Fontbonne University Options Program's Administration of Title IV Federal Student Aid Programs

FINAL AUDIT REPORT
ED-OIG/A07-A0031
September 2002

Our mission is to promote the efficiency, effectiveness, and integrity of the Department's programs and operations.

U.S. Department of Education
Office of Inspector General
Kansas City, Missouri Office

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. Determinations of corrective action to be taken will be made by the appropriate Department of Education officials.

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

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL

SEP 3 0 2002

Dr. Dennis C. Golden, President
Fontbonne University
6800 Wydown Boulevard
St. Louis, MO 63105-3098

Dear Dr. Golden:

Enclosed is our report entitled Fontbonne University Options Program's Administration of the Title IV Student Financial Assistance Programs (Control No. ED-OIG/A07-A0031). The report incorporates the comments you provided in response to the draft audit 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 Department of Education official, who will consider them before taking final Departmental action on the audit:

Theresa Shaw, Chief Operating Officer
Federal Student Aid
Union Center Plaza Building, Room 112G1
830 1st Street, NE
Washington, D.C. 20202-5402

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

In accordance with the Freedom of Information Act (5 U.S.C. §552), reports issued to the Department's grantees and contractors are made available, if requested, to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

Sincerely,

Thomas A. Carter
Assistant Inspector General for Audit

Enclosure

Table of Contents

Fontbonne University Options Program's Administration of the Title IV Student Financial Assistance Programs

Executive Summary

Fontbonne University (the University) is a private, nonprofit liberal arts institution that offers undergraduate degrees to its students. Our objectives were to determine whether the University complied with the Higher Education Act (HEA) and applicable regulations pertaining to (1) the prohibition against the use of incentive payments for recruiting activities, and (2) course length. We found that:

- The University violated the statutory prohibition on the use of incentive payments based on success in securing student enrollments. The University contracted with the Institute for Professional Development (IPD) to provide recruiting and accounting services for students in its Options program, a program for nontraditional students. In accordance with the terms of the contract, IPD received payments based on the number of students enrolled in the Options program. In addition, IPD paid its recruiters based on the number of students enrolled in the program. Because the University did not comply with the HEA and regulations by paying incentives to IPD based on success in securing enrollments, the University must return $10,154,935 in Federal Stafford loan funds, $214,625 in Pell Grant funds, and $89,839 in Supplemental Educational Opportunity Grant (SEOG) funds disbursed on behalf of students who were improperly recruited for its Options program.

- The University's academic year for its Options program did not provide the number of instructional hours required by the HEA and the regulations. The HEA states that an academic year must contain a minimum of 30 weeks of instruction. The regulations for programs not using semester, trimester, or quarter systems require a minimum of 12 hours of instruction per week. These regulations are commonly known as the 12-Hour Rule. The University did not ensure that its Options program provided the required amount of instructional time. Because the University's academic year did not provide the required number of instructional hours, the University disbursed funds to students who were not eligible for all or part of the funds. We determined that the University improperly disbursed $1,892,066 in Stafford loans, and $90,025 in Pell Grant funds to its students.[1]

We recommend that the Chief Operating Officer, Federal Student Aid (FSA) require that Fontbonne University:

- Confirm that the University has amended and/or terminated its contractual relationship with IPD to eliminate payments based on success in securing student enrollment.[2]
- Establish an academic year for its Options program that satisfies the requirements of the 12-Hour Rule.
- Return $10,459,399 in Title IV funds disbursed to students who were improperly recruited to lenders and the Department.
- Return $1,982,091 in Title IV funds that were in excess of the amounts the students were entitled, to lenders and the Department as a result of not being in compliance with the 12-Hour Rule.[3]

[1]The dollars we determined as improperly disbursed are duplicative of the dollars we determined as improperly disbursed in the incentive-based payments finding.
[2]Subsequent to our field work, the University informed us that, effective July 2, 2001, it terminated its relationship with IPD.
[3]The amounts identified to be returned are duplicative of the amounts to be returned for students who were improperly recruited. Only those amounts not returned as a result of our first finding should be returned to lenders and the Department.

Audit Results

We determined that the University needed to improve its administration of the Title IV programs. We found that the University violated the statutory prohibition on the use of incentive payments for recruiting based on success in securing enrollments when it paid the Institute for Professional Development a percentage of tuition for all students enrolled in the Options program. In addition, the University's academic year for its Options program did not provide the required number of instructional hours as defined in the HEA and the regulations.

Finding No. 1 – The University Contracted With an Organization That Received Payments Based on the Number of Students Enrolled in the Options Program

Fontbonne University entered into a contract with IPD that provided for incentive payments to IPD based on success in securing enrollments for the Options program. In addition, IPD's recruiters received payments based on their success in enrolling students. The HEA expressly prohibits any type of incentive payment based directly or indirectly on success in securing enrollments. As a result of incentive payments to IPD, the University is liable for all Title IV funds awarded to students in the Options program who were improperly recruited for the period July 1, 1997, through July 2, 2001.

Institutions Participating in the Title IV Programs Must Not Provide Payments for Securing Enrollments

The HEA, Sections 487(a) and 487(a)(20) require that:

> In order to be an eligible institution for the purposes of any program authorized under this title, an institution . . . shall . . . enter into a program participation agreement with the Secretary. The agreement shall condition the initial and continuing eligibility of an institution to participate in a program upon compliance with the following requirements:
>
> . . . The institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance . . . .

The regulations at 34 CFR 668.14(b)(22) codify the statutory prohibition on incentive payments based on securing enrollment.

> By entering into a program participation agreement, an institution agrees that . . . [it] will not provide, nor contract with any entity that provides, any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the awarding of student financial assistance.

IPD Received Payments Based on Student Enrollment in the Options Program

The University entered into a contract with IPD that provided for incentive payments to IPD based on success in securing student enrollments for its Options program. The contract stated that IPD shall:

- Recruit students to enroll in the courses of study in the program.
- Provide representatives to recruit students for the program covered under this agreement.
- Provide an initial average enrollment of sixteen students per learning group on an academic year basis.
- Submit to the University a sufficient number of qualified applicants for admission to the programs such that a minimum of 200 and a maximum of 1,500 students are enrolled in courses of study each academic year.
- Collect, on behalf of Fontbonne University, all tuition, application fees, book and material fees, and other fees applicable to the programs.
- Maintain the official program accounting books and records.

Book, material, application, and prior learning assessment fees were remitted in full to the University. Tuition was divided between the parties on a weekly basis -- during the scope of our review, in accordance with the contract, the division was 55 percent to the University and 45 percent to IPD (the first two months of the audit period the split was 50/50). A separate agreement covered general education courses taken by Options students; the split was 60 percent to the University and 40 percent to IPD.

The University Violated the HEA by Paying IPD Based on Success in Securing Enrollments for the Options Programs Which Resulted in $10,459,399 Improperly Disbursed Title IV Funds

Because the University did not comply with the HEA and regulations by paying incentives to IPD based on success in securing enrollments for its Options program, the University must return all Title IV funds that were disbursed on behalf of students enrolled in the Options program who were improperly recruited. Since the University paid incentives for each student enrolled in the Options program, all students in the Options program were improperly recruited. The University must return all Title IV funding that it disbursed for the Options program for the period July 1, 1997, through

July 2, 2001 (the date the contract was terminated). For the audit period July 1, 1997, through June 30, 2000, we determined that the amount of Stafford loan, Pell Grant, and SEOG funds improperly disbursed was $10,154,935, $214,625, and $89,839 respectively.

IPD's Compensation Plans for Recruiters Based Salary and Bonuses on the Number of Students Enrolled in the Options Program

Our review of IPD's compensation plans for fiscal years 1998-2000 disclosed that IPD provided incentives to its recruiters through salary levels that were based on the number of students recruited and enrolled in the programs. Recruiters were assigned a salary within the parameters of performance guidelines (i.e., knowledge of basic policies and procedures, organization and communication skills, and working relationships). An annual goal of at least 100 students was established for each fiscal year, and performance was assessed on a regular basis throughout the year. Formal evaluations were completed biannually and, after the first six months of employment, salary was determined on an annual basis. The recruiter's success in recruiting students who enrolled in the Options program determined whether the salary was adjusted upward, downward, or remained the same. In addition, the FY 1998 and 1999 compensation plans called for the payment of bonuses, based on the number of students recruited, for recruiters hired prior to September 1, 1998. The bonuses increased as the number of students recruited increased, and ranged from $1,344 for 100-149 students to $29,600 for over 200 students. The FY 1999 plan indicated that recruiters hired on or after September 1, 1998, who achieved 100 or more starts by the end of the fiscal year were entitled to a one-time bonus of $1,500.

Recommendations

We recommend that the Chief Operating Officer for FSA require the University to:

1.1. Confirm that it has amended and/or terminated[4] its present contractual relationship with IPD to eliminate incentive payments based on student enrollment.

1.2. Return to lenders the Stafford loan funds of $10,154,935 disbursed from July 1, 1997 through June 30, 2000. Also, the University should repay the Department the interest and special allowance costs incurred on federally subsidized loans.

1.3. Return to the Department $214,625 of Pell Grant, and $89,839 of SEOG funds disbursed to students enrolled in the Options program during the period July 1, 1997 through June 30, 2000.

1.4 Determine the amounts of Stafford loan, Pell Grant, and SEOG funds improperly disbursed since the end of our audit period and return the funds to lenders and the Department.

[4] Subsequent to our field work, the University informed us that, effective July 2, 2001, it terminated its relationship with IPD.

University Comments and OIG Response

The University did not agree with our conclusions and recommendations. The following is a summary of its comments and our response to the comments. The full text of the University's comments is enclosed.

Fontbonne disagreed with the logic and conclusion of the finding. The University stated that:

- Fontbonne's agreement to share revenue with IPD was not based on IPD's success in securing enrollments, but was based on IPD's development and assistance in administering the Options program.
- Fontbonne University's payments to IPD were based in part on the volume of services that IPD provided to Fontbonne in connection with the Options program.
- IPD's share of the tuition revenue <u>decreased</u> as enrollment increased.
- The Department's regulations do not prohibit tuition sharing agreements and the Department has not issued any guidance that would notify Fontbonne that its tuition sharing arrangement with IPD somehow violated federal law.
- IPD's recruitment of students was not tantamount to admissions or enrollment since Fontbonne alone was responsible for making decisions respecting admissions in accordance with its admissions criteria.
- Fontbonne's Options program maintained an average 76.5 percent completion rate during the audit period. This rate is 20 percent higher than the average completion rate of 4-year institutions. As such, the University's agreement with IPD did not encourage IPD to aggressively recruit or encourage Fontbonne to admit students unqualified to pursue postsecondary education, which is the harm the HEA seeks to avoid.

<u>Fontbonne University's Payments To IPD Were Based in Part on the Volume of Services That IPD Provided to Fontbonne in Connection With the Options Program</u>

The University stated that nothing in the legislative or regulatory history of the incentive compensation rule supports the notion that the rule was intended to regulate institutions' routine business arrangements with outside vendors where services are contracted for on a licensed basis or based on the volume of services provided, such as the agreement with IPD. The IPD agreement compensated IPD for creating the adult education model, helping Fontbonne establish the Options program, and providing a wide variety of professional services to the University. In reaching its conclusion that the agreement with IPD violated the prohibition against incentive compensation, the OIG ignores the significant non-enrollment related services performed by IPD under the agreement. Instead, the OIG describes the agreement as if it covered only recruitment and student accounting functions.

OIG Response

The OIG did not overlook or ignore the fact that IPD provided other services to Fontbonne University under the terms of the agreement. In our draft audit report, we acknowledged that IPD provided additional services, such as accounting. Since it was not within the scope of our audit, we did not determine the extent of additional services under the agreement that were actually provided by IPD at the request of Fontbonne and at IPD's cost. We did verify that the revenue to IPD was generated only by the success in securing enrollments for which IPD was performing recruiting services. This constitutes the statutory violation of providing a commission, bonus, or other incentive payment based directly or indirectly on the success in securing enrollment.

While we recognize that IPD logically had to incur expenses to provide the program accounting services, and any additional services that may have been provided by IPD, these expenses are not relevant in determining whether the structure of the revenue allocation is a violation of the HEA. No compensation was to be provided to IPD unless IPD was successful in recruiting and securing student enrollment. The agreement also included a minimum enrollment guarantee that, if not achieved, would result in a reduction in revenue to be allocated to IPD, despite other services that might have been provided. This further emphasizes that the revenue stream is completely generated by, and dependent on, student enrollment.

Fontbonne does not dispute that the payments it made to IPD were based on a percentage of the tuition and fees paid by students enrolled in the Options program. Fontbonne likewise does not dispute that IPD was responsible for recruiting students. Nor does Fontbonne dispute that some portion of the amount it paid to IPD was directly related to IPD's success in recruiting students for enrollment in the Options program. Our audit report did not focus on what other services may have been provided by IPD because once IPD became responsible for recruiting students, even among other activities, and received compensation from Fontbonne based on the number of students enrolled in the program, Fontbonne was in violation of the HEA.

The HEA at § 487(a)(20) states:

> The institution will not provide **any** commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to **any persons or entities engaged in any student recruiting** . . . . [Emphasis added.]

Once recruiting was added to the services to be provided under the contract, compensation based on enrollment was no longer permitted. IPD had responsibility for recruiting students for enrollment, and was paid under the contract only on the basis of its success in recruiting students for enrollment regardless of what other services it may have been providing. Whether or not the revenue allocation was intended to provide compensation for other services is not relevant since the allocation violates the law.

The IPD Agreement Provided That IPD Received Decreasing Percentages of Revenues as More Students Enrolled in the Options Program

The University stated that the declining percentages of revenue confirm that the revenue allocation is apparently tied at least in part to IPD's cost of providing various services which, due to economy of scale, presumably rise in smaller increments as the Options program's student population reaches certain threshold levels. As the number of Options students increased, IPD would be able to perform many of its contractual responsibilities at a lower per-capita cost, enabling it to share such savings with the University. If the allocation of revenue was intended to pay IPD solely for recruiting and enrollment services, the IPD agreement would not have provided for a decreasing percentage share.

OIG Response

The reduction in the incentive percentage upon reaching certain enrollment levels does not negate the conclusion that the revenue allocation (at whatever percentage) is an improper incentive. The incentive does not become proper by being reduced below a certain percentage amount. Regardless of the percentage amount, IPD was paid additional compensation directly tied to each additional enrollment.

The Incentive Compensation Rule Does Not Prohibit Tuition Sharing Agreements. The OIG Has No Legal Authority for Using the Incentive Compensation Rule as a Basis for Regulating Legitimate Business Transactions Unrelated to Enrollment Services

The University stated that the OIG's effort to clarify existing law by assessing a liability against Fontbonne based on the OIG's "clarified" interpretation of the law violates Fontbonne's due process rights because the University did not have adequate notice that its conduct would be deemed prohibited. Further, such action is outside the scope of the OIG authority because it is not within the OIG's authority to establish Department of Education policy. The OIG's role is limited to enforcing existing law as written and interpreted by the Department. The OIG is pursuing its interpretation of the incentive compensation rule despite the Department's apparent disagreement with that interpretation. The draft audit report cites no statutory, regulatory or nonregulatory guidance, or other legal authority to support the proposition that the tuition sharing arrangement violated the incentive compensation rule. The University did not know, and could not have known, that the allocation of revenue in the IPD agreement would be construed as a violation of the incentive compensation rule because no such pronouncement or interpretation had ever been published and disseminated to Title IV-participating institutions.

OIG Response

Our audit objective (clearly stated to Fontbonne and in our workpapers) was to determine compliance with the HEA and the regulations governing incentive payments, not to clarify or interpret existing law. The HEA does not excuse or permit incentive payments for recruiting activities depending on the type of contractual arrangement that creates them. Any incentive payment based directly or indirectly on success in securing enrollment is prohibited. The contract with IPD included recruiting activities with compensation determined by IPD's success in recruiting students for enrollment, on a per student basis.

