.

Similarly, the recommendations accompanying Draft Finding Two are overstated because they fail to take into account the mandatory Actual Loss Formula. In connection with Finding Two, LTI respectfully refers to, and incorporates by reference, its complete position concerning liabilities as stated at pages 7-10 above.

In any event, the recommended liabilities cited in Finding Two are overstated because several of the students certified on their FAFSAs that they would be high school graduates upon enrollment, and others graduated and were placed in relevant occupations. Four of the seven students cited in Draft Finding Two must be excluded from the finding, and from any liability recommendation, because they certified on their FAFSAs that they would be high school graduates upon enrollment. Those students are:

Student Name

Social Security No.

Copies of the relevant excerpts from these four students' FAFSAs are included in Attachment III. The OIG workpapers indicate that these four students received a total of \$12,070 in grant funds and \$23,855.19 in loans. Workpaper G-3-1 at page 3. These amounts⁵ should be deducted from the recommendations set forth in Finding Two.

⁵ LTI reserves any adjustments as may be necessary or appropriate based upon potential dollar differences between the OIG figures and its own internal records.

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Moreover, as is acknowledged in the Draft Report at page 5, at least three of the seven cited students graduated (). These students had the ability to benefit. Furthermore, in addition to graduating, each was also placed in a job in their field of training, as follows:

<u>Student Last Name</u>	<u>Place of Employment</u>
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Two of these three are included in the deduction referenced above. The OIG workpapers indicate that the remaining student, , received \$383 in grant funds, and \$6,625 in loan funds. Workpaper G-3-1 at page 3. These amounts should also be deducted from the recommendations set forth in Finding Two.

LTI disagrees with the draft finding's recommendation of repayment of thousands of dollars already applied to the cost of training for these students, when in fact the students have demonstrated their ability to benefit, they did graduate, and they did find jobs. While LTI does not concede that any liability is owed with respect to any of the seven students, the Title IV funds received by the five students referenced above should be excluded from any liability calculation.

⁶ This student was mistakenly identified under his first name, in the LTI response submitted to the OIG on September 24, 2001. That name was a computer typo and is now being corrected.

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Response to OIG Finding No. 3: LTI Disagrees With The Liabilities Recommended

The institution disagrees with the liabilities recommended in Finding Three, which references three isolated instances where students allegedly failed to achieve the WBST passing score. The repayment of the FSEOG funds listed at section 3.1 is inaccurate because it proposes repayment of \$178 which includes \$44 of institutional waiver funds. This figure should be reduced. Moreover, even though the loan dollars cited here are smaller, the objection with regard to principal loan amounts, and the failure to apply the Actual Loss Formula stated in response to Findings One and Two are equally applicable here.

Conclusion

For all of these reasons, Lincoln Technical Institute respectfully requests that the monetary recommendations in Draft Findings One and Two be rescinded, and that the findings cited in Finding Three be revised in accordance with our comments.

Respectfully submitted,


James F. Kuntz
Executive Director

**ATTACHMENT 1: ED REGULATIONS PERTINENT TO THE DRAFT
REPORT FINDINGS**

The legal requirements for ATB testing are set forth in Section 484(d) of the Higher Education Act of 1965, as amended (20 U.S.C. § 1070 et seq.), and 34 C.F.R. § 668.141-156. Of particular relevance to the Draft Audit Report of LTI are sections 668.150-151 and section 154. These sections provide:

Sec. 668.150 Agreement between the Secretary and a test publisher.

(a) If the Secretary approves a test under this subpart, the test publisher must enter into an agreement with the Secretary that contains the provisions set forth in paragraph (b) of this section before an institution may use the test to determine a student's eligibility for Title IV, HEA program funds.

