
Western Governors University Was Not Eligible to Participate in the Title IV Programs

FINAL AUDIT REPORT



ED-OIG/A05M0009
September 2017

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U.S. Department of Education
Office of Inspector General
Washington, DC

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

AUDIT SERVICES
Chicago/Kansas City Audit Region

September 20, 2017

Mr. Scott D. Pulsipher
President
Western Governors University
4001 South 700 East, Suite 700
Salt Lake City, UT 84107

Dear Mr. Pulsipher:

Enclosed is our final audit report, “Western Governors University Was Not Eligible to Participate in the Title IV Programs.” This report incorporates the comments you provided in response to the draft of this report. If you have any additional comments or information that you believe might have a bearing on the resolution of this audit, you should send them directly to the following U.S. Department of Education official, who will consider them before taking final action on this audit:

Dr. A. Wayne Johnson
Chief Operating Officer
Federal Student Aid
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

It is the policy of the U. S. Department of Education to expedite the resolution of audits by initiating timely action on the findings and recommendations contained therein. Therefore, receipt of any additional comments within 30 calendar days would be appreciated.

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

We appreciate the cooperation extended by your employees during our audit. If you have any questions or require additional information, please call me at (312) 730–1620.

Sincerely,

/s/

Gary D. Whitman
Regional Inspector General for Audit

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ABBREVIATIONS, ACRONYMS, AND SHORT FORMS USED IN THIS REPORT

AAV	Academic Activity Verification
Award year 2013–2014	July 1, 2013, through June 30, 2014
Award year 2014–2015	July 1, 2014, through June 30, 2015
Award year 2015–2016	July 1, 2015, through June 30, 2016
34 C.F.R. §	Title 34 of the Code of Federal Regulations, Section
Department	U.S. Department of Education
Direct Loan	William D. Ford Federal Direct Loan
F.R.	Federal Register
FSA	Federal Student Aid
HEA	Higher Education Act of 1965, as amended
Northwest Commission	Northwest Commission on Colleges and Universities
OIG	Office of Inspector General
Pell	Federal Pell Grant Program
Title IV	Title IV of the Higher Education Act of 1965, as amended

EXECUTIVE SUMMARY

Western Governors University began participating in the Federal student financial assistance programs in July 1999 as part of the Distance Education Demonstration Program authorized by Congress in the 1998 amendments of the Higher Education Act of 1965, as amended (HEA).¹ As part of the Distance Education Demonstration Program, schools received waivers to provide them access to Federal funds for students whose education was delivered via distance education. Upon completion of the Distance Education Demonstration Program in 2005, the U.S. Department of Education (Department) approved Western Governors University's continued participation in the student financial assistance programs authorized by Title IV of the HEA (Title IV).

In 2006, Congress removed restrictions that limited participation in the Title IV programs by schools offering distance education programs. Congress provided that distance education courses (then referred to as telecommunications courses) would no longer be considered correspondence courses as long as the distance education courses offered by a school exceeded 50 percent of its total course offerings. Congress retained the restrictions on correspondence programs, prohibiting the use of Title IV funds for living expenses unless a program had a residential component. Schools also continued to be ineligible if courses offered by correspondence exceeded 50 percent of the total course offerings or student enrollment in correspondence programs exceeded 50 percent of total enrollment. Additionally, students enrolled in correspondence programs continued to be limited to a half-time Federal Pell Grant Program (Pell) award. In 2008, Congress further amended the HEA to require that distance education programs "support regular and substantive interaction between the students and the instructor."

Western Governors University's online, competency-based educational programs were accredited as distance education programs by the Northwest Commission on Colleges and Universities (Northwest Commission).² We conducted this audit to determine whether Western Governors University complied with the HEA and selected Title IV regulations governing (1) institutional eligibility, (2) program eligibility, (3) disbursements, and (4) return of Title IV aid. We evaluated compliance with the requirements for each objective independently of one another (that is, noncompliance with one requirement did not affect our conclusions about compliance or noncompliance with the other requirements). Specifically, we evaluated compliance with the requirements that

- limit the percentage of regular students who may enroll in correspondence courses,
- prohibit a school from awarding Title IV funds to students based on credit for learning that took place before they enrolled in the school's courses,

¹ Public Law 105-244, October 7, 1998.

² Northwest Commission did not recognize any of Western Governors University's programs as being offered by correspondence.

- require a school to disburse Title IV funds only to students who had started attendance and to make subsequent disbursements only to students who were eligible for them at the time of the disbursements, and
- require a school to correctly determine the amount of Title IV funds students earned while enrolled.

We evaluated compliance with these requirements for award year 2013–2014 (July 1, 2013, through June 30, 2014).

Institutional Eligibility

We evaluated the school’s compliance with the institutional eligibility requirements of the HEA and Title IV regulations that were in effect during our audit period. Those requirements described the difference between distance education and correspondence courses: for a course to be considered distance education, the course must use technologies to support regular and substantive interaction between students and their instructors (Section 103(7) of the HEA).³ Although the HEA and Title IV regulations did not limit the percentage of courses that a school could offer through distance education or limit the percentage of regular students who could enroll in courses offered through distance education, a school became ineligible to participate in the Title IV programs if it offered more than 50 percent of its courses by correspondence or if 50 percent or more of its regular students were enrolled in correspondence courses. This 50-percent limitation was based on courses, not programs (Section 102(a)(3)(A) and (B) of the HEA and Title 34 of the Code of Federal Regulations, Section (34 C.F.R. §) 600.7(a)(1)).⁴ Therefore, we evaluated whether the design of the school’s individual courses met the Title IV definition of distance education or correspondence.

We concluded that Western Governors University did not comply with the institutional eligibility requirement that limits the percentage of regular students who may enroll in correspondence courses.⁵ Therefore, the Department should require the school to return the \$712,670,616 in Title IV funds it received from July 1, 2014, through June 30, 2016, and any additional funds it received after June 30, 2016.

Of the 61,180 regular students enrolled in the school’s courses during award year 2013–2014, at least 37,899 (62 percent) were enrolled in one or more courses that did not meet the Title IV definition of distance education.⁶ For each of the 102 courses required to complete the school’s 3 largest programs, we reviewed course design materials for evidence that each course was designed to offer regular and substantive interaction between students and instructors, the key requirement to be considered a course offered through distance education. We concluded that at least 69 of the 102 courses were not designed to offer regular and substantive interaction with

³ Previously in Section 103(19).

⁴ All regulatory citations are to the July 1, 2013, volume.

⁵ Because schools may receive Title IV funds only if they meet certain institutional eligibility requirements, determining whether Western Governors University achieved other goals not mandated by the HEA was outside the scope of our audit.

⁶ For Title IV purposes, a regular student is “A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution” (34 C.F.R. § 600.2).

an instructor and, therefore, did not meet the regulatory definition of distance education. Instead, these 69 courses met the Title IV definition of a correspondence course (34 C.F.R. § 600.2). None of these 69 courses could reasonably be considered as providing regular and substantive interaction between students and instructors. Course design materials for 32 of the 69 courses described no substantive interaction with an instructor. Course design materials for 27 courses described 1 substantive interaction with an instructor. Course design materials for 10 courses described 2 substantive interactions with an instructor.

According to Section 102(a)(3)(B) of the HEA and 34 C.F.R. § 600.7(a)(1), a school is not eligible to participate in the Title IV programs if, for its latest complete award year, 50 percent or more of the school's regular students were enrolled in correspondence courses. Because more than 50 percent of its regular students were enrolled in at least one correspondence course during award year 2013–2014, Western Governors University became ineligible to participate in the Title IV programs as of June 30, 2014 (34 C.F.R. § 600.40(a)(3)).

Program Eligibility

Although our review was limited, we did not identify any evidence indicating that Western Governors University violated the program eligibility requirement prohibiting a school from awarding Title IV funds to students based on credit for learning that took place before they enrolled in the school's courses. We evaluated the policies and procedures that the school designed to provide reasonable assurance that it would not award Title IV funds for instruction provided by other schools, examinations, or direct assessments provided for other accomplishments (such as life experience). We then reviewed the school's records for a sample of 10 student terms in which a student completed 36 or more competency units. We did not identify any instances in which the students received Title IV funds for learning that took place before they enrolled in Western Governors University's courses.

Title IV Disbursements

Western Governors University did not comply with the requirements governing disbursements. The school defined its academic year as 52 weeks of instructional time during which a full-time, undergraduate student was expected to complete at least 24 competency units.⁷ We reviewed the records for nine full-time, undergraduate students and the course design materials for the courses in which those students were enrolled during the academic year. We concluded that the design of these courses did not provide 52 weeks of instructional time to eight of the nine students. The number of weeks of instructional time provided to the eight students varied from 8 through 40 weeks, with six students being provided fewer than the minimum number of weeks for an academic year (30 weeks) required by the HEA. Additionally, the design of these courses did not ensure that Western Governors University provided at least 26 weeks (one half of the school-defined academic year or one payment period) of instructional time before disbursing Title IV funds for the students' subsequent payment periods.

Because its academic year and payment periods did not provide the minimum weeks of instructional time required by Section 481(a) of the HEA and 34 C.F.R. § 668.3(a), Western Governors University should have considered its programs to be nonterm programs, defined

⁷ A week of instructional time, as defined by Title IV regulations, is any week in which at least 1 day of regularly scheduled instruction or an examination occurs.

payment periods as prescribed by 34 C.F.R. § 668.4(c), disbursed Title IV funds for subsequent payment periods based on the requirements for a nonterm program, and adjusted students' Pell awards based on the regulations for nonterm programs. Instead, the school disbursed funds to students based on the requirements for a term-based program, resulting in disbursements to students who were ineligible for such disbursements at the time the school made them and resulting in the school not properly adjusting students' Pell awards.

