UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL

JUN 2 1 2002

MEMORANDUM

TO: Greg Woods
Chief Operating Officer
Federal Student Aid

[redacted]

FROM: Thomas A. Carter
Assistant Inspector General for
Audit Services

SUBJECT: FINAL AUDIT REPORT
University of La Verne's Compliance with the Higher Education Act's Prohibition on Incentive Payments Based on Success in Securing Enrollments
ED-OIG/A09-C0004

Attached is our subject report presenting our findings and recommendations resulting from our audit of the University of La Verne.

In accordance with the Department's Audit Resolution Directive, you have been designated as the action official responsible for the resolution of the findings and recommendations in this report.

If you have any questions, please contact Gloria Pilotti, Regional Inspector General for Audit, Sacramento, at (916) 930-2399.

Please refer to the above control number in all correspondence relating to this report.

Attachment

cc: James Castress, Case Director, Case Management and Oversight, FSA
Faye Harris, Audit Liaison Officer, FSA

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202-1510

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL

JUN 2 1 2002

ED-OIG/A09-C0004

Mr. Philip Hawkey
Executive Vice President
University of La Verne
1950 3rd Street
La Verne, California 91750

Dear Mr. Hawkey:

This is the Office of Inspector General's **Final Audit Report**, entitled University of La Verne's Compliance with the Higher Education Act's Prohibition on Incentive Payments Based on Success in Securing Enrollments. We limited our review to determining whether the institution complied with the Higher Education Act (HEA) and applicable regulations pertaining to the prohibition against incentive payments based on success in securing enrollments.

We found that the University of La Verne (ULV) violated the statutory prohibition when it paid bonuses to marketing staff at its School of Continuing Education (SCE) for enrollments in academic year 1999-2000. ULV's Merit Pay Plan for academic year 2000-2001 adhered to the statutory prohibition. After academic year 2000-2001, ULV discontinued using any incentive and merit pay plans for its marketing staff. ULV concurred with our finding that its Marketing Incentive Plan for academic year 1999-2000 violated the prohibition on incentive payments, but ULV disagreed with our recommendation that it return Title IV funds. We revised the recommended recovery and other information in the report to reflect the adjusted student counts and Title IV funds provided in ULV's response to the draft report.

AUDIT RESULTS

ULV's Marketing Incentive Plan for academic year 1999-2000 violated the HEA provision expressly prohibiting bonus payments based directly or indirectly on success in securing enrollments. Section 487(a) of the HEA states—

> 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:
>
> . . . (20) 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 C.F.R. § 668.14(b)(22) codify the statutory prohibition on incentive payments based on securing enrollments.

> By entering into a program participation agreement, an institution agrees that . . . [I]t 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 . . . .

The Marketing Incentive Plan for academic year 1999-2000 established a bonus pool based on the revenue gained from SCE enrollments exceeding a base enrollment quota. Under the plan, the SCE marketing directors who exceeded their base quota would receive three percent of the bonus pool. Other SCE staff included in the Marketing Incentive Plan would receive a bonus ranging from 0.3 to 0.8 percent of the bonus pool. The SCE staff included the academic advisors, campus directors, director of marketing and communications, director of corporate contacts, assistant dean of marketing, and business manager. ULV's payroll records for July 2000 showed bonuses totaling $133,954.

Section 487(a) of the HEA prohibits bonus payments based directly or indirectly on success in securing enrollments to persons engaged in any student recruiting or admissions activities. ULV paid bonuses based on success in securing enrollments to SCE staff included in the Marketing Incentive Plan. Educational programs offered through SCE are eligible programs for Title IV purposes.

For violating Section 487(a) of the HEA, ULV is liable for Title IV funds disbursed to the students whose enrollments were included in the bonus calculation. ULV identified 1,116 students who began their enrollment in SCE programs in academic year 1999-2000, of which 428 students received Title IV funds. The 428 students received over $6.9 million in Title IV funds from July 1, 1999, through December 4, 2001. This amount consisted of $395,730 in Federal Pell Grant (Pell) and $6,528,981 in Federal Family Educational Loan (FFEL) funds.

Recommendations

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

1.1 Return to lenders the FFEL funds disbursed to students who began their enrollment in SCE programs in academic year 1999-2000. Also, repay the Department for interest and special allowance costs incurred on Federally subsidized loans. The students identified by ULV received $6,528,981 in FFEL funds from July 1, 1999, through December 4, 2001.

1.2 Return to the Department the Pell funds disbursed to students who began their enrollment in SCE programs in academic year 1999-2000. The students identified by ULV received $395,730 in Pell funds from July 1, 1999, through December 4, 2001.

Auditee Comments

ULV concurred with our finding that its Marketing Incentive Plan for academic year 1999-2000 violated the prohibition on incentive payments, but it disagreed with the reported number of SCE staff whose bonuses were in violation of the prohibition. ULV described the responsibilities of the 15 staff who received bonuses and concluded that 11 of the 15 staff were not engaged in student recruiting or admission activities. ULV requested that the OIG revise the report to reflect that the only bonuses that violated the prohibition on incentive payments were those paid to the three individuals who were directly involved in recruiting and the individual who supervised and trained the recruiters. These four individuals received bonuses totaling $70,409.

ULV disagreed with the method used by OIG to calculate the recommended recovery. ULV stated that method overstated the recommended recovery because the three recruiters did not recruit many of the students whose Title IV funds were included in the recommended recovery. ULV also stated that, since the bonuses were paid only if revenue increased, the recommended recovery should be based on the increase in tuition revenue from 1998-1999 to 1999-2000 rather than the Title IV funds received by all students who started in 1999-2000.