The HEA prohibition (§ 487(a)(20)) on incentive payments is clear.

> The institution will not provide **any** commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to **any persons or entities engaged in any student recruiting** . . . . [Emphasis added.]

The University signed a program participation agreement (PPA) committing it to comply with the HEA and regulations. The contract clearly indicated that IPD was to be an entity engaged in student recruiting on behalf of the University. The contract also clearly showed that compensation to IPD was a percentage of the tuition revenue based on IPD's success in recruiting students for enrollment.

<u>IPD Recruiter Salaries Do Not Violate the Prohibition Against Incentive Compensation</u>

The University stated that it was unable to respond directly because it was not aware of IPD's compensation plans and had no involvement with IPD's internal payroll or salary structure. Because the subject of IPD's internal compensation structure was within the exclusive domain of IPD, the University provided comments prepared by IPD to address the issue of recruiter salaries. IPD stated that its compensation plans based recruiter salaries on factors or qualities that are not solely related to success in securing enrollments. It also stated that the prohibition in §487(a)(20) did not extend to salaries. Even if salaries were included, IPD stated that salaries could be based on merit or success in securing enrollment as long as enrollment was not the sole factor.

<u>OIG Response</u>

Contrary to IPD's representation, the compensation plan we reviewed did not include factors other than enrollment to adjust recruiter salaries. According to the compensation plan, recruiters' salary and bonuses were determined annually by how many students they enrolled in the programs. Annual salary and bonuses would increase, decrease, or remain the same in accordance with predetermined tables that directly tied students enrolled to particular salary and bonus amounts. The salary and bonus tables did not include factors other than enrollment. The requirements of § 487(a)(20) cannot be avoided by labeling improper incentive compensation as a salary.

The OIG's Recommendation to Disallow All Title IV Funds Received by the University for Options Program Students is Unwarranted and Is Inconsistent With Applicable Law and Regulations

The University stated that no basis exists to support that a violation of any of the innumerable PPA requirements warrants such an extreme sanction as a wholesale disallowance of all Title IV funds.

OIG Response

The University incorrectly characterized our recommendation for monetary recovery as a sanction. We are not proposing that the University be fined. We are recommending that the Department recover funds disbursed in violation of the HEA.

Finding No. 2 – The University's Academic Year for Its Options Program Did Not Provide the Required Number of Instructional Hours

---

We found that the University did not establish and implement adequate management controls to support the number of instructional hours to meet the statutory definition of an academic year for its Options program. The University disbursed Title IV funds to students who were not eligible for all or part of the funds. We determined that the University improperly disbursed $1,892,066 in Stafford loan funds, and $90,025 in Pell Grant program funds to its Options students.[5]

Nonterm Institutions Must Provide a Minimum of 360 Hours of Instructional Time in an Academic Year

Section 481(a)(2) of the HEA states that the term academic year shall:

> [R]equire a minimum of 30 weeks of instructional time, and, with respect to an undergraduate course of study, shall require that during such minimum period of instructional time a full-time student is expected to complete at least 24 semester or trimester hours or 36 quarter hours at an institution that measures program length in credit hours . . . .

The regulations at 34 CFR § 668.2(b) clarify what constitutes a week of instructional time.

> [T]he Secretary considers a week of instructional time to be any week in which at least one day of regularly scheduled instruction, examinations, or preparation for examinations occurs . . . . For an educational program using

[5]The dollars we determined as improperly disbursed are duplicative of the dollars we determined as improperly disbursed in the incentive-based payments finding.

> credit hours but not using a semester, trimester, or quarter system, the Secretary considers a week of instructional time to be any week in which at least 12 hours of regularly scheduled instruction, examinations, or preparation for examinations occurs . . . .

These regulations, commonly known as the 12-Hour Rule, require the equivalent of 360 instructional hours per academic year (12 hours per week for 30 weeks). Institutions were required to comply with the 12-Hour Rule as of July 1, 1995.

In the preamble of the Federal Register dated November 29, 1994, the Secretary explained that an institution with a program that meets less frequently than 12 hours per week would have to meet for a sufficient number of weeks to result in the required instructional hours. For example, if an institution decided to establish an academic year for a program with classes that met for 10 hours per week, the classes would need to be held for 36 weeks to result in 360 hours.

The University measured its Options educational program in credit hours, but did not use a semester, trimester, or quarter system. The Options program consisted of a series of courses for which a student generally received three credit hours per course. The University defined its academic year as 24 credit hours in 45 weeks. To comply with the 12-Hour Rule, the University needed to provide 8 hours of instruction per week for each week in its 45-week academic year to equal 360 hours per year.

The University Did Not Have Adequate Management Controls to Ensure That Students Received the Required 360 Hours of Instruction For Each Academic Year

Management controls are the policies and procedures adopted and implemented by an organization to ensure that it meets its goals which, as applicable to this situation, are compliance with laws and regulations. According to the Options student handbook, students were required to meet for four hours per week in regular classes, and an additional four hours per week in study groups. The University counted the study group time for purposes of the 12-Hour Rule. We determined that the University did not establish and implement management controls to ensure that study group meetings were regularly scheduled and occurred.

We reviewed the University's policies applicable to the Options program. It was the University's policy that an instructor be present at regular classes, take attendance, and forward attendance records to the Options office at the end of each class. As stated in the faculty and student handbooks, any absence (including arriving late and leaving early) from a class resulted in a loss of class participation points which factored into the final grade determination (this was not at the discretion of the faculty member). If a student missed more than 50 percent of the classes, the student received a failing grade. The University did not apply these policies to study groups. In addition, the University did not monitor the location of study groups and, according to the Director of Faculty, it usually was not aware of the meeting dates and times.[6]

We statistically selected a sample of 60 student/class combinations from a universe of 12,766 unique student/class combinations. A student/class combination is defined as an Options student and all the study group hours required for each class taken by that student during our audit period. We found that the University could not provide evidence that the required number of study group hours were regularly scheduled and occurred for any of the required hours in our sample. From our sample results, we estimate that the University had no statistically significant support that study group hours were scheduled and occurred. Based on review of the University's written policies and procedures, review of study group records, and interviews with University officials, we determined that the University did not provide adequate assurance that study groups were scheduled and occurred to meet the requirements of the 12-Hour Rule.

Failing to Comply With the 12-Hour Rule Resulted in the University Improperly Disbursing $1,982,091 of Title IV Funds To Its Options Students

Because the University did not ensure that study group meetings were regularly scheduled and occurred as required, the meetings do not qualify for inclusion in the 12-Hour Rule calculation. As a result, the University-defined academic year of 45 weeks only provided 180 hours of the required minimum of 360 hours of instructional time (four hours of instruction per week for 45 weeks equals 180 hours of classroom hours). In order to meet the 360-hour requirement, the University's academic year would need to be 90 weeks in length. By using an academic year of 45 weeks rather than 90 weeks for awarding Title IV funds, the University disbursed amounts to students that exceeded the maximum amounts for an academic year allowed under the Stafford loan and Pell Grant programs. We determined that the University improperly disbursed $1,982,091 of Title IV funds to Options students. The students included in this amount had Stafford loan and Pell Grant disbursements during our audit period July 1, 1997, through June 30, 2000.

- **Stafford Loan Limits.** Title 34 CFR § 682.603(d) stipulates that an institution may not certify a loan application that would result in a borrower exceeding the maximum annual loan amounts specified in 34 CFR § 682.204. We determined that $1,892,066 in Stafford loan disbursements exceeded the annual loan limits.

- **Pell Grant Maximum.** Title 34 CFR § 690.62(a) specifies that the amount of a student's Pell Grant for an academic year is based upon schedules published by the Secretary for each award year. The payment schedule lists the maximum amount a student could receive during a full

[6] Subsequent to our audit period, the University adopted policies and procedures for students to maintain study group attendance records (including meeting locations) and submit them weekly to the faculty member. The faculty member was required to monitor adherence to the 50 percent attendance requirement.

academic year. We determined that $90,025 in Pell Grant disbursements exceeded the maximum amount allowed.

Institutions were required to comply with the 12-Hour Rule as of July 1, 1995. Because the University's academic year for its Options program did not meet the requirements of the 12-Hour Rule, the University has improperly disbursed Title IV funds for students for Stafford loan and Pell Grants awarded during the period July 1, 1997 through June 30, 2000.

Recommendations

We recommend that the Chief Operating Officer, FSA require the University to:

2.1. Immediately develop an academic year for its Options program that satisfies the requirements of the 12-Hour Rule as a condition for continued participation in Title IV programs.

2.2. Return to lenders the Stafford loan funds disbursed that exceeded the loan limits for an academic year. We determined that the amount was $1,892,066 for students who had loans with beginning dates between July 1, 1997 through June 30, 2000. Also, the University should repay the Department the interest and special allowance costs incurred on federally subsidized loans.

2.3. Return the Pell Grant funds disbursed to students that exceeded the allowable award for an academic year. We determined that the amount was $90,025 for students who had Pell Grants with grant periods during July 1, 1997, through June 30, 2000.

NOTE: The amounts identified to be returned in this finding are duplicative of the amounts to be returned for students who were improperly recruited. Only those amounts not returned as a result of our first finding should be returned to lenders and the Department.

University Comments and OIG Response

The University did not agree with our conclusions and recommendations. The following is a summary of the University's comments and our response to the comments. The full text of the University's comments is enclosed.

In summary, the University stated that:

- The law and the regulations do not define regularly scheduled instruction, nor has ED issued any guidance respecting the definition of regularly scheduled instruction.

- The University had adequately documented its compliance with the 12-Hour Rule.
- Fontbonne is not required to produce attendance records of study group meetings.
- There is no statutory or regulatory basis for the OIG's requirement that the University "ensure that study group meetings were taking place" through the presence of an instructor.
- Fontbonne was not required to control where its study groups met.
- Fontbonne substantially complied with a rule that even the Department has labeled "unworkable".
- The recommended liability is based on an erroneous methodology and excludes significant amounts of time that count toward compliance with the 12-Hour Rule.
- Additional hours spent by students in preparation for examinations are includable under the 12-Hour Rule.

The Law and the Regulations Do Not Define Regularly Scheduled Instruction, Nor Has ED Issued Any Guidance Respecting the Definition of Regularly Scheduled Instruction

The University stated that the OIG reached its conclusion that Fontbonne did not comply with the 12-Hour Rule based on its erroneous assumption that Fontbonne is required to exercise an undue amount of control over the instructional process and take attendance at each instance of instruction. The law permits an institution to count as a week of instruction any week in which it provides at least 12 hours of regularly scheduled instruction. The regulations do not define "regularly scheduled instruction" except to exclude "periods of orientation, counseling, vacation, or other activity not related to class preparation or examination".

OIG Response

We determined that the University did not establish and implement adequate internal controls to ensure that study group meetings were actually scheduled and occurred *as required by the University*. On August 10, 2000, the Department issued a Notice of Proposed Rulemaking (NPRM) concerning, among other items, changes to the 12-Hour Rule. In the NPRM, the Department stated, "[i]t was never intended that homework should count as instructional time in determining whether a program meets the definition of an academic year, since the 12-hour rule was designed to quantify the in-class component of an academic program."

The University Adequately Documented Its Compliance With the 12-Hour Rule

The University stated that its handbooks required students to meet in study groups at an agreed-upon location for four hours per week of instructional activities. The student handbook stated that study groups function as mutual support mechanisms through which students can learn from the professional expertise of their peers. The handbook also stated that it is essential that study groups meet outside of the required class time *for at least four hours to discuss and prepare assignments and share learning resources.* Students were clearly on notice that study groups were a required instructional activity, study groups were to meet four hours a week, and students would be graded in part based on their study group performance. The University stated that the faculty handbook clearly supported its position that the study group meetings constituted regularly scheduled instruction. Individual professors controlled what materials the groups were to cover in their meetings and the product the students were to arrive at by the conclusion of the meeting. The faculty handbook also stated that the faculty member is responsible for monitoring the study group performance and identified two forms to be used for this purpose.

OIG Response

Although the faculty handbook identified various monitoring activities that the faculty must perform, we determined that the University did not establish and implement adequate internal controls to ensure that study group meetings were actually scheduled and occurred as required by the University. Contrary to the University's comments, we did not conclude that the study groups did not qualify as "regularly scheduled instruction". On August 10, 2000, the Department issued a Notice of Proposed Rulemaking (NPRM) concerning, among other items, changes to the 12-Hour Rule. In the NPRM, the Department stated, "[i]t was never intended that homework should count as instructional time in determining whether a program meets the definition of an academic year, since the 12-hour rule was designed to quantify the in-class component of an academic program." Based on our review of the University's controls, we concluded that the University did not provide sufficient evidence to support that the study groups were in fact regularly scheduled and occurred.

Fontbonne Is Not Required To Produce Attendance Records of Study Group Meetings

The University stated that it strongly encouraged attendance at study group meetings (despite the lack of a legal requirement) by telling students that participation was mandatory and students would be graded based on performance and attendance. Fontbonne was able to produce some attendance records (for calendar year 1999)[7] as one or two professors maintained records that they were not required to maintain under law or University policy. These limited records (i.e., the weekly study group report) demonstrated that students generally attended their study group sessions for the requisite period of time. There is no basis for assuming that additional records would show a contrary trend. Although Fontbonne University had no duty to maintain attendance records during the relevant period and encouraged its instructors to maintain such records only while the potential for a grade appeal existed, the weekly study group reports

[7] In Section III.D of its response to our audit report, Fontbonne stated that "Because these forms address the concerns the OIG raised respecting faculty confirmation of study group attendance, there should be no liability associated with the period in which Fontbonne employed the weekly study group reports."

contradict the OIG's assertion that Fontbonne did not ensure that study group sessions occurred on a regular basis.

OIG Response

We are not attempting to establish an attendance requirement. The regulations at 34 CFR § 668.24(a)(3) state:

> (a) An institution shall establish and maintain on a current basis, any application for title IV, HEA program funds and program records that document –
>
> (3) Its administration of the title IV, HEA programs in accordance with all applicable requirements; …

It is incumbent on the University to demonstrate that it is in compliance with the 12-Hour Rule. We conducted two sample reviews of study group records (which included calendar year 1999) and requested that the University provide us with available documentation to support that meetings were scheduled and occurred. During our initial work to obtain an understanding of internal controls, we judgmentally selected two study groups to review. Fontbonne provided us with weekly study group reports that documented all of the required 96 individual student study group hours for one study group in one course. The University provided no weekly study group reports for other study groups in that course. Subsequently, we statistically selected 60 student/class combinations to review. Fontbonne did not provide any documentation for the required individual student study group hours in this sample. As the documentation for 96 hours is statistically insignificant (.0003 of the 315,580 individual student study group hours in the total population), it had no impact on our conclusion that the University was not in compliance with the 12-Hour Rule.

To address the University's statement that the weekly study group reports maintained by two instructors demonstrated that the students attended their study group sessions, we examined the reports for documentation. As the reports were submitted for groups and the composition of the groups may have changed during the courses, our analysis was based on required *group* hours, not individual student study group hours. The documentation maintained by the two instructors for calendar year 1999 was for eight courses (excluding the study group identified above) and included 36 study groups. 43 percent of the required hours were not documented. In addition, we found instances of groups not meeting for the required four hours; starting times listed with no ending times; unspecified meeting dates; and meetings that took place by faxes, emails, and phone calls, with no times specified. Review of the additional study group weekly reports did not affect our conclusion that Fontbonne was not in compliance with the 12-Hour Rule.

