

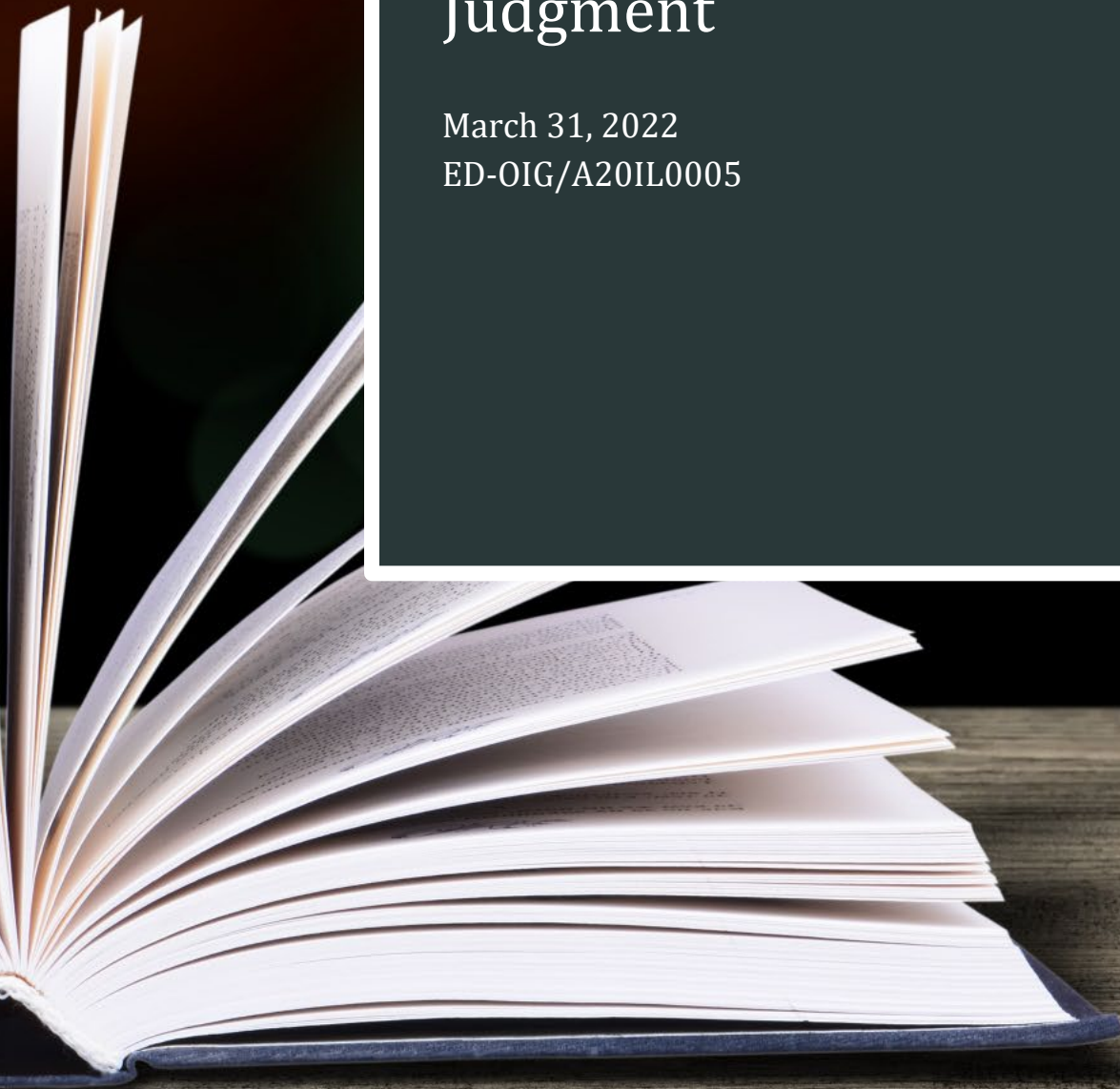


U.S. Department of Education  
Office of Inspector General

# Bais HaMedrash and Mesivta of Baltimore's Use of Professional Judgment

March 31, 2022

ED-OIG/A20IL0005



## NOTICE

Statements that managerial practices need improvements, as well as other conclusions and recommendations in this report, represent the opinions of the Office of Inspector General. The appropriate Department of Education officials will determine what corrective actions should be taken.

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UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF INSPECTOR GENERAL

Audit Services

March 31, 2022

Rabbi Elyasaf Slanger  
Acting President  
Bais HaMedrash and Mesivta of Baltimore  
6823 Old Pimlico Road  
Baltimore, MD 21209

Dear Rabbi Slanger:

Enclosed is our final audit report, "Bais HaMedrash and Mesivta of Baltimore's Use of Professional Judgment" (Control Number ED-OIG/A20IL0005). This report incorporates the comments you provided in response to the draft report. 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 U.S. Department of Education official, who will consider them before taking final action on this audit:

Richard Cordray  
Chief Operating Officer  
Federal Student Aid  
U.S. Department of Education  
400 Maryland Ave, SW  
Washington, D.C. 20202

The U.S. Department of Education's policy is to expedite audit resolution by timely acting on findings and recommendations. Therefore, if you have additional comments, please provide them to the action official within 30 days.

Sincerely,

Gary D. Whitman  
Regional Inspector General for Audit  
Chicago/Kansas City Audit Region

cc: Rabbi Chaim Cohen, Dean

# Table of Contents

Results in Brief .....	1
Introduction .....	7
Finding 1. Bais HaMedrash and Mesivta of Baltimore Did Not Apply Professional Judgment in Accordance with the HEA.....	11
Finding 2. Bais HaMedrash and Mesivta of Baltimore Did Not Adequately Document Its Use of Professional Judgment .....	27
Finding 3. Bais HaMedrash and Mesivta of Baltimore Reported Its Use of Professional Judgment in Accordance with the Application and Verification Guide.....	33
Appendix A. Scope and Methodology.....	34
Appendix B. Effect of Bais HaMedrash and Mesivta of Baltimore’s Improper Application of Professional Judgment .....	37
Appendix C. Acronyms and Abbreviations.....	41
Bais HaMedrash and Mesivta of Baltimore’s Comments .....	42

## Results in Brief

### What We Did

The objectives of our audit were to determine whether Bais HaMedrash and Mesivta of Baltimore (1) applied and documented its use of professional judgment in accordance with section 479A of the Higher Education Act of 1965, as amended (HEA), and (2) reported its use of professional judgment in accordance with the Application and Verification Guide.<sup>1</sup> Our audit covered award year 2017–2018 (July 1, 2017, through June 30, 2018) and award year 2018–2019 (July 1, 2018, through June 30, 2019).

To achieve the objectives, we reviewed Bais HaMedrash and Mesivta of Baltimore’s student financial aid and professional judgment records for all 65 students for whom the school applied professional judgment for award year 2017–2018, award year 2018–2019, or both. We also compared the school’s records for all 65 students to the records in the U.S. Department of Education’s (Department) Central Processing System as having professional judgment applied for award year 2017–2018, award year 2018–2019, or both.

### What We Found

Bais HaMedrash and Mesivta of Baltimore did not apply professional judgment in accordance with section 479A of the HEA for 52 (80 percent) of the 65 students for whom it applied professional judgment for award year 2017–2018, award year 2018–2019, or both. Rather than applying professional judgment on a case-by-case basis for special circumstances, as required by the HEA, Bais HaMedrash and Mesivta of Baltimore applied professional judgment across three classes of students—those whose families paid private school tuition, had investment properties, or received clergy allowances—and improperly applied professional judgment based on wedding expenses or standard living expenses (medical and dental insurance premiums, monthly support payments to the students’ sibling(s), and student loan payments) unrelated to special circumstances. By applying professional judgment across three classes of students and improperly applying professional judgment based on wedding expenses or standard living expenses unrelated to special circumstances, Bais HaMedrash and Mesivta of Baltimore awarded and disbursed \$155,845 more in Federal Pell Grant Program (Pell) funds than the 52 students would have otherwise received (see [Finding 1](#)).

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<sup>1</sup> Unless otherwise noted, we use Application and Verification Guide to refer to the 2017–2018 and the 2018–2019 “Federal Student Aid Handbook, Application and Verification Guide.”

Additionally, Bais HaMedrash and Mesivta of Baltimore did not document its use of professional judgment in accordance with section 479A of the HEA for 37 (57 percent) of the 65 students for whom it applied professional judgment for award year 2017–2018, award year 2018–2019, or both. For these 37 students, the school adjusted data items affecting gross income that resulted in a decrease in their expected family contributions (EFC) without records that adequately documented special circumstances. The decreases in these 37 students’ EFCs resulted in Bais HaMedrash and Mesivta of Baltimore awarding and disbursing \$80,390 more in Pell funds than the students would have otherwise received (see [Finding 2](#)).

Finally, Bais HaMedrash and Mesivta of Baltimore reported its use of professional judgment in accordance with the Application and Verification Guide for 97 percent (63 of 65) of the students for whom it applied professional judgment for award year 2017–2018, award year 2018–2019, or both. While its records showed that the school applied professional judgment, the Department’s Central Processing System did not indicate that the school applied professional judgment for 3 percent (2 of 65) of the students (see [Finding 3](#)).

## What We Recommend

We recommend that the Chief Operating Officer for Federal Student Aid require Bais HaMedrash and Mesivta of Baltimore to return to the Department \$155,845 in improper Pell payments made for the 52 students for whom it did not apply professional judgment in accordance with section 479A of the HEA ([Recommendation 1.1](#)). We also recommend that the Chief Operating Officer for Federal Student Aid require Bais HaMedrash and Mesivta of Baltimore to provide records adequately documenting that it applied professional judgment in accordance with section 479A of the HEA for the 37 students for whom we were not provided records substantiating their special circumstances or return to the Department \$80,390 in improper Pell payments ([Recommendation 2.1](#)).<sup>2</sup> Finally, we recommend that the Chief Operating Officer for Federal Student Aid take appropriate action pursuant to subpart G of Title 34 Code of

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<sup>2</sup> Of the \$80,390, \$25,820 is included in Recommendation 1.1. The total unduplicated amount for Recommendation 2.1 is \$54,570.

Federal Regulations (C.F.R.) Part 668 for the extensive instances of noncompliance with the HEA ([Recommendation 1.2](#)).<sup>3</sup>

## **Bais HaMedrash and Mesivta of Baltimore's Comments and Our Response**

We provided a draft of this report to Bais HaMedrash and Mesivta of Baltimore officials for comment on June 23, 2021. We received the school's comments on the draft of this report on July 23, 2021.

### **Bais HaMedrash and Mesivta of Baltimore's Comments**

Bais HaMedrash and Mesivta of Baltimore disagreed with Findings 1 and 2 and the related recommendations. However, it did not provide any additional documentation with its comments on the draft report. Bais HaMedrash and Mesivta of Baltimore did not say whether it agreed or disagreed with Finding 3.

#### ***Finding 1***

Bais HaMedrash and Mesivta of Baltimore stated that the audit's conclusion is founded on the school's student body being comprised of a very small minority population who often have overlapping circumstances with other members. Basing judgment about the merits of a circumstance based on those circumstances applying more frequently to a specific group when compared to national populations would be prejudiced against students for being part of a class. Additionally, special circumstances are to be determined based on the overall collegiate population for which the EFC formula was designed. The EFC formula was not constructed for a specific demographic or class but rather for the nation as a whole. Therefore, a circumstance is unusual when compared to the overall collegiate body in the United States.

#### ***Finding 2***

Bais HaMedrash and Mesivta of Baltimore stated that the premise of Finding 2 is not based on the lack of documentation but rather on the lack of documentation to the Office of Inspector General's (OIG) standards. The professional judgment meeting minutes, mathematical calculations, and actual expense documentation for each case provided to the OIG should have been sufficient for an auditor or program reviewer to

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<sup>3</sup> All references to the C.F.R. are to the July 1, 2017, version. Subpart G describes the actions that the Department may take against schools that violate any statutory provision of or applicable to Title IV of the HEA. These actions include imposing fines or limiting, suspending, or terminating a school's participation in the Title IV programs.

gain an understanding of each case and the actions taken. Additionally, Department guidance does not require documentation to be of expenses that were paid during the school year (as opposed to invoiced expenses). Further, in the cases of prior year versus prior-prior year Federal tax information described in the draft report, more recent tax returns provided a more accurate picture of the students' financial pictures.