We also concluded that the school did not always confirm that students started attendance in the courses on which their eligibility was based before disbursing Pell funds on or after the first day of a payment period. By not confirming attendance before disbursing Pell funds, the school increased the risk that it would disburse the funds to students who were not academically active during the payment period (see **OTHER MATTERS**).

Return of Title IV Aid

Western Governors University did not always comply with the requirements governing the return of Title IV aid. We reviewed the school's records for 15 students who withdrew, earned zero competency units, or both, during the payment period. We concluded that the school correctly calculated the amounts that 10 of the 15 students earned for the payment period. However, the school did not correctly determine the amounts that five of the students earned. One student never attended during the payment period but the school did not return any Title IV funds. Four other students either officially or unofficially withdrew from school but the school incorrectly calculated the amounts to return for three students (one of the students did not require a return of funds). As a result, the school returned \$10,509 less than required for the four students.

Recommendations

We recommend that the Chief Operating Officer for Federal Student Aid (FSA) take the following actions:

- Initiate appropriate administrative action against the school pursuant to 34 C.F.R. § 600.41.
- Determine whether the school complied with the institutional eligibility requirements before award year 2013–2014. If FSA determines that the school did not comply with the institutional eligibility requirements, the Chief Operating Officer for FSA should require the school to return all Title IV funds disbursed to regular students enrolled during award years for which the school was not eligible to participate in the Title IV programs.

We also recommend that the Chief Operating Officer for FSA require Western Governors University to take the following actions:

- Return to the Department the \$712,670,616 in Title IV funds the school received from July 1, 2014, through June 30, 2016, and any additional funds received after June 30, 2016.

- Return to the Department all funds disbursed to students who never earned a subsequent disbursement for student terms that started from July 1, 2013, through June 30, 2016.⁸
- Recalculate Pell awards in accordance with the regulations for credit-hour programs without terms for all students who received Pell funds for student terms that started from July 1, 2013, through June 30, 2016, and return to the Department all excess funds disbursed.
- Return \$10,509 to the Department for students who did not begin attendance or withdrew.
- Review the records for all students whose files we did not review, determine the amount of Title IV funds that the students did not earn for the payment period, and return any unearned funds to the Department (only applies to award year 2013–2014).
- Stop making subsequent disbursements of Title IV funds to students until it implements policies and procedures for ensuring that students have completed at least the regulatory minimums for both weeks of instructional time and credit hours (competency units).
- Ensure that the school-defined academic year will include at least 30 weeks of instructional time and each of the weeks will include at least 1 day of regularly scheduled instruction or an examination.

Finally, the Chief Operating Officer for FSA needs to determine whether Western Governors University should be allowed to continue using a student's date of academic activity verification (AAV) as the date on which the student started attending all of the classes on which his or her Title IV eligibility was based.

Western Governors University Comments

We provided the draft of this report to Western Governors University for review and comment. The school provided us with comments on the three findings but did not provide any comments on the Other Matters section of this report (see [Enclosure](#)).

Western Governors University disagreed with the finding that it was not eligible to participate in the Title IV programs ([Finding No. 1](#)). The school stated that all of the courses that the Office of Inspector General (OIG) determined to be correspondence courses were distance education courses as prescribed by the law, regulations, and sub-regulatory guidance. Western Governors University also disagreed with the finding that it disbursed Title IV funds to students before the students were eligible to receive them ([Finding No. 2](#)). The school stated that (1) the OIG only counted weeks in which individual students participated in a qualifying activity, rather than the weeks of instructional time available; (2) the school had a sufficient number of weeks of instructional time to meet its definitions of payment period and academic year; and (3) the

⁸ These funds should be returned to the extent that they are not required to be returned under the institutional eligibility finding.

school's courses were not self-paced. Finally, Western Governors University disagreed with the finding that it did not always comply with the requirements governing the return of Title IV funds ([Finding No. 3](#)). The school stated that it disagreed with four of the instances cited in the finding and was researching one other instance.

In summary, Western Governors University stated that it complied with all legal and accreditation standards, and its model fulfilled the overarching purpose of the HEA in improving quality and expanding access to higher education. Therefore, the school requested that the OIG withdraw its findings and close the audit.

OIG Response

Since 2007, when the Department recognized Western Governors University as a competency-based, credit-hour school, the school has been required to follow all Title IV requirements applicable to a credit-hour school. Therefore, we evaluated the school's compliance with requirements governing competency-based, credit-hour programs; we did not assess whether the school's model was improving educational quality or expanding access to higher education. We are not withdrawing our findings or the corresponding recommendations. Western Governors University did not provide any evidence to demonstrate that the courses that we determined met the regulatory definition of correspondence courses were distance education courses ([Finding No. 1](#)). We added information to the finding to clarify our evaluation process.

Also, Western Governors University incorrectly stated that we only counted weeks in which students participated in a qualifying activity. We counted the number of weeks of instructional time that the school designed into each course (as described in the course design materials for each of the courses in which the students in our sample enrolled during the academic year). Western Governors University did not provide any additional evidence to show that it offered a sufficient number of weeks of instructional time to meet its own definition of an academic year (52 weeks) and a payment period (26 weeks) or to show that its courses were not self-paced ([Finding No. 2](#)). We clarified the finding to show that we based our conclusion on the design of each course and not actual student participation.

Finally, the school did not provide any additional evidence to show that it complied with the Title IV requirements for the return of Title IV funds for the five students cited in the finding ([Finding No. 3](#)). In the finding, we clarified that Western Governors University was not required to take attendance and did not use the midpoint of the payment period when calculating the amount of Title IV funds that should be returned for students who unofficially withdrew.

We summarized Western Governors University's comments after each finding and included the comments in their entirety as an [Enclosure](#) to this report.

BACKGROUND

Western Governors University was founded in 1997 as a private, nonprofit university. The school provides online access to higher education through competency-based bachelor's degree programs, master's degree programs, and teacher licensure programs. Headquartered in Salt Lake City, Utah, Western Governors University is governed by a board of trustees. The school lists as members the governors of 19 States and 1 U.S. territory.⁹

During our audit period, Western Governors University's educational programs were accredited as distance education programs by Northwest Commission on Colleges and Universities (Northwest Commission).¹⁰ The school also had programmatic accreditation through the National Council for Accreditation of Teacher Education, the Commission on Collegiate Nursing Education, and the Commission on Accreditation for Health Informatics and Information Management Education.

The Title IV Programs

The purpose of the Title IV programs authorized by the HEA is to provide loans, grants, and work-study financial assistance to students and their parents. During award years 2013–2014 through 2015–2016, Western Governors University participated in the following Title IV programs:

- *William D. Ford Federal Direct Loan (Direct Loan)*: Provides loans to postsecondary school students and their parents to help defray the costs of education at participating schools.
- *Pell*: Provides eligible students who have demonstrated financial need with grant assistance to help pay undergraduate, postsecondary educational expenses.
- *Teacher Education Assistance for College and Higher Education Grants*: Provides annual grants of up to \$4,000 to eligible undergraduate and graduate students who agree to teach specified high-need subjects at schools serving primarily disadvantaged populations.
- *Federal Supplemental Educational Opportunity Grants*: Provides need-based grants to eligible students to help meet undergraduate, postsecondary educational expenses.

⁹ Alaska, Arizona, California, Colorado, Hawaii, Idaho, Indiana, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming, and Guam.

¹⁰ We have previously identified distance education programs as presenting challenges to the Department and school officials because little or no in-person interaction between school officials and a student presents difficulties in verifying the student's academic attendance, increasing the risk of the school not complying with Federal law and regulations.

- *Federal Work-Study*: Provides part-time employment to eligible students to help meet undergraduate, postsecondary educational expenses and encourage students receiving program assistance to participate in community service activities.

Enrollment and Title IV Funding Information

Western Governors University defines a student term as any 6-month period in which a student was enrolled in school. A student term may begin on the first day of any month. For student terms that started during award year 2013–2014, 61,180 students enrolled in 77 undergraduate and graduate degree programs in business, information technology, health professions, and teacher licensure.

Western Governors University disbursed more than \$280 million in Title IV funds to students for student terms that started during award year 2013–2014. From July 1, 2014, through June 30, 2015 (award year 2014–2015), the school received almost \$332 million in Title IV funds. From July 1, 2015, through June 30, 2016 (award year 2015–2016), the school received more than \$381 million in Title IV funds. (See [Table 1.](#))

Table 1. Title IV Funding for Award Years 2013–2014 Through 2015–2016

Title IV Program	Funds Disbursed For Student Terms That Started During Award Year 2013–2014 (a)	Funds Received During Award Year 2014–2015 (b)	Funds Received During Award Year 2015–2016 (b)
Direct Loan	\$212,309,003	\$245,578,961	\$286,538,795
Pell	\$65,951,387	\$82,686,231	\$91,015,875
Teacher Education Assistance for College and Higher Education Grants	\$1,851,217	\$1,875,897	\$1,802,493
Federal Supplemental Educational Opportunity Grants	\$0	\$1,460,695	\$1,653,713
Federal Work-Study Program	\$0	\$15,555	\$39,711
Total (c)	\$280,111,606	\$331,617,338	\$381,053,278 (d)

(a) Source: Department’s G5 system.

(b) Source: Department’s National Student Loan Data System.

(c) Totals are net of \$1 rounding differences.

(d) Includes \$2,691 for Iraq and Afghanistan Service Grants received during award year 2015–2016.

Student Status, Tuition Structure, Faculty Structure, and Academic Approach

According to “Western Governors University Institutional Catalog,” the school used an unbundled faculty composition model that divided educational roles and tasks, such as meeting

As explained on Western Governors University’s web site, the school used a competency-based academic approach, awarding degrees to students for demonstrating their skills and knowledge (competence) in specific subject areas rather than basing progress on seat time in the classroom. One competency unit was equivalent to one semester credit of learning.