There is No Statutory or Regulatory Basis for the OIG's Requirement That the University "Ensure That Study Group Meetings Were Taking Place" Through the Presence of an Instructor

The University stated that the draft report suggests that the study group meetings did not constitute regularly scheduled instruction because no instructor was present at the meetings. There is no requirement that a professor must be present in the room for regularly scheduled instruction to occur

OIG Response

Our determination that an instructor was not present at study group meetings was a result of our review of the University's overall internal control over study groups. We did not state that an instructor must be present for a study group to qualify as instruction. If an instructor had been present at study group meetings, we would have considered this as evidence of a strong control.

Fontbonne Was Not Required to Control Where Its Study Groups Met

The University stated that the OIG suggests that the study group meetings did not constitute regularly scheduled instruction because the University did not control the meeting place. The OIG does not cite any statute, regulation, or ED guidance to support its assertion.

OIG Response

Our audit report did not state that the study team meetings must be held at locations controlled by the University. During our review, we considered the University's monitoring of study group locations as one possible element of the University's internal control system, and we determined that this control was weak because the University was generally not aware of where study group meetings were held.

Fontbonne Substantially Complied With a Rule That Even the Department Has Labeled "Unworkable"

The University stated that the underlying basis for the 12-Hour Rule and its continued applicability to the Title IV programs are presently in serious doubt, particularly as applied to nontraditional educational programs such as the University's Options Program. The HEA requires a minimum of 30 weeks of instructional time; however, the 12-hour per week requirement was added by regulation and therefore does not have any statutory basis. The recently introduced Internet Equity and Education Act of 2001 effectively eliminates the 12-Hour Rule. The Department most recently expressed its lack of confidence in the 12-Hour Rule as a meaningful measure of quality instruction in the final negotiated rulemaking sessions held in April 2002.

OIG Response

The University was required to comply with the HEA and the regulations in effect during our audit period. The 12-Hour Rule was a regulatory complement to the statutory definition of an academic year, and the University acknowledged it was required to comply with it. As with any other regulation, the University must be able to document that it is in compliance. Accordingly, the University must be able to document that it scheduled and provided 360 hours of instruction for full-time students.

The OIG's Calculation of Liability Does Not Give Appropriate Credit for Time Spent in Traditional Courses

The University stated that the procedure the OIG used to calculate the liability is flawed because the OIG's formula misstates the number of hours of instruction claimed by Fontbonne when packaging student financial aid awards. A majority of Options students supplemented their schedule with "traditional" classes. The OIG correctly recognized that these students attended an increased number of hours of regularly scheduled instruction through these supplemental classes but did not properly account for the additional instructional hours in its liability calculation. Fontbonne disagreed with the assumption of 12.5 hours of instruction per credit hour and instead believed that the OIG should have assigned 15 instructional hours per credit hour, since under the regulatory definition of an academic year, traditional classes are assumed to meet one hour per week per credit hour and Fontbonne's traditional semesters are 15 weeks in duration. It was incorrect to include in the denominator of the formula used to determine the allowable Pell funds the number of "traditional" instructional hours the student completed because Fontbonne did not in fact claim these additional hours in establishing its academic year or awarding Title IV funds.

OIG Response

The associate director of financial aid informed us that a three-credit-hour traditional course consisted of 37.5 instructional hours. We divided the 37.5 by three to arrive at the 12.5 hours of instruction per credit hour. The preliminary recommended Pell liability in the draft report was obtained by using the actual Options hours plus traditional hours in the denominator of the formula. Subsequently, we determined that the denominator should be a nonvariable 360 hours, as this is the number of instructional hours in the school's definition of an academic year for the Options program. As a result, we reduced the recommended liability by $399.

Additional Hours Spent by Students in Preparation for Examinations Are Includable Under the 12-Hour Rule

The University stated that some Options courses utilize traditional examinations, in addition to the study group presentations and other graded activities. The audit report ignores the additional hours spent by students in those courses preparing for examinations, although the 12-Hour Rule explicitly permits time spent in "preparation for examinations" to be counted towards compliance. Because there is no requirement for supervision of the exam period, any calculation under the 12-Hour Rule must presume, by the simple fact that the exams occurred, that students in those courses were expected to spend, and did spend, additional time preparing for exams.

OIG Response

The University defined its academic year as consisting of a minimum of four hours per week in classroom workshops, and four hours per week in study group meetings. If individual students spent additional time in preparation for examinations or homework-type activities, it would not be relevant to the University's compliance with the 12-Hour Rule. Students were *required* to spend four hours per week in study *group* meetings. Our review focused on whether the University had documentation to show that these group meetings were regularly scheduled and occurred.

Background

Fontbonne University (the University) is a Catholic liberal arts University sponsored by the Sisters of St. Joseph of Carondelet. The main campus is located in St. Louis (Clayton), with off-campus sites located at South County and Fenton, Missouri. The University received its last full accreditation in 1993 by the North Central Association (NCA) of Colleges and Schools. The Options program is designed for nontraditional working adults. During our audit period, 900 students attended classes in the Options program.

During the scope of our review, Fontbonne offered three degrees through its Options program: (i) bachelor of business administration (BBA), (ii) master of business administration (MBA), and (iii) master of management (MM). Students were required to have a minimum of 54 semester credits to be accepted in the BBA, and the BBA core (44 credits) could be completed in 22 months. A total of 128 semester hours were required for the BBA degree (the remaining credits consisted of free-choice electives which could be acquired through a variety of methods). The MBA could be completed in 24 months, and the MM in 18 months. Small groups (cohorts) of 16 to 22 adults registered in advance and progressed through the curriculum together. Classes met formally one night each week for four hours, and courses were taken sequentially one at a time. Study groups consisting of three to five students from the same cohort were expected to meet weekly outside of class for four additional hours to discuss and prepare group assignments.

On May 1, 1991, the University contracted with IPD for marketing and accounting support while Fontbonne provided curriculum, facilities, and faculty. During our review, tuition revenue was split 55 percent to the University and 45 percent to IPD (except for the first two months which were 50/50, and for general education traditional courses taken by Options students which were split 60/40). Book, material, and application fee revenue was remitted in full to Fontbonne.

The University participated in the Federal Family Education Loan, the Federal Pell Grant, the Perkins Loan, and the SEOG programs for its Options students. The U.S. Department of Education reported a 3 percent default rate for Fontbonne University for fiscal year 1998.

Audit Scope and Methodology

The objectives of the audit were to determine compliance with the HEA and Title IV regulations in the areas of recruitment of students and student enrollment, and course length. We focused our review on the following areas.

- The University's contract with IPD, and the University's Program Participation Agreement with the Department of Education.

- Required hours of instruction in an academic year.

To accomplish our objectives, we reviewed the University's policies and procedures for its Options program, accounting and bank records, and student financial assistance and academic files. We reviewed the University's contract and additional agreements with IPD, IPD's compensation plans for its recruiters, and the University's Program Participation Agreement with the Department. We reviewed the audit reports for the three years ended June 30, 1999, prepared by the University's Certified Public Accountants, and the program review report for the two award years ended June 30, 1995, prepared by OSFA's Institutional Participation and Oversight Service. We reviewed the most recent report prepared by the University's accrediting agency. We interviewed University and IPD management officials and staff. We reviewed documentation for two nonstatistically selected study groups, and 60 statistically (randomly) selected student/class combinations. For the statistical sample, we defined the universe as consisting of 12,766 unique student/class combinations. The statistical sample was equally distributed into three separate strata for each award year in our audit period. The desired confidence level was defined as 90 percent with a precision of + or – 20 percent. We determined that, if there were 1000 documented hours in the total universe, the probability was 96.8 percent (sampling risk) that we would have found at least one hour.

We relied extensively on computer-processed data extracted by the University from its database of Title IV academic records for use in analyzing student attendance and for identifying SEOG disbursements. We used an extract of payment and award data from the Department's National Student Loan Data System (NSLDS) to identify disbursements for Pell Grants and Stafford loans as NSLDS data was more complete than the University's electronic data. We tested the accuracy, authenticity, and completeness of the data by comparing source records to computer data, and comparing computer data to source records. Based on these tests and assessments, we concluded that data were sufficiently reliable to be used in meeting the audit's objectives.

The audit covered the 1997-98, 1998-99, and 1999-2000 financial aid award years (July 1, 1997, through June 30, 2000). We performed fieldwork on-site at the University's offices in St. Louis, Missouri, during the periods September 26-29, 2000, December 18-21, 2000, January 31 through February 1, 2001, and August 30-31, 2001. We conducted our exit conference with the University on June 26, 2001. We issued our draft report on April 19, 2002. The University responded to the draft report on June 17, 2002. We conducted the audit in accordance with government auditing standards appropriate to the scope of review described above.

Methodology Used to Determine the Title IV Funds Improperly Disbursed by the University for the Commissioned Sales Finding

We identified total disbursements of $10,154,935 Stafford loan, $214,625 Pell Grant, and $89,839 SEOG funds by the University during the period July 1, 1997, through June 30, 2000.[8] The University provided electronic files containing information on Options students who received disbursements for Stafford loans, SEOG and Pell Grants during our audit period. We used the information contained in these files and information extracted from NSLDS to determine the improperly disbursed funds.

Methodology Used to Determine the Title IV Funds Improperly Disbursed by the University for the Course Length Finding

The University defined its academic year as 45 weeks; therefore, a typical student enrolled in only study-group related courses received 180 hours of instruction per academic year as the study groups did not qualify for inclusion in the 12-Hour Rule calculation. Because some Options students took traditional semester-based courses that were not study-group related, it was necessary to convert the number of weeks of instruction to allowable instructional hours for each Options student. A student was given credit for four hours of instruction for each week of class related to the Options program, and 12.5 hours for each credit earned for a traditional course. The effect of this calculation was to increase the 180 *allowable* instructional hours in the University's definition of an academic year by the amount of traditional hours of instruction taken.

<u>Stafford Loan Disbursements Made in Excess of the Amounts Allowable for an Academic Year</u>. For each student who received Stafford loan funds during the period July 1, 1997, through June 30, 2000, we assigned an initial academic level and applicable loan limit(s) based on the first loan(s) guaranteed during our audit period. We then compared the disbursements for each 360-hour period to the applicable Stafford loan limits as set forth in 34 CFR 682.204 and identified the amounts that exceeded the limits. We identified $1,892,066 in disbursements that exceeded the annual limits.

<u>Pell Grant Disbursements Made in Excess of Amounts Allowable for an Academic Year</u>. We identified the funds disbursed for Pell Grants during the period July 1, 1997, through June 30, 2000. Pell Grants are awarded using schedules published annually by the Secretary of Education. To determine the amount of Pell Grant funds that a student may

[8] We determined that Perkins Loans were not material to our review.

receive in a payment period, institutions without standard terms multiply the maximum amount shown on the schedules by a specified fraction. The numerator of the fraction is the number of credit hours in a payment period, and the denominator is the number of credit hours in an academic year. Since the University used the credit hours for a 45-week academic year rather than a 90-week academic year as the denominator, the Pell Grant award was overstated by one-half, or 50 percent. An adjustment was necessary to allow for those Options students that took traditional semester-based courses. For each student that received Pell Grant disbursements during our audit period, we calculated the number of allowable and the number of claimed instructional hours for each award year. For those Options students that took traditional semester-based courses, we converted the number of credits earned to allowable instructional hours and combined them with the allowable classroom hours. If a student's total allowable instructional hours were 217, then the amount of Pell improperly disbursed for that student would be 40 percent (one minus 217/360) of the amount actually disbursed during that award year. We identified $90,025 in Pell Grant disbursements that exceeded the maximum amount allowed.

Statement on Management Controls

As part of our review, we gained an understanding of the University's management control structure, as well as its policies, procedures, and practices applicable to the scope of the audit. Our purpose was to assess the level of control risk for determining the nature, extent, and timing of our substantive tests. We assessed the significant controls in the following categories:

- Data Reliability
- Student Enrollment
- Institutional Eligibility
- Institutional Adherence to the Definition of an Academic Year

Because of inherent limitations, a study and evaluation made for the limited purpose described above would not necessarily disclose all material weaknesses in the management controls. However, our assessment disclosed significant management control weaknesses which adversely affected Fontbonne University's ability to administer the Title IV programs included in its Options program. These weaknesses included incentive-based payments for student enrollment that violated the statutory prohibition on commissioned sales, and inadequate control over the amount of time spent in instruction that violated the requirements of the 12-Hour Rule. These weaknesses and their effects are fully discussed in the *Audit Results* section of this report.

Fontbonne University's

Response to the Draft Report

Fontbonne
UNIVERSITY
Office of the President

6800 Wydown Boulevard
St. Louis, Missouri 63105-3098
(314) 889-1419
(314) 889-1473 fax
www.fontbonne.edu

June 17, 2002

VIA FEDERAL EXPRESS

Mr. William Allen
Office of Inspector General, Region VII
10220 N. Executive Hills Blvd., Bldg. R07
Suite 720, Room 200
Kansas City, MO 64153-1367

Re: Draft Audit Report, Control No. ED-OIG/A07-A0031

Dear Mr. Allen:

Fontbonne University's ("Fontbonne" or the "University") response to the Draft Audit Report issued by the Office of the Inspector General, Region VII on April 19, 2002 ("Report"), and covering the 1997-2000 award years (the "audit period"), is contained below.

We appreciate the opportunity to respond to the Report as well as the courtesies displayed by the audit team throughout the audit process.

BACKGROUND

Situated on a 13-acre campus in Clayton, Missouri, Fontbonne University is a coeducational institution of higher learning dedicated to the discovery, understanding, preservation, and dissemination of truth. Fontbonne derives its name and inspiration from Mother St. John Fontbonne, refoundress of the Sisters of St. Joseph. The University seeks to educate students to think critically, to act ethically, and to assume responsibility as citizens and leaders.

Chartered by the State of Missouri in 1917, the University is dedicated to the liberal arts, responsive to the needs of professional areas, and committed to the education of women and men. Preserving the ideals of the Catholic education, Fontbonne continues to be sponsored by the Sisters of St. Joseph.

544745.1

I. THE OPTIONS PROGRAM

Fontbonne University's Options Program was established under an agreement (the "Agreement") with the Institute for Professional Development ("IPD") (an unrelated corporation).[1] In accordance with the Agreement, IPD assisted the University in establishing and managing academic programs in formats that could be marketed to adult students. The format originally suggested by IPD was thought to be attractive to adult students because it required applicants to have completed at least two years (50 semester credit hours) of undergraduate study,[2] was developed to allow students to complete their academic program within one to two years, allowed students to concentrate on one course at a time (through the use of modules), and offered eight hours of instruction during two sessions per week, instead of requiring the same amount of instruction during four or five sessions per week, as a traditional format might have required.

The Agreement generally obligated IPD to provide curriculum for the academic programs (to be modified and approved by Fontbonne), train Fontbonne faculty respecting the new program format, educate Fontbonne respecting the administrative processes appropriate to the program including providing student and faculty evaluations, provide accounting services, prepare advertising and promotional materials, and lease property as needed for the program. IPD also was to recruit students who would attend the Fontbonne University Options Program.

The Agreement generally required Fontbonne to admit students *in compliance with the College's admission standards* (Agreement at p. 15), develop curriculum as needed, approve all curriculum, provide academic instruction and student services, and maintain student records. Under the Agreement, Fontbonne and IPD were to split tuition equally until enrollment in the Options program exceeded 500 students, and then Fontbonne would receive a greater share of the tuition.[3]

II. THE AGREEMENT BETWEEN FONTBONNE UNIVERSITY AND IPD DOES NOT VIOLATE THE PROHIBITION AGAINST INCENTIVE COMPENSATION

The OIG asserts in the Draft Audit Report that under the Agreement, Fontbonne University paid incentive payments to IPD based on IPD's success in securing enrollment for the Options Program, which payments were prohibited under section 487 (a)(20) of the Higher Education Act of 1965, as amended (the "HEA"). The OIG bases this

[1] The Agreement is included in the OIG workpapers at B-20.