### ***Recommendations 1.2 and 2.2***

Bais HaMedrash and Mesivta of Baltimore disagreed with the recommendations, stating that the report does not distinguish between a school acting in good faith versus one intentionally abusing the law. The school applied its best understanding of the intent of the law, making Recommendations 1.2 and 2.2 inconsistent with a school operating on good faith. Even if the school might agree with the OIG's conclusion, Bais HaMedrash and Mesivta of Baltimore asks that any recourse be corrective rather than punitive.

### ***Finding 3***

Bais HaMedrash and Mesivta of Baltimore stated that it submitted a request through the Department's Common Origination and Disbursement system's website to have the 2018–2019 school year reopened so that it could correctly mark the two relevant cases as professional judgments. The school later provided email communications from the Common Origination and Disbursement system and Central Processing System stating that the award year is closed and no further changes can be made.

We summarized Bais HaMedrash and Mesivta of Baltimore's comments and provided our responses at the end of each finding. We included the full text of the school's comments on the draft report at the end of this final report (see [Bais HaMedrash and Mesivta of Baltimore's Comments](#)).

### **OIG Response**

We did not revise the part of Finding 1 questioning Bais HaMedrash and Mesivta of Baltimore's use of professional judgment across three classes of students (those whose families paid private school tuition, had investment properties, or received clergy allowances). However, after considering Bais HaMedrash and Mesivta of Baltimore's comments and reviewing the records the school provided again, we have accepted the school's comments on and removed the parts of draft report Finding 2 that discussed a lack of documentation of actual expenses and prior year Federal tax information and a lack of documentation substantiating the school's determination that several other types of recurring costs were special circumstances. Finally, we eliminated draft report Recommendations 2.2 and 3.1.



### ***Finding 1***

As used in our report, “class” does not refer to demographic characteristics, such as students with disabilities or students from underserved populations. Rather, “class” as used in this report refers to any group of students with special circumstances with similar characteristics, and the HEA states that professional judgment may not be applied across a class (or group) of students. Bais HaMedrash and Mesivta of Baltimore did the opposite; it applied professional judgment across three classes of students—those whose families paid private school tuition, those whose families had investment properties, and those whose families received clergy allowances.

We agree that there might be situations where more than one student has a special circumstance with similar characteristics. However, a school must retain records demonstrating how each student’s special circumstance differentiated them from the class (or group) of students with similar characteristics (section 479A(a) of the HEA and the Application and Verification Guide). While Dear Colleague Letter GEN-16-03 states that a financial aid administrator may identify a category of students with similar circumstances to consider for possible professional judgment adjustments, the financial aid administrator still must assess and document how each individual student’s situation was affected and not assume that every student with similar circumstances was affected in the same way. Financial aid administrators may not automatically provide identical treatment to all students with similar circumstances.

### ***Finding 2***

Contrary to the school’s comments, we applied the requirements of section 479A(a) of the HEA and Department guidance as criteria, not our own standards. While the law and the Department do not define adequate documentation, section 479A(a) of the HEA states that documentation for any adjustments shall substantiate special circumstances of individual students; the Application and Verification Guide adds that the reason for any adjustment should be adequately documented by a third party if possible. Neither during our audit nor with its comments on the draft report did Bais HaMedrash and Mesivta of Baltimore provide records of each of the student’s individual special circumstances sufficient to allow us to understand the reasons for the financial aid administrators’ professional judgment decisions.<sup>4</sup>

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<sup>4</sup> We removed the part of Finding 2 of the draft report discussing a lack of documentation of actual expenses (as opposed to documentation of billed expenses), prior year Federal tax information, and other recurring costs.

### ***Recommendations 1.2 and 2.2***

Regarding Recommendation 1.2, Department regulations and the school's program participation agreement require Bais HaMedrash and Mesivta of Baltimore to substantially comply with Federal requirements. Yet we identified 86 instances of the improper application of professional judgment for 52 students—80 percent of the 65 students for whom the school applied professional judgment for award year 2017–2018, award year 2018–2019, or both. When we encounter such extensive instances of noncompliance, we recommend that the Chief Operating Officer for Federal Student Aid take appropriate action pursuant to subpart G of Title 34 C.F.R. Part 668.

We revised Recommendation 1.2 to be more specific and eliminated draft report Recommendation 2.2 because Finding 2 concerns a lack of documentation that the school might still be able to obtain from the students and their families.

### ***Finding 3***

On August 27, 2021, we confirmed with Federal Student Aid officials that an award year cannot be reopened once closed. Therefore, we removed our draft report recommendation that the school report that it applied professional judgment for two students.

# Introduction

## Background

Bais HaMedrash and Mesivta of Baltimore is a private nonprofit school located in Baltimore, Maryland. The school offers students a bachelor's degree in Talmudic law, is accredited by the Association of Advanced Rabbinical and Talmudic Schools and is approved by the Maryland Higher Education Commission.

During award year 2017–2018 (July 1, 2017, through June 30, 2018), 41 (53 percent) of the 77 students enrolled in Bais HaMedrash and Mesivta of Baltimore received Federal Pell Grant Program (Pell) funds. During award year 2018–2019 (July 1, 2018, through June 30, 2019), 47 (59 percent) of the 80 students enrolled in the school received Pell funds.

## Federal Assistance Programs and Funding Information

The purpose of the Title IV of the Higher Education Act of 1965, as amended (Title IV), programs is to provide loans, grants, and work-study financial assistance to students and their parents. During award year 2017–2018 and award year 2018–2019, Bais HaMedrash and Mesivta of Baltimore participated in Pell. Pell provides eligible students who have demonstrated financial need with grant assistance to help pay undergraduate educational expenses. The school also participated in the Federal Supplemental Educational Opportunity Grants Program (FSEOG). FSEOG provides need-based grants to eligible students to help meet undergraduate expenses.

According to the U.S. Department of Education's (Department) grants management system (G5), Bais HaMedrash and Mesivta of Baltimore disbursed \$227,570 in Pell funds and \$5,000 in FSEOG funds for award year 2017–2018. The school disbursed \$248,665 in Pell funds and \$5,000 in FSEOG funds for award year 2018–2019.

## Professional Judgment

Students apply for Title IV funds by completing a Free Application for Federal Student Aid (FAFSA). The FAFSA is processed by the Department's Central Processing System. This system uses FAFSA information to calculate each applicant's expected family contribution (EFC). After processing the FAFSA, the Central Processing System produces two output documents—an Institutional Student Information Record sent to the school and a Student Aid Report sent to the student. Both documents show the student's application data, EFC, and other information. The FAFSA does not provide a student with a field to explain a special circumstance that could affect the student's EFC, and the need analysis formula that the Department's Central Processing System uses to calculate each student's EFC does not include any provisions for exceptions.

According to section 479A(a) of the Higher Education Act of 1965, as amended (HEA), professional judgment refers to the authority of a:

financial aid administrator, on the basis of adequate documentation, to make adjustments on a case-by-case basis to the cost of attendance or the values of the data items required to calculate the expected student or parent contribution (or both) to allow for treatment of an individual eligible applicant with special circumstances. However, this authority shall not be construed to permit aid administrators to deviate from the contributions expected in the absence of special circumstances. Special circumstances may include tuition expenses at an elementary or secondary school, medical, dental, or nursing home expenses not covered by insurance, unusually high child care or dependent care costs, recent unemployment of a family member or an independent student, a student or family member who is a dislocated worker ... the number of parents enrolled at least half time in a degree, certificate, or other program leading to a recognized educational credential ... a change in housing status that results in an individual being homeless ... or other changes in a family's income, a family's assets, or a student's status. Special circumstances shall be conditions that differentiate an individual student from a class of students rather than conditions that exist across a class of students.

According to the 2017–2018 and the 2018–2019 “Federal Student Aid Handbook, Application and Verification Guide” (Application and Verification Guide), pages AVG-110 and AVG-112, respectively, financial aid administrators must make reasonable decisions that support the intent of the HEA’s professional judgment provisions. The financial aid administrator does not have the authority to waive general student eligibility requirements, change the need analysis formula itself, or directly adjust the EFC. Instead, the financial aid administrator may adjust the value of the data items used in the need analysis formula. The data items that are adjusted must relate to the student’s special circumstances. The standard need analysis formula is then applied using the revised values of the data items, yielding a new EFC on the Institutional Student Information Record and Student Aid Report. The Department cannot override a financial aid administrator’s decision if it was made on a case-by-case basis based on special circumstances and substantiated by adequate documentation.

During award year 2017–2018, Bais HaMedrash and Mesivta of Baltimore applied professional judgment for 29 (71 percent) of 41 Pell recipients. During award year 2018–2019, Bais HaMedrash and Mesivta of Baltimore applied professional judgment for 36 (77 percent) of 47 Pell recipients.

## **Prior-Prior Year Federal Tax Information and Coronavirus Disease 2019 Pandemic**

In 2015, the Department began allowing applicants for Title IV funds to use prior-prior year Federal tax information beginning with the 2017–2018 FAFSA. Therefore, for the 2017–2018 FAFSA, student and parent Federal tax information would be based on 2015 tax year information. Using prior-prior year information rather than prior year information was intended to increase accuracy and give students and families an earlier and more accurate idea of their anticipated school costs and Title IV awards. Because prior-prior year Federal tax information is older, the Department anticipated that schools might see an increase in requests from students for the schools to apply professional judgment to adjust for more current circumstances.

The Coronavirus Disease 2019 (COVID-19) pandemic has caused economic hardship for many students and their families. For affected students, prior-prior year Federal tax information might not be an accurate depiction of the student’s financial condition for award year 2020–2021 and beyond. In guidance released on July 9, 2020, the Department noted that high nationwide unemployment resulting from the COVID-19 pandemic would increase the number of requests for schools to apply professional judgment. It encouraged financial aid administrators to use professional judgment to more accurately reflect the financial need of students and families affected by the pandemic. The Department also reminded schools of the need to adequately document adjustments made on a case-by-case basis.

In guidance released on January 29, 2021 (Dear Colleague Letter GEN-21-02), the Department again reminded financial aid administrators of their ability to apply professional judgment to more accurately reflect the financial need of students and families based on special circumstances, including for recently unemployed individuals during the ongoing COVID-19 pandemic. The guidance stated that schools may use a letter from a State unemployment agency or other evidence showing that a student or parent was receiving unemployment benefits. The Department again reminded schools that they must obtain and retain records supporting and substantiating the reasons for any adjustments made using professional judgment, and they must make professional judgment determinations only on a case-by-case basis.

## **Bais HaMedrash and Mesivta of Baltimore’s Processes for Documenting and Reporting Its Use of Professional Judgment**

Bais HaMedrash and Mesivta of Baltimore used its “Professional Judgment Checklist” and “Professional Judgment Committee Meeting Minutes” to document the financial aid administrator’s use of professional judgment. These forms described the relevant special circumstances and the documentation that the financial aid administrator

obtained from the students. The “Professional Judgment Checklist” did not list the documentation that the financial aid administrator should collect to support professional judgment decisions, but the school’s policy stated that a student or parent, after initiating an appeal, would be informed of all required documentation.

For award year 2017–2018 and award year 2018–2019, the school applied and reported its use of professional judgment near the end of or after the award year. For award year 2017–2018, Bais HaMedrash and Mesivta of Baltimore reported its use of professional judgment to the Department’s Central Processing System from July 2018 through September 2018.<sup>5</sup> For award year 2018–2019, Bais HaMedrash and Mesivta of Baltimore reported professional judgment from May 2019 through September 2019.<sup>6</sup>

According to the chief of operations for the school, Bais HaMedrash and Mesivta of Baltimore did not take any specific steps to address professional judgment for students affected by the COVID-19 pandemic. Additionally, the school did not modify its policies, procedures, or practices for applying, documenting, and reporting the use of professional judgment because of the COVID-19 pandemic.

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<sup>5</sup> Award year 2017–2018 ended June 30, 2018.

<sup>6</sup> Award year 2018–2019 ended June 30, 2019.