Western Governors University considered itself to be a term-based school, with two 6-month terms making up 1 academic year. All students were considered full time. For each 6-month term, undergraduate students were expected to complete courses worth 12 or more competency units; graduate students were expected to complete courses worth 8 or more competency units.

The school's courses were self-paced. According to the school's web site, students were allowed to complete their courses as soon as they successfully completed all of the necessary assessments for those courses. Students had around-the-clock access to a variety of learning resources, including teaching practicums, electronic textbooks, library services, web-based tutorials, and learning communities. Students who quickly attempted and completed assessments could complete their courses and programs in less time than the expected pace for a full-time student.

Western Governors University charged tuition at a flat rate per term. During award year 2013–2014, tuition ranged from \$2,890 to \$4,250 per term (depending on the program), regardless of the number of courses or competency units that the student attempted or completed each term.

Definitions of Distance Education and a Correspondence Course

Northwest Commission accredited Western Governors University's educational programs as distance education programs. It did not recognize any of the programs as being offered by correspondence. According to Section 103(7) of the HEA, distance education means education that uses certain technologies, such as the internet, transmissions through open broadcast, audio conferencing, or DVDs (as long as the DVDs are used in conjunction with one or more of the other three technologies), to deliver instruction to students who are separated from the instructor. The technologies must support regular and substantive interaction between the students and the instructor. The regular and substantive interaction may be synchronous (occurs in real time) or asynchronous (is not coordinated in time). The HEA definition of distance education is incorporated into regulation at 34 C.F.R. § 600.2.

The regulation at 34 C.F.R. § 600.2 also defines a correspondence course as a course for which a school provides instructional materials, including examinations on the materials, to students who are separated from the instructor. Correspondence courses are typically self-paced, with interaction between the student and instructor being limited, not regular and substantive, and primarily initiated by the student. Correspondence courses are not distance education.

Eligibility and Funding Limitations Relevant to Correspondence Courses

The HEA and regulations do not limit the percentage of courses that a school is allowed to offer through distance education or limit the percentage of regular students who may enroll in courses offered through distance education. However, according to Section 102(a)(3)(B) of the HEA and 34 C.F.R. § 600.7, if a school offers more than 50 percent of its courses by correspondence or 50 percent or more of its regular students are enrolled in correspondence courses, the school loses eligibility to participate in the Title IV programs.

Section 472 of the HEA, states that cost of attendance for a student enrolled in a correspondence program is limited to tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training. According to 34 C.F.R. § 668.2, a student enrolled in a correspondence program is limited to the total Title IV funds that the school may award to a half-time student. Additionally, 34 C.F.R. § 690.66 limits students enrolled in a correspondence program to one half of a full Pell award.

Pell awards to students enrolled in correspondence programs have been limited to half-time awards since the first publication of regulations for the Pell program (45 C.F.R. §§ 190.2(h) and 190.51(d) (1975)). The Department explained in an update to the regulations that correspondence students receive a half-time award “because generally those students have a workload comparable to a part-time student.” (50 F.R. 10713 (March 15, 1985)).

The Department Recognized Western Governors University as a Credit-Hour School for Title IV Eligibility Purposes

As part of the 1998 amendments of the HEA (Section 486), Congress authorized Western Governors University’s participation in the Distance Education Demonstration Program, which ran from July 1, 1999, through June 30, 2005. The program allowed schools to use technology for delivering different methods of instruction. Congress authorized the Department to issue waivers of certain statutory and regulatory requirements, including the requirement for a minimum number of weeks of instructional time in an academic year. The intent of the waivers was to enable access to Title IV funds for quality education delivered via distance education to students pursuing college-level academic studies and training. In July 1999, the Department approved 15 schools, including Western Governors University, to participate in the Distance Education Demonstration Program and receive Title IV funds while doing so.

The Distance Education Demonstration Program also helped the Department determine the regulatory changes needed to provide greater access to distance education and the appropriate level of Title IV assistance for students enrolled in distance education programs. At the time, the HEA and implementing regulations contained provisions restricting or limiting the use of Title IV funds for distance education programs. These provisions included limitations on the amount of distance education (telecommunications and correspondence courses) a school could offer and retain its eligibility to participate in the Title IV programs. The HEA and implementing regulations no longer limit the use of Title IV funds for distance education programs but still limit Title IV funds for correspondence programs.

Upon completion of the Distance Education Demonstration Program in 2005, the Department approved Western Governors University’s continued participation in the Title IV programs. In 2007, Western Governors University requested advice from the Department on two issues relating to program eligibility. The Office of Postsecondary Education and FSA notified Western Governors University that, if it were recognized as offering programs via direct assessment, students enrolling in the school’s teacher licensure programs would not be eligible for Title IV funds.¹¹ The programs needed to be offered as competency-based, credit hour programs to be Title IV eligible. The Office of Postsecondary Education and FSA also notified Western Governors University that the Department would recognize the school as a Title IV-eligible, competency-based, credit-hour school because the school defined one competency unit as equivalent to one credit hour. Because the Department recognized it as a credit-hour school

¹¹ Pursuant to 34 C.F.R. § 668.10(g), “Title IV, HEA program eligibility with respect to direct assessment programs is limited to direct assessment programs approved by the Secretary. Title IV, HEA program funds may not be used for (1) the course of study described in §668.32(a)(1)(ii) and (iii) if offered by direct assessment” According to 34 C.F.R. § 668.32(a)(1)(iii), a student is eligible to receive Title IV funds if the student, “For purposes of the Federal Perkins Loan, FWS, FFEL, and Direct Loan programs, is enrolled or accepted for enrollment as at least a half-time student at an eligible institution in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State;”

and not a direct assessment school, since 2007, Western Governors University has been required to follow all Title IV requirements applicable to a credit-hour school, including the HEA and regulations defining a credit hour, minimum academic year length, and payment period for disbursing Title IV funds.

The Federal regulation defining a credit hour does not mandate the classroom hours or seat time required for a course or program. Instead, the regulation at 34 C.F.R. § 600.2 defines a credit hour as

. . . an amount of work represented in intended learning outcomes and verified by evidence of student achievement that is an institutionally established equivalency that reasonably approximates not less than . . . [o]ne hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately fifteen weeks for one semester or trimester hour of credit, or ten to twelve weeks for one quarter hour of credit, or the equivalent amount of work over a different amount of time; or . . . [a]t least an equivalent amount of work . . . for other academic activities as established by the institution including laboratory work, internships, practica, studio work, and other academic work leading to the award of credit hours.

According to Section 481(a) of the HEA and 34 C.F.R. § 668.3, an academic year for a program of study must include, for a program offered in credit hours, a minimum of 30 weeks of instructional time during which a full-time student is expected to complete at least 24 semester credit hours. A week of instructional time is defined as a consecutive 7-day period during which at least 1 day of regularly scheduled instruction or an examination occurs. Instructional time does not include any vacation periods, homework, periods of orientation, or periods of counseling.

Pursuant to 34 C.F.R. § 668.4, for a program that measures progress in credit hours and uses standard terms or nonstandard terms that are substantially equal in length, a payment period is the academic term. For a program that is more than 1 academic year in length, measures progress in credit hours, and uses nonstandard terms that are not substantially equal in length, the first payment period is the period of time in which the student successfully completes half of the number of credit hours in the academic year and half of the number of weeks of instructional time in the academic year. The second payment period is the period of time in which the student successfully completes the academic year.

AUDIT RESULTS

Western Governors University did not comply with the institutional eligibility requirement that limits the percentage of regular students who may enroll in correspondence courses. Of the 61,180 students enrolled in Western Governors University courses during award year 2013–2014, at least 37,899 (62 percent) were enrolled in 1 or more of 69 courses that met the Title IV definition of a correspondence course, not the Title IV definition of distance education. None of these 69 courses could reasonably be considered as providing regular and substantive interaction between students and instructors, the key requirement to be considered a course offered through distance education. A school is not eligible to participate in the Title IV programs if, for its latest complete award year, 50 percent or more of the school’s regular students were enrolled in correspondence courses.¹² Therefore, Western Governors University became ineligible to participate in the Title IV programs as of June 30, 2014. (See [Finding No. 1.](#))

Our limited review did not identify any evidence indicating that Western Governors University violated the program eligibility requirement prohibiting a school from awarding Title IV funds to students based on credit for learning that took place before they enrolled in the school’s courses. We evaluated the policies and procedures that Western Governors University designed to ensure that it did not award Title IV funds for instruction provided by other schools, examinations, or direct assessments provided for other accomplishments (such as life experience). We then reviewed the school’s records for a sample of 10 students who completed 36 or more competency units during one student term. We did not identify any instances in which students received Title IV funds for learning that took place before they enrolled in Western Governors University’s courses.

Western Governors University did not comply with the requirements governing disbursements. The school defined its academic year as 52 weeks of instructional time during which a full-time, undergraduate student was expected to complete at least 24 competency units. However, the school did not provide 52 weeks of instructional time to eight of the nine students included in our sample. The weeks of instructional time varied from 8 through 40 weeks, with six of the students being provided fewer than the minimum 30 weeks of instructional time required by the HEA. The school also did not provide at least 26 weeks of instructional time, as required by its definition of a payment period, before disbursing Title IV funds for the students’ subsequent payment periods. Because the school’s payment periods did not include the minimum weeks of instructional time required by Section 481(a) of the HEA and 34 C.F.R. § 668.3(a), the school should have considered its programs to be nonterm programs and disbursed Title IV funds for subsequent payment periods based on the requirements for a nonterm program. Instead, it disbursed Title IV funds based on the requirements for a term-based program, resulting in the school disbursing funds to students who were ineligible for them at the time and not properly adjusting students’ Pell awards. (See [Finding No. 2.](#))

¹² According to the 2013–2014 Federal Student Aid Handbook (Volume 2, page 2–26), regular students enrolled in one or more correspondence courses are correspondence students.