ULV presented several factors that, in its opinion, should be taken into consideration when determining the amount of Title IV funds to be returned to the Department. ULV stated that the Marketing Incentive Plan had no adverse, harmful effect on students or the institution. ULV also stated that mitigating factors and the institution's performance record should be considered in determining the recovery amount. ULV requested that the OIG omit the recommended recovery from the final report. ULV stated that, if the OIG must include a recommended recovery, the amount should be limited to an administrative fine or adjusted using the Department's Estimated Loss Formula.

ULV provided a revised count of the number of students who began their enrollment in academic year 1999-2000.

OIG Response

Our conclusion regarding the bonuses paid to the 11 SCE staff remains unchanged. The prohibition on incentive payments applies to bonuses based directly or indirectly on success in securing enrollments to any persons engaged in any student recruiting or admission activities. The bonus amounts paid to the 11 staff were based on earned additional revenue that was calculated using enrollment numbers. The Marketing Incentive Plan for academic year 1999-2000 provided justifications for including 10 of the 11 staff in the plan. The justifications explained each staff's involvement in bringing students to SCE. Attachment 1 lists the justification, bonus amount, and bonus calculation for each of the 11 staff.

The method used to calculate the recommended recovery appropriately reflects the Title IV funds impacted by violation of the prohibition on incentive payments. The revenue method proposed by ULV would not reflect the Title IV funds received by all students who were recruited or enrolled using incentive payments based on success in securing enrollments.

We made no changes in the recommendations in regards to ULV comments on harm, mitigating factors, performance record, administrative fine and the Estimated Loss Formula. During the audit resolution process, the appropriate Department officials will determine the monetary liability owed by ULV with respect to this finding.

We revised the recommended recovery and other information in the report to reflect the adjusted number of students who began their enrollment in SCE programs in academic year 1999-2000 and the corresponding adjusted Title IV fund amounts that were provided in ULV's response to the draft report.

BACKGROUND

ULV is an independent, non-sectarian, and non-profit education institution that was founded in 1891 by members of the Church of the Brethren. The institution offers bachelor, master, and doctoral degree programs from its College of Arts and Sciences, the School Business and Global Studies, the School of Education and Organizational Leadership, the College of Law, the School of Organizational Management, and the School of Continuing Education. ULV provides instruction at its main campus located at La Verne, California, and off-campus locations. At present, ULV has regional off-campus sites at the following locations in California: San Luis Obispo, Oxnard, Bakersfield, Burbank, Garden Grove, and Rancho Cucamonga. ULV is accredited by the Accrediting Commission for Senior Colleges and Universities of the Western Association of Schools and Colleges.

ULV records show that the institution disbursed the following amounts of Title IV funds during the period July 1, 1999, to June 30, 2001—

Perkins Loan	$ 907,001
Federal Supplemental Educational Opportunity Grants	425,745
Federal Work Study	716,094
Pell	4,316,882
FFEL	70,934,119
	$77,299,841

The 1999 Cohort Default Rate (most recent Department's published rate) for ULV was 2.9 percent.

AUDIT OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of our audit was to determine whether ULV complied with the HEA and applicable regulations pertaining to the prohibition against the use of incentive payments based on success in securing enrollments. Our review covered ULV's Marketing Incentive Plan for academic year 1999-2000, its Merit Pay Plan for academic year 2000-2001, and payments to marketing staff for the period July 1, 1999, through June 30, 2001.

To accomplish our objective, we reviewed applicable HEA provisions and Title IV regulations. We reviewed ULV's accreditation documents, state licensure, and Title IV program participation agreement. We interviewed ULV administrators and staff responsible for recruiting students and administering the incentive plans. We reviewed incentive plans and staff performance evaluations. We reviewed the Report on Audited Financial Statements and Federal Awards

Audit Reports for the fiscal year ended June 30, 2000, prepared by ULV's independent public accountant.

We relied on information extracted by ULV from its Banner System database to identify the students whose enrollments were included in the bonus calculation. We compared the number of students included in the bonus calculation to the number of students identified from the database. We relied on information contained on the Department's National Student Loan Data System (NSLDS) to identify the Title IV funds disbursed to the students. We compared Title IV funds identified from NSLDS to information extracted by ULV from its Banner System database. We relied on information contained in ULV's pay registers to identify payments to SCE marketing staff. We traced payments that appeared to be other than regular salary payments to supporting payroll documentation. Based on these tests, we concluded that the data used were sufficiently reliable for meeting our objective.

We conducted fieldwork at ULV's main campus during the period October 30 through November 9, 2001. We held our exit conference with ULV officials on January 10, 2002. We issued a draft report on March 11, 2002. ULV responded to our draft report on April 26, 2002. Our audit was performed in accordance with generally accepted government auditing standards appropriate to the scope of the review described above.

STATEMENT ON MANAGEMENT CONTROLS

As part of our audit, we gained an understanding of ULV's procedures used to calculate and pay bonuses to SCE marketing staff. We determined that an assessment of the management control structure covering these procedures was not necessary to meet our audit objective and we performed no such assessment.

Due to inherent limitations, a study and evaluation made for the limited purpose described above would not necessarily disclose all material weaknesses. However, we found that ULV violated the statutory prohibition against the use of incentive payments based on success in securing enrollments. The AUDIT RESULTS section of this report fully discusses this finding.

ADMINISTRATIVE MATTERS

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

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

Mr. Greg Woods
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 by the Office of Inspector General are made available, if requested, to members of the press and general public to the extent information contained therein is not subject to exemptions under the Act.