## Finding 1. Bais HaMedrash and Mesivta of Baltimore Did Not Apply Professional Judgment in Accordance with the HEA

Bais HaMedrash and Mesivta of Baltimore did not apply professional judgment in accordance with section 479A of the HEA for 52 (80 percent) of the 65 students for whom it applied professional judgment for award year 2017–2018, award year 2018–2019, or both. Rather than applying professional judgment on a case-by-case basis for special circumstances as required by the HEA, Bais HaMedrash and Mesivta of Baltimore applied professional judgment across three classes of students (those whose families paid private school tuition, had investment properties, or received clergy allowances) and improperly applied professional judgment based on wedding expenses or standard living expenses (medical and dental insurance premiums, monthly support payments to the students’ sibling(s), and student loan payments) unrelated to special circumstances. By applying professional judgment across classes of students and improperly applying professional judgment based on wedding expenses or standard living expenses unrelated to special circumstances, Bais HaMedrash and Mesivta of Baltimore awarded and disbursed \$155,845 more in Pell funds than the 52 students would have otherwise received. [Table 1](#) summarizes the number of instances (86) in which the school improperly applied professional judgment. [Table 2](#) summarizes the number of students (52) for whom the school improperly applied professional judgment and the total amount of improper disbursements of Pell funds that the school made.<sup>7</sup>

**Table 1. Number of Instances of the Improper Application of Professional Judgment**

Category	2017–2018 Number of Instances	2018–2019 Number of Instances	Total Number of Instances
Private School Tuition	18	28	46
Investment Properties	4	4	8

<sup>7</sup> We used each of the 52 students’ expected family contributions before professional judgment and recalculated their Pell awards as if the school had not applied professional judgment. The \$155,845 consists of the recalculated amounts for all four categories—those whose families paid private school tuition, had investment properties, or received clergy allowances and those whose families incurred wedding expenses or standard living expenses unrelated to special circumstances. The amount of the overawards in each category will not equal the \$155,845 in recommended recoveries because the amounts could be included in more than one category, and the students could be included in more than 1 award year. See [Appendix B](#) for details.

Category	2017–2018 Number of Instances	2018–2019 Number of Instances	Total Number of Instances
Clergy Allowances	4	7	11
Wedding or Standard Living Expenses	8	13	21
<b>Total</b>	<b>34</b>	<b>52</b>	<b>86</b>

**Table 2. Number of Students for whom the School Improperly Applied Professional Judgment and the Corresponding Improper Increase in the Amount of the Students’ Pell Disbursements**

Award Year	Number of Students	Total Amount of the Improper Increases in the Students’ Pell Awards
2017–2018	21	\$60,520
2018–2019	31	\$95,325
<b>Total</b>	<b>52</b>	<b>\$155,845</b>

### **Professional Judgment Applied Across Three Classes of Students**

Section 479A(a) of the HEA states that special circumstances are conditions that differentiate an individual student from a class of students rather than conditions that exist across a class of students. It further states that a financial aid administrator may “make adjustments on a case-by-case basis to the cost of attendance or the values of the data items required to calculate the expected student or parent contribution (or both) to allow for treatment of an individual eligible applicant with special circumstances.”

Contrary to the law, rather than applying professional judgment based on the special circumstances of each individual student for award year 2017–2018, award year 2018–2019, or both, Bais HaMedrash and Mesivta of Baltimore applied professional judgment for 50 students across 3 classes of students—those whose families paid private school tuition, had investment properties, or received clergy allowances. The school’s records did not substantiate that financial aid administrators differentiated each individual student from the rest of the students in the same class.



## **Private School Tuition**

Special circumstances may include tuition expenses at an elementary or secondary school but adjustments for them may only be made on a case-by-case basis (section 479A(a) of the HEA). For 46 students for whom it applied professional judgment for award year 2017–2018, award year 2018–2019, or both, Bais HaMedrash and Mesivta of Baltimore adjusted data items affecting parental gross income based on private school tuition expenses for the students' sibling(s).

The school provided us with copies of each student's sibling's "Tuition Verification Form" showing the tuition that the family was assessed during each award year. In "Professional Judgment Committee Meeting Minutes" for 35 of the 46 students, Bais HaMedrash and Mesivta of Baltimore's justification for using professional judgment was: "private school tuition was received and accepted towards lowering the [adjusted gross income]." In "Professional Judgment Committee Meeting Minutes" for 9 of the 46 students, the justification for using professional judgment was: "[t]he family had requested additional financial considerations based upon private school tuitions paid for siblings." In "Professional Judgment Committee Meeting Minutes" for 2 of the 46 students, the school's justification for using professional judgment was: "private school tuitions ... were accepted towards lowering the [adjusted gross income]." Contrary to the law, Bais HaMedrash and Mesivta of Baltimore did not provide records substantiating, on a case-by-case basis, the reason that private school tuition was a special circumstance that justified adjusting the data items used to calculate each student's expected family contribution.

By applying professional judgment across a class of students (those whose families paid private school tuition) rather than making case-by-case determinations for each student, Bais HaMedrash and Mesivta of Baltimore awarded and disbursed \$84,805 more in Pell funds than these 46 students would have otherwise received.

## **Investment Properties**

According to section 480(f) of the HEA:

The term "assets" means cash on hand, including the amount in checking and savings accounts, time deposits, money market funds, trusts, stocks, bonds, other securities, mutual funds, tax shelters, qualified education benefits ... and the net value of real estate, income producing property, and business and farm assets.

The Application and Verification Guide identifies the net value of real estate (excluding the student's or parent's home) as an asset. According to Federal Student Aid's explanation for question 89 on the FAFSA (see [studentaid.gov](https://studentaid.gov)), net worth of

investments is the current value of investments after deducting the debt related to those same investments. The 2017–2018 FAFSA (notes on question 91) states that

[i]nvestments include real estate (do not include the home in which your parents live), rental property (includes a unit within a family home that has its own entrance, kitchen, and bath rented to someone other than a family member), trust funds, UGMA and UTMA accounts, money market funds, mutual funds, certificates of deposit, stocks, stock options, bonds, other securities, installment and land sale contracts (including mortgages held), commodities, etc.

According to the Application and Verification Guide, rental properties are an asset. The EFC for a dependent student is calculated using FAFSA data for both the student and the student's parents:

The [Department's Central Processing System] calculates the parents' contribution (which includes their assets), the student's contribution from income, and the student's contribution from assets; the [expected family contribution] is the sum of these three.... [In calculating the expected family contribution's parents' contribution from assets], the full formula uses the assets of parents of a dependent student and determines a "contribution from assets." This amount is combined with available income to give an accurate picture of the family's financial strength.... First, the parents' net worth is calculated by adding assets reported on the FAFSA. The net worth of a business or a farm is adjusted to protect a portion of these assets.... Second, the parents' discretionary net worth is calculated by subtracting the education savings and asset protection allowance (Table A5) from the parents' net worth. As with income, this is done to protect a portion of assets.... Finally, the discretionary net worth is multiplied by the conversion rate of 12 [percent] to get the parents' contribution from assets, which represents the portion of parental assets considered available to help pay for the student's college education. If the contribution from assets is negative, it is set to zero.

For eight students for whom it applied professional judgment for award year 2017–2018, award year 2018–2019, or both, Bais HaMedrash and Mesivta of Baltimore adjusted the net worth of investments because of family-owned investment properties. The justification of the decision in "Professional Judgment Committee Meeting Minutes" for all eight students was that investment properties were rented out and used as a source of income. The meeting minutes stated that because the families relied on the

income generated by the investment properties for support, they were not available to pay tuition. The school did not provide us with records substantiating how the value of the investment properties qualified as special circumstances that, on a case-by-case basis, justified adjusting the net worth of the assets reported on each student's FAFSA.

By applying professional judgment across a class of students (those whose families had investment properties) rather than making a case-by-case determination for each student, Bais HaMedrash and Mesivta of Baltimore awarded and disbursed \$33,100 more in Pell funds than the eight students would have otherwise received.

### **Clergy Allowances**

Non-taxable clergy allowances that are otherwise excluded from adjusted gross income must be reported on the FAFSA. For 11 students for whom it applied professional judgment for award year 2017–2018, award year 2018–2019, or both, Bais HaMedrash and Mesivta of Baltimore reduced parents' untaxed clergy allowances. The school recorded the same decision in "Professional Judgment Committee Meeting Minutes" for all 11 students:

Following [Internal Revenue Service] tax codes, parsonage income is restricted to housing expenses only. Therefore, these funds are not available to use towards college tuition. Furthermore, since the [expected family contribution] formula only allots 22 [percent] of the [income protection allowance] for housing expenses, this should be the limit of the parsonage income considered towards the [expected family contribution]. Accordingly, the determination is to decrease the amount of the untaxed parsonage income to 22 [percent] of the [income protection allowance].

Although a clergy allowance is untaxed and not included in a family's adjusted gross income for Federal income tax reporting purposes, clergy allowance is an item under the parents' untaxed income on a student's FAFSA. Therefore, the clergy allowances for the 11 students were included on their Institutional Student Information Records and accounted for when their EFCs were calculated. "Professional Judgment Committee Meeting Minutes" for each student acknowledged that an income protection allowance was already included in the EFC calculation, including 22 percent for assumed housing expenses.

According to the Application and Verification Guide, a financial aid administrator should keep in mind that an income protection allowance is included in the EFC calculation to account for modest living expenses. Before adjusting for an unusual expense, the financial aid administrator should consider whether the expense is already covered by

the income protection allowance. For example, the income protection allowance assumes 30 percent of the income protection allowance is for food, 22 percent for housing, 9 percent for transportation, 16 percent for clothing and personal care, 11 percent for medical care, and 12 percent for other family consumption. Bais HaMedrash and Mesivta of Baltimore, however, applied professional judgment to reduce the parents' untaxed income by an amount that exceeded 22 percent of the income protection allowance. Its records did not substantiate, on a case-by-case basis, that financial aid administrators determined that the clergy allowances were a special circumstance that justified adjusting the data item used to calculate each student's EFC.

By applying professional judgment across a class of students (those whose families had clergy allowances) without making a case-by-case determination for each student, Bais HaMedrash and Mesivta of Baltimore awarded and disbursed \$22,300 more in Pell funds than the 11 students would have otherwise received.

### **Professional Judgment Applied Based on Wedding Expenses or Standard Living Expenses Unrelated to Special Circumstances**

The Application and Verification Guide states that professional judgment may not be used to circumvent the intent of the law. It also states that financial aid administrators should not base adjustments on, among other costs, standard living expenses (such as utilities, credit card expenses, and children's allowances) unrelated to special circumstances. Absent a determination of special circumstances, the use of these types of standard living expenses as the basis for making an adjustment under professional judgment is contrary to the intent of the law.

For 17 students for whom it applied professional judgment for award year 2017–2018, award year 2018–2019, or both, Bais HaMedrash and Mesivta of Baltimore based its determinations on wedding expenses or standard living expenses (medical and dental insurance premiums, monthly support payments to the students' sibling(s), and student loan payments)<sup>8</sup> unrelated to special circumstances. The school then adjusted data items affecting gross income based on those wedding expenses or standard living expenses unrelated to special circumstances.

### **Adjustment for Wedding Expenses**

According to materials presented during the "2020 Virtual FSA Training Conference for Financial Aid Professionals," wedding expenses are not a typical special circumstance. Contrary to that guidance, Bais HaMedrash and Mesivta of Baltimore reduced one

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<sup>8</sup> Students could be included in more than one category and more than 1 award year.

student's parental adjusted gross income for wedding expenses. To substantiate its use of professional judgment based on the wedding expenses, Bais HaMedrash and Mesivta of Baltimore provided us with copies of checks paying for gown rental, gown alterations, invitations, and catering and a receipt of payment for a wedding hall rental. It did not provide us with records substantiating that it completed an assessment of how these wedding expenses were a special circumstance and, therefore, justified adjusting the data items used to calculate the EFC.

### **Adjustments for Standard Living Expenses Unrelated to Special Circumstances**

For 17 students, Bais HaMedrash and Mesivta of Baltimore reduced parental adjusted gross income for standard living expenses—medical and dental insurance premiums, monthly support payments to students' sibling(s), and student loan payments—unrelated to special circumstances. The school's records did not substantiate why the financial aid administrators determined that these types of standard living expenses were special circumstances that justified adjusting the data items used to calculate each student's EFC.

#### ***Medical and Dental Insurance Premiums***

Section 479A(a) of the HEA states that special circumstances may include medical, dental, or nursing home expenses not covered by insurance; it does not state that the cost of insurance itself is a potential special circumstance. For three students, Bais HaMedrash and Mesivta of Baltimore provided us with letters from an insurance provider that showed monthly medical or dental insurance premium balances, but it did not provide records substantiating that the medical and dental insurance premiums were special circumstances. In "Professional Judgment Committee Meeting Minutes," the school wrote that "[d]ocumentation of ... greater than 11 [percent] of the [income protection allowance] was received and accepted towards lowering the [adjusted gross income]." or that "Medical expenses totaling ... were documented. Following ED guidance, only ... the amount over 11 [percent] [income protection allowance] threshold, were accepted towards lowering the [adjusted gross income]."