Finally, Western Governors University did not always properly handle Title IV funds when students did not begin attendance or withdrew. The school either did not calculate the amount of Title IV funds that should have been returned or used an incorrect withdrawal date. (See [Finding No. 3.](#))

FINDING NO. 1 – Western Governors University Was Not Eligible to Participate in the Title IV Programs

Western Governors University became ineligible to participate in the Title IV programs as of June 30, 2014, because more than 50 percent of its regular students were enrolled in at least one correspondence course during award year 2013–2014.¹³ According to the HEA and regulations, a school is not eligible to participate in the Title IV programs if, for its latest complete award year, 50 percent or more of the school’s regular students were enrolled in correspondence courses. If a school loses its eligibility under this institutional eligibility provision, it loses its eligibility on the last day of the award year being evaluated under that provision.

Western Governors University considered all of its courses as meeting the Title IV definition of distance education (34 C.F.R. § 600.2). However, at least 62 percent of the school’s regular students were enrolled in at least 1 of 69 courses that we concluded met the Title IV definition of a correspondence course, not the Title IV definition of distance education. None of these 69 courses could reasonably be considered as meeting the Title IV definition of distance education because the school’s faculty model did not ensure that the courses were designed to offer regular and substantive interaction between students and instructors.

Course Offerings Met the Title IV Definition of a Correspondence Course, Not the Title IV Definition of Distance Education

To determine whether Western Governors University complied with the institutional eligibility requirements in Section 102(a)(3)(B) of the HEA and 34 C.F.R. § 600.7(a)(1), we evaluated whether the school’s courses could reasonably be considered as meeting the Title IV definition of distance education or the Title IV definition of correspondence.

According to Section 103(7) of the HEA, as incorporated into the regulations at 34 C.F.R. § 600.2:

Distance education means education that uses one or more of the technologies listed in paragraphs (1) through (4) of this definition to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. The technologies may include—

- (1) The internet;
- (2) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;

¹³ Our audit scope did not include award years before 2013–2014. Therefore, we do not express an opinion on Western Governors University’s eligibility to participate in the Title IV programs before June 30, 2014.

- (3) Audio conferencing; or
- (4) Video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3) of this definition.

The regulation defines a correspondence course as

- (1) A course provided by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor. Interaction between the instructor and student is limited, is not regular and substantive, and is primarily initiated by the student. Correspondence courses are typically self-paced.
- (2) If a course is part correspondence and part residential training, the Secretary considers the course to be a correspondence course.
- (3) A correspondence course is not distance education.

We first identified all the courses that full-time, undergraduate students were required to complete to earn degrees in the school's 3 largest programs in terms of student enrollment: Bachelor of Science in Business Management (5,653 students enrolled), Bachelor of Arts in Interdisciplinary Studies for Prospective K–8 Teachers (4,220 students enrolled), and Bachelor of Science in Nursing (RN to BSN) (4,012 students enrolled).¹⁴ According to "Western Governors University Institutional Catalog" (May 1, 2014), these 3 programs included 102 of the 980 courses that the school offered to students during award year 2013–2014. In addition to the 13,885 students enrolled in the school's 3 largest programs, another 25,513 students were enrolled in at least 1 of the 102 courses. Therefore, of the 61,180 students enrolled in the school during the award year, 39,398 (64 percent) were enrolled in these 102 courses.

Next, for each of the 102 courses, we reviewed course design materials, including course outlines, pacing guides suggesting the amount of coursework a student should complete each week to finish the courses within the school's suggested number of weeks, and calendars of live events referenced in course outlines and pacing guides.¹⁵ We reviewed the materials for evidence that the school designed each of the 102 courses in a way that could reasonably be considered as meeting the Title IV definition of distance education. That definition requires a course to be designed to offer regular and substantive interaction between students and instructors.

Because the HEA and Title IV regulations did not define instructor, substantive, or regular, we considered the ordinary meaning of those terms when assessing whether the school designed the 102 courses to offer regular and substantive interaction between students and instructors. We reviewed the school's course design materials for evidence of interaction that was not primarily initiated by the student and was (1) with someone who instructs or provides knowledge about the subject matter of the course (instructor), (2) relevant to the subject matter (substantive),

¹⁴ Based on the number of Title IV recipients enrolled during student terms that started during award year 2013–2014.

¹⁵ We did not review the course design materials for the other 878 courses (from the universe of 980 courses) to determine whether they met the definition of distance education or the definition of a correspondence course.

and (3) occurring with some reasonable frequency considering the school-suggested length of the course (regular).

We then determined which Western Governors University employees could reasonably be considered instructors by (1) identifying who Northwest Commission recognized as members of the school's faculty and reviewing how the accrediting agency characterized each faculty member's role, (2) obtaining and reviewing the school's descriptions of each faculty member's role and responsibilities, and (3) interviewing the school's Associate Provost for Mentoring, three course mentors, and six student mentors.

- Northwest Commission recognized Western Governors University's student mentors, course mentors, evaluators, product managers, and council members as members of the school's faculty. The accrediting agency also distinguished between the roles of student mentors and course mentors, characterizing student mentors as serving in academic advisory roles and course mentors serving in instructional roles.
- The school's descriptions of faculty roles and responsibilities showed that course mentors provided instruction and evaluators provided detailed feedback regarding the subject matter of the course. Only the description for course mentors stated that their experience and training was specific to the courses they supported. The description for the student mentors stated that, rather than teach courses, student mentors were students' primary sources of information about how the student's program of study will work and the school's policies and procedures.
- The Associate Provost for Mentoring stated that student mentors were not subject matter experts; rather, they had responsibilities that included providing support and guidance to students.
- The three course mentors we interviewed stated that they were subject matter experts who provided instruction to students.
- The six student mentors we interviewed indicated that their responsibilities did not include providing instruction on course content. Three of the six student mentors stated that they did not provide instruction or discuss course content with students. The other three student mentors described advising and counseling responsibilities, such as motivating students and helping students progress through their programs of study.

We, therefore, concluded that only course mentors and evaluators, not student mentors, product managers, or council members, could reasonably be considered instructors. According to the school's course design materials, interaction with course mentors could include webinars and meetings with groups of students to discuss issues, solve problems, and share research. Interaction with an evaluator could include the evaluator explaining that a performance task (assignment) was adequate or instructing the student to revise the assignment before resubmitting it for additional evaluation and feedback.

After identifying the employees who could reasonably be considered instructors, we determined what type of interactions could reasonably be considered substantive. We considered an interaction to be substantive if the course design materials described student interaction with a course mentor or required an individual submission of a performance task for which an evaluator provided the student feedback. We did not consider the following to be instances of substantive interactions between students and instructors:

- Objective assessments that students submitted for evaluation because feedback on objective assessments was computer-generated, was not provided by instructors, and did not facilitate synchronous or asynchronous interaction between students and instructors.
- Recorded webinars, videos, and reading materials if the course design materials did not require the students to watch the webinars or videos and then interact with an instructor. Many course outlines stated only that course mentors were available to students for assistance if the student wanted to contact the course mentor. Had the course design materials indicated that the recorded webinars, videos, and reading materials facilitated synchronous or asynchronous interactions, such as requiring the student to contact an instructor or participate in an online discussion moderated by an instructor, we would have considered those instances to be substantive interaction.
- Contact with student mentors because the accrediting agency's recognition, the school's description of the student mentor's role, and our interviews with six student mentors disclosed that student mentors did not provide instruction on the subject matter of the courses that students were taking.

Finally, we determined whether student interaction with instructors could reasonably be considered regular. We reviewed the course design materials, including any instructional materials that supported or facilitated synchronous or asynchronous interaction with an instructor, for the 102 courses and counted the number of substantive interactions that Western Governors University designed into each course. We did not find any evidence in the course design materials for 69 courses that would provide a reasonable basis for concluding that planned student interactions with course mentors and evaluators could be considered as occurring with some reasonable frequency (regular). The only evidence of regular interaction was student contact with student mentors. However, student mentors did not provide instruction.

Based on this analysis, we concluded that 69 of the 102 courses required to earn a degree in Western Governors University's 3 largest programs could not reasonably be considered as meeting the Title IV definition of distance education. Instead, these 69 courses met the Title IV definition of a correspondence course. None of these 69 courses were designed to offer regular and substantive interaction between students and instructors. The course design materials for all 69 of these courses described courses that would be self-paced, interaction between the students and instructors that would primarily be initiated by students, and interaction between the students and instructors that would not be regular and substantive.

None of the course design materials for these 69 courses described any specific interaction with a course mentor, such as online meetings with the course mentor or webinars presented by

a course mentor. The course design materials typically showed that information would be shared with students via links to online reading materials and prerecorded videos. These course design materials did not demonstrate that the courses would provide synchronous or asynchronous interaction with an instructor. Instead, the course design materials described only limited instances of substantive interaction, such as a performance task that the student was required to submit and for which an evaluator explained that the submitted task was either adequate or needed to be revised and resubmitted. Specifically, we found

- 32 courses did not describe any planned substantive interactions between students and instructors;
- 27 courses, 17 of which had suggested lengths of 3 or more weeks, described only 1 planned substantive interaction between students and instructors, with the described interaction being the completion and evaluation of a performance task; and
- 10 courses, 6 of which had a suggested length of 4 or more weeks, described only 2 planned substantive interactions between students and instructors, with both interactions being the completion and evaluation of performance tasks.

The design of the 69 courses is similar to how the 2013–2014 Federal Student Aid Handbook (Volume 2, page 2–26) described the design of a correspondence course:

A correspondence course is a home-study course for which the school provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the school . . . When a student completes a portion of the instructional materials, the student takes the examinations that relate to that portion of the materials and returns the examinations to the school for grading.