(b) The agreement between a test publisher and the Secretary provides that the test publisher shall—

(1) Allow only test administrators that it certifies to give its test;

(2) Certify test administrators who have—

(i) The necessary training, knowledge, and skill to test students in accordance with the test publisher's testing requirements; and

(ii) The ability and facilities to keep its test secure against disclosure or release;

(3) Decertify a test administrator for a period that coincides with the period for which the publisher's test is approved if the test publisher finds that the test administrator—

(i) Has repeatedly failed to give its test in accordance with the publisher's instructions;

(ii) Has not kept the test secure;

(iii) Has compromised the integrity of the testing process; or

(iv) Has given the test in violation of the provisions contained in Sec. 668.151;

(4) Score a test answer sheet that it receives from a test administrator;

* * *

(8) Three years after the date the Secretary approves the test and for each subsequent three-year period, analyze the test scores of students to determine

whether the test scores produce any irregular pattern that raises an inference that the tests were not being properly administered, and provide the Secretary with a copy of this analysis;

* * * *

Sec. 668.151 Administration of tests.

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

(2) An institution may use the results of an approved test to determine a student's eligibility to receive Title IV, HEA programs funds if the test was independently administered and properly administered.

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

(1) Given at an assessment center by a test administrator who is an employee of the center; or

(2) Given by a test administrator who--

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

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

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

(iv) Is not a current or former student of the institution.

(c) The Secretary considers that a test is not independently administered if an institution--

(1) Compromises test security or testing procedures;

(2) Pays a test administrator a bonus, commission, or any other incentive based upon the test scores or pass rates of its students who take the test;

(3) Otherwise interferes with the test administrator's independence or test administration.

(d) The Secretary considers that a test is properly administered if the test administrator—

(1) Is certified by the test publisher to give the publisher's test;

(2) Administers the test in accordance with instructions provided by the test publisher, and in a manner that ensures the integrity and security of the test;

(3) Makes the test available only to a test-taker, and then only during a regularly scheduled test;

(4) Secures the test against disclosure or release;

(5) Submits the completed test to the test publisher within two business days after test administration in accordance with the test publisher's instructions; and

* * * *

Sec. 668.154 Institutional accountability.

An institution shall be liable for the Title IV, HEA program funds disbursed to a student whose eligibility is determined under this subpart only if the institution—

(a) Used a test administrator who was not independent of the institution at the time the test was given;

(b) Compromises the testing process in any way; or

(c) Is unable to document that the student received a passing score on an approved test.



Request Form For Special ATB Reporting

Submit this completed form along with your ATB answer sheets to request *standard*, *overnight*, or the *same-day-fax* reporting of official ATB test results. Answer sheets submitted without this completed form will be processed with Wonderlic's *standard* three-day reporting service.

Please enter your seven digit School ID# here ■

Check One	ATB Reporting Option	Number of Answer Sheets Enclosed	Charge Per Sheet	Total Shipping Charge	Total Reporting Charge
<input type="checkbox"/>	<i>Standard</i> - Within three business days Wonderlic will send the Official ATB test results via first class mail.	<input type="text"/>	× \$0.00	+ \$0.00	= NO CHARGE
<input type="checkbox"/>	<i>Overnight</i> - Within three business days Wonderlic will send Official ATB test results via UPS overnight.	<input type="text"/>	× \$0.00	+ \$15.00	= \$15.00
<input type="checkbox"/>	<i>Same-Day-Fax</i> - The same day Wonderlic receives the original answer sheets, Official ATB test results will be sent via fax.	<input type="text"/>	× \$1.65	+ \$0.00	= <input type="text"/>

SECURE FAX NUMBER

- -

Area Code

I wish to have all Official ATB test results for my school sent by the Same-Day-Fax reporting option.

_____ School Director / Representative

I confirm that the fax number appearing to the left is a secure fax line. All ATB transmissions received through this fax number will be held in strict confidence.

[OIG NOTE: We have not included "Attachment 3" that LTI provided with its response to the draft report. The attachment contained only private information about LTI students, which is summarized in the text of our final audit report.]

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