Bais HaMedrash and Mesivta of Baltimore did not provide any other records, such as records showing that the premiums were extraordinarily high, explaining how each family's medical and dental insurance premium expenses were a special circumstance.

### ***Monthly Support Payments to Students' Sibling(s)***

The Application and Verification Guide states that

[o]ccasionally, aid administrators have made decisions contrary to the professional judgment provision's intent. These "unreasonable" judgments have included, for example, the reduction of EFCs based on recurring costs such as vacation expenses, tithing expenses, and standard living expenses (related to utilities, credit card expenses, children's allowances, and the like). Aid administrators must make "reasonable" decisions that support the intent of the provision.

For 13 students, Bais HaMedrash and Mesivta of Baltimore reduced parental adjusted gross income for monthly support payments to the students' independent adult married sibling(s). The school provided us with letters signed by the students' sibling(s) and bank statements. It did not provide us with records substantiating that each family's adult independent married child's monthly allowances met the conditions of a special circumstance.

### ***Student Loan Payments***

According to the Application and Verification Guide, professional judgment cannot be based on standard living expenses unrelated to special circumstances. For four students, Bais HaMedrash and Mesivta of Baltimore reduced parental adjusted gross income for payments on the parents' student loans. The school provided us with copies of statements from loan servicers showing the amount due or screenshots with monthly payment histories. However, the school did not provide any records that substantiated how the parents' student loan payments were related to special circumstances.

By applying professional judgment based on wedding expenses and standard living expenses unrelated to special circumstances, Bais HaMedrash and Mesivta of Baltimore awarded and disbursed \$27,640 more in Pell funds than the 17 students would have otherwise received.

## **Recommendations**

We recommend that the Chief Operating Officer for Federal Student Aid—

- 1.1 Require Bais HaMedrash and Mesivta of Baltimore to return \$155,845 in Pell overawards to the Department.<sup>9</sup>

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<sup>9</sup> Assistance listing number 84.063.

- 1.2 Take appropriate action pursuant to subpart G of Title 34 Code of Federal Regulations (C.F.R.) Part 668 for the extensive instances of noncompliance described in this finding.<sup>10</sup>

### **Bais HaMedrash and Mesivta of Baltimore's Comments**

Bais HaMedrash and Mesivta of Baltimore disagreed with Finding 1, stating that it evaluated each student's case on its individual merits. The school further stated that the finding is founded on its student body being comprised of a very small minority population who often have overlapping circumstances with other members of the small minority population. Bais HaMedrash and Mesivta of Baltimore stated that it would be inappropriate and discriminatory for it to base its judgment of the merits of a circumstance just because it applies more frequently to a specific group when compared to national populations. Such judgment would be prejudiced against these students.

Bais HaMedrash and Mesivta of Baltimore added that Finding 1 is in contrast with the intent of the law. According to the school, special circumstances should be determined based on the overall collegiate population for which the EFC formula was designed, and the uniqueness of a circumstance should be viewed in the appropriate context of the circumstance. Accordingly, the school said a circumstance should be considered unusual when compared to the overall collegiate body in the United States; circumstances occurring in an individual school are irrelevant to the question of their unusual nature. Bais HaMedrash and Mesivta of Baltimore concluded that it followed the Department's understanding of special circumstances by evaluating each individual case against the overall population for whom the FAFSA was designed. The school continued by commenting on each of the classes of students (those with private school tuition, clergy allowances, and investment properties) described in the finding and stated that each situation was under the sole purview of its legal authority to use its judgment in evaluating each claim.

#### **Private School Tuition**

Bais HaMedrash and Mesivta of Baltimore stated that this part of the finding is egregious given that the HEA lists private school tuition as a possible special circumstance. It further stated that it does not believe that Congress or the Department

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<sup>10</sup> Subpart G describes the actions that the Department may take against schools that violate any statutory provision of or applicable to Title IV of the HEA. These actions include imposing fines or limiting, suspending, or terminating a school's participation in the Title IV of the HEA programs.

needs the school to explain its position. Certain circumstances are self-evident, and the school's standard has been to write briefly on easily understood cases, such as private school tuition.

### **Investment Properties**

Bais HaMedrash and Mesivta of Baltimore stated that "Professional Judgment Committee Meeting Minutes" explained its reasoning behind the determination that investment properties were special circumstances. According to the school, owning one investment property as an income source is not a common situation and is therefore different from most investments. In situations where a family had only one investment property, the school concluded that the investment property was an unusual investment situation.

### **Clergy Allowance**

Bais HaMedrash and Mesivta of Baltimore quoted the 2019–20 Financial Aid Handbook, Chapter 5, page AVG-113: "Also, using PJ does not require you to verify a student's application if he was not already selected for verification by the Department or your school." According to Bais HaMedrash and Mesivta of Baltimore, none of the data elements on the FAFSA, including clergy allowance, are required to be verified before a financial aid administrator applies professional judgment. Bais HaMedrash and Mesivta of Baltimore also stated that the appropriate use of clergy allowances for housing expenses are approved and paid by the respective employer. It would be illegal for an employer to authorize clergy allowances to be distributed for anything other than housing expenses. Investigating the validity of an employer's due diligence is the responsibility of the Internal Revenue Service, not the student's school.

Bais HaMedrash and Mesivta of Baltimore continued by commenting on the part of the finding addressing the income protection allowance. According to the school, "Professional Judgment Committee Meeting Minutes" described housing expenses above the 22 percent income protection allowance threshold as unusual because clergy allowance funds must be used only for housing expenses. Therefore, once the income protection allowance threshold is met, the usual housing expense threshold has been met, and the amounts exceeding the threshold may be considered unusual and reasonable to be excluded from the EFC.

### **Adjustments for Wedding Expenses and Recurring Costs (Standard Living Expenses Unrelated to Special Circumstances)**

Bais HaMedrash and Mesivta of Baltimore agreed that the wedding expenses were incorrectly used as the basis of its professional judgment decision. It asked that the final report indicate how detailed its "Professional Judgment Committee Meeting Minutes"



were and how the minutes explained the school's rationale. The school also agreed that the students' parents' student loan payments were incorrectly used as the basis of its professional judgment decisions. However, it stated that Department guidance does not preclude the use of any recurring cost (2019–20 Financial Aid Handbook, Chapter 5, page AVG-112).

According to Bais HaMedrash and Mesivta of Baltimore, the Department's guidance is concerned about ensuring reasonable uses of expenses that fall outside of usual circumstances. Recurring expenses are often, but not exclusively, typical. For example, the HEA specifically mentions private school tuition as a potential special circumstance even though tuition payments are a recurring expense.

Bais HaMedrash and Mesivta of Baltimore noted that insurance premiums are not one of the examples given in the handbook as a recurring cost and stated that, while recurring insurance premiums are a standard living expense, high insurance premium costs can transform a case into an unusual circumstance. When a family documented that its insurance premium expenses exceeded the income protection threshold, the excess was atypical. The school only considered the amount of insurance premiums in excess of the income protection threshold as part of its decision.

Bais HaMedrash and Mesivta of Baltimore further stated that financial support of a child after marriage is not a standard living expense. According to FAFSA question 72, if parents provide a child not living in their home with recurring costs of over 50 percent of their support, that child can be included as part of the family size. When the percentage of support falls below half, while that person can no longer be counted in the family size, the situation does not cease from being a legitimate expense. Because financial support of married children is unusual, Bais HaMedrash and Mesivta of Baltimore concluded that it fell within its rightful purview to consider.

Bais HaMedrash and Mesivta of Baltimore continued by stating that the Department asserts that once an income protection allowance threshold is met, any additional expenses in that category may be considered a special circumstance. The example provided on page AVG-113 of the 2019–20 Financial Aid Handbook states that

[i]n 2017 Alan had \$3,550 in medical expenses that were out-of-pocket costs. He is married, has two children, and is the only member of his household in college, so his [income protection allowance] is \$40,360. Because his expenses were less than the amount for medical expenses already provided for in the [income protection allowance] (11 [percent] of \$40,360 is \$4,440), the aid administrator at Sarven Technical Institute does not adjust Alan's FAFSA information.

According to Bais HaMedrash and Mesivta of Baltimore, the Department is precluding the medical expenses in the example because they fall below the income protection allowance threshold. Therefore, the guidance is implicitly accepting as reasonable the use of medical expenses in excess of the income protection allowance threshold in professional judgment decisions.

### **Finding 1 Recommendations**

Bais HaMedrash and Mesivta of Baltimore disagreed with the recommendations, stating that it consistently applied its best understanding of the intent of the law throughout the professional judgment process, and it acted in good faith. Therefore, recommendations for punitive action, including imposing fines or limiting, suspending, or terminating its participation in the Title IV programs, would be inconsistent with a school operating in good faith. Even for a case where it might agree with the Office of Inspector General's (OIG) conclusion, Bais HaMedrash and Mesivta of Baltimore asked that any recourse be corrective rather than punitive.

### **OIG Response**

We did not revise the part of Finding 1 questioning Bais HaMedrash and Mesivta of Baltimore's use of professional judgment across three classes of students and based on wedding expenses. However, we clarified Finding 1 after considering Bais HaMedrash and Mesivta of Baltimore's comments on our questioning its use of professional judgment based on recurring costs (medical and dental insurance premiums, monthly support payments to the students' sibling(s), and student loan payments).

Regarding Bais HaMedrash and Mesivta of Baltimore's comment that our recommendations are punitive, Department regulations and the school's program participation agreement require the school to substantially comply with Federal requirements. We are making Recommendation 1.2 because of the extent of the school's noncompliance with section 479A of the HEA. Contrary to the law and Department guidance, Bais HaMedrash and Mesivta of Baltimore applied professional judgment across a class of students and based on wedding expenses or standard living expenses unrelated to special circumstances for 80 percent (52 of the 65) of the students for whom it applied professional judgment for award year 2017–2018, award year 2018–2019, or both.<sup>11</sup> When we encounter such extensive instances of noncompliance with Federal law and regulations, we recommend that the Chief

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<sup>11</sup> The school applied professional judgment for 65 (74 percent) of the 88 students who received Pell funds for award year 2017–2018, award year 2018–2019, or both.

Operating Officer for Federal Student Aid take appropriate action under subpart G of 34 C.F.R. Part 668. Federal Student Aid makes the final decision on whether to take such actions based on our recommendation.

### **Applying Professional Judgment Across Classes of Students**

As used in this report, “class” does not refer to demographic characteristics, such as students with disabilities or students from underserved populations. Rather, we use “class” to refer to any group of students with special circumstances with similar characteristics. The HEA states that professional judgment may not be applied across a class (or group) of students. Bais HaMedrash and Mesivta of Baltimore did the opposite; it applied professional judgment across three classes of students—those whose families paid private school tuition, those whose families had investment properties, and those whose families received clergy allowances.

We agree that there might be situations where multiple students have special circumstances with similar characteristics. However, the law still requires a school to have records demonstrating how each student’s special circumstance differentiated the student from the class (or group) of students with similar characteristics.

Section 479A(a) of the HEA states that a financial aid administrator may make adjustments on a case-by-case basis to the cost of attendance or the values of the data items required to calculate the EFC to allow for treatment of an individual with special circumstances. The Application and Verification Guide adds that the reason for any adjustment must relate to the special circumstances that differentiates the student, not to conditions that exist for a whole class (or group) of students. While Dear Colleague Letter GEN-16-03 states that financial aid administrators might identify a category of students with similar circumstances to consider for possible professional judgment adjustments, they still must assess and document how each individual student's situation was affected and ensure that they do not assume that every student in that category was affected in the same way. Financial aid administrators may not automatically provide identical treatment to all students in that category.

Bais HaMedrash and Mesivta of Baltimore’s records did not demonstrate how each individual student's situation was affected or how their circumstances differentiated that student from other students with similar circumstances. Instead, the school provided identical treatment to all students in that category and wrote the same or similar justifications in “Professional Judgment Committee Meeting Minutes” for every student who had similar circumstances—those whose families paid private school tuition, those whose families had investment properties, and those whose families received clergy allowances.

### ***Private School Tuition***

We disagree that Bais HaMedrash and Mesivta of Baltimore's professional judgment decisions for 46 students were self-evident based on the records we were provided. Although the school provided a "Tuition Verification Form" showing the amount of private school tuition assessed for each student's sibling(s), it did not provide records substantiating, on a case-by-case basis, why private school tuition was a special circumstance for each student and, therefore, a reasonable basis for a professional judgment adjustment.