[2] Students applying to the graduate Options programs were required to submit proof of a baccalaureate degree.

[3] In fact, enrollment exceeded 500 students in 1996 and IPD started receiving a lesser portion (45%) of the tuition and fees in the 1997 academic year.

assertion on the facts that 1) among other things, IPD recruited students for the Options Program and 2) Fontbonne University shared tuition revenues with IPD.

Fontbonne disagrees with the logic and conclusion of this finding. Fontbonne's Agreement with IPD did not violate the prohibition against incentive compensation for the following reasons:

1. Fontbonne's agreement to share revenue with IPD was not based on IPD's success in securing enrollments, but was based on IPD's development and assistance in administering the Options Program.

2. Fontbonne University's payments to IPD were based in part on the volume of services that IPD provided to Fontbonne in connection with the Options Program.

3. IPD's share of the tuition revenue decreased as enrollment increased.

4. The Department's regulations do not prohibit tuition sharing agreements and the Department has not issued any guidance that would notify Fontbonne that its tuition sharing arrangement with IPD somehow violated federal law.

5. IPD's recruitment of students was not tantamount to admissions or enrollment since Fontbonne alone was responsible for making decisions respecting admissions in accordance with its admissions criteria.

6. Fontbonne's Options Program maintained an average 76.5% completion rate during the audit period. This rate is 20% higher than the average completion rate of four year institutions.[4] As such, the University's agreement with IPD did not encourage IPD to aggressively recruit or encourage Fontbonne to admit students unqualified to pursue postsecondary education, which is the harm that section 487 (a)(20) seeks to avoid.

Each of these issues is discussed in greater detail below.

[4] *See e.g.*, "Table 311. -- Percentage distribution of enrollment and completion status of first-time postsecondary students starting during the 1989-90 academic year, by type of institution and other student characteristics: 1994." http://nces.ed.gov/pubs2001/digest/dt311.html (visited June 14, 2002). This

A. The Incentive Compensation Rule

The HEA requires institutions participating in the federal student financial aid programs under Title IV of the HEA ("Title IV programs") to enter into a Program Participation Agreement ("PPA") which contains a number of compliance requirements, including a requirement that:

> The institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance.

20 U.S.C. § 1094(a)(20). The implementing regulation promulgated by the U.S. Department of Education ("the Department" or "ED") in turn requires Title IV, HEA participating institutions to agree that they:

> ...will not provide, nor contract with any entity that provides,[5] any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the awarding of student financial assistance.

34 C.F.R. § 668.14(b)(22). As is clear from the plain language of both provisions, the Incentive Compensation Rule was intended to prevent schools from using commissioned salespersons to recruit students. The legislative and regulatory histories similarly emphasize the intent to stop the use of commissioned salespersons as recruiters. Congress explained:

> The conferees note that substantial program abuse has occurred in the student aid programs with respect to the use of commissioned sales representatives. Therefore this legislation will prohibit their use.

---

document indicates that 53% of the students who enter into a bachelors degree program at a four year institution actually graduate with that degree.

[5] The statute restricts the ability of an institution to provide a commission, bonus, or other incentive payment to a person or entity based on that person's success in securing enrollments or financial aid. The Department's regulation extends the prohibition so that an institution also cannot contract with any entity that provides a commission, bonus or other incentive compensation based on success in securing enrollments or financial aid. As such, the Department's regulation purports to govern the actions of entities not addressed under the statute. The Department lacked authority to unilaterally expand Congress' unambiguous statement of law.

Conf. Rep. No. 102-630, 102d Cong., 2d Sess. 499 (1992). Similarly, the Secretary's published commentary on the final regulation stated:

> The Secretary believes that this provision is necessary to implement more rigid restrictions than were seen in the past on the practices of "commissioned salespersons."

59 Fed. Reg. 9539 (February 28, 1994). Notably, nothing in the legislative or regulatory history of this Rule supports the notion that the rule was intended to regulate institutions' routine business arrangements with outside vendors where services are contracted for on a licensed basis or based on the volume of services provided, such as the Agreement between the University and IPD.

B. <u>The IPD Agreement Compensated IPD for Creating the Adult Education Model, Helping Fontbonne Establish the Options Program and Providing a Wide Variety of Professional Services to Fontbonne University.</u>

As discussed above, the Agreement between Fontbonne and IPD provided that IPD would perform the following non-recruitment and non-enrollment services for Fontbonne related to the operation of the Options Program:

- **Program development**, including:

  1. Establishing required student competencies of specified criterion levels;
  2. Student performance evaluation mechanisms;
  3. Development of curriculum materials as required;
  4. Payment for all faculty and student curriculum materials developed by Fontbonne College faculty or by IPD;
  5. Ongoing curriculum review and revision;

- **Management consultation and training regarding**:

  1. Program administration and evaluation;
  2. Prior college-level learning assessment;
  3. Faculty recruitment, assessment and development;
  4. Marketing research and management;

5. Student tracking systems development and implementation;

6. Student tuition and Financial aid accounting;

7. Training services to assist the University to develop program management expertise including the ability to recruit and assess faculty;[6]

- **Maintenance of accounting records, and financial planning and budgeting**;

- Advice and consultation respecting **comprehensive academic quality control**, including instructor evaluations, student evaluations, and evaluations of courses of study related to the Options Program;

- **Office space** for Fontbonne and IPD personnel involved in the administration of the Options program;[7] and

- **Collection of all tuition and fees.**

Further, IPD was to perform the following non-recruiting **marketing functions**:

- Preparation of advertising and promotional literature (including copy and design ideas);

- Print copy; and

- Electronic advertising.[8]

Significantly, IPD provided all of these services, with the exception of faculty recruitment.

In reaching its conclusion that the Agreement between Fontbonne and IPD violated the prohibition against incentive compensation, the OIG ignores the significant non-enrollment related services performed by IPD under the Agreement. Instead, the

---

[6] Although not required under the Agreement, IPD also provided training on the use of technology in the classroom.

[7] IPD provided office space for the South County location and paid for renovations and furnishings at the main campus location.

[8] These marketing functions, which ED has agreed do not constitute recruiting, are not insignificant because IPD was required to spend $8,000-15,000 per month on such activities. (IPD Agreement at p. 7.) This was a valuable service to Fontbonne, the expenditures for which far exceeded the amount that Fontbonne or any small college would be able to spend on advertising.

OIG describes the Agreement as if it covered only recruitment and student accounting functions. *See* Draft Audit Report at page 3.

The OIG does not appear to understand that IPD earned a portion of the Options Program revenues because IPD was Fontbonne's partner in establishing the Options Program. IPD developed the educational format and several administrative aspects of the Options Program and provided Fontbonne significant assistance in developing the curricula for the associated academic programs. Further, the OIG ignores the fact that IPD provided many services subsequent to student enrollment which the parties clearly had the right to agree were best compensated based on volume. Because small colleges and universities like Fontbonne often cannot take the economic risk of paying for a product such as the Options Program without knowing whether the product is of value, or of paying a fixed price for an unknown quantity of student services, agreeing to pay IPD based on the level of services needed was Fontbonne's only real option. The OIG should not take it upon itself to mandate the form of agreement that Fontbonne can enter into in an arms-length negotiation with a private party. It is only by distorting the terms of the Agreement that the OIG can assert that the Agreement is a contract for recruiting services, for which IPD received a commission.[9]

Although the Draft Audit Report does not clearly recognize the other functions performed by IPD, the OIG's Audit Workpapers ("workpapers") do.[10] According to the workpapers, the auditors did not believe that the other services "that may have been provided by IPD" were relevant to their review. (Workpapers at C-2-Sum, p. 2.) However, it is illogical to think that the functions performed by IPD, which directly relate to the payments made to IPD, could be irrelevant to an analysis that alleges that the payments under the Agreement constituted a prohibited commission or incentive payment. No allegation of wrongdoing on the basis of the Agreement should stand where the reviewers believed it was unnecessary to consider all the facts related to the Agreement.[11]

C. Fontbonne University Did Not Pay IPD Based on Its Success in Securing Enrollments.

Beyond its failure to examine the broad range of IPD's non-enrollment related academic and administrative functions, the Draft Audit Report's reliance upon certain recruiting functions similarly fails to demonstrate any violation of the Incentive

[9] This aspect of the IPD Contract is discussed in greater detail infra.

[10] Fontbonne requested a copy of the OIG's Audit Workpapers which form the basis for the Draft Audit Report. The OIG agreed to provide a portion of those workpapers. Fontbonne reserves the right to review the workpapers that it did not receive.

[11] Fontbonne submits that if IPD was being paid primarily for its recruiting services, then it would not have had any incentive to provide regular training and the other significant services it did provide throughout the audit period. IPD willingly provided these services because the parties understood that these services were integral to the Agreement.

Compensation Rule because IPD did not and could not secure enrollments within the meaning of the Incentive Compensation Rule. IPD had no authority or control with respect to the University's criteria, standards, procedures or decisions respecting the admission or enrollment of students. Fontbonne University admitted to the Options Program only those students who met or exceeded its admissions criteria. Further, the University, not IPD, awarded Title IV funds to those Options Program students eligible to participate in the federal student financial aid programs. Because the Incentive Compensation Rule prohibits only those payments based upon "success in securing enrollments or financial aid," the prohibition does not apply to IPD, which could not and did not secure enrollments or financial aid for the University.

D. <u>The Incentive Compensation Rule Does Not Prohibit Tuition Sharing Agreements.</u>

1. <u>The OIG has no legal authority for using the Incentive Compensation Rule as a basis for regulating legitimate business transactions unrelated to enrollment services.</u>

The OIG's position in Finding No. 1 of the Draft Audit Report is not mandated by existing law and the OIG knew this when it began its review of Fontbonne University. According to the OIG workpaper titled "Planning Meeting" (Index: B-1), the expected benefits of the OIG's audit of Fontbonne were "better use of funds for student aid dollars, *clarifying definitions, guidelines and regulations*, and recovery of funds overawarded to students." (Index B-1, page 2 of 6, emphasis added). Although Fontbonne understands that the Regional OIG office did not instigate this review on its own,[12] the University is disturbed that the OIG would put it through the significant expense and extraordinary effort of cooperating with and responding to an audit merely as an exercise in clarifying the boundaries of current law. The OIG's effort to clarify existing law by assessing a liability against Fontbonne based on the OIG's "clarified" interpretation of the law violates Fontbonne's due process rights. Further, such action is outside the scope of the OIG's authority because it is not within the OIG's authority to establish Department of Education policy. The OIG's role is limited to enforcing existing law as written and interpreted by the Department. This is clear from the Inspector General Act of 1978, as amended,[13] and the corresponding legislative history.[14]

[12] The Planning Meeting workpaper states that prior audits were conducted of other IPD schools and the audit of Fontbonne was an effort to expand the OIG's review of schools contracting with IPD.

[13] According to the Act, "there shall not be transferred to an Inspector General under paragraph (2) program operating responsibilities." 5 U.S.C. app. 5 § 9(a)(2). Clearly, interpreting agency regulations and establishing policy are "program operating responsibilities."

[14] Fontbonne submits that the OIG may not have authority to conduct the instant program-specific audit since, according to the legislative history of the Inspector General Act, the OIG does not have "responsibility for audits and investigations constituting an integral part of the programs involved . . . . In such cases, the Inspector General would have oversight rather than direct responsibility." H.R. Rep. No. 584 at 12-13.

The OIG's reading of the law has no clear relationship with the purpose for the Incentive Compensation Rule and expands the scope of the Rule beyond any reasonable interpretation of current law.

2. <u>The Department has published no regulation or other public guidance supporting the OIG's interpretation of the Incentive Compensation Rule to restrict routine tuition sharing arrangements.</u>

Given that the expected benefits of the OIG's audit of Fontbonne were to clarify definitions, guidelines and regulations, it is not surprising that the Draft Audit Report cites no statutory, regulatory or non-regulatory guidance, or other legal authority to support the proposition that the tuition sharing arrangement under the IPD Agreement violated the Incentive Compensation Rule. However, regulated entities are entitled to adequate notice of what rules are to be applied to them. Federal law requires the Department to publish in the Federal Register all "statements of general policy or interpretations of general applicability formulated and adopted by the agency" and any "amendment, revision, or repeal" of such. 5 U.S.C. § 552(a)(1)(D) and (E).[15] In this case, the University did not know, and could not have known, that the allocation of revenue in the IPD Agreement would be construed as a violation of the Incentive Compensation Rule because no such pronouncement or interpretation had ever been published and disseminated to Title IV-participating institutions.[16] Indeed, for all of the reasons presented in this submission, this University and many others like it reasonably believed the opposite. The Agreement simply is not a contract that calls for prohibited payments to commissioned salesmen.

See also 124 Cong. Rec. 10,405 (1978), which contains the following quote from Congressman Levitas:

> [T]he office of Inspector General would not be a new "layer of bureaucracy" . . . . They would deal exclusively with the internal operations of the departments and agencies. Their public contact would only be for the beneficial and needed purpose of receiving complaints about problems with agency administration and in the investigation of fraud and abuse by those persons who are misusing or stealing taxpayer dollars.

[15] *See also* the General Education Provisions Act ("GEPA") at 20 U.S.C. § 1232(a), which defines the term "regulation" to include "any generally applicable rule, regulation, guideline, interpretation, or other requirement" that is prescribed by the Department and has legally binding effect.

[16] Indeed, the Department's *2001 Program Review Guide* ("Guide"), which describes the compliance issues that a program reviewer should consider when conducting a review of an institution's administration of the Title IV programs, does not even address the issue of tuition sharing agreements. Instead, after referencing the general requirement that an institution cannot provide nor contract with any entity that provides any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid, the Guide instructs the reviewer to determine compliance with the rule by investigating how recruiters or "sales representatives" of the organization are paid.

> Reviewers should interview a sales representative to verify compensation policies, and ask what part they play in providing students with information [sic] financial aid availability. This should also be discussed with school administrators. Additionally, reviewers should ask students and other school personnel, especially financial aid staff, how financial aid information is provided.

The 2001 Program Review Guide, page IV-78. We suggest that this is further proof that it is not the Department's policy to prohibit tuition sharing agreements under the Incentive Compensation Rule.

We submit that the interpretation advanced by the OIG in the Draft Audit Report is so removed from a reasonable person's understanding of the regulations that the University cannot be deemed to have been fairly informed of any such agency perspective. Imposition of any liability under this questionable, retroactively applied policy interpretation violates traditional notions of due process and basic fairness because the University did not have adequate notice that its conduct would be deemed prohibited.

Moreover, to the best of the University's knowledge, despite the national emergence of revenue sharing and agreements between higher education institutions and outside vendors, the Department has not previously applied this rule in this manner to any institution, and the OIG has provided no justification or legal authority for selectively enforcing its own internal policy interpretation against the University. We respectfully suggest that such action is arbitrary and capricious because a regulatory agency must provide an adequate explanation before it treats similarly situated parties differently.

3. The OIG is pursuing its interpretation of the Incentive Compensation Rule despite the Department's apparent disagreement with that interpretation.

Within the last several months, the Department of Education has expressed its view that institutions need guidance respecting the Incentive Compensation Rule, that the Rule was not intended to interfere with legitimate business practices,[17] and that the Rule specifically does not apply to tuition sharing arrangements. The fact that the OIG persists in exploring the potential limits of the Incentive Compensation Rule in the face of these statements by Department of Education officials is frustrating. Fontbonne does not believe that it or any of the other small colleges and universities that have signed contracts with IPD should be used as a tool in an internal debate between the Department of Education's regulators and the OIG as to the meaning of the Incentive Compensation Rule.