We did not determine whether the other 33 courses required to earn a degree in 1 of Western Governors University's 3 largest programs met the Title IV definition of distance education. Given the percentage of the school's regular students who were enrolled in the 69 courses that we concluded were correspondence courses, the school was already over the 50-percent limitation imposed by the HEA. Although it was not necessary for us to reach a final conclusion on whether the other 33 courses met the Title IV definition of distance education, we noted that the course design materials for many of these courses contained planned substantive interactions consisting only of evaluator feedback to students regarding performance tasks. Such a design is more characteristic of a correspondence course rather than a course offered through distance education.

During Award Year 2013–2014, More Than 50 Percent of Students Were Enrolled in Courses That Met the Definition of a Correspondence Course, Not Distance Education

Of the 61,180 students enrolled in Western Governors University courses during award year 2013–2014, at least 37,899 (62 percent) were enrolled in one or more of the 69 courses that we concluded met the Title IV definition of a correspondence course. When determining the number of students enrolled in these 69 courses, we did not count only those students who enrolled in the 3 largest programs because the curriculum for the school's other programs also required the students to take at least 1 of the 69 correspondence courses. The 37,899 students included

- 32,927 students (53.8 percent of the 61,180 total students) who enrolled in at least 1 of the 32 courses that did not describe any planned substantive interactions;
- 3,431 students (5.6 percent of the 61,180 total students) who enrolled in at least 1 of the 27 courses that described only 1 planned substantive interaction; and
- 1,541 students (2.5 percent of the 61,180 total students) who enrolled in at least 1 of the 10 courses that described only 2 planned substantive interactions.

If any of the 878 courses that we did not evaluate met the Title IV definition of a correspondence course and additional students enrolled in those courses during student terms that started during award year 2013–2014, the percentage of students enrolled in correspondence courses would be greater than the 62 percent described above.

According to 34 C.F.R. § 600.7(a)(1), a school is not eligible to participate in the Title IV programs if “For its latest complete award year. . . (ii) fifty percent or more of the institution’s regular enrolled students were enrolled in correspondence courses.” According to the 2013–2014 Federal Student Aid Handbook (Volume 2, page 2–79), in calculating the percentage of correspondence students at a school, regular students enrolled in one or more correspondence courses are counted once in the numerator; regular students enrolled in all of the school’s courses are counted once in the denominator.

Pursuant to 34 C.F.R. § 600.41, if a school does not satisfy the requirements for an eligible school, appropriate administrative action may include terminating the school’s eligibility designation; limiting the school’s authority to disburse, deliver, or cause the disbursement or delivery of Title IV funds; or initiating an emergency action with regards to the school’s participation in the Title IV programs. According to 34 C.F.R. § 600.40(a)(3), “If an institution loses its eligibility under the provisions of § 600.7(a)(1), it loses its eligibility on the last day of the award year being evaluated under that provision.”

The School’s Faculty Model Did Not Ensure All Courses Were Designed to Offer Regular and Substantive Interaction

To provide students with instruction in their courses, Western Governors University used what it described as an unbundled faculty composition model. This model divided the roles of meeting with and advising students, course or curriculum design, learning resource selection, instruction, and assessment among student mentors, course mentors, evaluators, product managers, and council members. The school described the roles of these employees as follows:

- Student mentors counsel and provide support and guidance to students. Rather than teach courses, they are students’ primary sources of information about program operation and the school’s policies and procedures. According to the Associate Provost for Mentoring, student mentors are not subject-matter experts.
- Course mentors provide content expertise and specialized instructional help to students as they work to complete course material and prepare for assessments. They help students with specific questions that arise and offer specialized instruction.

Their experience and training is specific to the courses they support. According to the school's official job descriptions, course mentors are subject-matter experts.

- Evaluators review students' performance tasks and provide detailed feedback to students regarding the subject matter. According to the school's web site, evaluators are subject-matter experts.
- Product managers develop, manage, and provide ongoing evaluation of academic programs and curriculum. They generally do not interact with students.
- Council members provide academic expertise and industry experience to help approve curriculum and identify new programs for development. They generally do not interact with students.

Northwest Commission considered all of these employees to be members of Western Governors University's faculty. Although Northwest Commission considered all these employees (student mentors, course mentors, evaluators, product managers, and council members) part of the school's faculty, Western Governors University's unbundled faculty composition model did not ensure that courses were designed to provide the regular and substantive interaction between students and instructors required to meet the Title IV definition of distance education. The HEA and regulations required the regular and substantive interaction in a distance education course to be between the student and an instructor, not just any member of a school's faculty.

Western Governors University required student mentors to participate in phone conversations with students every 1 to 2 weeks and considered such contact between student mentors and students to be regular and substantive interaction with an instructor. However, according to the school's official job description, student mentors did not teach courses. Additionally, the accrediting agency considered student mentors as serving in an advisory role, not an instructional role. In the peer evaluation report on its 2013 review of Western Governors University, Northwest Commission stated that student mentors advised and counseled students. The accrediting agency stated that course mentors worked with students in the individual courses, were content experts in the courses, and taught the course curriculum. Therefore, while student mentors had regular interaction with students, the interaction could not reasonably be considered the substantive interaction with an instructor required by the law and regulations.

Western Governors University required course mentors to provide instruction and evaluators to provide detailed course content feedback to students. Based on the job descriptions, course mentors and evaluators could reasonably be considered instructors who had substantive interaction with students, the key Title IV requirement for a course to be considered as offered through distance education rather than being offered through correspondence. However, for the 69 courses that we concluded met the Title IV definition of a correspondence course, the course design materials did not describe regular interaction between the students and course mentors and evaluators. The course design materials described limited interaction with course mentors that was typically on an as-needed basis and typically initiated by the student. Therefore, we concluded that the school's faculty composition model did not ensure that the school's courses were designed to provide the regular and substantive interaction between students and instructors required by the Title IV definition of distance education.

Because more than 50 percent of the school's regular students were enrolled in at least one course that met the definition of a correspondence course during award year 2013–2014, Western Governors University became ineligible to participate in the Title IV programs as of June 30, 2014. During award years 2014–2015 and 2015–2016, the school received about \$713 million in Title IV funds.

Recommendations

We recommend that the Chief Operating Officer for FSA—

- 1.1 Initiate appropriate administrative action against the school, pursuant to 34 C.F.R. § 600.41.
- 1.2 Require the school to return to the Department \$712,670,616 in Title IV funds received for award years 2014–2015 and 2015–2016 and any additional funds received after award year 2015–2016.¹⁶
- 1.3 Determine whether the school complied with the institutional eligibility requirements before award year 2013–2014. If FSA determines that the school did not comply with the institutional eligibility requirements, the Chief Operating Officer for FSA should require the school to return to the Department all Title IV funds disbursed to regular students enrolled during award years for which the school was not eligible to participate in the Title IV programs.

Western Governors University's Comments and OIG Response

Western Governors University stated that it disagreed with the finding (see [Enclosure](#)). The school stated that all of the courses that the OIG determined to be correspondence were and continue to be distance education courses in accordance with the HEA, regulations (including the definition of distance education in 34 C.F.R. § 600.2), guidance, and common practice. The findings in the draft report are fundamentally flawed based on misunderstanding of material facts and misapplication of the relevant law, regulation, and guidance. Specifically, the OIG

- excluded certain activities when determining whether an interaction was substantive, even though such exclusions are not supported by law, regulation, or guidance;
- conducted an improper analysis by focusing on what happened in each course, applied concepts from campus-based higher education models to the school's programs, and reviewed areas that are outside the scope of its authority;
- did not count, as regular and substantive interaction, significant interactions not described in course outlines;

¹⁶ The \$712,670,616 included \$331,617,338 for award year 2014–2015 and \$381,053,278 for award year 2015–2016. See [Table 1](#) for a breakdown, by award year and program, of the Title IV funds that the school should be required to return.

- counted the number of tasks included in performance assessments, which has no basis in application of statute or regulation; and
- did not review a sufficient number of courses to support its position and did not clearly explain how it identified the 37,899 students who it claims were enrolled in at least one correspondence course.

Western Governors University did not provide any additional evidence to support its position or cause us to withdraw this finding or the recommendations. One of our audit objectives was to determine whether the school complied with the HEA and Title IV institutional eligibility requirements. Pursuant to these institutional eligibility requirements, students enrolled in competency-based, credit hour programs must be offered regular and substantive interaction with instructors. Based on how the school's courses were designed during our audit period, we concluded that not all of the school's courses satisfied the requirement to offer regular and substantive interaction with instructors. Courses that do not offer regular and substantive interaction with instructors are correspondence, not distance education.

In the following sections, we summarize the school's comments and then provide our response.

The OIG's Exclusion of Certain Activities When Determining Whether an Interaction Was Substantive Is Not Supported by Law, Regulation, or Guidance

Western Governors University Comments

Western Governors University stated that the OIG incorrectly excluded certain activities when determining whether an interaction with a faculty member was regular or substantive. Neither law, regulation, nor guidance supported excluding contact with student mentors; objective assessments; recorded webinars, videos, and reading materials if the course design materials did not require the students to watch the webinars or videos and then interact with an instructor; and all student-initiated contact.

Western Governors University stated that the OIG recognized only direct instruction as regular and substantive interaction with an instructor, applying a classroom-based concept to a nonclassroom-based model. The OIG did not recognize other important and substantive interactions between student mentors and students, such as students' contextualizing what they learned to their own work and career aspirations and student mentors' helping students develop good study habits and time management, modeling professional roles and values, analyzing and managing student progress to keep students on track (pacing), and listening and providing professional advice. The school also stated that the only appropriate way to view the school's faculty was to consider all classifications of faculty as one faculty unit. Therefore, contacts between students and all of the school's faculty members must be included in the determination of whether interaction with students is regular and substantive.¹⁷

¹⁷ After referring to student mentors and course mentors, Western Governors University's responses transitioned to referring to faculty mentors without clarifying whether it was referring to student mentors, course mentors, both student mentors and course mentors, or some other member of the school's faculty.