In "Professional Judgment Committee Meeting Minutes" for 35 of the 46 students, Bais HaMedrash and Mesivta of Baltimore's justification for using professional judgment was: "private school tuition was received and accepted towards lowering the [adjusted gross income]." In "Professional Judgment Committee Meeting Minutes" for 9 of the 46 students, the justification for using professional judgment was: "[t]he family had requested additional financial considerations based upon private school tuitions paid for siblings." In "Professional Judgment Committee Meeting Minutes" for 2 of the 46 students, the school's justification for using professional judgment was: "private school tuitions ... were accepted towards lowering the [adjusted gross income]." Such justifications do not describe each student's specific circumstance(s) or explain what made private school tuition a special circumstance differentiating the student from those with similar circumstances. Instead, the justifications demonstrate that the school based its professional judgment decisions solely on the fact that the students' families incurred private school tuition expenses.

### ***Investment Properties***

The Application and Verification Guide explains that the net value of real estate, excluding the student's or parent's primary residence, is an asset that should be included in the calculation of a student's EFC. The EFC calculation uses the assets of parents of a dependent student and determines a "contribution from assets." This amount is combined with available income to give an accurate picture of the family's financial strength. Bais HaMedrash and Mesivta of Baltimore did not provide us with records that clearly explained eight student's special circumstances and how those special circumstances differentiated the individual student from the class of students with similar circumstances. By reducing the net value of assets used to calculate the students' EFCs, Bais HaMedrash and Mesivta of Baltimore effectively awarded more need-based aid (Pell) to families who owned investment properties than it awarded to families who did not own investment properties or similar assets.

### ***Clergy Allowance***

“Professional Judgment Committee Meeting Minutes” provided for all 11 students said the same thing:

Following [Internal Revenue Service] tax codes, parsonage income is restricted to housing expenses only. Therefore, these funds are not available to use towards college tuition. Furthermore, since the [expected family contribution] formula only allots 22 [percent] of the [income protection allowance] for housing expenses, this should be the limit of the parsonage income considered towards the [expected family contribution]. Accordingly, the determination is to decrease the amount of the untaxed parsonage income to 22 [percent] of the [income protection allowance].

Bais HaMedrash and Mesivta of Baltimore’s records did not include sufficient information for us to understand its professional judgment decisions. The records did not explain the specific need of each individual student and family, why each family’s housing expenses were unusual, or why the clergy allowance should be excluded from the untaxed income amount reported on the FAFSA.

### **Adjustments for Wedding Expenses and Standard Living Expenses Unrelated to Special Circumstances (Recurring Costs)**

As Bais HaMedrash and Mesivta of Baltimore asked, we clarified the finding by explaining that the school’s justification in the case of wedding expenses was detailed. We also clarified Finding 1 to explain that we are not questioning certain expenses as a basis for professional judgment because they are recurring costs; rather, we are questioning them because they are standard living expenses unrelated to special circumstances.

While we agree that the law allows recurring standard living expenses to be considered special circumstances, they may only be considered special circumstances if they are unusual. As Bais HaMedrash and Mesivta of Baltimore noted, section 479A(a) of the HEA allows elementary and secondary school tuition costs and medical and dental expenses to be considered a special circumstance. However, the HEA does not state that financial aid administrators may automatically consider such standard living expenses a special circumstance. Records of each professional judgment decision must substantiate why the expenses were unusual. To clarify that point, we revised the finding to better explain that we did not question the use of professional judgment because the elementary and secondary school tuition and medical and dental expenses were recurring. Rather, we are questioning the use of professional judgment because the school’s records did not substantiate why these standard living expenses were unusual circumstances that

justified adjustments to the cost of attendance or the values of the data items used to calculate each student's EFC.

Section 479A(a) of the HEA does state that special circumstances may include medical, dental, and nursing home expenses not covered by insurance; however, it does not state that the cost of insurance premiums itself is a special circumstance. Medical and dental insurance premiums are standard living expenses and not automatically a special circumstance. Bais HaMedrash and Mesivta of Baltimore did not provide any records that explained what made each individual student's family's medical and dental insurance premiums that exceeded the 11 percent income protection allowance a special circumstance.

Bais HaMedrash and Mesivta of Baltimore also did not provide any records documenting why monthly allowances paid to a family's independent adult married child met the conditions of a special circumstance or how such allowances are relevant to FAFSA question 72. FAFSA question 72 pertains to children living in the student's household who receive more than half of their economic support from the student's parents. The question is not relevant to parents financially supporting an independent adult married child not living in their household by giving them a monthly allowance.

The authority granted by section 479A of the HEA should not be construed as permitting financial aid administrators to deviate from the contributions expected in the absence of special circumstances. The Department's guidance does not state that if an income protection allowance threshold is met, then any additional expenses in that category may automatically be considered a special circumstance. Rather, the Application and Verification Guide states that a financial aid administrator should keep in mind that an income protection allowance is included in the EFC calculation to account for modest living expenses. Before adjusting data items because they consider the expenses unusual, financial aid administrators should consider whether the expenses are already covered by the income protection allowance. While expenses that are more than the income protection allowance may be considered a special circumstance in unusual situations, Bais HaMedrash and Mesivta of Baltimore did not provide us with records explaining why it considered the expenses exceeding the income protection allowance unusual. Instead, the records indicated that the school adjusted gross income just because the expenses exceeded the income protection allowance.

## Finding 2. Bais HaMedrash and Mesivta of Baltimore Did Not Adequately Document Its Use of Professional Judgment

Bais HaMedrash and Mesivta of Baltimore did not adequately document special circumstances for 37 (57 percent) of the 65 students (41 instances) for whom it applied professional judgment for award year 2017–2018, award year 2018–2019, or both. According to section 479A(a) of the HEA, financial aid administrators may adjust the cost of attendance or the data items used to calculate the EFC to reflect an individual student’s special circumstances based on adequate documentation. It further states that adequate documentation for such adjustments shall substantiate such special circumstances of the individual students. According to the Application and Verification Guide, the reason for a professional judgment adjustment must be documented, by a third party if possible, and must relate to the special circumstances.

Bais HaMedrash and Mesivta of Baltimore did not provide us with adequate documentation to substantiate that the following were special circumstances:<sup>12</sup>

- summer camp costs (5 students),
- clergy allowances that exceeded 22 percent of the income protection allowance (11 students),
- tuition debt (6 students),
- personal loans (1 student),
- reinvested business income (2 students),
- costs for sibling(s) to study abroad (7 students),
- home equity line of credit (6 students),
- day care costs (1 student),<sup>13</sup> and
- hurricane damage costs (1 student).

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<sup>12</sup> Students could be included in more than one group and in more than 1 award year.

<sup>13</sup> The school also did not provide us with adequate documentation substantiating that day care costs were unusually high and why the financial aid administrator considered them special circumstances.

For each of these students, the school adjusted data items affecting gross income that resulted in a decrease in their EFCs. The decreases in the students' EFCs resulted in Bais HaMedrash and Mesivta of Baltimore awarding and disbursing \$80,390 more in Pell funds than the 37 students would have otherwise received. [Table 3](#) shows the total number of students for whom the school did not adequately document the special circumstances on which it based its use of professional judgment and the total amount of potential improper Pell disbursements made by the school.

**Table 3. Number of Students for whom the School Inadequately Documented Its Use of Professional Judgment and the Corresponding Amount of Potential Improper Pell Disbursements**

	Number of Students	Total Amount of Potential Improper Pell Disbursements
Award Year 2017–2018	16	\$32,760
Award Year 2018–2019	21	\$47,630
<b>Total</b>	<b>37</b>	<b>\$80,390</b>

## Recommendations

We recommend that the Chief Operating Officer for Federal Student Aid—

- 2.1 Require Bais HaMedrash and Mesivta of Baltimore to provide documentation adequate to substantiate special circumstances and show that it applied professional judgment in accordance with section 479A of the HEA for the 37 students or return \$80,390 in improper Pell payments to the Department.<sup>14</sup>

## Bais HaMedrash and Mesivta of Baltimore's Comments

Bais HaMedrash and Mesivta of Baltimore disagreed with the finding, stating that its premise is based not on the lack of documentation but rather the lack of documentation to the OIG's standards. The school quoted page 6 of "Federal Student Aid—Professional Judgment Participant's Guide":

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<sup>14</sup> Of the \$80,390, \$25,820 is included in [Recommendation 1.1](#). The total unduplicated amount for Recommendation 2.1 is \$54,570.



The Higher Education Act and corresponding regulations use the phrase, “on the basis of adequate documentation.” While the Department of Education does not define adequate documentation, the documentation should be such that an auditor or program reviewer must be able to gain understanding from the documentation. Documentation should also be such that the institution has satisfied itself in the belief that proper action has been taken.

Bais HaMedrash and Mesivta of Baltimore stated that it provided the OIG with detailed professional judgment meeting minutes, mathematical calculations, and actual expense documentation for each case. In the absence of clear guidance, unless the documentation collected skirts the intent of the law, deference is given to the school to make its own determinations of what necessary documentation is. Although OIG might think additional or different documentation would have been helpful, there is not a legal standard to this point. Therefore, Bais HaMedrash and Mesivta of Baltimore has satisfied itself that the documentation collected and the overall actions based on that documentation are proper.

### **Billed Versus Paid Expenses**

Bais HaMedrash and Mesivta of Baltimore stated that most of the cases mentioned in the draft report take issue with the school obtaining documentation of invoiced expenses rather than documentation of paid expenses; the Department’s guidance does not require documentation to be of paid expenses. According to the school, its practice of accepting invoiced expenses as adequate documentation adheres to the overall intent of the FAFSA, which is to evaluate the overall financial picture of a family and determine their ability to pay for college. Both an expense owed and an expense paid represent a lack of available funds to pay for college. It would be incorrect to conclude that a family who has already paid their bills has less of an ability to afford college than a family who has not yet paid their bills. The dates on which the financial obligations are paid is irrelevant.

### **Summer Camps**

Bais HaMedrash and Mesivta of Baltimore stated that when it knew a summer camp was educational and documentation of the expense was provided, the school accepted the validity of the circumstance without requiring a curriculum of the program. When information is publicly available and an expense has been documented, the need for more documentation is unnecessary. For example, it would neither be relevant nor appropriate to investigate the credentials of a doctor or the validity of a diagnosis and treatment for a person who provided documentation of medical expenses. If the

documentation of the medical expenses is realistic and raises no concerns, there is no need to investigate the expenses any further.

### **Parents' Prior Year Federal Tax Information**

Bais HaMedrash and Mesivta of Baltimore stated that in the cases described in the draft report, the family provided a more recent tax return to display a decrease in income compared to the base FAFSA year. The FSA Handbook states: "However, you do not have to verify information that you will entirely remove due to [professional judgment]." In the prior year versus prior-prior year tax information cases, the relevant data elements were removed from the FAFSA and replaced with the more current income figures. From the school's perspective, there would be no need to investigate prior year tax information because the more recent tax return provides a more accurate picture of the students' financial situations.

### **Value of Investment Properties**

Bais HaMedrash and Mesivta of Baltimore quoted page AVG-113 of the Application and Verification Guide: "However, you do not have to verify information that you will entirely remove due to [professional judgment]." According to the school, investments are an item exempted from verification requirements when the use of professional judgment removes them entirely, just like the prior year income example. There is no need for the school to defend its logic.

### **Clergy Allowances**

Bais HaMedrash and Mesivta of Baltimore noted that this topic, including a discussion of documentation, was covered in its comments on Finding 1 (see [Bais HaMedrash and Mesivta of Baltimore's Comments](#), Finding 1, Specific Examples, Clergy Allowances).

### **Finding 2 Recommendations**

Bais HaMedrash and Mesivta of Baltimore disagreed with the recommendations, again stating that it acted in good faith and applied its best understanding of the intent of the law. The school added that given the unique nature of professional judgment, little clear guidance, and the law giving a school the authority to use its judgment, the appropriate recourse should be corrective rather than punitive.

### **OIG Response**

Contrary to the school's comments, we applied the requirements of section 479A(a) of the HEA and Department guidance as criteria, not our own standards. While we agree that neither the legislation nor Department guidance include a definition of adequate documentation, section 479A(a) of the HEA states that adequate documentation for

adjustments shall substantiate special circumstances of individual students. The Application and Verification Guide adds that the reason for any adjustment should be adequately documented by a third party if possible. Neither during the audit nor with its comments on the draft report did Bais HaMedrash and Mesivta of Baltimore provide documentation that allowed us to understand each student's individual special circumstances and the reasons for the financial aid administrators' professional judgment decisions.