If you have any questions, please call Ms. Gloria Pilotti at (916) 930-2399. Please refer to the control number in all correspondence related to this report

Sincerely,

[redacted]

Thomas A. Carter
Assistant Inspector General for
Audit Services

Attachments

Attachment 1
Page 1 of 2

Marketing Incentive Plan
Academic Year 1999-2000

Staff Position Per ULV's Response	Marketing Plan Justification	Bonus	Bonus Calculation
Academic Advisor (3 staff)	Assists, as needed, with all prospects brought into their campus.	$5,387 for two staff and $4,040 for one staff [a]	0.5% of earned additional Education Program revenue[b] ($1,077,300)
Academic Advisor (3 staff)	Assists, as needed, with all prospects brought into their campus.	$4,333 each	0.5% of earned additional CAPA revenue[c] ($866,621)
Assistant Director of Teacher Education Programs	Assists, as needed, with all prospects brought into their campus.	$5,387	0.5% of earned additional Education Program revenue ($1,077,300)
Departmental Business Manager/Director of Administration and Operations	No justification provided. Individual was added to the plan at year-end.	$3,867	0.3% of earned additional CAPA and non-CAPA[d] revenue ($866,621 + $422,400)
Associate Dean of Academic Affairs for Adult Undergraduate Main Campus Programs	Provides additional motivational management and overall hands on with all marketing activities that occur at their campus.	$4,333	0.5% of earned additional CAPA revenue ($866,621)
Marketing Director/Director for Marketing and Communications	Contributes directly to success of each quota-based recruiter. Makes critical decisions in budget control of all advertising dollars, and is in charge of strategy and distribution of entire advertising campaign to draw prospective leads to all regional recruiters.	$15,699	$10,312 Bonus -- 0.8% of earned additional CAPA and non-CAPA revenue ($866,621 + $422,400) $5,387 Bonus -- 0.5% of earned additional Education Program revenue ($1,077,300)
Marketing Director/Director of Corporate Contacts	Contributes directly to success of each quota-based recruiter.	$6,445	0.5% of earned additional CAPA and non-CAPA revenue ($866,621 + $422,400)
Total Bonus Paid		$63,545	

Attachment 1
Page 2 of 2

Marketing Incentive Plan
Academic Year 1999-2000
(Continued)

Notes:

[a] Prorated for nine months participation (3/4 of $5,387).

[b] Education Programs for teacher credential and other education-related credentials. Number of new students in excess of Education Programs base times revenue for fiscal year per student equals Education Programs gained revenue (171 students X $6,300 = $1,077,300).

[c] Campus Accelerated Programs for Adults, a central campus program designed for working adults. The original formula for CAPA gained revenue was the number of student full time equivalent in excess of the CAPA base times units times cost per unit (309 students X 15 units X $315 per unit = $1,460,025). Instead of using this amount, SCE used $866,621, the amount of gained revenue identified from its budget reported revenue. SCE managers concluded that the budgeted reported revenue more accurately reflected the CAPA gained revenue.

[d] Non-CAPA are educational programs offered at SCE's regional campuses. Number of new students in excess of non-CAPA base times tuition equals non-CAPA gained revenue (96 students X $4,400 = $422,400).

Attachment 2

University of La Verne

Comments on the Draft Report

OIG NOTE

In adherence with the Privacy Act of 1974 (5 U.S.C. § 552a), names of ULV staff and students have been redacted from the comments. The attachments referred to in ULV's comments are available on request.

UNIVERSITY OF LA VERNE

Office of the President

April 26, 2002

Ms. Gloria Pilotti
Regional Inspector General for Audit
U.S Department of Education
Office of Inspector General
501 I Street, Suite 9-200
Sacramento, CA 95814

Re: Draft Audit Report: Control Number ED-OIG/A09-C0004

Dear Ms. Pilotti:

Attached is the response from the University of La Verne to the Draft Audit Report issued on March 11, 2002. I urge your consideration of the information we have provided, that documents our argument that the liability you have described in your Draft Audit Report is far in excess of what is appropriate for our circumstances.

As we have previously communicated, the University made a poor decision in experimenting with a very limited bonus program in the 1999-2000 academic year for a handful of people. The program was terminated within several months of its initiation, as soon as we realized it was out of compliance.

The University made a mistake. It involved very few people and very few dollars relative to our total size. The mistake was discovered and corrected by the University long before the Inspector General's Office got involved. We fully cooperated with the auditors and provided all information requested.

The University of La Verne is proud to have had well respected academic programs for over 110 years, and we would never act in any conscious way to jeopardize our reputation and our mission.

Since we did not engage in any intentional, prolonged or egregious conduct, I request that you consider closing this audit without assessing any repayment liability or fine against the University of La Verne.

Sincerely,

[redacted]

Stephen Morgan
President

SM:dj
Attachment

DOW, LOHNES & ALBERTSON, PLLC
ATTORNEYS AT LAW

BLAIN B. BUTNER
DIRECT DIAL 202-776-2579
bbutner@dlalaw.com

WASHINGTON, D.C.
1200 NEW HAMPSHIRE AVENUE, N.W. - SUITE 800 - WASHINGTON, D.C. 20036-6802
TELEPHONE 202-776-2000 - FACSIMILE 202-776-2222

ONE RAVINIA DRIVE - SUITE 1600
ATLANTA, GEORGIA 30346-2108
TELEPHONE 770-901-8800
FACSIMILE 770-901-8874

April 26, 2002

Ms. Gloria Pilotti
Regional Inspector General for Audit
Region IX
Office of Inspector General
U.S. Department of Education
501 I Street, Suite 9-200
Sacramento, California 95814

Re: University of La Verne
ACN: ED-OIG/A09-C0004

Dear Ms. Pilotti:

On behalf of the University of La Verne ("the University"), we are hereby responding to the Office of Inspector General's draft audit report dated March 11, 2002, concerning the University's compliance with the incentive compensation provision of the Higher Education Act of 1965, as amended (the "HEA"), Audit Control No. ED-OIG/A09-C0004 (the "Draft Audit Report").