Western Governors University further stated that, as long as it provided an interactive curriculum designed and overseen by a faculty member, any student interaction with that curriculum was sufficient to meet the requirement of the HEA for regular and substantive interaction with an instructor, even if the student did not personally interact with the faculty member who designed the curriculum.

Additionally, the school stated that the coaching report for objective assessments is developed and maintained by faculty on the program development team, in conjunction with the faculty mentors and evaluators, to provide feedback to students.¹⁸ These coaching reports were reviewed with the students during meetings with student mentors. Based on the school's disaggregated faculty model, this computer-based feedback must be counted as substantive interaction.

The school further stated that, even though statutory and regulatory language allows for interaction that is provided either synchronously or asynchronously, the OIG counted only live interactions as regular and substantive. Therefore, the OIG disregarded the option of asynchronous education. The OIG ignored recorded webinars and videos, other technology-facilitated academic delivery models, interactive learning, coaching reports, instant grading feedback, course communities, program communities, e-mail exchanges between faculty and students, additional learning materials specific to students' academic needs, adaptive learning techniques, gaming technology, online business simulations, and nursing lab medical mannequins. Western Governors University stated that these interactions were designed and overseen by school faculty and delivered asynchronously over the internet. These interactions constituted asynchronous learning and regular and substantive interaction.

To support its assertion that student-initiated interaction should not be excluded, Western Governors University stated the following:

. . . [T]he definition of distance learning does not limit "regular and substantive" interaction to instructor-initiated contact. Rather, the applicable definition of a correspondence course says the course work is "primarily initiated by the student". Student-initiated contact is only one indicator that a course might be correspondence. It is not a required factor in the definition of correspondence courses and likewise does not require a determination that a course is not distance education.

OIG Response

Western Governors University's argument that any interaction with any faculty member, including non-teaching faculty, was sufficient does not fit with the plain language of the HEA and 34 C.F.R. § 600.2, both of which use the term "instructor," not "faculty" or "faculty member." In the preamble to the interim final regulations implementing the changes to the HEA resulting from the Higher Education Reconciliation Act of 2005 (71 F.R. 45666, 45667 (August 9, 2006)), the Department explained the need for the regular and substantive interaction with an instructor definition to clearly distinguish between distance education (at the time referred to as telecommunications courses) and correspondence:

¹⁸ See previous footnote on the school's use of "faculty mentors."

Under the [Higher Education Reconciliation Act of 2005], courses offered by telecommunications are no longer considered correspondence courses, and students enrolled in telecommunications courses are no longer considered to be correspondence students. As a result, otherwise eligible institutions that offer over 50 percent of their courses by telecommunications, or have 50 percent or more of their regular students enrolled in telecommunications courses, are now eligible to participate in the Title IV, HEA programs. The 50 percent limitations continue to apply to correspondence courses and students.

Because of the different statutory treatment of telecommunications and correspondence, we are changing the definition of telecommunications course. We believe that it is critical to differentiate between the two delivery modes. A definition of telecommunications course that focused exclusively on technologies could be erroneously interpreted to allow an institution to qualify for full participation in Title IV, HEA programs upon introduction of minor e-mail contact between students and a grader or instructional assistant (who may or may not have subject matter expertise) into what is essentially a correspondence course. Similarly, a course outline or course notes posted to an Internet Web site might also meet the current definition of a telecommunications course. Quality standards for electronically-delivered education emphasize the importance of interaction between the instructor and student. The amended definition of a telecommunications course acknowledges the importance of interactivity in electronically-delivered instruction and clearly distinguishes telecommunications from correspondence.

If accepted, the school's argument that, as long as a faculty member designed an interactive curriculum, any student interaction with the curriculum would qualify as substantive interaction with an instructor would render meaningless the distinction between correspondence and distance education established by the Department and adopted by Congress in 2008 through the Higher Education Opportunity Act. We added information to this finding to explain why, despite being members of the school's faculty, the school's student mentors should not be considered instructors for the purposes of meeting the regular and substantive interaction with an instructor requirement.

We did not count coaching reports for objective assessments because those reports were not prepared by subject-matter experts or instructors. The reports for objective assessments were automated and did not facilitate either synchronous or asynchronous interaction with an instructor. Any discussions about the objective assessment and coaching report that the student had with a student mentor also were not interactions with an instructor of the course content. Therefore, the objective assessments cannot reasonably be considered substantive interaction with an instructor.

We did not exclude asynchronous interaction. However, we did not consider a student's watching prerecorded webinars and videos, reading materials, and participating in other activities as substantive interaction with an instructor if Western Governors University did not provide evidence that the student was required to complete these activities and then interact with an instructor. For each of the 102 courses we reviewed, we looked at all documentation that the school provided to us. If these course design materials did not describe synchronous or asynchronous interaction with an instructor, we concluded that substantive interaction was not part of the course design. The course design materials for 69 of the 102 courses did not describe any requirements for students to watch recorded webinars and videos, read materials, or participate in other activities and then interact with an instructor. Had the course design

materials indicated that the recorded webinars and videos, reading materials, and other activities facilitated interaction, such as requiring the student to contact an instructor or participate in an online discussion board moderated by an instructor, we would have considered those instances to be substantive interaction.

The OIG Conducted an Improper Analysis by Focusing on What Happened in Each Course; Applied Concepts from Campus-Based Higher Education Models to the School's Programs; and Reviewed Areas That Are Outside the Scope of Its Authority

Western Governors University Comments

Western Governors University stated that the OIG viewed each program as only a collection of courses, focusing only on what was happening within each course. This was an improper analysis. Unlike at traditional colleges and universities, Western Governors University students were required to enroll in a degree program with a set learning plan, without electives. Students could not enroll in individual courses. Every degree program included a defined set of competencies that every student had to demonstrate mastery of to graduate. Courses were a component of the process that enabled students to master the required competencies but it was the mastery of the competencies that constituted the overall program requirements.

Similarly, Western Governors University stated that the OIG applied an arbitrary definition and antiquated interpretation of instruction and faculty roles that might have been consistent with campus-based higher education models but was not consistent with online and technology-enabled models. Students interacted with the school's entire faculty. However, the OIG inappropriately applied the regular and substantive standard to each faculty role separately, rather than considering the students' academic program experience and faculty interactions in their entirety. If a role was designated faculty by a recognized accrediting agency, then, by definition, all interactions with students by that role were substantive. Once Northwest Commission had designated an academic role as faculty, the additional requirement was to ensure that interaction between faculty and students was regular. The OIG found regular interaction but with a category of school faculty that the OIG decided was not faculty. The entire basis for Finding No. 1 was the OIG's own opinion of the proper definition of the words regular, substantive, and instructor. The interaction between students and faculty in Western Governors University's courses was regular and substantive, and student mentors were faculty. Yet, the OIG reached its own conclusions as to which school employees should have been considered instructors by reviewing the school's descriptions of employee roles against those the OIG defined as valid.

The school further stated that the OIG's methodology was outside its scope of authority. An accrediting agency recognized by the Secretary was assigned responsibility for ensuring the academic quality of a Title IV-eligible institution. The Secretary was not permitted to set standards for accrediting agencies to exercise their academic discretion; the OIG's recommendation that FSA substitute its academic judgment for that of the accrediting agency of the school would violate this prohibition.

OIG Response

We considered interaction in each course individually because the regulations described correspondence at the course level, not the program level (34 C.F.R. § 600.7(a)(1)). Students

had to register for and complete individual courses, with each course having a description, design, required assessment, and “pass” or “not pass” level of achievement.

Contrary to the school’s argument, we did not apply the regular and substantive standard to each faculty role. We identified those faculty members who served in the role of instructor and whether the school offered regular and substantive interaction with the faculty members who were providing instruction in or teaching the course. We did not decide that a category of Western Governors University’s faculty was not faculty. Rather, we determined that a category of school faculty could not reasonably be considered instructors. We concluded that student mentors were not instructors based on Northwest Commission’s recognizing the student mentor role as advisory, job descriptions showing that student mentors provided counseling and advising services, and the Associate Provost for Mentoring and six student mentors explaining that the student mentor role did not include course instruction.

Northwest Commission’s Accreditation Handbook defined faculty as “academic professionals employed by the institution to achieve its educational objectives.” Additionally, the handbook stated: “[f]aculty, through well-defined structures and processes with clearly defined authority and responsibilities, exercise a major role in the design, approval, implementation, and revision of the curriculum Faculty with teaching responsibilities take collective responsibility for fostering and assessing student achievement of clearly identified learning outcomes.” The handbook demonstrated that Northwest Commission did not consider all the school’s faculty to be teaching faculty (that is, instructors). Given Western Governors University’s description of their roles, student mentors did not have teaching responsibilities and were not subject-matter experts. Students who only had interactions with student mentors would be denied substantive interaction with faculty meeting the accrediting agency’s standard for teaching faculty.

Accrediting agencies are the recognized authorities for identifying employees who should be considered part of a school’s faculty and ensuring the academic quality of the educational programs provided by an eligible school. However, accrediting agencies are not the recognized authorities for evaluating a school’s compliance with the HEA and Title IV regulations. That authority is vested in FSA through the HEA and in the OIG through the Inspector General Act of 1978.¹⁹ The Inspector General Act of 1978 gave us the authority to conduct and supervise audits relevant to the programs and operations of the Department; recommend policies and activities to prevent and detect fraud and abuse in the Department’s programs and operations; and keep the Secretary and Congress informed about problems and deficiencies relevant to the administration of the Department’s programs and operations. Because we limited our audit to determining whether Western Governors University complied with the requirements of the HEA and Title IV regulations, our audit was within our authority.

¹⁹ Pursuant to Section 498 of the HEA, FSA is responsible for determining whether schools seeking to participate or participating in the Title IV programs comply with the school eligibility, financial responsibility, and administrative capability requirements for participation in the Title IV programs.