### **Billed Versus Paid Expenses and Parent's Prior Year Federal Tax Information**

As the school noted, certain instances of inadequate documentation that we included in the draft report were about expenses for which the family had been billed, not expenses that the family had paid. Because Bais HaMedrash and Mesivta of Baltimore waits until the end of the award year or later to make its professional judgment decisions, we expected the school to ask for and retain documentation substantiating that the families had paid the expenses during the award year for which the school applied professional judgment. However, because we do not have any evidence showing that billed expenses were any different than the paid expenses, we have removed all 11 instances included in our draft report.

Similarly, we agree with the school's comment that more recent Federal tax information provided a more accurate picture of each student's financial situation and removed all 17 instances that we included in our draft report from this final report.

### **Summer Camp Costs and Other Inadequately Documented Costs**

While we removed the instances of billed versus paid expenses and parents' prior year Federal tax information, Bais HaMedrash and Mesivta of Baltimore did not provide records that allowed us to understand each student's individual special circumstances and the reasons for the financial aid administrators' professional judgment decisions based on summer camp costs, clergy allowances in excess of the income protection allowance, personal loans, tuition debt, reinvested business income, costs for students' siblings to study abroad, home equity lines of credit, day care costs, and hurricane damage costs.

Regarding summer camp costs, "Professional Judgment Committee Meeting Minutes" stated that "[the school] distinguished between a summer camp whose purpose is enjoyment and a summer camp whose purpose is the furthering of a student's [education]." Given that justification, it is reasonable to have expected the school to have records showing what distinguished summer camps that further the student's education from summer camps that are for the student's enjoyment. Although Bais

HaMedrash and Mesivta of Baltimore stated that it considered information about the summer camps that is both publicly available and known to the school, it did not retain or provide us with this information. The school also did not provide any records that indicated how the cost of the summer camps justified deviating from the families' financial contributions expected in the absence of special circumstances. Therefore, we considered the school's documentation insufficient for an auditor or program reviewer to understand the financial aid administrator's professional judgment decisions.

### **Recommendations**

We revised recommendation 2.1 to be more specific. We removed the draft report recommendation for the Chief Operating Officer to take appropriate action pursuant to subpart G of 34 C.F.R. Part 668 for the instances of noncompliance described in Finding 2.

### **Finding 3. Bais HaMedrash and Mesivta of Baltimore Reported Its Use of Professional Judgment in Accordance with the Application and Verification Guide**

According to the Application and Verification Guide, a school must electronically report its use of professional judgment to the Department’s Central Processing System. When this step is done correctly, the next Institutional Student Information Record will indicate the school’s use of professional judgment. We compared the names of all 65 students shown in the school’s system as having professional judgment applied for award year 2017–2018, award year 2018–2019, or both, to the students listed in the Department’s Central Processing System. We concluded that Bais HaMedrash and Mesivta of Baltimore complied with the requirement to report its use of professional judgment to the Department’s Central Processing System if the students in both the school’s and the Department’s systems matched or if we were able to reconcile any differences.

We concluded that Bais HaMedrash and Mesivta of Baltimore reported its use of professional judgment in accordance with the Application and Verification Guide for 97 percent (63 of 65) of the students for whom it applied professional judgment for award year 2017–2018, award year 2018–2019, or both. While its records showed that the school applied professional judgment for 3 percent (2 of 65) of the students, the Department’s Central Processing System did not indicate that the school applied professional judgment for them.

#### **Bais HaMedrash and Mesivta of Baltimore’s Comments and Our Response**

Bais HaMedrash and Mesivta of Baltimore neither agreed nor disagreed with our finding or the recommendation to report its use of professional judgment for the two students to the Department’s Common Origination and Disbursement system. However, the school stated that it initiated a request on the Department’s Common Origination and Disbursement system’s website to reopen the 2018–2019 school year to correctly mark the two relevant cases as professional judgments.

On August 3, 2021, Bais HaMedrash and Mesivta of Baltimore provided us email communications from the Common Origination and Disbursement system and Central Processing System stating that the award year is closed, and no changes may be made. On August 27, 2021, we confirmed with Federal Student Aid officials that an award year may not be reopened once closed. Therefore, we are not making any recommendations for corrective actions relevant to this finding.

## Appendix A. Scope and Methodology

We evaluated Bais HaMedrash and Mesivta of Baltimore’s compliance with requirements governing the application, documentation, and reporting the use of professional judgment for award year 2017–2018 and award year 2018–2019. We did not consider internal control to be significant within the context of the audit objectives. Therefore, we did not assess the design of internal control relevant to the school’s applying, documenting, and reporting the use of professional judgment.

To accomplish our audit objectives, we gained an understanding of the following law, regulations, guidance, and other information relevant to the audit objectives:

- Section 479A of the HEA;
- 34 C.F.R. section 668.53(c);
- Department guidance (the Application and Verification Guide, Dear Colleague Letters,<sup>15</sup> electronic announcements, and presentation slides from three Federal Student Aid conferences);<sup>16</sup> and
- annual financial audit report for the year ended August 31, 2019, conducted by Wilschanski and Co.

Next, we reviewed the Association of Advanced Rabbinical and Talmudic Schools’ website, the Maryland Higher Education Commission’s website, Bais HaMedrash and Mesivta of Baltimore’s website, and documents and records that school officials provided us to gain an understanding of the school’s history, organizational structure, and accreditation status. We then reviewed the school’s financial aid policies and procedures for applying, documenting, and reporting the use of professional judgment to the Department’s Central Processing System. Additionally, we discussed with Bais HaMedrash and Mesivta of Baltimore employees the records that the school provided that were relevant to applying, documenting, and reporting the use of professional judgment.

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<sup>15</sup> GEN-03-07, GEN-08-12, GEN-11-04, GEN-11-07, GEN-11-15, GEN-16-03, and GEN-21-02; updated guidance for interruptions of study related to COVID-19 (April 3, 2020); and electronic announcement regarding an increase in professional judgments because of COVID-19 (July 9, 2020).

<sup>16</sup> November 28, 2017, through November 30, 2017; December 3, 2019, through December 6, 2019; and December 1, 2020, through December 4, 2020.

To identify the Title IV programs in which the school participated during award year 2017–2018 and award year 2018–2019, we reviewed Title IV funding information in the Department’s Grants Management system (G5) and records Bais HaMedrash and Mesivta of Baltimore provided.

## **Analysis Techniques**

To determine whether Bais HaMedrash and Mesivta of Baltimore complied with section 479A of the HEA, 34 C.F.R. section 668.53, and the Application and Verification Guide, we reviewed the school’s student financial aid records for all 65 students for whom the school applied professional judgment for award year 2017–2018, award year 2018–2019, or both. We also reviewed “Professional Judgment Checklist” used by the school to document the special circumstances that it considered for each student, “Professional Judgment Committee Meeting Minutes” used by the school to describe the decisions it made based on each student’s special circumstances, and other documentation that Bais HaMedrash and Mesivta of Baltimore provided to us to support its professional judgment decisions. The other documentation included Federal tax returns, statements from students and other individuals, tuition verification forms, bank statements, canceled checks, loan payment statements, invoices for moving expenses, bills for medical and dental insurance premiums, and Institutional Student Information Records.

We concluded that Bais HaMedrash and Mesivta of Baltimore complied with section 479A of the HEA if its records demonstrated that the financial aid administrator considered available income, assets, expenses, and support from all sources based on special circumstances before adjusting the value of data items affecting adjusted gross income and submitting the adjustments to the Department’s Central Processing System. For all 29 (of 65) students who were selected for verification, we concluded that Bais HaMedrash and Mesivta of Baltimore complied with 34 C.F.R. section 668.53 and completed verification before applying professional judgment if the verification completion date in the school’s records for each student was before the “Transaction Receipt Date” on the student’s Institutional Student Information Record that reflected the school’s use of professional judgment.

To determine whether Bais HaMedrash and Mesivta of Baltimore reported its use of professional judgment to the Department in compliance with the Application and Verification Guide, we compared the names of the 65 students shown in the school’s system as having professional judgment applied for award year 2017–2018, award year 2018–2019, or both to the students listed in the Department’s Central Processing System. We concluded that Bais HaMedrash and Mesivta of Baltimore complied with the reporting requirements if the students shown in the school’s system matched the

students listed in the Department’s systems or if we were able to reconcile any differences.

### **Use and Reliability of Computer-Processed Data**

We relied, in part, on data that Bais HaMedrash and Mesivta of Baltimore retained in its information systems. We assessed the reliability of the school’s data by comparing the data for the 65 students for whom the school applied professional judgment with documentation that the school obtained from each student. We also compared the school’s data for these 65 students to data on Institutional Student Information Records generated by the Department’s Central Processing System. We did not identify any unexplained differences. Therefore, we concluded that the school’s data were sufficiently reliable for use in the audit.

### **Compliance with Auditing Standards**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We conducted our audit from July 2020 through February 2021. We discussed the results of our audit with officials of Bais HaMedrash and Mesivta of Baltimore on April 20, 2021, and provided them with a draft of this report on June 23, 2021.



## Appendix B. Effect of Bais HaMedrash and Mesivta of Baltimore's Improper Application of Professional Judgment

We classified the school's improper application of professional judgment into four categories: Those whose families (A) paid private school tuition, (B) owned investment properties, (C) received clergy allowances, and (D) incurred wedding expenses or standard living expenses (medical and dental insurance premiums, monthly support payments to the students' sibling(s), and student loan payments) unrelated to special circumstances.

**Table 4. Award Year 2017–2018: Improper Application of Professional Judgment**

OIG- Assigned Student Number	Category	EFC Before Professional Judgment	EFC After Professional Judgment	Pell Award Before Change in EFC	Pell Award After Change in EFC	Improper Amount of the Increase in the Student's Pell Award
1	A, C	2119	42	\$3,770	\$5,870	\$2,100
3	A	20607	0	\$0	\$5,920	\$4,150
4	A	20607	0	\$0	\$5,920	\$4,150
6	A	1966	0	\$3,970	\$5,920	\$750
7	A	495	0	\$5,470	\$5,920	\$450
8	C	2221	0	\$3,670	\$5,920	\$2,250
9	C	2221	0	\$3,670	\$5,920	\$2,250
10	A, D	13433	1731	\$0	\$4,170	\$4,170
11	A, D	2070	155	\$3,870	\$5,770	\$1,900
12	A, D	2031	116	\$3,870	\$5,770	\$1,900
15	A, B, D	27689	226	\$0	\$5,670	\$5,670
16	A, B, D	27689	226	\$0	\$5,670	\$5,670
18	B, C	39953	52	\$0	\$5,870	\$5,870

OIG- Assigned Student Number	Category	EFC Before Professional Judgment	EFC After Professional Judgment	Pell Award Before Change in EFC	Pell Award After Change in EFC	Improper Amount of the Increase in the Student's Pell Award
19	A, D	7736	506	\$0	\$5,370	\$5,370
20	A	5407	3460	\$0	\$2,470	\$1,000
24	A	6887	30	\$0	\$5,870	\$1,600
25	A	10142	0	\$0	\$5,920	\$0
26	A	10262	120	\$0	\$5,770	\$0
27	A	2623	600	\$3,270	\$5,370	\$2,100
28	A, B	12935	0	\$0	\$5,920	\$5,920
29	A	3241	0	\$2,670	\$5,920	\$3,250
Total	-	-	-	-	-	\$60,520

**Table 5. Award Year 2018–2019: Improper Application of Professional Judgment**

OIG- Assigned Student Number	Category	EFC Before Professional Judgment	EFC After Professional Judgment	Pell Award Before Change in EFC	Pell Award After Change in EFC	Improper Amount of the Increase in the Student's Pell Award
1	A, C	14493	2886	\$0	\$3,245	\$3,245
2	A, C	5251	3546	\$845	\$2,545	\$2,545
3	A, C	2717	43	\$3,345	\$6,045	\$2,700
6	A, D	18760	260	\$0	\$5,845	\$5,845
7	A, C	5794	80	\$0	\$6,045	\$6,045
8	A, B, D	14250	3084	\$0	\$3,045	\$3,045