In this response, we seek to present information to correct certain data and factual statements contained in the Draft Audit Report, and we also provide additional information to support the University's position that the repayment liability recommended in the Draft Audit Report is excessive and unwarranted.

I. The Alleged Violation is Not as Serious as Described in the Draft Audit Report

The University requests that the Office of Inspector General ("OIG") make several changes to the Draft Audit Report, relating to the employees who received bonuses, adjustments to the number of students referenced, and adjustments to the proposed liability amounts for Pell Grants and Federal Family Education Loan ("FFEL") program loans.

A. Employees Who Received Bonuses

The Draft Audit Report indicates that for the 1999-2000 academic year, the year in question, the University paid $133,954 in bonuses in violation of the incentive compensation provision of the HEA. This figure represents bonuses paid to 15 employees in the University's School of Continuing Education. In fact, most of these bonuses were not in violation of the incentive compensation provision, because the employees were not covered by the language of that provision.

The incentive compensation provision, Section 487(a)(20) of the HEA, 20 U.S.C. § 1094(a)(20), provides that an institution participating in the Title IV financial aid programs may 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 University concedes that it paid bonuses to these 15 individuals in 2000, but 11 of those bonuses were paid to employees who were not "engaged in any student recruiting or admission activities."

Three of the 15 employees who received bonuses – were directly involved in recruiting and thus fall within the coverage of the incentive compensation law. was also involved, in that she supervised and trained recruitment directors, among numerous other responsibilities.

Other than these four individuals, the employees who received bonuses were not engaged in student recruiting.

- were Academic Advisors during the entire 1999-2000 academic year. In that position, they provided academic counseling and advice, and were not engaged in student recruitment.

- were Academic Advisors during part of 1999-2000, with the duties described immediately above. In addition, for part of that year, was Associate Director of Teacher Education Programs, in which position she recruited new faculty, determined instructor schedules and performed other duties relating to instructors. For the part of the year that she was not an Academic Advisor, was a financial aid advisor, in which position she advised students and parents about financial aid opportunities and determined applicants' eligibility for financial aid. Thus, while she participated in the awarding of financial aid, her bonus was not based on her awarding of financial aid. Neither of these employees was engaged in student recruitment.

- was Assistant Director of Teacher Education Programs, with virtually the same duties described above for when she was Associate Director of Teacher Education Programs.

- served in a purely administrative position during 1999-2000, first as Departmental Business Manager and then as Director of Administration and Operations for the School of Continuing Education. Her responsibilities included budget, purchasing, technology and the like. She was not engaged in student recruitment.

- , was Associate Dean of Academic Affairs for Adult Undergraduate Main Campus Programs, a managerial academic position dealing with all phases of the academic programs and faculty for on-campus undergraduate programs. She did not recruit students.

- planned, developed and supervised various marketing materials, such as advertising, direct mail, and mass media, and analyzed the results of various strategic marketing initiatives. Her titles during 1999-2000 were Marketing Director, and then Director of Marketing and Communications. She was engaged in marketing, not recruiting, and had no contact with students.

- 's primary duties were establishing corporate class sites with corporate employers and establishing policies for class delivery for corporate class sites, and he did not recruit students. He also supervised and managed the Marketing Advisement Director and Recruitment Directors. His titles during 1999-2000 were Marketing Director, and then Director of Corporate Contacts.

The University believes that the duties of these 11 employees placed them outside the scope of coverage of the law, because they were not "engaged in any student recruiting or admission activities."

The bonuses paid to the other four employees totaled $70,409. The University requests that the Draft Audit Report be revised so as not to include the $63,545 paid to the 11 employees whose duties are described above.

B. Students To Be Excluded from Totals in Draft Audit Report

The Draft Audit Report states that there were 1,157 students who were included in the bonus calculation for academic year 1999-2000. That was the number derived from the data compiled by the University and submitted to the auditors shortly after the auditors' site visit. The University compiled those data as correctly as they could, in order to meet the auditors' deadlines, and the University believed those data were correct when they were provided. Since that time, however, the University has had the opportunity to very carefully review all the students on all the lists, and has determined that there were some inadvertent errors in the lists.

The auditors also requested and the University produced another list of all students among those 1,157 students who received Title IV financial assistance during the 1999-2000, 2000-01 or 2001-02 academic years, and the amount of Title IV aid they received. That list totaled 469 students.

To date, the University has discovered three specific categories of students that need to be removed from these lists.

1. Duplicated Students

The list of 1,157 students consisted of 253 students for the Inland Empire Campus ("IEC"), 430 students for the Campus Accelerated Program for Adults ("CAPA"), and 474 students for the School of Continuing Education's Education programs ("SCE/Ed"). The University's subsequent review has determined that four of the 1,157 students (   ) were duplicates, as they took some courses at both IEC and CAPA and thus were listed on both the IEC and CAPA lists. Removing them from the total reduces the number of students to 1,153 students.

Of those four students, one ___ was duplicated in the listing of 469 financial aid recipients and her Title IV funds were listed twice. Removing this student reduces the number of students who received Title IV aid from 469 students to 468 students, and reduces the FFEL total by $5,093 (with no change to the Pell Grant total).

2. Students Enrolled Prior to the 1999-2000 Academic Year

The University has also determined that several of the 1,153 students did not begin their enrollment in the 1999-2000 academic year, but were enrolled and in attendance in the 1998-99 academic year or prior years. However, they had stopped attending for one or more terms. In preparing the lists for the auditors, the University inadvertently listed them as new students recruited in 1999-2000, which they were not.