The OIG Did Not Count, As Regular and Substantive Interaction, Significant Interactions Not Described in Course Outlines

Western Governors University Comments

Western Governors University stated that the OIG limited what it counted as regular and substantive interaction to what it found in course outlines, even though significant interactions not spelled out in these course outlines regularly took place. Nothing in law or regulation suggested that all interaction be spelled out in a syllabus or course outline. Both student mentors and course mentors provided students a range of individualized supplemental materials, including additional electronic documents, new web sites with academic-related content, short videos on difficult concepts, recorded webinars, and other educational resources. The school also stated that both student mentors and course mentors used computer analytics to identify students who were having difficulty and proactively reached out to those students. This mentoring model provided students with substantive interaction on a regular basis, including interaction through unscheduled events and interactive lessons. Considering all of these events, interaction between students and faculty was regular and substantive.

The school further stated that the OIG did not have the benefit of reviewing the course within the course delivery platform, including calendars, student communities, announcements, and other support resources that would have been used by faculty mentors to support students beyond just the content listed in the course outline. Essentially, the OIG made its determination by reviewing the equivalent of a syllabus and disregarded all other forms of faculty mentor communication and learning resource support.

OIG Response

We considered all events described in course outlines and pacing guides, along with calendars of live events referenced in those materials. If substantive interactions were not described in any of these course design materials, we had no reasonable basis to conclude that such interactions were part of the design of the courses and did not consider them as planned course requirements. The school did not provide any evidence, such as descriptions in any of the course design materials, showing that the unscheduled events it described were regularly offered to students within the course delivery platform or through any other delivery method. We have no indication that course mentors were regularly required to interact with students, either by design or in practice, and the supplemental materials the school listed do not demonstrate substantive interaction.

We considered supplemental materials that facilitated synchronous or asynchronous interaction, such as requiring the student to contact an instructor or participate in an online discussion moderated by an instructor, as substantive interaction. However, the school did not provide evidence that the supplemental materials facilitated synchronous or asynchronous interaction, or that its courses had a requirement for this type of interaction to occur as part of the design of the course. The school only stated that supplemental materials were provided.

Course mentors might have identified students who were struggling, and many course outlines instructed students to contact course mentors if the students needed assistance. However, if course design materials did not describe the interaction, there was no reasonable assurance that students had any regular and substantive interaction with course mentors. The school did not provide any evidence that interaction initiated by course mentors occurred on a regular basis. One course mentor estimated that about half of students did not need one-on-one assistance from

a course mentor because the students used other learning resources, including videos and live events.

For each course we reviewed, we considered all events described in course outlines, pacing guides, and calendars of live events referenced in course outlines and pacing guides to be offered to students. Although some instructors might have provided other materials, providing materials is not a form of substantive interaction. Western Governors University's responses transitioned to referring to faculty mentors without clarifying whether it was referring to student mentors, course mentors, both student mentors and course mentors, or some other member of the school's faculty.

Counting the Number of Tasks Included in Performance Assessments Has No Basis in Application of Statute or Regulation

Western Governors University Comments

Western Governors University stated that the OIG counted only performance assessments in which the student had to submit three or more tasks for evaluation. Performance assessments, regardless of the number of tasks included in them, often required multiple iterations and evaluator feedback to get to a final submission that would receive a passing grade. Counting the number of tasks was arbitrary and had no basis in application of statute or regulation.

OIG Response

We did not only count the number of individual tasks required to be submitted for evaluation or exclude performance assessments for which the student had to submit for evaluation fewer than three tasks; rather, we based our conclusions on the totality of the evidence described in the finding.

The OIG Did Not Review a Sufficient Number of Courses to Support Its Position and Did Not Clearly Explain How It Identified the 37,899 Students Who It Claims Were Enrolled in at Least One Correspondence Course

Western Governors University Comments

Western Governors University stated that the OIG cannot support a conclusion that the school failed the institutional eligibility requirement because it reviewed only 10 percent of the school's 980 courses and cannot project the results of its analysis to the universe of all courses. The school also stated that the OIG did not adequately explain how it identified the 37,899 students who it stated were enrolled in at least 1 of the 69 courses designated as correspondence courses. The school stated that the total might be inaccurate because (1) some students might have been counted more than once and (2) the total number might have included students who transferred course credits from other schools. Also, the draft report did not include a listing of the students enrolled in the courses.

OIG Response

Our conclusion that the school did not comply with the institutional eligibility requirements does not concern the percentage of courses that were correspondence. Rather, we concluded that the school did not comply with the institutional eligibility requirements because more than 50 percent of its students were enrolled in correspondence courses during the year that ended June 30, 2014. Our review of 102 courses was sufficient to demonstrate that more than

50 percent of the school's students were enrolled in correspondence courses. We included a statement that our results were not projectable because our conclusions apply only to the students who were enrolled in the 102 courses that we reviewed, not the students enrolled in the other 878 courses offered by the school and for which we did not review course design materials.

In the [Institutional Eligibility](#) section of Objectives, Scope, and Methodology, we explained that we counted the number of regular students who enrolled in the 69 courses and included students who enrolled in multiple correspondence courses only once. Whether some transfer students previously earned credits before enrolling in the correspondence courses at Western Governors University is irrelevant; each of the 37,899 students had enrolled in at least one correspondence course at Western Governors University.

We did not include a list of the 37,899 students in the draft audit report because of the length of this list and because it was not necessary. We counted the number of students enrolled in the 69 courses using data Western Governors University provided; therefore, the school already has this information. We also provided the school with a list of all 102 courses that we reviewed, each of the courses identification numbers, and our conclusion on whether each course met the Title IV definition of a correspondence course. In the [Institutional Eligibility](#) section of Objectives, Scope, and Methodology, we clarified that we used a file provided by Western Governors University to count the number of unduplicated students enrolled in the 69 courses.

FINDING NO. 2 – Western Governors University Disbursed Title IV Funds to Students Before the Students Were Eligible to Receive the Funds

Western Governors University disbursed Title IV funds to students based on the requirements for academic years and payment periods governing a term-based program. However, the school's programs were not designed to provide students with 52 weeks of instructional time as required by the school's definition of an academic year. Therefore, the school should have considered its programs to be nonterm programs, defined payment periods as prescribed by 34 C.F.R. § 668.4(c), and disbursed Title IV funds based on the requirements for a nonterm program. By not disbursing funds in compliance with the regulations for a nonterm program, the school disbursed Title IV funds to students who were ineligible for such disbursements at the time the school made them and did not adjust students' Pell awards.

Western Governors University Did Not Provide the Minimum Weeks of Instructional Time Required by the HEA

The Department recognized the school's participation in the Title IV programs as a credit-hour school. Therefore, the school's academic year must meet the statutory and regulatory minimums for both weeks of instructional time and number of credit hours. According to Section 481(a) of the HEA and 34 C.F.R. § 668.3(a), an academic year for a program of study offered in credit hours must include a minimum of 30 weeks of instructional time and 24 credit hours. Western Governors University defined its academic year as 52 weeks, consisting of two, 26-week student terms.

According to the school, one competency unit was the equivalent of one semester credit hour. The school expected full-time, undergraduate students to enroll in courses totaling at least 12 competency units during a 6-month term (24 competency units in 1 academic year). Its written policies stated that the school's academic year consisted of two, 6-month terms but did

not address weeks of instructional time. Because the written policies did not address weeks of instructional time in the academic year, we obtained information on weeks of instructional time from the Associate Director of Financial Aid. The Associate Director of Financial Aid told us that the school’s academic year consisted of 52 weeks of instructional time given that learning resources were available to all students for 52 weeks. According to “Western Governors University Institutional Catalog,” “[s]tudents can access learning resources, schedule assessments, view grader notes, and complete online performance [tasks] any time day or night.” However, according to 34 C.F.R. § 668.3, for a credit-hour program, each week of instructional time must include at least 1 day of regularly scheduled instruction or examination. Only providing access to learning resources for each week of an academic year is not compliant with the Title IV requirements for instructional time.

The school’s policy did not specify whether each week of instructional time would include at least 1 day of regularly scheduled instruction or an examination, a regulatory requirement for a credit-hour program. Therefore, we reviewed records for all courses in which each of nine judgmentally selected, full-time, undergraduate students enrolled during the academic year.²⁰ We reviewed these records to determine whether, based on the design of each course, the school provided full-time, undergraduate students 52 weeks of instructional time within two 6-month payment periods. Based on the scheduled instructional activities described in these course design materials, we concluded that the design of the courses would have provided 52 weeks of instructional time to only one student. The design of the courses would not have provided 52 weeks of instructional time to the other eight students. The number of weeks of instructional time provided to these eight students varied from 8 to 40 weeks. (See [Table 2.](#)) For six of these eight students, the design of the courses provided only 8 to 22 weeks of instructional time, less than the minimum of 30 weeks for an academic year required by the HEA. We did not determine whether students participated in the instructional activities or examinations described in course design materials because compliance with the weeks of instructional time requirement does not depend on actual student participation.

Table 2. Weeks of Instructional Time in the Academic Year for Full-time, Undergraduate Students

Student	Weeks of Instructional Time in the Academic Year
1	8
2	12
3	18
4	19
5	20
6	22
7	34
8	40
9	52

²⁰ We judgmentally selected these 9 students from the universe of 13,885 students who enrolled in Western Governors University’s 3 largest programs and received Title IV funds. We reviewed these nine students because each student received Title IV funds in two payment periods in the same academic year. (See [OBJECTIVES, SCOPE, AND METHODOLOGY](#) for more details.)

Western Governors University Should Have Defined Its Academic Year and Payment Periods Based on the Regulations for Nonterm Schools

The school disbursed funds following the requirements for a school offering term-based programs (nonstandard terms that are substantially equal in length). For purposes of the Title IV programs, schools can offer programs on a standard term, nonstandard terms substantially equal in length, nonstandard terms not substantially equal in length, or nonterm basis. Title IV disbursements must be made on a payment period basis. The payment period a school uses depends on the type of term the school uses to offer programs.