OIG- Assigned Student Number	Category	EFC Before Professional Judgment	EFC After Professional Judgment	Pell Award Before Change in EFC	Pell Award After Change in EFC	Improper Amount of the Increase in the Student's Pell Award
9	A, C	9154	1200	\$0	\$4,945	\$4,845
10	A	7254	2710	\$0	\$3,345	\$600
11	C, D	4446	20	\$1,645	\$6,045	\$900
12	A	658	70	\$5,445	\$6,045	\$600
13	A	672	84	\$5,445	\$6,045	\$600
16	A, B, D	16048	260	\$0	\$5,845	\$5,845
17	A, B, D	15948	160	\$0	\$5,945	\$5,845
18	A, D	12915	2493	\$0	\$3,645	\$3,645
19	A, D	8550	3139	\$0	\$2,945	\$2,945
20	A, D	2312	200	\$3,745	\$5,945	\$2,200
21	A	13714	2291	\$0	\$3,845	\$2,700
22	A, D	8685	1998	\$0	\$4,145	\$2,900
23	A	5364	2888	\$745	\$3,245	\$300
24	D	13018	1435	\$0	\$4,645	\$4,645
25	D	46683	0	\$0	\$6,095	\$6,095
26	A	17721	3759	\$0	\$2,345	\$2,345
27	A	1683	200	\$4,445	\$5,945	\$1,500
29	A	1110	0	\$4,945	\$6,095	\$1,150
30	A, C	3288	180	\$2,845	\$5,945	\$3,100
31	A	1079	80	\$5,045	\$6,045	\$1,000

OIG- Assigned Student Number	Category	EFC Before Professional Judgment	EFC After Professional Judgment	Pell Award Before Change in EFC	Pell Award After Change in EFC	Improper Amount of the Increase in the Student's Pell Award
32	A, D	2354	1674	\$3,745	\$4,445	\$700
33	A	10623	206	\$0	\$5,845	\$1,600
34	A	8359	600	\$0	\$5,545	\$5,545
35	A, B	16818	0	\$0	\$6,095	\$6,095
36	A	4,297	20	\$1,845	\$6,045	\$4,200
Total	-	-	-	-	-	\$95,325

## Appendix C. Acronyms and Abbreviations

AGI	Adjusted Gross Income
Application and Verification Guide	Federal Student Aid Handbook, Application and Verification Guide
C.F.R.	Code of Federal Regulations
COVID-19	Coronavirus Disease 2019
Department	U.S. Department of Education
EFC	Expected Family Contribution
FAFSA	Free Application for Federal Student Aid
FSEOG	Federal Supplemental Educational Opportunity Grant Program
HEA	Higher Education Act of 1965, as amended
OIG	Office of Inspector General
Pell	Federal Pell Grant Program
Title IV	Title IV of the Higher Education Act of 1965, as amended

## Bais HaMedrash and Mesivta of Baltimore's Comments



### Bais HaMedrash & Mesivta of Baltimore

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**Rabbi Zvi Dov Slanger**  
Founder ♦ 1934-2018

**Rabbi Chaim Cohen**  
Dean

July 21, 2021

Dear Mr. Whitman,

Enclosed are the written responses from the Bais HaMedrash and Mesivta of Baltimore for the OIG draft audit report, "Bais HaMedrash and Mesivta of Baltimore's Use of Professional Judgment," Control Number ED-OIG/A201L0005.

Thank you for the opportunity to provide our responses.

Sincerely,

Rabbi Chaim Cohen  
Dean

Bais Hamedrash and Mesivta of Baltimore  
Professional Judgment Audit ED-OIG/A20IL0005  
Responses to Draft Report – June 23, 2021

Finding 1:

Professional Judgment Applied Across Classes of Students

Our institution disagrees with this finding and the subsequent recommendations. As the OIG reports, each student's case was individually evaluated based on its individual merits, as required by law. The fallacy in the audit's conclusion is founded on our student body being comprised of a very small minority population, who accordingly often have overlapping circumstances with other members. When evaluating each student individually, it would be inappropriate and discriminatory to base our judgement of the merits of a circumstance merely because they apply more frequently to a specific group when compared to national populations. Ironically, this conclusion is prejudice against students specifically for being part of a class, which is unallowed. The regulations require blinders to class, and allow us only to review each student as an individual. This is precisely the methodology we followed, and the frequency of the conclusions were specifically not altered by accounting for a specific class of students, rather all determinations were based on individual merit.

An example of unjustly classing demographics could occur in a school for students with disabilities. There would naturally be a large percentage of students with unusually high medical expenses. When evaluated individually, there would be reasonable conclusions for a professional judgment in each case. However, it would be discriminatory if the school were to factor in the large number of disabled students in this class, and subsequently disallow the nature of this special circumstance. This would create a prejudicial punishment for a specific class of students simply because they chose to attend a school most suited for their needs.

This leads to the next component of the OIG conclusion that "the school did not provide us with records substantiating that it differentiated each individual student from the rest of the students in the same class". There is no reference to this requirement of differentiating between students with similar unusual circumstances in Department of Education guidance. Neither did the OIG provide any citation to support this requirement. Furthermore, this standard would overtly be in contrast with the intent of the law. Conceptually, special circumstances are determined based on the overall collegiate population for which the EFC formula was designed. A determination of the uniqueness of a circumstance needs to be viewed in the appropriate context of the circumstances already factored into consideration. The EFC formula was not constructed for a specific demographic or class, rather for the nation as a whole. Accordingly, a circumstance is unusual when compared to the overall collegiate body in the United States. The particular circumstances occurring in an individual school are irrelevant to the question of their unusual nature.

This can be exemplified by the case of our student from Florida whose home was destroyed by Hurricane Irma, leaving his family with extensive costs of damage not covered through insurance. This was a circumstance unusual for both our student body and the national population. However, had the same student attended Florida State University, there is a reasonable likelihood that a large number of students would have presented this similar situation. When each record would be evaluated, the school should certainly not reject the request based on the non-differentiable characteristics from other hurricane survivors. This standard would create a situation where students with the same unusual circumstance would be treated differently simply based on how many chose to attend the same school.

The Department of Education itself clearly holds this view of evaluating special circumstances based on the overall population. As the OIG reported, due to the COVID-19 pandemic, “[The Department] encouraged financial aid administrators to use professional judgment to more accurately reflect the financial need of students and families affected by the pandemic. The Department also reminded schools of the need to adequately document adjustments made on a case-by-case basis.” There has been no greater example of a recent universal tragedy than COVID-19. Virtually every person has faced negative impacts from this scourge. It certainly would not be considered unusual for a student to have faced challenging circumstances. However, the Department of Education rightfully recognized that while common, COVID-19 issues are unusual when compared to the overall student population the FAFSA was designed to evaluate. They specifically recognize (and require) the ability to judge COVID-19 situations on a case-by-case basis, notwithstanding their ubiquitous nature or differentiability from other students with similar claims. Our institution followed the Department of Education’s understanding of special circumstances by evaluating each individual case against the overall population for whom the FAFSA was designed.

### Specific Examples:

#### Private School Tuition

The audit reported that, “Bais Hamedrash and Mesivta of Baltimore did not provide records substantiating on a case-by-case basis the reason that private school tuition was a special circumstance.”

There is an overarching contention our institution takes with the standards of documentation requirements. This is covered at length in Finding 2, and it certainly applies here to the depth of our recorded explanation in each case.

However, this finding is particularly egregious, as the Higher Education Act itself lists private school tuitions as a possible special circumstance (as quoted in the audit). Our institution does not believe that Congress or the Department of Education need us to explain their positions. Certain circumstances are self-evident of their nature, especially after the law recognizes them as such. Our standard has been to write briefly on easily understood cases, such as tuitions, medical expenses, etc., especially if the Department of Education specifically mentions them. The auditors will note that the further atypical cases had longer, detailed explanations of their circumstances. We recognized when there was a need for a thorough explanation, and provided it as appropriate. The “Meeting Minutes” were composed with an explanation suffice to provide the intended audience with information they needed to understand the case.



## Clergy Allowances

The finding states, "It did not provide us with records substantiating that it made and documented on a case-by-case basis a decision that the clergy allowance was not covered by the income protection allowance...".

There is a two-step process in evaluating this finding. The first is the documentation requirements. Clergy Housing is a figure directly reported on the FAFSA. As quoted in the Financial Aid Handbook<sup>1</sup>, "Also, using PJ does not require you to verify a student's application if he was not already selected for verification by the Department or your school." Therefore, none of the data elements on the FAFSA, including clergy housing, are required to be verified before applying a professional judgment. For example, a case of a student who reported an AGI of \$50,000 on their FAFSA, and subsequently provides \$10,000 of special circumstance expenses. In order to adjust the AGI, the regulation would not require the school to obtain documentation to verify if the \$50,000 AGI was either accurately reported on the FAFSA and/or that proper tax law was followed when submitting this AGI to the IRS. Necessitating that would amount to verifying a data element on the FAFSA. This same categorization applies to clergy housing, and the regulation does not require the school to verify either the accuracy of the reported clergy housing on the FAFSA, and/or whether correct tax law was followed when the family used the allowance by restricting it to housing expenses. Furthermore, the appropriate usage of clergy allowances for housing expenses are approved for and paid by the respective employer. It would be illegal for an employer to authorize clergy housing payments to be distributed for anything outside of housing expenses. Investigating the validity of an employer's due diligence in complying with tax law would be a responsibility for the IRS and certainly not a responsibility for the employee's children's school. Therefore, consistent with the regulation, our school utilized the clergy housing figure on the FAFSA as the documentation for that amount.

Once this has been established, the second part of the finding addresses the usage of the IPA in determining the special circumstance. As the audit noted, our Meeting Minutes describe the evaluation of the housing expenses above the 22% IPA threshold as unusual. Furthering the unusual nature is the legal limitations of clergy housing funds from being used for anything outside of housing expenses. Accordingly, once the IPA threshold was met, the full measure of usual housing expenses was met, and the amounts exceeding this were deemed unusual and reasonable to exclude from realistic uses towards cost of attendance. This decision is of course rightfully within our school's purview of utilizing our judgment.

## Investment Properties

The audit mentioned two points outside of the general finding of applying a decision across a class of students (which was responded to in detail above). Firstly, "The school did not provide us with records substantiating the fair market value of the assets reported...". Contentions over proper documentation requirements are discussed at length in Finding 2 below. The same rationale would apply to documentation of the fair market value of the properties.

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<sup>1</sup> 2019-20 Financial Aid Handbook. Chapter 5, page AVG-113

The second point was “...or how the investment properties qualified as a special circumstance...”. As the audit reported, the Meeting Minutes did explain the reasoning behind the determination. Owning one investment property as an income source is not a common situation. It is qualitatively different from most investments, and the particular situations of a family having only one property speaks to the quantitative difference of money available from the investments. Under that circumstance, the school’s judgment was used in determining this as an unusual investment situation. This analysis falls under the sole purview of an institution’s legal ability to use their judgment in evaluating a claim.

#### Unreasonable Costs:

Our institution agrees with the auditor’s conclusion that the wedding case was an incorrect application of special circumstances. Accordingly, we would agree to the fair return of the difference in funds this created at the Department’s request. Our fair appeal would be that the final report would indicate how our Meeting Minutes did explain our rationale, which was lengthy and detailed, indicating the non-haphazard nature of the decision. Nevertheless, hindsight has provided greater clarity and we agree with the finding in this case.

#### Recurring Costs:

The Financial Aid Handbook does not inherently preclude the use of any recurring cost, rather it states<sup>2</sup>, “Occasionally aid administrators have made decisions contrary to the professional judgment provision’s intent. These “unreasonable” judgments have included, for example, the reduction of EFCs based on recurring costs such as vacation expenses, tithing expenses, and standard living expenses (related to utilities, credit card expenses, children’s allowances, and the like).” Only recurring costs fitting that categorization are deemed unreasonable. The guidance is concerned about ensuring reasonable uses of expenses that fall outside of usual circumstances. Recurring expenses are often, but not exclusively, typical. For example, the HEA specifically mentions private school tuitions as a potential special circumstance, even though tuition payments are a recurring expense, not a rare, unanticipated expense.

#### Medical and Dental Insurance Premiums

It is of note that this is not one of the examples given in the Financial Aid Handbook as a recurring cost. While recurring insurance premiums are a standard living expense, high total cost amounts can certainly transform a case into an unusual circumstance. When a family documented their expenses exceeded the IPA percentage allowance, the excess entered the realm of atypical and subsequently was appropriately under the scope of consideration. It is only this part of the premiums which were factored into consideration.

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<sup>2</sup> 2019-20 Financial Aid Handbook. Chapter 5, page AVG-112

### Monthly support Payment to Students' Sibling(s)

The audit report states, "It did not provide us with records substantiating how monthly support payments to each student's sibling(s) were special circumstances and not a recurring cost like vacation expenses, tithing expenses, and standard living expenses."

Financial support of children couldn't be further from an irresponsible claim of vacation expenses. It also has nothing to do with religious expenses such as tithing, and it certainly is not a standard living expense to support a child after marriage. These situations are significantly qualitatively different from the examples provided.