Of this group of students, 25 were included on the list the University compiled for the auditors as students who received Title IV assistance. See Exhibit A. Thus, the list of 468 financial aid recipients referenced above should be further adjusted by deleting these 25 students, and so the revised total is 443 students. The Title IV funds reported for these 25 students should also be removed from the totals, reducing the totals by $422,817 in FFEL loans and $5,126 in Pell Grants.

3. Students with a Record of Contact with the University Prior to 1999-2000

The University has determined, upon a careful review of student records, that an additional 15 students who were on the list of Title IV recipients given to the auditors, were in contact with the University prior to the 1999-2000 academic year, even though they had not enrolled prior to 1999-2000. These students had already been recruited or made inquiry to the University prior to the 1999-2000 academic year, and were already in the University's database and records system. Therefore, these 15 students should not be included in the list of students recruited in 1999-2000. A list of these students is included in Exhibit B. This reduces the number of Title IV recipients by a further 15 students to 428 students. The Title IV funds reported for these 15 students should also be removed from the totals, reducing the totals by $243,857 in FFEL loans and $19,485 in Pell Grants.

C. Additional Adjustment to Title IV Funds Totals

The amount of Title IV funds received by the 469 students, compiled by the University on the spreadsheets given to the auditors, needs to be further reduced for an additional reason. The 428 Title IV recipients remaining on the spreadsheets after the revisions described above all began a program at the University during the 1999-2000 academic year. In the listings of Title IV funds received that were given to the auditors, the University included all Title IV funds received by these students in academic years 1999-2000, 2000-01 and 2001-02. However, some of these students completed the program which they began in 1999-2000, and subsequently decided to enroll in another program at the University. A typical example would be a student who started the teaching credential program in 1999-2000 and after completion of that program enrolled in the masters in education program starting in a later year. There were 21 Title IV recipients who completed the program they began in 1999-2000 and then enrolled in another program, and 12 of those 21 received FFEL loan and/or Pell Grant funds based on their enrollment in the subsequent program.

In preparing the Title IV funding spreadsheets for the auditors, the University included all the Title IV funds disbursed to those students, i.e., the funds for their enrollment in the first program and the funds for their enrollment in the second program. The University believes that only the enrollment in the first program – the program that the student started in 1999-2000 – could have possibly been related to the recruiting and bonuses for 1999-2000, and that the subsequent program begun in a later year was not related. Thus, the University believes that the Title IV funds reported for these 12 students for their second academic program should be removed from the totals, reducing the totals by $84,071 in FFEL loans and $1,875 in Pell Grants. A listing of these students is provided as Exhibit C, together with the amount of their FFEL loans and Pell Grants listed on the spreadsheets provided to the auditors which were actually for these students' subsequent programs of education.

D. Summary of Reductions in Number of Title IV Recipients and Amounts of Title IV Funds in the Recommended Liability

The Draft Audit Report recommends a liability of $7,284,819 in FFEL funds and $422,216 in Pell Grant funds, which is based on 1,157 students who began their enrollment in the IEC, CAPA or SCE/Ed programs in the 1999-2000 academic year, of which 469 received Title IV assistance. As described in Sections I.B and I.C above, these figures need to be revised to remove the following numbers of students and FFEL and Pell Grant funds.

Reason	Students Receiving Title IV	FFEL Loan Funds	Pell Grant Funds
I. B.1 – Duplicated Students	1	$ 5,093	$ 0
I. B.2 – Students Enrolled Prior to 1999-2000	25	$422,817	$ 5,126
I. B.3 – Students with Contact Prior to 1999-2000	15	$243,857	$19,485
I.C – Student Enrollment in a Subsequent Program	0	$ 84,071	$ 1,875
Total Adjustments	41	$755,838	$26,486

Removing these amounts reduces the amounts in the Draft Audit Report to $6,528,981 in FFEL funds and $395,730 in Pell Grant funds, based on a revised total of 428 students who received Title IV assistance.

E. Additional Reasons the Draft Audit Report Overstates the Recommended Liability

The Draft Audit Report bases its recommendation of liability on the Title IV assistance received by all of the new students in the IEC, CAPA and SCE/Ed programs in 1999-2000. This approach significantly overstates the recommended liability, for at least two reasons.

First, this approach assumes that the three recruiters who received bonuses recruited all of these students. That was not the case. Many of these students were not recruited by these three recruiters. This is because many of these students came to the University from other sources, e.g., as a result of knowing friends or family members who had attended the University, as a result of seeing University advertising in print media, as a result of the University's strong reputation in southern California, through employer-sponsored programs, and for various other reasons. Only a portion of the students referenced in the Draft Audit Report were recruited by the recruiters who received bonuses, and so the number in the Draft Audit Report is significantly overstated and should be significantly reduced.

Second, the bonuses paid for the 1999-2000 academic year were based on an increase in revenue for the IEC, CAPA and SCE/Ed programs from the previous academic year. As discussed with the auditors during the site visit, bonuses were to be paid only if revenue increased in 1999-2000 over 1998-99. Therefore, the University believes that if the OIG is going to recommend a liability based on Title IV funds received, it should not be based on all the Title IV funds received by all students who started in the IEC, CAPA and SCE/Ed programs in 1999-2000, but rather on the increase in tuition revenue for these programs from 1998-99 to 1999-

2000. The tuition revenue for these three programs for the 1998-99 academic year was approximately $9.7 million, and for 1999-2000 the tuition revenue was approximately $11.8 million, an increase of approximately $2.1 million, or about 21 percent. Over the last five years, which of course includes years when there was no bonus program, the tuition revenue for these three programs increased by an average of approximately 10 percent per year. So, of course, it is very likely that a great many of the students who enrolled in 1999-2000 would have enrolled even had there been no bonus program in place. Thus, a liability that is based on the increased enrollments and revenue for 1999-2000 is a much more logical approach than assessing liability for all new students who enrolled that year.