As the OIG undoubtedly is aware based on its attendance at the negotiated rulemaking sessions, the U.S. Department of Education distributed proposed regulatory changes for consideration by the negotiators, including changes that addressed the Incentive Compensation Rule.[18]

[17] *See* The Chronicle of Higher Education, April 29, 2002 (Negotiations Collapse Over Federal Rules on Compensation for Admissions Recruiters) and May 10, 2002 (U.S. Plans to Loosen Regulations for Colleges Receiving Federal Aid) at http://chronicle.com/daily/2002/04/2002042902n.htm and http://chronicle.com/weekly/v48/i35/35a02501.htm, respectively (visited on June 9, 2002).

[18] The Department's published agenda for negotiated rulemaking stated that the goal for placing incentive compensation on the agenda was to "clarify and define" the scope of the Incentive Compensation Rule. www.ed.gov/offices/OPE/rulemaking/negregagenda. As a result, the OIG and the Department apparently are in agreement that the Incentive Compensation Rule would benefit from clarification.

The language issued by the Department specifically addressed the concept of revenue sharing agreements, proposing to allow

> [p]ayments to third parties, including tuition sharing arrangements, that deliver various services to the institution, even if one of the services involves recruiting or admission activities or the awarding of Title IV, HEA Program funds, provided that the individuals performing the recruitment or admission activities, or the awarding of Title IV, HEA Program funds, are not paid prohibited incentive compensation.[19]

Although the team that discussed this proposal during negotiated rulemaking (Team II) was not able to reach agreement on all issues before them, the Department's position during negotiated rulemaking was clear - tuition sharing agreements do not violate the statutory prohibition against incentive compensation, even if the vendor in question provides recruiting services.

The Draft Audit Report, issued on April 19, 2002, does not serve the purpose of enforcing the Department's rules and regulations or the Department's interpretation of the guiding statute. Instead, the apparent purpose of the Report is to force the Department to address the fact that the OIG disagrees with its interpretation of the scope of the Incentive Compensation Rule. Once again, Fontbonne objects to the fact that it must use scarce resources to defend itself in a dispute that appears to have very little to do with Fontbonne University or with the OIG's authority to enforce the Department's rules and regulations.

4. <u>The IPD Agreement provided that IPD received decreasing percentages of revenues as more students enrolled in the Options Program.</u>

The Draft Audit Report fails to consider that the University allocates IPD a <u>decreasing</u> percentage of Options tuition as the number of enrollments in the Options Programs increases.[20] This fact contradicts the OIG claim that IPD's compensation rights were linked to increased enrollment. In fact, the declining payment percentages confirm that the revenue allocation is apparently tied at least in part to IPD's costs of providing

---

[19] This language is taken from a document distributed by ED at the last negotiated rulemaking session for Team II. The document is titled "Proposed Regulatory Language Committee II – Program Issues," has a date of April 17, 2002, and states that it is "Draft, Pre-Decisional, for Discussion Purposes Only." Exhibit I.

[20] Initially, the IPD Agreement allocated an equal share of the revenues to IPD and Fontbonne. However, that share decreased to 45 percent following the academic year in which Options enrollment exceeded 500 students (1996), and was set to decrease further when enrollments exceeded 800 students, and then again when enrollments exceeded 1100 students. <u>See</u> IPD Agreement at 21.

various services,[21] which, due to economy of scale, presumably rise in smaller increments as the Options Program student population reaches certain threshold levels. (As discussed earlier, the payments to IPD also were based in part on IPD's development of the Options Program format and basic curriculum.) As the number of Options students increased, IPD would be able to perform many of its contractual responsibilities at a lower per-capita cost, enabling it to share such savings with the University. If the allocation of revenue was intended to pay IPD solely for recruiting and enrollment services, the IPD Agreement would not have provided for a decreasing percentage share.

5. <u>The University's compensation to IPD does not constitute a "commission, bonus, or other incentive payment based directly or indirectly on success in securing student enrollments."</u>

a. The allocation of revenue to IPD does not constitute commissions or bonuses tied to enrollments.

Black's Law Dictionary (6th ed. 1990) defines "bonus" as "an extra consideration given for what is received, or something given in addition to what is ordinarily received by, or strictly due, the recipient." It defines "commission" as "a fee paid to an agent or employee for transacting a piece of business or performing a service." On its face, the bonus definition does not apply to the allocation of revenue between the University and IPD because those payments constitute the sole compensation to IPD for services performed pursuant to the IPD Agreement. The revenue allocation is not supplemental compensation. Similarly, the allocations do not constitute enrollment-based commissions because (a) as has been shown, IPD is compensated for the wide variety of services it performs in regard to the Options Program, not merely for recruiting students; (b) the allocation of revenues does not compensate IPD for any specific transaction, but instead pays for the full scope of services provided under the IPD Agreement; and (c) the revenue is allocated to IPD as a corporate entity; there are no payments under the IPD Agreement to any individual "agent or employee" based upon specific transactions or recruitment activities.

b. The allocation of revenue to IPD does not constitute incentive payments.

The statute and regulations forbid payment of "any commissions, bonus, or other <u>incentive</u> payment based directly or indirectly on success in securing enrollments" (emphasis added).[22] Webster's 3d New International Dictionary (1981) defines the word "incentive," when used as an adjective, as "serving to encourage, rouse, or move to

---

[21] As stated earlier, Fontbonne's obligation to share revenue with IPD also is based on IPD's development of the Options Program format and curriculum and its willingness to lend this expertise and content with Fontbonne.

[22] By inserting the word, "other," before "incentive payment," Congress and ED made clear that only these commissions, bonuses, or other payments that constitute <u>incentive</u> payments are prohibited.

action." As described above, IPD's percentage share of Options revenues actually decreases as enrollment increases. The revenue allocation does not motivate or incite enrollments.

E. Response to the Draft Audit Report's Assertions With Respect to IPD's Internal Salary Structure.

The Draft Audit Report also questions whether IPD's internal compensation plans were consistent with the Incentive Compensation Rule. The University is unable to respond directly to the OIG's claim because the University's Agreement with IPD did not provide for incentive compensation payments and Fontbonne was not aware of IPD's compensation plans. Under the Agreement, each party was responsible for paying its "respective taxes, workers compensation, employee benefits (if any), and all similar obligations." *Id.* at page 36. The University therefore had no involvement with IPD's internal payroll or salary structure.

Because the subject of IPD's internal compensation structure is within the exclusive domain of IPD, IPD agreed to prepare a statement for inclusion in this submission. IPD presented us with the following statement, which is included in its entirety as follows:

* * *

IPD Recruiter Salaries Do Not Violate the Prohibition Against Incentive Compensation

The Draft Report asserts at page 5 that IPD compensation plans "provided incentives to its recruiters through salary levels that were based on the number of students recruited and enrolled in programs." Yet, in describing the IPD salary plan, the Draft Report states "IPD assigned recruiters a salary within the parameters of performance guidelines (i.e., knowledge of basic policies and procedures, organization and communication skills, and working relationships)." The guidelines cited by OIG are not related to a recruiter's success in securing enrollments - e.g., a recruiter may exhibit any or all of the aforementioned qualities without recruiting a threshold number of students. Thus, the Draft Report itself establishes that the cited IPD compensation plans based recruiter salaries in part on factors that are not based on success in securing enrollments.

To the extent that the Draft Report suggests that those provisions violate the HEA § 487(a)(20) (U.S.C. § 1094(a)(20)), that contention is incorrect and contrary to law. As detailed below, the cited provisions regarding recruiter salaries are fully consistent with the governing statute and regulation for each of the following reasons.

1. The Prohibition Against Incentive Compensation Does Not Prohibit Salary Based On Success In Securing Enrollments

The terms of the HEA's prohibition incentive compensation do not extend to "salary." Both the governing statute and regulation require a Title IV participating institution to agree that it will not provide

> [A]ny commission, bonus or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons . . . . engaged in any student recruiting or admissions activities . . .

20 U.S.C. § 1094(a)(20); 34 C.F.R. § 668.14(a)(22). Neither the statute nor the regulation makes reference to salary. The prohibition against incentive compensation only extends to certain "commission[s]," "bonus[es]," or "other incentive payment[s]," each of which are distinct from salary. Accordingly, the express language and plain meaning of the law does not prohibit an institution from basing recruiter salaries, in whole or in part, on success in securing enrollments.

2. The Legislative History Makes Clear That Congress Intended To Permit Recruiter Salaries To Be Based On Merit

Even if one erroneously presumed that the prohibition against incentive compensation could extend to certain recruiter "salaries," Congress made clear in enacting the 1992 amendments to the HEA that salary based on success in securing enrollments is not prohibited so long as it is not based solely on success in securing enrollments. Specifically, the Conference Committee that resolved the House and Senate differences in the 1992 HEA Amendments stated that the statute does not prohibit salary that is based on merit, even if measured, in part, by success in securing enrollments. The Committee's report states in pertinent part:

> The conferees note that substantial program abuse has occurred in the student aid programs with respect to the use of commissioned sales representatives. Therefore, this legislation will prohibit this use. The conferees wish to clarify, however, that the use of the term "indirectly" does not imply that the schools cannot base employee salaries on merit. It does imply that such compensation cannot solely be a function of the number of students recruited, admitted, enrolled or awarded financial aid.

Conf. Rep. 630, 102d Cong., 2d Sess. at 499 (1992)(emphasis added). As clarified by the Conference Report, the statute was not aimed at merit-based salaries for recruiters. The Committee instead stated that Section 487 (a)(20) does not prohibit salary that is based on successful job performance, even if that success is measured, in part, by success in securing enrollments.

Thus, the legislative history of the prohibition against incentive compensation contradicts any suggestion in the Draft Report that recruiter salary may not be based on merit. As noted above, the Draft Report itself concedes that the cited provisions for recruiter salaries set forth in the IPD compensation plans satisfy these criteria because they base salary on a variety of performance criteria that are not solely related to success in securing enrollments. Accordingly, the Draft Report acknowledges that the cited IPD compensation plans do not set recruiter salaries based solely on enrollments. The cited salary provisions are therefore consistent with both the text and the intent of the law.

3. The Secretary has not published any interpretation of Section 487 (a)(20) or 668.14 (a)(22) that would prohibit recruiter salaries based on merit

The Secretary has not published an interpretation of relevant law that explicitly prohibits basing recruiter salaries on success in securing enrollments. Neither the notice of proposed rulemaking nor the preamble to the final regulations address the issue of "salary" based on success in securing enrollments. 59 Fed. Reg. 22348 (Apr. 29, 1994); 59 Fed. Reg. 9526 (Feb. 28, 1994). Although the Secretary indicated that he might, at some point, publicly clarify what he considers acceptable under the statute and regulation (see 59 Fed.Reg. at 9539), he has not, as of yet, done so. Accordingly, the Secretary has not published any explicit prohibition with respect to recruiter salaries, or any interpretation contrary to that set forth in the aforementioned Congressional Conference Report.

If the Draft Report is suggesting that the Department prohibits recruiter salaries based in part on enrollments, that suggestion is incorrect, contrary to law, contrary to rational policy and must be rejected. As detailed above, the Department has not published such an interpretation. Consequently, there is no basis for the Draft Report's suggestion.

If the Department sought to retroactively enforce the interpretation suggested by the Draft Report, its enforcement would be unlawful because it would contradict both the text of the prohibition against incentive compensation and the intent of Congress. Moreover, the Department has never given institutions advance notice through publication of the interpretation set forth in the Draft Report. An administrative agency must give the regulated public "fair notice" of its regulatory interpretations, or it violates the due process clause of the Fifth Amendment to the U.S. Constitution. Accordingly, the Draft Report's suggested retroactive interpretation of this rule cannot lawfully be enforced.

Moreover, the Draft Report's suggested interpretation with respect to recruiter salaries is premised on an overly broad interpretation of the statute that is contrary to rational policy. The Draft Report's approach would deprive schools of the ability to appropriately compensate their admissions personnel for what they are employed to do. Specifically, schools would be required in effect to ignore the employee's ability to recruit qualified students who apply for, are accepted, and enroll in school. The aforementioned Conference Report stated explicitly that the prohibition against incentive compensation "does not imply that the schools cannot base employee salaries on merit." Conf. Rep. 630, 102d Cong., 2d Sess. At 499 (1992). In short, the Draft Report's interpretation is contrary to the law, its history, and rational policy, and must be rejected.

* * *

This concludes the statement supplied by IPD with respect to the portion of the Draft Audit Report focusing upon IPD's internal compensation structure.

F. The OIG's Recommendation to Disallow All Title IV Funds Received by the University for Options Program Students is Unwarranted and is Inconsistent With Applicable Law and Regulations.

The Draft Audit Report asserts at page 3 that "because the University did not comply with the HEA and regulations by paying incentives to IPD based on success in securing student enrollments for its Options Program, the University must return all Title IV funds that were disbursed on behalf of students enrolled in the Options Program who were improperly recruited." The OIG repeats this recommendation on page 5 of the Report. According to the OIG, this amounts to over $10,459,399.

The University objects to the sanction recommended by the Draft Audit Report. First, as argued above, we disagree with the OIG's assertion that the allocation of revenue under the IPD Agreement constitutes payment of prohibited incentive compensation to IPD. Because the OIG cites that assertion as the basis for the recommended sanction, we believe that no sanction is warranted. Second, even if the OIG's allegations had merit, the violations asserted would not trigger the wholesale disallowance that is recommended. The OIG offers neither legal authority nor analysis to justify or explain why disallowance of all Options-related financial aid funding would lawfully, logically, or reasonably result from the cited noncompliance.

In the absence of any OIG explanation for its recommendation of this extreme sanction, the University cannot presently submit any comprehensive response to the Draft Audit Report's recommendation. Instead, we reserve the right and opportunity to respond at a later date, if such a statement is presented. In the meantime, we offer the following preliminary statement of reasons why the recommended sanction is unjustified and should be deleted from any final audit report:

1. The extraordinary recommended monetary sanction – wholesale disallowance of over ten million dollars representing all federal funds received by students enrolled in the Options Program – is facially arbitrary and capricious because: a) the Draft Audit Report does not explain the basis for the recommendation; b) no statute, regulation, or other published guidance imposes wholesale disallowance based upon violation of the Incentive Compensation Rule; and c) various ED rules and precedents articulate a variety of lesser sanctions. The recommended sanction should be revised because the Draft Audit Report does not and cannot explain any basis for a wholesale disallowance of aid to eligible students, and because the OIG has not considered, much less rejected with reasons, any of the available lesser alternatives.

2. The University and its Options students utilized all Title IV program funds targeted by the OIG for disallowance for their lawful intended purposes, *i.e.*, to pay the costs of attendance associated with these students' education. The Draft Audit Report presents no finding or allegation to the contrary; nor does it assert any instance where the audit fieldwork revealed that funds were misapplied or unaccounted for. Even though the OIG has pointed to no actual or presumptive harm suffered by the Department or by any student, the Draft Report recommends that the University repay all the funds – including principal loan amounts already slated for repayment by the students themselves – that were long since spent to educate these students. The OIG can point to no statute, regulation, or principle of law to substantiate the disallowance sought. The OIG has not even explained why the University should repay funds that were duly applied to their lawful intended purposes, or explained why the University should repay loan principal amounts that the students themselves will repay.

3. The facts associated with the Options Program do not support OIG's argument that ED or students have suffered any harm. The students admitted to the Options Program indisputably met Fontbonne's admissions standards. On average, 76.5% of these students graduated from Fontbonne, most within the accelerated study period allotted under the program.[23] These facts refute any argument by the OIG that Title IV funds were misspent on aggressively recruited students who were under-qualified to engage in postsecondary study at Fontbonne University. Instead, given the average completion and graduation rates of two and four year colleges and universities, as well as the

[23] The graduation rates for the three Options academic programs range from 71.8% to 84.1%. Moreover, these rates are understated because they assume that students who remain enrolled at Fontbonne today are "nongraduates."

increased period of time in which students are completing their programs, the Options Program provides good value for the student's and the taxpayer's dollar.