According to FAFSA question 72, if parents provide a child (or anyone else) not living in their home with recurring costs of over 50% of their support, that child can be included as part of the family size. When the percentage of support falls below half, while that person can no longer be counted in the family size, the situation doesn't magically cease from being a legitimate expense. As it is unusual, it fell within our institution's rightful purview to consider.

### Summer Camp Costs

The finding here relates to documentation procured. Accordingly, it will be discussed under Finding 2.

### Student Loan Payments

Our institution agrees with this finding that student loans are a recurring cost that should not have been included for a professional judgment. This is based on the aforementioned discussion on bases to determine unusual circumstances. The overarching principal is distinguishing a student's particular circumstances in comparison to overall student populations. The determinations made in this category took a myopic view of how uncommon student loans were to our specific minority demographic. Instead, the appropriate framework should have been a universal comparison, which would have led to a different conclusion.

### Income Protection Allowance

The consideration of amounts greater than IPA thresholds as a special circumstance was mentioned as part of previous discussions, therefore the validity of our accepting this approach is important.

Page 11 of the Professional Judgement Participant's Guide discusses IPA usage and concludes, "Knowing that a student has an IPA of 7780, you can determine that the formula took into account \$856 for medical expenses (11% of 7780). If a student provides documentation that \$2856 will be spent on out-of-pocket medical expenses, you have the ability to adjust either the AGI or taxes paid for the difference of \$2000."

The Department of Education clearly asserts that once an IPA threshold is met, any additional expenses in that category may be considered a special circumstance, as the school has the ability to adjust the AGI based on that amount.

This is also consistent with the example provided on page AVG-113 of the 2019-20 Financial Aid Handbook, entitled "IRA percentage example", "In 2017 Alan had \$3,550 in medical expenses that were out-of-pocket costs. He is married, has two children, and is the only member of his household in college, so his IPA is \$40,360. Because his expenses were less than the amount for medical expenses already provided for in the IPA (11% of \$40,360 is \$4,440), the aid administrator at Sarven Technical Institute does not adjust Alan's FAFSA information." The Department of Education is precluding the medical expenses because they fall below the IPA threshold. The case was simply "out-of-pocket costs", not a particularly specific, unusual medical condition. Had the costs been above the IPA threshold, the guidance is implicitly accepting their usage in a Professional Judgment.

#### Recommendations:

Based on the aforementioned disagreement to the Finding, we accordingly disagree with the Recommendations.

However, regardless of the OIG's final determination, the most important contention is the lack of distinction between a school acting in good faith versus one intentionally abusing the law. As vigorously discussed above, our school consistently applied our best understanding of the practices throughout the process. The recommendations for punitive action "including imposing fines or limiting, suspending, or terminating a school's participation in the Title IV of the HEA programs" are flagrantly inconsistent with a school operating on good faith. Especially considering the unique nature of professional judgment where there is little clear guidance to define requirements and the intent of the law is explicitly to provide a school with latitude to use their judgment.

Therefore, even for a case where we might agree with the auditor's conclusion, the appropriate recourse should be corrective, rather than punitive. Our institution takes the decisions of the OIG seriously, and we welcome guidance for future practices. The final conclusions will immediately become our standard operation, as our goal and responsibility is always to administer programs correctly.

## Finding 2:

### Documentation for use of Professional Judgment

Our institution does not agree with this conclusion and the subsequent recommendations. The premise of this finding is virtually exclusively based not on the lack of documentation, rather the lack of documentation to the standards of the OIG. This distinction is significant.

The Federal Student Aid – Professional Judgment Participant’s Guide states<sup>3</sup>, “The Higher Education Act and corresponding regulations use the phrase, ‘on the basis of adequate documentation.’ While the Department of Education does not define adequate documentation, the documentation should be such that an auditor or program reviewer must be able to gain understanding from the documentation. Documentation should also be such that the institution has satisfied itself in the belief that proper action has been taken.”

This clause is certainly a central concept for this audit. Our school has provided detailed PJ Meeting Minutes, mathematical calculations, as well as actual expense documentation for each case sufficient that “an auditor or program reviewer must be able to gain understanding from the documentation”. These documents certainly provide an understanding as to the case and actions took. However, there is clearly not a legal standard to “adequate documentation”. Therefore, while there might be cases where the auditing team feels additional and/or different documentation would have been helpful, there is not any clear regulation to this point. Most importantly, we have fulfilled the necessity of “Documentation should also be such that the institution has satisfied itself in the belief that proper action has been taken.” Our institution has satisfied itself that the documentation collected and overall actions based on those documentations are proper.

Included in this is our utilization of documentation of bills to demonstrate expenses, without specifically requiring documentation of these bills being already paid. Another example would be determining the extent of the documentation required, such as our accepting payments to a known educational camp without requiring the submission of a curriculum.

Unlike most laws, professional judgment is unique in the inherent legal right it provides a school to utilize its own judgment. In the absence of clear guidance, unless the documentation collected clearly skirts the intent of the law, deference is given to the school to make its own determinations for the necessary documentation. It is precisely the intent of the law to afford an institution this right.

Furthermore, once the Department of Education states there is no definition of adequate documentation, it is virtually entrapment for the OIG to ex post facto determine official Department policy for adequate documentation and hold a school liable for not adhering to these standards. It would ironically create a situation where schools would be required to maintain the strictest definition of adequate documentation to not risk running afoul of potential ensuing retroactive definitions. This approach would be counter to the intent of the law to extend latitude to schools’ discretions.

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<sup>3</sup> Page 6

## Paid Expenses

Most of the cases mentioned in the report are documents of expenses, as opposed to documents of paid expenses. While the guidance certainly requires documentation for expenses, nowhere does it require the documentation must be of expenses that were actually paid during the school year.

This concept comfortably coheres with the overall intent of FAFSA. The encompassing premise is to evaluate the overall financial picture of a family to determine their ability to pay for college. In doing so, there is no qualitative difference between an expense owed versus an expense paid. Both represent a lack of available funds to pay for college. For example, a case of two families which owe \$10,000 in medical expenses. One family has just paid the bill, while the other family has yet to remit payment. It would be incorrect to conclude that only the family who has already paid their bills has less of an ability to afford college than a family who hasn't yet paid. Both have the same level of financial obligations weighing against their ability to afford college.

A prime example of this precept is the FAFSA itself. The financial data used is from the prior-prior year, while the bank account information is as of the date of submission. The intent is to get an overall picture of a family's financial situation, not to see the exact amount of dollars available in their bank account during the school year. Otherwise, the FAFSA would require both current W2s as well as current updates to bank account data throughout the year.

Accordingly, once the family has documented an expense they have, it fulfills the requirements to display financial burdens that can be considered. The dates these financial obligations are actually paid is irrelevant.

The Department of Education itself follows this rationale as displayed in the Case Study on page 8 of the Professional Judgment Participant's Guide which is entirely based on an estimation of expenses. "Mandy is an independent student attending classes at Catch-Up Culinary School. Mandy states that while she already receives the maximum Pell award of \$5550, she needs to borrow additional loan funds to pay for additional unforeseen expenses. She tells you that her mother is now bedridden and cannot afford to pay for assistance during the night hours. Mandy has agreed to watch over her mother in the evenings, but the additional costs for gas come out to \$180 a month. She estimates that the additional expense for the academic year will be \$1620."

Note the question at the bottom of that page, "If you determine that Mandy's assessment of additional costs are accurate, by what amount would you increase the COA?" Since basing expenses from an estimation are acceptable for a Professional Judgment, a fortiori, it would be acceptable to utilize actual bills awaiting payment as the basis for expenses.

Another example is the Case Study on Page 12 *ibid.*, "Nina is an independent student who wants to attend Applewood Technical School to pursue a nursing career. She tells the financial aid advisor that her daughter has a rare medical condition that has cost her an annual average of \$8,500 in out-of-pocket medical expenses. She is in need of additional aid to help with living expenses..."

The question later on that page of the case study asks, "If Nina's documentation validates her assertion of \$8,500 in out-of-pocket medical expenses, what can you do to help?" There is no indication of a need to demonstrate Nina has paid these bills, rather that she is burdened by the overall average need.

## Depth of Documentation

As previously discussed, the lack of guidance defining adequate documentation leaves its determination to the discretion of the school, synchronous with the intent of the law. Included in this purview is the evaluation of the extent and depth of the documentation required. Accordingly, while there are cases where the auditor's judgment could have led to a conclusion of possible necessity for additional information, our school properly exercised its judgment to determine the appropriate needs.

Included in this premise are the cases of summer learning camps. When there was a camp our school was familiar with as an educational entity, once documentation of the expense was provided, we accepted the validity of the circumstance without requiring a curriculum of the program. Information that is both publicly available and known to our institution was not considered germane to the intent of documentation.

Generally speaking, once an expense has been documented, the need for further detailed documentation would not be reasonably expected. An example would be a person who provides documentation of medical expenses from a doctor. It would neither be relevant nor appropriate to investigate the credentials of the doctor, or the validity of the diagnosis and treatment presented. If the document of the expense is realistic and raises no obvious concerns, there is no need to delve deeper ad infinitum to investigate.

## Parents' Prior Year Income

These are cases where a family provided a more recent tax return to display a decrease in income compared to the base FAFSA year. The FSA Handbook explicitly states<sup>4</sup>, "Also, using PJ does not require you to verify a student's application if he was not already selected for verification by the Department or your school." As the prior year income is the original income reported on the FAFSA, and is one of the items subjected to potential verification, the Department directly exempts any requirement to verify the income in the absence of Federal verification selection.

Furthermore, even for cases where the application was selected for verification, the point would be moot. The FSA Handbook states<sup>5</sup>, "However, you do not have to verify information that you will entirely remove due to PJ". In the prior year income cases, irrespective of the accuracy of the previous year's income reported, those data elements are removed entirely from the FAFSA and replaced with the more current income figures. (It is important to note that this did not apply to any of our cases as all students selected for verification were completely verified before applying Professional Judgment, as the audit mentions. This point is raised merely to exhibit the extent of the lack of verification requirement in these cases).

Once the Department's guidance is set, there is no need to defend its logic. However, it is significant to mention that from a school's perspective there would be no logical need to investigate previous year's income, as the reason behind accepting a more recent tax return is that it provides a more accurate description of the current financial picture of a student, rendering previous incomes irrelevant.

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<sup>4</sup> 2019-20 Financial Aid Handbook. Chapter 5, page AVG-113

<sup>5</sup> Ibid

## Value of Rental Properties

As mentioned above, the FSA Handbook states<sup>6</sup>, “However, you do not have to verify information that you will entirely remove due to PJ”. Concurrent with the explanation above regarding prior year income, investments are an item explicitly exempted from verification requirements when the professional judgment removes them entirely. Again, once the Department’s guidance is set, there is no need to defend its logic. However, it is clear that determining the value of these investment properties would have been an ineffectual exercise. The value of investment properties reported by the parents on the FAFSA is their personal data entry. If documentation would contradict their assertion, that data element would consequently be adjusted accordingly. However, once a determination to remove the asset is concluded, the end result will be the same. Therefore, this verification would have been an unnecessary stage for the process.

## Clergy Allowances

This topic was previously discussed at length in Finding 1, including the documentation requirement.

## Recommendations:

Our response to the recommendation for Finding 2 is the same as above for Finding 1 and is copied below:

Based on the aforementioned disagreement to the Finding, we accordingly disagree with the Recommendations.

However, regardless of the OIG’s final determination, the most important contention is the lack of distinction between a school acting in good faith versus one intentionally abusing the law. As vigorously discussed above, our school consistently applied our best understanding of the practices throughout the process. The recommendations for punitive action “including imposing fines or limiting, suspending, or terminating a school’s participation in the Title IV of the HEA programs” are flagrantly inconsistent with a school operating on good faith. Especially considering the unique nature of professional judgment where there is little clear guidance to define requirements and the intent of the law is explicitly to provide a school with latitude to use their judgment.

Therefore, even for a case where we might agree with the auditor’s conclusion, the appropriate recourse should be corrective, rather than punitive. Our institution takes the decisions of the OIG seriously, and we welcomingly accept guidance for future practices. The final conclusions will immediately become our standard practice, as our goal and responsibility is always to administer programs correctly.

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<sup>6</sup> Ibid



### Finding 3:

#### Reporting Usage of Professional Judgment

Our institution has initiated a request on the COD website for the reopening of the 2018-19 school year to correctly mark the two relevant cases as professional judgments. Once access is granted, the corrections will be made. We will inform the OIG once this process has been completed.