II. There was No Harmful Effect on Students or the Institution Due to the Bonuses Paid

The University has admitted that it paid bonuses to certain employees for the 1999-2000 academic year. However, it maintains that there was no adverse, harmful effect on students or the institution based on that compensation. This is a factor that the Draft Audit Report does not acknowledge.

First, the University did not compromise its admissions standards in any way during the 1999-2000 academic year. This is not a case of enrolling more students at all costs, or enrolling students who were unqualified for the program in which they enrolled. The University is a well known and respected regional university, which has been in existence for over 110 years. It is especially well known in southern California for its high quality liberal arts undergraduate degree programs and for its teacher and graduate education programs. It also has notable programs in business, law, public administration and psychology. While the University experienced an increase in enrollments in its IEC, CAPA and SCE/Ed programs in 1999-2000, it did not do so at the expense of its established academic standards. All students admitted during 1999-2000 were subjected to the same admissions standards and requirements as in the preceding and succeeding years.

Further, and as evidence of this fact, the dropout, completion and graduation rates for this cohort of students was consistent with the rates for students who were admitted in preceding and succeeding years. These students were as qualified and successful as their peers in earlier and later years, and the payment of bonuses for 1999-2000 had no identifiable effect on student retention and success.

In addition, it is a very important point that students who enrolled in 1999-2000 were not harmed by the payment of bonuses to certain employees for that year. Students received the education they paid for, and it was the same, high quality education the University has long offered. The University has remained throughout fully accredited by the Western Association of Schools and Colleges. The Draft Audit Report does not make any finding that any individual students were harmed as a result of the 1999-2000 bonus payments, and the auditors did not make any suggestion to the University that they thought that was the case. The recommendation in the Draft Audit Report that the University repay over $7 million in Title IV funds is tantamount to saying that every one of those students was either unqualified, or did not receive the education for which he or she contracted. Nothing could be further from the truth, and the University wishes to emphasize that fact to the Office of Inspector General in the strongest terms possible.

III. The Liability Recommended in the Draft Audit Report is Not The Appropriate Penalty in This Case

The University believes that the $7.7 million penalty recommended by the Office of Inspector General in the Draft Audit Report, even as adjusted as described above, is an extremely excessive amount that is not warranted in the circumstances of this case.

A. Mitigating Factors

The University believes that the totality of its conduct militates against the voluminous penalty recommended in the Draft Audit Report.

First, it is important to remember the scope of the bonus plan and the circumstances surrounding its brief use. The bonus plan was only used in the School of Continuing Education, which is only one of the University's six schools. It was never used in any of the other schools. Moreover, the bonus plan was only in place for one year. It was implemented after SCE employees made a recommendation to senior University officials to experiment with the plan in conjunction with other marketing initiatives, in an effort to increase revenue in SCE. This was at a time of transition in the senior leadership at the University. The Executive Vice President, who was new to higher education after a career in public management, had only been at the University for a few months.

The SCE staff advised the Executive Vice President that other schools were paying their recruiters bonuses like this, and, based in part on that fact, the SCE staff believed that such payments were acceptable. This was explained to and confirmed by the auditors during the site visit, as stated in the auditors' Finding Point Sheet given to the University at the time of the exit conference, which stated, "SCE managers proposed to the University administration a bonus plan with the belief that the plan complied with the law." See Exhibit D, page 2. The Executive Vice President approved the SCE bonus plan in 1999 for a one-year, trial basis.

By summer of 2000, the University's new Vice President for Enrollment Management had arrived and became aware of the SCE bonus plan. She advised the Executive Vice President of the existence of the incentive compensation provision in the HEA and, upon review of the matter, the Executive Vice President promptly terminated the experimental plan. It was thus in effect for only one year and was not extended. These circumstances were described in detail during the site visit and were reiterated in a letter from the University's President to the auditors in December 2001, a copy of which is included as Exhibit E.

In addition, the size of the bonuses was not large. This is not a case of employees receiving small salaries and huge bonuses that dwarf their salaries. These were all established employees of the University, many of whom had been employed in the SCE for many years. For the $133,954 in bonuses referenced in the Draft Audit Report, those 15 employees' total aggregate salaries for the 1999-2000 year were $603,053, so the bonuses were only an average of 18.2% the employees' total compensation. For the four employees who are the only ones the University believes were covered by the scope of the incentive compensation provision (as discussed in Section I.A above), the aggregate bonuses were $70,409 and their salaries for the 1999-2000 year were $194,191, so the bonuses were only an average of 26.6% of the employees' total compensation for that year. These figures should be considered in the context of the annual payroll of the School of Continuing Education for 1999-2000, which was $7,686,307, and the payroll of the entire University, which was $29,486,957 for that year. Thus, the bonuses paid of $133,954 were less than one-half of one percent of the University's payroll in 1999-2000.

Further, during and following the auditors' site visit, the University believes it was exceedingly cooperative and forthcoming with the auditors. University personnel willingly explained the bonus plan and its origins, provided full access to all student and other data the auditors requested, and promptly made available for interviews every employee the auditors requested. Following the site visit, the University continued to devote significant resources to producing the information and compiling the data that the auditors requested, as expeditiously as it could.

In short, while the University regrets the fact that it ever used the trial bonus plan, it took prompt action to discontinue it as soon as it realized it was in violation of the HEA, and it has cooperated completely and fully with the OIG throughout its review of this matter. The University believes that all of these factors should carry significant weight in determining the appropriate penalty to be assessed in this case.