4. The Department's student eligibility rules do not include the Incentive Compensation Rule as a student eligibility requirement. Accordingly, no basis exists for the OIG to seek or recommend wholesale disallowance of all Title IV funds received by all Options students.

5. Nowhere does the Draft Audit Report allege or imply that the Options Program lacked eligibility for Title IV participation, based upon alleged noncompliance with the Incentive Compensation Rule or with any other Title IV requirement. The Department's program eligibility rules do not include the Incentive Compensation Rule as a program eligibility requirement. Accordingly, no basis exists for the OIG to seek or recommend wholesale disallowance of all Title IV funds received by all Options students.

6. The elements of institutional eligibility set forth in Title IV and ED's regulations do not include the Incentive Compensation Rule as an institutional eligibility requirement. Although Title IV formerly included a different eligibility provision prohibiting the use of commissioned salespersons to promote the availability of federal loans, Congress repealed that provision when it enacted the Incentive Compensation Rule. In fact, prior to enactment of the Rule, the Congress rejected a proposal that would have made the Rule a component of the definition of an eligible institution of higher education. Accordingly, no basis exists for the OIG to seek or recommend wholesale disallowance of all federal student financial aid funds received by all Options students.

7. The Draft Audit Report quotes Title IV provisions and ED rules that identify the Incentive Compensation Rule as the twentieth of twenty-six mandatory terms to be included in the institutional Program Participation Agreement ("PPA") with the Department. However, the PPA terms collectively encompass hundreds of statutory and regulatory requirements prescribed under Title IV of the HEA. No basis exists to support the OIG's position that an alleged violation of <u>any</u> of these innumerable PPA requirements warrants a wholesale disallowance of all Title IV funds where no statutory or regulatory element of institutional, student, or program eligibility is at issue. The Draft Audit Report does not identify any basis for such an extreme sanction, and various ED administrative decisions support the view that the recommended sanction is unreasonable and unwarranted.

The seventeenth PPA term requires institutions to "complete, in a timely manner and to the satisfaction of the Secretary, surveys conducted as part of the Integrated Postsecondary Education Data System." *See* 34 C.F.R. § 668.14(b). The OIG's position would require a total disallowance of all Title IV funds for a violation of that ministerial requirement. Or, if the OIG's position differs regarding that PPA requirement from its position in this case, the OIG is assigning varying degrees of significance to the PPA requirements thereby modifying a regulatory scheme without notice-and-comment as required by law.

8. Given the absence of any factual allegations of actual harm, coupled with the absence of any basis for asserting that the University, its students, or its Options Program were ineligible for Title IV funds, it would appear that the OIG's recommended liability is intended to punish the University for purported noncompliance. The OIG cannot lawfully seek or recommend punishment in an audit report.

9. The Draft Audit Report overstates the amount of purported liabilities arising out of Options students' participation in the Title IV programs by 1) including funds earned after the audit period,[24] and 2) erroneously recommending that the University be required to repurchase all Stafford and PLUS loans disbursed to such students. The Draft Report inexplicably ignores established rules limiting the scope and quantity of any audit disallowances of loan funds to the ED's actual losses. The Department's established policies and administrative precedent require the application of an actual loss formula that takes into account institutional default rates in lieu of repurchase of all loans. In recommending repurchase of the face amount of these loans, the Draft Audit Report simply ignores the actual loss formula.

Even without the benefit of an OIG explanation seeking to justify the recommended wholesale disallowance, the foregoing preliminary responses establish that the Draft Audit Report's recommended sanction is unreasonable, unwarranted and arbitrary. The OIG should therefore remove the recommendation from any final report.

G. Conclusion

IPD developed the concept of the Options program, provided Fontbonne with the model curriculum, developed the related administrative materials, provided training regarding how to administer such a program and identified the likely market. IPD was willing to sell this expertise to Fontbonne on a per use basis. Although the OIG's workpapers acknowledge the extent of the IPD-Fontbonne Agreement, it focuses on only one aspect of the Agreement: IPD's obligation to recruit students for the Options Program. We believe that this narrow focus inappropriately leads the OIG to conclude

[24] Although the University brought this discrepancy to the OIG's attention, the OIG determined that its numbers were close enough. (OIG workpapers, Index B-5, p. 65.)

that the Agreement was a prohibited agreement to provide incentive compensation to IPD based on its success in securing enrollments. The OIG cannot ignore relevant facts in an attempt to substantiate a finding, as it does here. By focusing only on IPD's obligation to recruit students and ignoring the remaining terms of the agreement, the OIG distorts the nature of the very Agreement that it claims violates Title IV law. Fontbonne University emphatically did not pay and did not intend to pay IPD based on the number of students that IPD recruited for enrollment in the Options Program.

The Audit Report's conclusions and recommendations on the Incentive Compensation Rule are predicated upon policy assumptions that have never been actually determined, much less disclosed to the public, by any authorized policymaking official within the Department. The Audit Report focuses upon the unsettled question of whether the revenue allocation formula in our Agreement with IPD can somehow be deemed a prohibited commission, bonus, or other incentive payment. This position is not supported by the plain language of the law and is in fact refuted by ED's recent proposals in negotiated rulemaking.

For all of the foregoing reasons, the University vigorously disagrees with the Draft Audit Report's findings and recommendations with respect to the IPD Agreement. We urge the OIG to rescind the draft finding and recommendation and to forego issuance of any final report, or to delete both from any final report.

III. FONTBONNE UNIVERSITY ACCURATELY MEASURED THE ACADEMIC YEAR FOR ITS OPTIONS PROGRAM

The Draft Audit Report alleges in Finding No. 2 that Fontbonne University did not comply with the so-called 12-Hour Rule. Fontbonne believes that it is clear from Fontbonne policies and practice that the University did comply with the 12-Hour Rule. Further, Fontbonne believes that the OIG reaches its conclusion to the contrary based on its erroneous assumption that Fontbonne is required to exercise an undue amount of control over the instructional process and take attendance at each instance of instruction in order to comply with this Rule. In fact, the law does not, and arguably cannot impose any such requirement.[25] Fontbonne also disagrees with the OIG's calculation of liability for this finding.

A. The Applicable Law

The HEA requires that an academic year shall:

> [R]equire a minimum of 30 weeks of instructional time, and, with respect to an undergraduate course of study, shall require that during

[25] The Department of Education may not "exercise any direction, supervision, or control over the curriculum, program of instruction, administration or personnel of any educational institution." 20 U.S.C. § 1232a.

> such minimum period of instructional time a full-time student is expected to complete at least 24 semester or trimester hours or 36 quarter hours at an institution that measures program length in credit hours . . . .

Section 481(d)(2).

According to Department of Education regulations in effect at the time, the Secretary considered a "week of instructional time" to be:

> any week in which at least one day of regularly scheduled instruction, examinations, or preparation for examinations occurs; and . . . [f]or an educational program using credit hours but not using a semester, trimester, or quarter system, the Secretary considers a week of instructional time to be any week in which at least 12 hours of regularly scheduled instruction, examinations, or preparation for examinations occurs . . . .

34 C.F.R. § 668.2 (b) *(Academic Year)* (1999).

As written, the law permits an institution to count as a week of instruction within an educational program, any week in which it provides, in that program, at least 12 hours of regularly scheduled instruction. The regulations do not define "regularly scheduled instruction" except to exclude "periods of orientation, counseling, vacation, or other activity not related to class preparation or examinations." *Id.* Nor has ED issued any guidance respecting the definition of regularly scheduled instruction.

The OIG asserts that the University did not provide adequate assurance that study groups were scheduled and occurred in order to meet the requirements of the 12-Hour Rule. The University believes that it provided ample evidence that study groups were scheduled and occurred. The University further believes that the OIG has no basis for its position that the only manner in which an institution can prove that instruction was scheduled and occurred is through attendance records.

B. <u>The University Has Adequately Documented Its Compliance with the 12-Hour Rule.</u>

As described in the Fontbonne University Student Handbook and the Fontbonne University Faculty Handbook for the Options Program, during the audit period, all students enrolled in an Options academic program were required to meet each week for four hours in class with a faculty member, and for four hours in "study groups." The study groups generally consisted of no more than five students and were required to meet at an agreed-upon location for four hours of instructional activities. Under this structure, the Options Program provided at least eight hours of instruction per week, for 45 weeks, in full compliance with the 12-Hour Rule.

The following description appeared in Fontbonne University's Student Handbook during the audit period.

> Study groups are a *critical component* of the OPTIONS PROGRAM educational model and are integrated into each of the program's modular-based courses. The groups are comprised of three to five students each and meet weekly outside of class. Study groups function as mutual support mechanisms through which students can learn from the professional expertise of their peers. Both Fontbonne College students and faculty are acknowledged as major learning resources. This concept of shared learning is an integral element of the College's educational philosophy.
>
> It is essential that study groups meet outside of the required class time *for at least four hours to discuss and prepare assignments and share learning resources.* Each course generally requires a group project in the form of a written and/or an oral report, usually presented to the class for discussion and critique. Often group grades are awarded, so the ability to integrate each member's participation becomes the responsibility of all group members.

Options Student Handbook September 1996 (emphasis added).

Students clearly were on notice from this text that 1) study groups were a required instructional activity, 2) study groups were to meet four hours a week, and 3) students would be graded in part based on their study group performance. Fontbonne believes that, just as most Options students fulfilled their obligation to attend class regularly, most Options students also fulfilled their weekly study group obligation and would be willing to confirm this in writing.

Fontbonne University's policy respecting study groups also is described in the Options Faculty Handbook.

> STUDY GROUPS
>
> The role of Study Groups is vital to the learning process in the accelerated adult format of the OPTIONS program. *All students in the OPTIONS program must participate in study groups in each course of their program. Study Groups are an important tool through which students learn from the professional expertise of their peers.* Unlike traditional programs where students may play less

active roles in the learning process, in OPTIONS students learn from one another through participation in study groups. When study group members work well together, the group can accomplish more. Study groups work together on reports, projects and presentations and provide support for one another.

The 12-Hour Rule issued by the U. S. Department of Education, as it applies to the OPTIONS Program, states that students must meet in class for four hours and meet in study groups for an additional four hours each week to earn the credit hours designated for a course. Study group attendance and participation *is mandatory.*

Each OPTIONS course generally requires a group project in the form of a written and /or oral report, usually presented to the class for discussion and critique. Group grades are awarded for all study group outcomes, so the ability to integrate each member's total participation becomes the responsibility of all group members, and will be reflected in individual grades for study group performance.

Study Group Guidelines

Individual study groups should have no more than five and no fewer than three members. It is the instructor's responsibility to check study group composition at the beginning of a course and to ensure that the number of members of each study group is appropriate.

. . .

In relation to study groups, the faculty member is responsible for establishing a positive tone, *monitoring the group's performance*, and guiding the group through conflict.

. . .

Study group performance must be monitored. The faculty member must provide direction on tasks and expectations for performance. Two forms have been developed for the faculty member to use in monitoring the group process. Study groups (beginning with BBA050, MBA047, and MGT003) are required to complete a *Weekly Study Group Report.* Each group will complete one form for the previous week and turn it into the instructor each night of class. The instructor should hand the study group report in with the weekly class attendance.

> At the end of each course each student must complete a *Study Group Evaluation Form* that the instructor is to collect and to use in calculating grades. This form is to be completed by the student in private. (Please be alert for situations in which members of a group coerce others to complete the forms as a group.)

Fontbonne College Options Faculty Handbook (April 1998), pp. 30-31 (emphasis in original in part and added in part).

The University believes that the text of the Faculty Handbook clearly supports its position that the assigned study group meetings constituted regularly scheduled instruction. Fontbonne controlled the formation of the groups and stated its expectation respecting how often the students would meet (once a week), and the minimum period of time for which they were to meet (4 hours per session). Further, individual professors controlled what materials the groups were to cover in their sessions and the product the students were to arrive at by the conclusion of their session. The study groups were required to be ready to report during the next class session, which allowed the professor to monitor their progress. Instructors were required to take individual student study group performance into account when determining a student's grade for the class. As such, the study group meetings constituted regularly scheduled instruction. Fontbonne believes that the Options Program faculty would readily confirm the importance of the study groups in the Options Program.

C. The OIG's Conclusion that Study Group Meetings did not Constitute Regularly Scheduled Instruction is Based on Standards that do not Exist in Law

The Draft Audit Report suggests that the mandatory Options Program study group meetings did not constitute regularly scheduled instruction because 1) the University did not limit the number of times a student could be absent from study groups, 2) instructors were not present at the study groups, and 3) the University did not monitor the location or time of the meetings.

1. Fontbonne University is not required to produce attendance records of study group meetings.

Fontbonne University is not required to maintain a specific attendance policy, and in fact, in most traditional college settings, professors do not know which students attend class and which do not on any particular day. A student's grade is based on the student's performance on assignments and examinations. Unless an individual professor establishes his or her own attendance policy, the student's attendance at one class session or another typically is of little import.

Because the Options Program was an accelerated program, Fontbonne University believed it was appropriate to mandate a certain level of attendance in class in order to ensure that students would be able to successfully complete the course materials. Students who did not comply with this policy received a failing grade. Likewise, students were informed that their peers would evaluate their contribution (including attendance, preparation of materials, cooperation and follow-through) to the study group meetings, and that this evaluation would be taken into account in assigning the student a grade for the course. The professor tracked attendance in class and peers reported attendance (and contribution in general) for the study groups.

No law required Fontbonne to mandate student attendance at the study group meetings or to take attendance at these meetings. Nevertheless, Fontbonne believes that it strongly encouraged attendance by telling students that a) study group participation *was mandatory*, b) groups would be graded based on the joint product of their efforts, and c) students would be graded by their peers based on their study group performance (including attendance). Clearly, any thinking student would understand that to successfully complete the course, they would need to participate in and attend study group meetings.

Yet, the OIG faults Fontbonne because it could not produce a statistical sample of study group attendance records.

Generally, institutions participating in the Title IV programs are not required to take attendance. The OIG has not cited any authority to the contrary.[26] As a result, Fontbonne's inability to produce a statistical sample of attendance records for the study group sessions is not meaningful. Fontbonne was not required by law to keep such records.

However, as shown in the workpapers, Fontbonne was able to produce *some* attendance records for the audit period because one or two professors maintained records that they were not required to maintain under law or under Fontbonne University policy. For at least one year (January 1999-November 1999)[27], and as referenced in the Student Handbook, Fontbonne required study groups to maintain a weekly study group report ("WSGR"). These reports described and evaluated the objectives achieved at each study group meeting and identified the participants at those meetings.[28] The reports were retained by the instructors and were utilized in grade calculations.[29] These limited records demonstrate that students generally attended their study group sessions for the

[26] According to the Department's regulations respecting the return of Title IV funds, at 34 C.F.R. § 668.22(b), the only institutions required to take attendance are those institutions that are required to do so by their accrediting agency, state licensing agency, or other oversight agency. No outside agency requires Fontbonne to take attendance.

[27] Fontbonne University personnel have located a memorandum from 1997 that requires the use of these reports. However, Fontbonne has not located a copy of any report completed prior to 1999.

[28] Fontbonne determined that these reports served no real purpose and created additional paperwork. Therefore, it abandoned the WSGR policy until August 2000, when the policy was reinstituted.

[29] These materials previously were provided to the OIG within a collection of retained instructor records from approximately fifty-three classes offered during the relevant time period.

requisite period of time. There is no basis for assuming that additional records would show a contrary trend. Further, although Fontbonne disagrees with the OIG's assertion that it was required to check up on the study groups in this manner, these records, which specify meeting participants, objectives obtained, and meeting dates, demonstrate the type of control over the study groups that the OIG would seek to impose.

Although Fontbonne University had no duty to maintain attendance records during the relevant period and encouraged its instructors to maintain such records only while the potential for a grade appeal existed (*i.e.*, 45 days after the end of a course), the weekly study group reports, which are the only records that have survived, contradict the OIG's assertion that Fontbonne did not ensure that study group sessions occurred on a regular basis.

As the OIG recognized in its Workpapers, starting in 1998, Fontbonne also required students to sign a study group "Constitution" that required students to come to study group meetings on time and prepared to work, to treat each other with respect, and to live up to study group commitments.

The Draft Audit Report provides no basis in statute, regulation, published guidance, or case law to support its heightened requirement that the University monitor students' actual attendance for the "regularly scheduled instruction" to be counted under the 12-Hour Rule. Any attempt by the OIG to establish such a policy through this audit constitutes improper agency rulemaking and falls outside the scope of the OIG's authority under the Inspector General Act of 1978, which precludes an agency from delegating "program operating responsibilities" to an OIG. See 5 U.S.C. app. 3 § 9(a)(2) (2002).

2. There is no statutory or regulatory basis for the OIG's requirement that the University "ensure that study group meetings were taking place" through the presence of an instructor.

The Draft Audit Report suggests that the study group meetings did not constitute regularly scheduled instruction because no instructor was present at the meetings.[30] However, there is no requirement that a professor must be present in the room for regularly scheduled instruction to occur. And in fact, the regulatory language is to the contrary.

The 12-Hour Rule requires only a minimum number of "regularly scheduled" instructional hours. The Draft Audit Report is a far-reaching attempt to expand the rule to require that an instructor be present or that such hours be actually attended (and as

[30] "[S]tudents were required to meet in class for four hours per week, and expected to meet an additional four hours per week in study groups . . . . The University's policy was that an instructor be present at regular class, but did not . . . require instructors to be present at study group meetings." Draft Audit Report at 5.

noted above, that the University specifically document such attendance). This action by the OIG ignores the Department's prior statements about the nature and scope of the rule. When promulgating the regulation and considering a variety of educational contexts, the Department published the following response to a comment submitted by the public:

> *Comments:* One commenter observed that many external degree and adult learning programs are trying to reduce the number of days spent in the classroom. One commenter requested that the Secretary utilize the diversity and plurality of the education system by recognizing the amount of time the student spends in different educational settings...
>
> *Discussion:* The Secretary agrees that internships, cooperative education programs, independent study, and other forms of <u>regularly scheduled instruction</u> can be considered as part of an institution's academic year.

59 Fed. Reg. 61148 (Nov. 29, 1994) (emphasis added). Significantly, the Department did not use a phrase such as "actually provided instruction" or "regularly scheduled instruction at which an instructor is present" to explain the scope of the rule. The concern of the Department was simply that educational programs, particularly non-traditional programs like the Options Program, have a minimum amount of "regularly scheduled instruction" consistent with the institution's curriculum. The Department clearly was attempting to give institutions latitude in defining regularly scheduled instruction.

The above language also clearly states that internships, cooperative education programs, and <u>independent study</u> are all forms of regularly scheduled instruction. This is true in spite of the fact that no instructor is present during such instruction.

In addition, the Department based the 12-Hour Rule on its definition of a full-time student. The regulations define a "full-time student," in relevant part, as follows:

> *Full-time student:* An enrolled student who is carrying a full-time academic workload (other than by correspondence) as determined by the institution under a standard applicable to all students enrolled in a particular educational program. <u>The student's workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student...</u>

34 C.F.R. § 668.2 (emphasis added); <u>see</u> <u>also</u> 34 C.F.R. § 682.200. The emphasized language demonstrates the Department's recognition that a student's academic workload may consist of activities including "work," "research," and "special studies that the

institution considers sufficient." There is no stated requirement that an institution specifically document each and every hour spent by a student on such activities, so long as they are "regularly scheduled." Similarly, there is no stated requirement that an instructor be present at such activities.

The 12-Hour Rule directly addresses the issue of whether an instructor must be present or control the location of instruction by including time spent in "preparation for examinations" in the overall calculation of a week of instruction, without any additional qualification that an instructor must be present whenever a student studies or prepares for examination. Likewise, faculty presence during Options study group meetings was not required for the meetings to qualify as regularly scheduled instruction.

The course module indicated that mandatory study group meetings were to be devoted to learning among peers, the development of group projects, and preparation of presentations for the next faculty-led course workshop. These projects and presentations were graded and comprised part of each student's final grade.[31] Unless the students and faculty of the Options Program engaged in a collective effort to thwart very clear Fontbonne University standards, the study group meetings were regularly scheduled and occurred according to University policy.

3. Fontbonne University was not required to control where its study groups met.

The OIG suggests that the study group meetings did not constitute regularly scheduled instruction because the University did not control the meeting place of this group. The OIG does not cite any statute, regulation, or ED guidance to support its assertion. Fontbonne University suggested that study groups meet at the college library, at public libraries, or at similarly mutually convenient locations. Fontbonne does not believe it was required to tell adult students where they should meet to perform work on which they would subsequently be graded and the OIG's report does not convince it otherwise.[32]

4. Fontbonne University substantially complied with a rule that even the Department has labeled "unworkable."

The underlying basis for the 12-Hour Rule and its continued applicability to the Title IV programs are presently in serious doubt, particularly as applied to nontraditional educational programs such as the University's Options Program. The section of the

[31] The Department is statutorily barred from exercising any "direction, supervision, or control over the curriculum" of the University. 20 U.S.C. § 1232a. Therefore, to the extent this audit raises questions about the Options Program curriculum, such issues are plainly beyond the OIG's scope of authority.
[32] Based on the OIG's assertion, and out of an abundance of caution and desire to comply with even an unsupported reading of the law, Fontbonne currently tracks study group meeting locations.

Higher Education Act ("HEA") concerning the minimum period of academic instruction for Title IV eligibility reads:

> [T]he term "academic Year" shall require a minimum of 30 weeks of instructional time, and with respect to an undergraduate course of study, shall require that during such minimum period of instructional time a full-time student is expected to complete at least 24 semester or trimester hours or 36 quarter hours at an institution that measures program length in credit hours.

20 U.S.C. § 1088(a)(2). The HEA mandates nothing further regarding the length or structure of a traditional, four-year institution of higher education's period of undergraduate instruction. In regulations implementing the above HEA provision, however, the Department created an additional requirement for educational programs that use credit hours but that do not use a semester, trimester, or quarter system. For such programs, "the Secretary considers a week of instructional time to be any week in which at least 12 hours of regularly scheduled instruction, examinations, or preparation for examination occurs." 34 C.F.R. § 668.2(b)(2)(ii)(B). This requirement was added by regulation without any statutory basis.

The appropriateness of the 12-Hour Rule has recently come under increased scrutiny. For example, in the Department's "Report to Congress in the Distance Education Demonstration Programs" submitted in January 2001, the Department stated:

> [i]n the last year or two, there has been considerable discussion between Department staff and representatives of the higher education community who believe the 12-Hour Rule limits the institutions unreasonably from organizing academic activity in ways that best meet the needs of students. *Id.* at p. 24.[33]

The Department's fading confidence in the relevance of the 12-Hour Rule as a compliance requirement is further demonstrated by its public support of the "Internet Equity and Education Act of 2001" (H.R. 1992), passed by the House of Representatives on October 10, 2001.[34] This bill (which was introduced but not taken up by the Senate) would have defined a "week of instructional time" for all programs, regardless of format, as "a week in which at least one day of instruction, examination, or preparation for examination occurs," thus negating the regulation creating the 12-Hour Rule. The Department's support of this legislation was consistent with its acknowledgment that the 12-Hour Rule had become unworkable.

---

[33] The report also states that this 12-Hour Rule is impossible to measure in the case of distance learning, which it defines as "an educational process that is characterized by the separation, in time or place, between the instructor and student." *Id.* at 20.

[34] *See* 145 Cong. Rec. H6465, H6466 (daily ed. Oct. 10, 2001) (letter from Secretary Paige to the House of Representatives Committee on Education and the Workforce, dated July 31, 2001).

The Department most recently expressed its lack of confidence in the 12-Hour Rule as a meaningful measure of quality instruction in the final negotiated rulemaking sessions held in Washington, D.C. in April 2002. At those sessions, the Department repeated its position that the 12-Hour Rule does not currently serve any meaningful purpose and circulated proposed regulatory language (but not a formal proposed rule) that would eliminate the 12-Hour Rule. (*See* Exhibit 2). The Department was particularly persuasive in its argument that any institution attempting to provide less instruction than the 12-Hour Rule requires could just adjust their calendar to a traditional semester or quarter term and thereby avoid the 12-Hour Rule.[35] The OIG reportedly was in attendance at these sessions and clearly was privy to the Department's suggested regulatory revisions distributed beforehand. Fontbonne is once again troubled that the OIG issued this Draft Audit Report despite the Department's increasingly public position that the 12-Hour Rule does not serve any meaningful purpose and should be removed from regulation.

D. <u>The Recommended Liability is Based on an Erroneous Methodology and Excludes Significant Amounts of Time That Count Toward Compliance with the 12-Hour Rule.</u>

Fontbonne University believes that the proposed liability is overstated because 1) it does not give appropriate credit for cross-registration in traditional courses, 2) it does not exclude Title IV funds for the year in which Fontbonne University required professors to maintain attendance records for the study group, and 3) does not include the time set aside for preparation for exams.

1. <u>The OIG's calculation of liability does not give appropriate credit for time spent in traditional courses.</u>

Even if the OIG is correct in its assertion that the time spent in structured study groups cannot be included in Fontbonne's calculation of the academic year for its Options programs, the procedure the OIG uses to calculate liability is flawed because the OIG's formula misstates the number of hours of instruction claimed by Fontbonne when packaging student financial aid awards.

Options program students enrolled in courses according to a set schedule that required them to attend class four hours per week and attend a study group four hours per week. Based on this schedule, Fontbonne assumed eight hours of regularly scheduled instruction per week when establishing its Academic Year, which then served as the basis for its award of federal student financial aid funds. However, a majority of Options

[35] During the audit period, Fontbonne University offered the Options Program courses in terms of 21-23 weeks. Ironically, if Fontbonne had condensed the period of instruction to 15 weeks per term (i.e., standard terms), while still offering 12 credits per term, Fontbonne would have to prove only that it provided one day of instruction per week in each Options program. Clearly, Fontbonne met this standard.

Program students supplemented their Options Program schedule with "traditional" classes at some point during the audit period.[36] The OIG correctly recognized that these students attended an increased number of hours of regularly scheduled instruction through these supplemental classes but did not properly account for the additional instructional hours in its liability calculation.

According to the OIG workpapers, the OIG apparently allowed 12.5 instructional hours for each credit-hour of the "traditional" courses. With that number in hand, the OIG determined the percentage of financial aid that was allowable. The first step apparently was to add each student's number of allowable Options instructional hours (4) and allowable "traditional" instructional hours (12.5 per credit) to get the total number of allowable instructional hours. Although we do not agree with the number of instructional hours assigned to the traditional classes, we agree with the process to this point.[37] The total number of allowable instructional hours was then divided by the total of the number of hours (8) Fontbonne had assumed when calculating its Academic Year and Title IV awards, *plus the number of "traditional" instructional hours taken.*

However, it was incorrect to include in the denominator the number of "traditional" instructional hours the student completed because Fontbonne did not in fact claim these additional hours in establishing its academic year or awarding Title IV funds. Thus, the OIG's formula improperly minimizes the effect of additional instructional hours taken by students enrolled in supplemental traditional courses.

Illustrative of the effect of this apparent miscalculation is the OIG calculation for Student P.B., attached as Exhibit 3. The OIG determined that Student P.B. was entitled to 59.31% of her received Pell Grant. To obtain that figure, the OIG added the 164 allowable Options program hours (ACHO) to the 75 allowable "traditional" hours (ACHT).[38] That total was divided by the total of the 328 hours (8 hours for 41 weeks) that Fontbonne had claimed for Student P.B. plus the 75 allowable "traditional" hours. Mathematically, the calculation can be represented as follows:

$$\frac{164+75\ (239)}{328+75\ (403)} = 0.5931 = 59.31\%$$

---

[36] Of the 131 Options program students enrolled in the relevant award years, 76 (58%) also enrolled in non-Options courses offered on a traditional semester basis.

[37] Fontbonne disagrees with the assumption of 12.5 hours of instruction per credit hour and instead believes that the OIG should have assigned 15 instructional hours per credit hour, since, under the regulatory definition of an Academic year, traditional classes are assumed to meet one hour per week per credit hour and Fontbonne's traditional semesters are 15 weeks in duration.

[38] Because it appears that the OIG's ACHT total sometimes excludes certain traditional courses, Fontbonne requests an explanation of how the totals of ACHO and ACHT were derived.

However, this calculation assumes that Fontbonne claimed more than eight instructional hours in determining the relevant Academic Year. When the calculation is adjusted to properly reflect Fontbonne's claimed hours, the percentage of aid that Fontbonne actually earned, assuming the OIG is correct in its assertions in the Draft Audit Report, increases significantly:

$$\frac{164+75\ (239)}{328} = 0.7287 = 72.87\%$$

The OIG's calculated $1,099 overaward is reduced to $733 in this case.

If the hours spent in study groups are to be disallowed, the liability formula must be adjusted to properly reflect the proposed liability.

2. The proposed liability should exclude funds disbursed during the period that Fontbonne University used the weekly study group reports.

As explained previously, for at least one year (the 1999 calendar year) and probably even before then, Fontbonne University required students to submit weekly study group reports. Under Fontbonne policy, study groups were required to record their meeting time, meeting place, the attendance of its members, and the group's success in meeting stated objectives on the weekly reports. According to University policy, professors checked these reports weekly, and collected them at the end of the semester. Professors used these reports, as well as the peer evaluations, to grade individual student performance.

Because these forms address the concerns the OIG has raised respecting faculty confirmation of study group attendance, there should be no liability associated with the period in which Fontbonne employed the weekly study group reports.

3. Additional hours spent by students in preparation for examinations are includable under the 12-Hour Rule.

Some Options courses utilize traditional examinations, in addition to the study group presentations and other graded activities. The Draft Audit Report ignores the additional hours spent by students in those courses preparing for their examinations, although the 12-Hour Rule explicitly permits time spent in "preparation for examination" to be counted towards compliance. Because there is no requirement for supervision of the exam preparation period, any calculation under the 12-Hour Rule must presume, by the simple fact the exams occurred, that students in those courses were expected to spend, and did spend, additional time preparing for the exams.

IV. CONCLUSION

The Draft Audit Report is fundamentally mistaken in its claim that the University must "ensure" that study groups actually "occurred." There is simply no statutory or regulatory basis for this claim. Rather, all that is required by the 12-Hour-Rule is that an institution schedule 12 hours of instruction within a *program* per week. This is a programmatic measure, not a student attendance measure. To meet this standard, Fontbonne University needs only to demonstrate that the study groups constituted regularly scheduled instruction. As demonstrated above, the Faculty and Student Handbooks for the Options Program clearly stated that the formation of study groups was mandatory. These publications further provide that the study groups would add to the students' learning experiences, and that professors were to assign topics and projects to be developed during weekly study group meetings, which were to last at least four hours. Professors were to monitor study group programs and consider study group performance in each student's grade. Further, throughout the audit period, students completed peer evaluations, grading their peers on, among other things, study group attendance. It could not be more clear that the University considered the study groups to constitute instruction and that the study groups, which were required to meet once a week for four hours were regularly scheduled. Absent any law or guidance limiting the definition of regularly scheduled instruction, Fontbonne University properly included the assigned study group meetings in its calculation of instructional time. The OIG does not have the authority to impose its definition of "instruction" on Fontbonne University or any other postsecondary institution.