B. <u>Removal of Financial Penalty</u>

For all of the reasons discussed above, the University does not believe that it should be assessed any financial penalty related to its 1999-2000 bonus plan. The University's mistake was inadvertent, and the University corrected the mistake as soon as it realized the violation. No students were harmed by the bonuses paid, none failed to get the education they were promised, and the Title IV dollars disbursed to the University were well spent for their intended purpose.

The Department of Education has repeatedly stated that it is not out to "get" institutions or to unduly penalize good institutions. As stated in a 2001 letter to Congressman Ron Paul following the Department's assessment of a nine-figure Title IV liability against a nationwide school group, the Department's "first step is always to provide technical and other assistance to help a school solve its deficiencies and better serve students." That letter goes on to say that the Department always takes care to consider a school's performance in meeting applicable standards, but that because the Department "cannot fail to address a school's repeated statutory and regulatory violations," it will "impose sanctions when necessary to protect program integrity and the Federal fiscal interest." (See Exhibit F, second paragraph.)

The University believes that approach should be applied to the University of La Verne. The Department's primary focus should be on ensuring that a school has corrected its problem and is no longer out of compliance with the HEA. In this case, that has been fully accomplished. The University was out of compliance for only one year, and promptly brought itself back into compliance on its own initiative, over a year before the Office of Inspector General ever set foot on campus. The Draft Audit Report confirms this fact.

We believe the OIG should consider the University's performance record, which clearly demonstrates that this was a one-time, limited scope violation that was promptly corrected by the University and not repeated. There were no "repeated statutory and regulatory violations," warranting the sanctions recommended in the Draft Audit Report. The University has devoted significant resources to the site visit, the follow-up period and this response to the Draft Audit Report, and most assuredly will not be repeating the compensation practices covered in this audit.

The University would like to point out that when the incentive compensation provision was added to the HEA as part of the Higher Education Amendments of 1992, Congress stated that its intent in adding this provision, along with numerous other changes to the law, was to safeguard students from unscrupulous schools, reduce student loan default rates and similar purposes. For example, the report of the House of Representatives Committee on Education and Labor stated as follows concerning that bill, H.R. 3553:

> Second, H.R. 3553 makes major changes to enhance the integrity of the student financial aid programs. The student aid programs have been tarnished by reports detailing the exploitation of students by unscrupulous schools, growing default costs, schools offering overpriced and inferior educational programs and schools and lenders with unacceptable default rates. The easy assumption can no longer be made that everyone who assumes the title of "educator" offers a quality educational program or puts the interests of students uppermost. H.R. 3553 includes nearly 100 provisions to strengthen controls on schools and colleges to end waste and abuse and to minimize loan defaults. These provisions include prohibiting the use of commissioned sales persons and recruiters. . . .

H.R. Rep. No. 447, 102d Cong., 2d Sess. 10 (1992), reprinted in 1992 U.S.C.C.A.N. 334, 343. None of these factors is present at the University of La Verne. The University of La Verne has an excellent reputation, offers quality educational programs, is very concerned about the welfare of its students, and has always had low student loan default rates. Over the last ten years, its FFEL cohort default rates have averaged under 9%, and its FFEL cohort default rate for federal fiscal year 1999, the most recent year for which such rates have been published, is 2.9%. This rate is approximately half of the national average rate.

The University respectfully requests that the OIG issue a final audit report that directs the University not to repeat this violation, but that does not assess any financial penalty against the University.

C. Alternative Penalty

While the University sincerely and earnestly believes, for all the reasons set forth above, that the circumstances of this case warrant no financial penalty against it whatsoever, if the OIG feels it must recommend a financial penalty, the University believes it should be very significantly less than the penalty described in the Draft Audit Report.

1. Administrative Fine

If a penalty is to be recommended, the University believes a fine, rather than a significant repayment of the Title IV funds received, is more appropriate. As discussed above, in this case the individual students were not harmed: they were not improperly recruited, they were qualified for the programs in which they enrolled, and they received the education they expected. The University believes it is not logical to assess a liability equal to all of the Title IV funds those students received. That might be an appropriate penalty if the school did not deliver the education it promised or if the students never enrolled or if the school had been cited for multiple long-standing violations. But that is not the case here.

A more appropriate penalty in the circumstances of this case is an administrative fine, a penalty authorized by Section 487(c) of the HEA, 20 U.S.C. § 1094(c). Pursuant to the Department's regulations, a fine may be assessed for a violation of any provision of the HEA or any implementing regulation. 34 C.F.R. § 668.84(a). Since this was a single mistake, a single fine rather than the repayment of Title IV funds received by over 1,000 individual students is a more appropriate penalty.

Further, the statute and regulation both provide that the Department may impose a fine of up to $25,000 for each violation. The University's implementation of a bonus plan for a single year should be viewed as a single violation of the HEA. This would be consistent with the Department's prior practice for a violation of the incentive compensation provision. For example, see the case of Bel Rea Institute of Animal Technology, in which an audit of that school's Title IV programs revealed that the institution had paid impermissible incentive payments to admissions personnel based on the number of students they enrolled. According to the Department's letter informing the school of the fine, the institution paid $43,080 in impermissible additional compensation in one year. The letter does not indicate how many years this payment plan was in effect. The Department characterized this practice as a single violation and assessed a fine of $25,000. See correspondence from the Department to the school, attached as Exhibit G.

The University believes that if the OIG is going to recommend a penalty in this case, then the same type of assessment should be made as in the Bel Rea Institute case. Compared to Bel Rea Institute, the University of La Verne's violation appears certainly no more significant. The University's bonus plan was in place for a single year; it is unclear if Bel Rea's plan was in place for one year or multiple years. The University self-terminated its bonus plan; it appears Bel Rea may have continued its bonus plan until the violation was identified by the audit. The University paid $70,409 in bonuses to its recruiters for the year in question; Bel Rea made payments of $43,080. In comparison to the size of the institution, the University's bonus payments were minuscule compared to those paid by Bel Rea: the University of La Verne was an institution of approximately 7,000 students during the year it paid its bonuses; by contrast, Bel Rea was an institution of 280 students, according to the 1995 Higher Education Directory (see Exhibit H). So the magnitude of the violation relative to the size of the institution was much greater for Bel Rea.

For these reasons, the University believes that if a fine is assessed against it, that fine should be no larger than the fine assessed against Bel Rea Institute for the same violation. If there is going to be a fine, it should be no larger than $25,000.

2. Estimated Loss to Government on Student Loans

The University believes that no financial penalty should be assessed against it at all, or at most a fine of a limited amount. However, if the OIG believes it must recommend a liability to the Department's Office of Federal Student Aid based on the Title IV funds received by the students who started in the specified programs at the University during 1999-2000, then the University requests that the OIG apply the Department's "Estimated Loss Formula" in setting the liability for the FFEL Loans.

Under the Estimated Loss Formula (sometimes referred to as Actual Loss Formula), the Department does not require an institution to repay all of the ineligible FFEL loan funds to lenders, and also to pay the interest and special allowance costs on subsidized FFEL loans to the Department, as the Draft Audit Report recommends. Rather, the Department has developed an Estimated Loss Formula, which estimates the actual loss to the government on those loans. The Formula uses the institution's FFEL cohort default rate, and assumes that portion of the loans not going into default will be repaid by the borrowers, so that a liability is assessed only for the disallowed FFEL amount multiplied by the default rate. Added to that amount is a calculation of interest and special allowance payments on the portion of the disallowed loans that is subsidized loans. The combination of those amounts is the total liability for FFEL loans, and it is all payable to the Department.

The Department's Office of Student Financial Assistance has stated that the Department's audit resolution staff must use the actual loss methodology when disallowing all ineligible FFEL loans. See ARB Procedure #94-10 (Feb. 1994), attached hereto as Exhibit I. Because the Department will assess FFEL loan liability utilizing the Estimated Loss Formula, the University requests that the OIG utilize that formula in making its recommended penalty calculation.

The FFEL liability figure of $7,284,819 provided in the Draft Audit Report needs to be revised downward by a total of $755,838, based on the adjustments and corrections described above in Section I.D. That leaves a revised FFEL figure of $6,528,981. The University has calculated that for the remaining students, $4,071,261 of the FFEL loans was in the form of unsubsidized loans. Subtracting that amount from the total revised FFEL liability leaves the remaining $2,457,720 as subsidized loans.

In completing the Estimated Actual Loss worksheet, the Department has stated that unsubsidized FFEL loans should be treated as SLS loans in the formula. The University's most recent FFEL cohort default rate (fiscal year 1999) is 2.9%. Applying the standard formula to these figures yields an estimated actual loss for FFEL loans of $834,551. See completed Estimated Actual Loss Worksheet, a copy of which is provided as Exhibit J.

Therefore, applying the Estimated Loss Formula to the FFEL portion of the loan liability identified in the Draft Audit Report (as corrected) results in a loan liability of $834,551, payable to the Department. In addition, the Pell Grant liability of $422,216 referenced in the Draft Audit Report should be reduced by the $26,486 in Pell Grants described in Section I.D above, for a revised Pell Grant liability of $395,730.

For all of the reasons set forth above, the University does not believe that the FFEL and Pell Grant funds received by the 1,100+ SCE students should be the basis for assessing liability in this case. However, if the OIG believes it must utilize that approach in recommending liability to the Department's Office of Federal Student Aid, then the University requests that the adjusted liability figures and the Estimated Actual Loss Worksheet be utilized, producing a combined FFEL and Pell Grant liability amount of $1,230,281.

* * * * *

The University appreciates the OIG's consideration of all of the information and points set forth in this letter. If we can provide any additional information at this time, please do not hesitate to contact us.

Sincerely,

[redacted]

Blain B. Butner
Special Counsel
University of La Verne

Exhibits

cc (w/exhibits): Philip A. Hawkey, Executive Vice President

REPORT DISTRIBUTION LIST
CONTROL NO. ED-OIG/A09-C0004

Auditee

Mr. Philip Hawkey
Executive Vice President
University of La Verne

ED Action Official

Ms. Candace Kane
Acting Chief Operating Officer
Federal Student Aid

Other ED Officials/Staff (electronic copy)

Audit Liaison Officer
Federal Student Aid

Correspondence Control
Office of General Counsel

Assistant Secretary
Office of Legislation and
Congressional Affairs

Assistant Secretary
Office of Intergovernmental
and Interagency Affairs

Director
Financial Improvement and
Post Audit Operations
Office of the Chief Financial Officer

Post Audit Group Supervisor
Financial Improvement and
Post Audit Operations
Office of the Chief Financial Officer

Indirect Cost Group Supervisor
Financial Improvement and
Post Audit Operations
Office of the Chief Financial Officer

Press Secretary
Office of Public Affairs

Assistant General Counsel
Office of the General Counsel

Deputy Secretary
Office of the Deputy Secretary

Chief of Staff
Office of the Secretary

Under Secretary
Office of the Under Secretary

Director
Office of Public Affairs

Case Director-San Francisco
Case Management and Oversight
Federal Student Aid

Other

Western Association of Schools and Colleges,
Accrediting Commission for Senior Colleges and
Universities
985 Atlantic Avenue, Suite 100
Alameda, California 94501

California Postsecondary Education Commission
1303 J Street, Suite 500
Sacramento, California 95814-2938