Sincerely,

Gary Zack

Gary Zack
Vice President for Finance and
Administration

Proposed Regulatory Language
Committee II - Program Issues

Quick Fix: No

Origin: Fed Up #64

Issue: Incentive compensation

Regulatory Cite: §668.14

Summary of Change: Provides clarification on the prohibitions on providing incentive compensation based on success in securing enrollments or financial aid.

Updated Information Since 3/6-8 meetings:

(1) Subparagraph A--Added language from the conference report to clarify that adjustments may not be based solely on the number of students recruited, admitted, enrolled, or awarded financial aid, and an exemption for cost of living increases.

(2) Subparagraph B--Clarified that the students must only enroll in non-Title IV eligible programs in order for this practice to qualify as an acceptable activity.

(3) Subparagraph C--Clarified that the employer must pay more that 50% of the tuition and fees, that the compensation is not based upon the number of employees who enroll or the revenue they generate, and that the recruiter have no contact with the employees.

(4) Subparagraph D--Added admissions and financial aid staff.

(5) Subparagraph F--Clarified "pre-enrollment" activities.

(6) Subparagraph G--Added "directly" per our last session.

(7) Subparagraph H--Changed "value" to "cost" per our last session.

(8) Subparagraph I--Clarified that profit distributions are proportional to the individual's ownership interest per our last session.

(9) Subparagraph K--Conforming changes to paragraph I and changed to "compensation in a manner that would be impermissible under this paragraph" per our last session.

Tentative agreement: No

Change:

§668.14 Program participation agreement.

* * * * *

(b) * * *

(22) (i) It will not provide~~, nor contract with any entity that provides,~~ any commission, bonus, or other incentive payment based directly or indirectly ~~on~~ upon success in securing enrollments or financial aid to any person~~s~~ or entit~~ies~~y engaged in any student recruiting or admission activities or in making decisions regarding the awarding of ~~student financial assistance~~Title IV, HEA program funds, except that this ~~requirement~~ limitation ***[the use of the word "limitation" in place of "requirement" is a change from the last meeting]*** ~~shall~~ does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive ~~Federal student assistance~~Title IV, HEA program funds. ~~This provision does not apply to the giving of token gifts to students or alumni for referring students for admission to the institution as long as: The gift is not in the form of money, check, or money order; no more than one such gift is given to any student or alumnus; and the gift has a value of not more than $25;~~

[None of the following language is in the current regulations. The mark-up shows the changes from the language presented at the last

meeting.]

(ii) Activities and arrangements that an institution may carry out without violating the provisions of paragraph (b)(22)(i) of this section include, but are not limited to:

(A) The payment of fixed compensation, such as a fixed annual salary, as long as ~~the salary~~that compensation is not adjusted,~~by promotion or otherwise,~~ up or down, more than twice during any twelve month ~~period.~~ period, and any adjustment is not based solely on the number of students recruited, admitted, enrolled, or awarded financial aid. For this purpose, an increase in fixed compensation resulting from a cost of living increase that is paid to all or substantially all employees is not considered an adjustment.

(B) Compensation to recruiters based upon their recruitment of students who enroll only in programs that are not eligible programs under the Title IV, HEA programs.

(C) Compensation to recruiters who arrange contracts between the institution and an employer under which the employer's employees enroll in the institution, and the employer pays~~directly or by reimbursement all or substantially all~~more than 50 percent of the tuition and fees ~~ofpaid to all or substantially all~~charged to its employees; provided that compensation is not based upon the number of employees who enroll in the institution, or the revenue they generate, and the recruiters have no contact with the employees.

(D) Compensation to all or substantially all of the institution's full-time professional and administrative employees as part of a profit-sharing plan, or substantially all of the full-time employees at the same organizational level, except that an organizational level may not consist ~~predominately of recruiters.~~predominantly of recruiters, admissions staff, or financial aid staff.

(E) Compensation~~paid to recruiters~~ that is based upon students successfully completing ~~the program~~their educational programs or one academic year of their educational ~~program in which they enroll,~~programs, whichever is shorter. For this purpose, successful completion of an academic year means that the student has earned at least 24 semester or trimester credit ~~hours or~~hours or 36 quarter credit hours, or has successfully completed at least 900 clock hours of instruction.

(F) Compensation paid to employees who perform "pre-enrollment" activities, such as answering telephone ~~calls or providing access to institutional information or institutional applications~~calls, referring inquiries, or distributing institutional materials, as long as compensation is not based on actual ~~enrollment.~~
enrollment.

(G) Compensation to managerial or supervisory employees who do not directly manage or supervise employees who are directly involved in recruiting or admissions activities, or the awarding of Title IV, HEA program funds.

(H) The awarding of token gifts to the institution's students or alumni, provided that the gifts are not in the form of money, no more than one gift is provided annually to an individual, and the ~~value~~cost of the gift is ~~no more than~~less ~~$100.~~than $100.

(I) Profit distributions ~~to an individual who owns at least 25 percent of~~proportionately based upon an individual's ownership interest in the institution.

(J) Compensation paid for Internet-based recruitment and admission activities that provide information about the institution to prospective students, or permit them to apply for admission on-line.

(K) Payments to third parties, including tuition sharing arrangements, that deliver various services to the institution, provided that none of the services involves recruiting or admission activities, or the awarding of Title IV, HEA program funds.

(L) Payments to third parties, including tuition sharing arrangements, that deliver various services to the institution, even if one of the services involves recruiting or admission activities or the awarding of Title IV, ~~activities,~~HEA program

Proposed Regulatory Language

Committee II - Program Issues

Quick Fix:	No
Origin:	Fed Up # 65
Issue:	12 hour rule
Regulatory Cite:	§668.2 Definition of "Academic year", §668.4 Payment Period, §668.8 Eligible Program, §682.603 FFEL Loan Certification, §685.301 Direct Loan Origination, and §690.75 Pell Payment Eligibility.

Summary of Change: These proposed regulations change the definition of an academic year by eliminating the requirement that for non-standard and non-term programs a week of instruction is a week of at least 12 hours of regularly scheduled instruction or examinations. Instead, the rule that applies to standard term programs would also be applied to non-standard and non-term programs - that a week of instruction must have at least 1 day of regularly scheduled instruction or examination. The definition of academic year is removed from §668.2 and the revised definition is placed in a new §668.3. Similar changes are made to §668.8 - Eligible Program.

The elimination of the 12 hour rule necessitates modifications to the definition of payment period to insure that, in addition to the completion of a certain number of credit hours, there is also a calendar time element that must be met before subsequent disbursements of Title IV funds can be made. Thus, these rules modify §668.4 in order to include a time element in the determination of a payment period.

These changes also necessitate minor cross-reference changes in the FFEL and Direct Loan regulations. Finally, the Pell Grant payment eligibility regulation is slightly modified to refer to the new definitions of payment period in §668.4.

Updated Information Since 3/6-8 Meetings:

The following technical changes were made to the draft regulatory language:

(1) The phrase, "at least" was moved from §668.3(a)(2)(i) to §668.3(a)(2) to reflect that the full-time student

requirement for an undergraduate clock hour program is at least 900 clock hours.

(2) The phrase "or payment period" was added to §668.3(b)(2) to conform to the language of §668.8(b)(3)(i)(A).

(3) The word "final" was added to §663(b)(2) and §668.8(b)(3)(i)(A) to conform to the language in the current regulations which provides that any week in which at lease on day of study for final examinations occurs counts as a week of instructional time.

(4) The phrase, "the second half of" was removed from §668.4(b)(1)(ii) because it is unnecessary.

(5) Section 690.75(a)(3) was revised to make clear that it would apply to credit hour programs without terms and all clock hour programs, term or nonterm.

Tentative Agreement: No

Change:

§ 668.3 Academic year .

Section 668.3 is revised to read as follows.

§668.3 Academic year.

(a) General. Except as provided in paragraph (c) of this section, an academic year is a period that begins on the first day of classes and ends on the last day of classes or examinations during which--

(1) An institution provides a minimum of 30 weeks of instructional time; and

(2) For an undergraduate educational program, a full-time student is expected to complete at least--

(i) ~~At least 24~~Twenty-four semester or trimester credit hours or 36 quarter credit hours for a program measured in credit hours~~,~~; or

(ii) 900 clock hours for a program measured in clock hours.

(b) Definitions. For purposes of paragraph (a) of this section--

(1) A week is a consecutive seven-day period;

(2) A week of instructional time is any week in which at least one day of regularly scheduled instruction or examinations occurs or, after the last scheduled day of classes for a term or payment period, at least one day of study for final examinations occurs; ~~and.~~

(3) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

(c) Reduction in the length of an academic year.

(1) Upon the written request of an institution, the Secretary may approve, for good cause, an academic year of between 26 and 29 weeks of instructional time for educational programs offered by the institution if the institution offers a two-year program leading to an associate degree or a four-year program leading to a baccalaureate degree.

(2) An institution's written request must--

(i) Identify each educational program for which the institution requests a reduction, and the requested number of weeks of instructional time for that program;~~.~~

(ii) Demonstrate good cause for the requested reductions; and

(iii) Include any other information that the Secretary may require to determine whether to grant the request.

(3)(i) The Secretary grants the request of an eligible institution for a reduction in the length of its academic year if the institution has demonstrated good cause for granting the request and the institution's accrediting agency and State licensing agency have approved the request.

(ii) If the Secretary approves the request, the approval terminates when the institution's program participation agreement expires. The institution may request an extension of that approval as part of the recertification process.

(Authority: 20 U.S.C. 1088)

* * * * *

Section 668.4 is revised to read as follows.

<u>§668.4 Payment period.</u>

* * * * *

(a) <u>Payment periods for an eligible program that measures progress in credit hours and has academic terms.</u>

For a student enrolled in an eligible program that is offered in terms and measures progress in credit hours, the payment period is the academic term.

(b) <u>Payment periods for an eligible program that measures progress in credit hours and does not have academic terms.</u>

FONTBONNE COLLEGE
PELL REGULATORY NON-COMPLIANCE FINDING QUANTIFICATION
1997/1998 PELL AWARD YEAR

			CLASS DATES								PELL DISBURSEMENTS		
CLASS	COHORT	CREDITS	START	END	GRADE	INDIC	ACHO	ACHT	CCHO	PELL %	GROSS $	NET $	OVERAWARD$
BBA308	BBA052	3	02/24/1998	04/28/1998	C	O	40.0	0.0	80.0				
BBA403	BBA052	3	05/05/1998	06/02/1998	C+	O	20.0	0.0	40.0				
BBA407	BBA040	3	08/07/1997	09/04/1997	B	O	20.0	0.0	40.0				
BBA406	BBA052	3	09/09/1997	10/07/1997	A	O	20.0	0.0	40.0				
BBA303	BBA052	3	10/14/1997	11/11/1997	F	O	20.0	0.0	40.0				
BBA308	BBA050	3	11/05/1997	01/28/1998	W	O	0.0	0.0	0.0				
BBA305	BBA052	3	11/25/1997	01/06/1998	B-	O	20.0	0.0	40.0				
BBA307	BBA052	3	01/13/1998	02/10/1998	A	O	20.0	0.0	40.0				
BBA308	BBA052	3	02/24/1998	04/28/1998	A	O	40.0	0.0	80.0				
BBA403	BBA052	3	05/05/1998	06/02/1998	F	O	20.0	0.0	40.0				
							160.0	0.0	320.0	50.00%	$950	$475	$475
[redacted]													
ED 392		3	08/27/1997	12/18/1997	C	T	0.0	37.5	0.0				
EN 101		3	08/27/1997	12/18/1997	B+	T	0.0	37.5	0.0				
CA 103		3	08/27/1997	12/18/1997	A	T	0.0	37.5	0.0				
CS 103		3	08/27/1997	12/18/1997	A	T	0.0	37.5	0.0				
BBA300	BBAS01	3	01/29/1998	03/12/1998	A	O	28.0	0.0	56.0				
BBA406	BBAS01	3	03/26/1998	04/30/1998	A	O	20.0	0.0	40.0				
BBA303	BBAS01	3	05/07/1998	06/04/1998	A-	O	20.0	0.0	40.0				
BBA402	BBA044	3	07/24/1997	08/21/1997	C+	O	20.0	0.0	40.0				
BBA405	BBA044	3	09/04/1997	10/02/1997	B	O	20.0	0.0	40.0				
BBA306	BBA044	4	10/09/1997	12/18/1997	D	O	40.0	0.0	80.0				
B/A377		3	01/14/1998	05/14/1998	C	T	0.0	37.5	0.0				
B/A376		3	01/14/1998	05/14/1998	B+	T	0.0	37.5	0.0				
BBA407	BBA045	3	02/10/1998	03/10/1998	A	O	24.0	0.0	48.0				
BBA404	BBA045	3	03/17/1998	04/21/1998	B-	O	32.0	0.0	64.0				
BBA408	BBA045	4	05/05/1998	06/23/1998	B	O	28.0	0.0	56.0				
							164.0	75.0	328.0	59.31%	$2,700	$1,601	$1,099
[redacted] STUDENT	P.B.												
BBA306	BBA041	4	07/09/1997	09/17/1997	A-	O	40.0	0.0	80.0				
BBA407	BBA041	3	09/24/1997	10/22/1997	A	O	20.0	0.0	40.0				
BBA404	BBA041	3	10/29/1997	12/10/1997	A	O	24.0	0.0	48.0				
BBA408	BBA041	4	12/17/1997	02/18/1998	A	O	32.0	0.0	64.0				
							116.0	0.0	232.0	50.00%	$1,462	$731	$731
[redacted]													
BBA305	BBA049	3	07/24/1997	08/21/1997	B	O	20.0	0.0	40.0				
BBA307	BBA049	3	09/04/1997	10/02/1997	A-	O	20.0	0.0	40.0				
BBA308	BBA049	3	10/09/1997	12/18/1997	A	O	40.0	0.0	80.0				
BBA403	BBA049	3	01/08/1998	02/05/1998	A	O	20.0	0.0	40.0				
BBA400	BBA049	3	02/12/1998	03/12/1998	A	O	20.0	0.0	40.0				
BBA402	BBA049	3	03/26/1998	04/23/1998	A	O	20.0	0.0	40.0				
BBA405	BBA049	3	04/30/1998	05/28/1998	A	O	20.0	0.0	40.0				
							160.0	0.0	320.0	50.00%	$675	$338	$338
[redacted]													
BBA305	BBA049	3	07/24/1997	08/21/1997	B-	O	20.0	0.0	40.0				
BBA307	BBA049	3	09/04/1997	10/02/1997	C	O	20.0	0.0	40.0				
BBA308	BBA049	3	10/09/1997	12/18/1997	D	O	40.0	0.0	80.0				

REPORT DISTRIBUTION SCHEDULE
Audit Control Number A07-A0031

	No. of Copies
Auditee	
Dr. Dennis C. Golden, President Fontbonne University 6800 Wydown Boulevard St. Louis, MO 63105-3098	1
Action Official	
Teresa Shaw, Chief Operating Officer Federal Student Aid U.S. Department of Education Regional Office Building, Room 4004 7th and D Streets, SW Washington, D.C. 20202	4
Other ED Officials (electronic copy)	
William D. Hansen, Deputy Secretary	1
John Danielson, Chief of Staff	1
Eugene Hickok, Under Secretary	1
John Gibbons, Director, Communications	1
Jack Martin, Chief Financial Officer	1
Clay Boothby, DAS, Legislation and Congressional Affairs	1
Laurie M. Rich, AS, Intergovernmental and Interagency Affairs	1
Philip Maestri, Director, Financial Improvement and Post Audit Operations, OCFO	1
Michelle Douglas and Carolyn Adams, OGC	1
L'Wanda Rosemond, General Operations Team	1
Charles Miller, Post Audit Group, OCFO	1
Headquarters and Regional Audit Managers	1 each