Because the school did not ensure that the design of its courses provided 52 weeks of instructional time, as required by its own definition of an academic year, and because the number of weeks of instructional time provided to the nine students varied, we concluded that the school had no basis to determine the length of its terms or to determine when students completed the weeks of instructional time in a payment period and in an academic year. Therefore, we concluded that the school should have considered its programs to be nonterm programs and defined its academic year and payment periods as prescribed by 34 C.F.R. § 668.4(c). According to 34 C.F.R. § 668.4(c):

- (2) For a student enrolled in an eligible program that is more than one academic year in length—
 - (i) For the first academic year and any subsequent full academic year—
 - (A) The first payment period is the period of time in which the student successfully completes half of the number of credit hours or clock hours, as applicable, in the academic year and half of the number of weeks of instructional time in the academic year; and
 - (B) The second payment period is the period of time in which the student successfully completes the academic year . . .

Students Were Not Always Eligible at the Time of Subsequent Disbursements

Western Governors University considered its academic year to consist of 52 weeks of instructional time during which a full-time undergraduate student was expected to complete at least 24 competency units. Therefore, the school should have ensured that the design of its courses provided students at least 26 weeks of scheduled instructional time and ensured that the students completed at least 12 competency units before disbursing Title IV funds for a subsequent payment period.

We reviewed the school's records for the nine full-time, undergraduate students in our sample to identify when the school made a second disbursement to each student. Of the nine students, only two were provided 26 weeks of instructional time before receiving a second disbursement. The other seven students, who received second disbursements totaling \$26,365, were not provided 26 weeks of instructional time before receiving the second disbursements, making the students ineligible for the disbursements at the time the school made them. In addition to not being provided 26 weeks of instructional time, three of the seven students did not complete at least 12 competency units during the payment period before receiving a second disbursement. (See [Table 3](#), students 4, 5, and 6.)

We also found that eight of the nine full-time, undergraduate students were not eligible for a disbursement at the beginning of their subsequent academic years. These eight students were not

provided 52 weeks of instructional time or did not complete at least 24 competency units in the academic year. (See [Table 3](#), students 1 through 8.) For example, one student (student 5) was provided only 20 weeks of instructional time in 1 academic year. If that student continued at the pace of completing only 20 weeks of instructional time per academic year, the student would not complete 1 academic year consisting of 52 weeks of instructional time for more than 2.5 calendar years; the student would not be eligible for a Title IV award for a subsequent academic year until that time.

Table 3. Student Eligibility for Subsequent Disbursements

Student	Weeks of Instructional Time in the First Payment Period	Competency Units Completed During the First Payment Period	Student Eligible for Second Disbursement?*	Weeks of Instructional Time in the Academic Year	Competency Units Completed During the Academic Year	Student Eligible for Disbursements at the Start of the Subsequent Academic Year?
1	5	12	No	8	12	No
2	7	12	No	12	23	No
3	13	12	No	18	24	No
4	10	6	No	19	15	No
5	6	9	No	20	9	No
6	10	9	No	22	18	No
7	19	18	No	34	37	No
8	26	20	Yes	40	35	No
9	26	18	Yes	52	47	Yes

* All 9 students received a second disbursement in the academic year within 19 days of the end of the first, 6-month payment period.

According to 34 C.F.R. § 668.164(b)(3), a school may disburse Title IV funds to a student for a payment period only if the student is enrolled for classes for that payment period and is eligible to receive those funds.

By not ensuring that students completed the required weeks of instructional time and competency units during the first payment period, the school made subsequent disbursements of Title IV funds to students who were ineligible for the funds at the time of the disbursements. By not ensuring that students completed the required weeks of instructional time and competency units during the academic year, the school increased the risk that the students and the school would receive Title IV funds in subsequent academic years even though students would not be eligible for the funds at the time of the disbursements.

In addition, because the eight students were not provided 52 weeks of instructional time during the academic year (see [Table 2](#)), the school should have reevaluated the students' Pell awards in accordance with 34 C.F.R. 690.63(e). For programs using credit hours without terms, a school must multiply the Pell award by the lesser of (1) the number of credit hours in the payment period divided by the number of credit hours in the program's academic year or (2) the number of weeks of instructional time in the payment period divided by the number of weeks of instructional time in the program's academic year.

Recommendations

We recommend that the Chief Operating Officer for FSA require Western Governors University to—

- 2.1 Stop making subsequent disbursements of Title IV funds to students until the school implements policies and procedures for ensuring that students have completed at least the regulatory minimums for both weeks of instructional time and credit hours (competency units).
- 2.2 Review the records for all students who received Title IV funds for student terms that started from July 1, 2013, through June 30, 2016; identify students who never earned a subsequent disbursement based on the Title IV requirements governing a nonterm program; determine the amount of Title IV funds disbursed to those students who were ineligible for a subsequent disbursement; and return any funds not returned in response to Recommendation 1.2, to the Department.
- 2.3 For all students who received Pell funds for student terms that started from July 1, 2013, through June 30, 2016, recalculate the students' Pell awards in accordance with the regulations for credit-hour programs without terms and return all excess funds disbursed but not returned in response to Recommendations 1.2 and 2.2.
- 2.4 Ensure that the school-defined academic year will include at least 30 weeks of instructional time and each of the weeks will include at least 1 day of regularly scheduled instruction or examination.

Western Governors University's Comments and OIG Response

Western Governors University disagreed with this finding. Specifically, Western Governors University stated that

- the OIG counted only weeks in which individual students participated in a qualifying activity, rather than the weeks of instructional time available;
- the school had a sufficient number of weeks of instructional time to meet the payment period and academic year definitions; and
- the school's courses were not self-paced.

The school did not provide any additional evidence to support its position or cause us to withdraw the finding or the recommendations. In the following sections, we summarize the school's comments and provide our response.

The OIG Counted Only Weeks in Which Individual Students Participated in a Qualifying Activity

Western Governors University Comments

Western Governors University stated that the OIG's analysis was wrong because the OIG counted only weeks in which students participated in an OIG-determined qualifying activity and excluded all other weeks in the term. The determination of instructional time must measure the weeks of instructional time available to the student and not the actual weeks in which the individual student participated in the available instruction. The OIG also required each student to participate in each week of the academic period and required that participation to be documented. There is no requirement that each student participate in each week of offered instruction or that participation be documented. In support of its position, Western Governors University quoted sub-regulatory guidance issued by the Department in December 2014 (Dear Colleague Letter GEN-14-23) and August 2015 (2015–2016 Federal Student Aid Handbook) that discusses student engagement in educational activities.

OIG Response

Western Governors University correctly quoted the sub-regulatory guidance; there was no requirement to document academic engagement in an educational activity for each student for every week of instructional time. Dear Colleague Letter GEN-14-23, Question 8, stated: "While it is expected that students will generally be academically engaged throughout an educational program, there is no requirement that the institution be able to document academic engagement for each student for every week of instructional time." For that reason, we did not review records for evidence of student participation in instructional activities during every week of the academic year. Rather, we reviewed the course design materials for each of the courses in which the students in our sample enrolled during the academic year and counted the number of weeks of instructional time that the school made available to students for each course. We clarified the finding, explaining that we based the number of weeks of instructional time on a count of instructional activities described in course design materials, not a count of the number of times students participated in instructional activities.

The School Had a Sufficient Number of Weeks of Instructional Time to Meet the Payment Period and Academic Year Definitions

Western Governors University Comments

Western Governors University stated that it offered instruction for the entire 26-week term and 52-week academic year and made instructional materials available to students throughout the term. Because the school had sufficient weeks of instructional time to meet the payment period and academic year definitions established by the school, it appropriately awarded and disbursed Title IV funds to students based on the requirements governing disbursements for nonstandard terms that are substantially equal in length. Western Governors University asserted that Dear Colleague Letter GEN-14-23 and the 2015–2016 Federal Student Aid Handbook supported its position that instructional materials only need to be made available during a week to qualify that week as a week of instructional time.

OIG Response

Western Governors University's assertion is incorrect; the sub-regulatory guidance does not permit a school to substitute a week of availability of instructional materials or faculty support

for a week of instructional time required by regulation. Dear Colleague Letter GEN-14-23 and the 2015–2016 Federal Student Aid Handbook state that, for every week that it counted when defining the length of its academic year and payment period, a school must ensure that instructional materials and faculty support are available.

Western Governors University did not provide any additional evidence demonstrating that it offered regularly scheduled instructional time for the courses we concluded met the Title IV definition of a correspondence course.

Courses Are Not Self-Paced

Western Governors University Comments

Western Governors University stated that its courses were not self-paced. Students were given a pacing guide and were expected to complete a certain number of competency units each term. In addition, a key role of the student mentor was to guide the pace of academic progress with individual students to ensure course completion by a certain date. Students had some flexibility in the pacing and moved through the content at different rates to allow for their individual competency development. However, that does not mean that the courses were self-paced.

OIG Response

Western Governors University's statement that courses were not self-paced is contrary to its advertising materials, pacing guide descriptions, and statements from school officials we interviewed. According to the school's web site, students could complete a degree program as soon as they successfully completed all of the necessary assessments. Students who completed assessments quicker could complete their degree quicker. The school's web site also stated that students could complete assessments as soon as they were ready; if they were already competent in a subject area, they could prove it faster and complete their degree faster. If students completed their programs in less time, they paid only the tuition for the number of student terms in which they needed to enroll to complete the program. Course outlines stated the following about the pacing guides: "The pacing guide suggests a weekly structure to pace your completion of learning activities. It is provided as a suggestion and does not represent a mandatory schedule." Western Governors University's Program Development Operations Manager, Director of Assessment Design and Development, and Associate Provost for Academic Services confirmed to us during the audit that courses were self-paced.

From the universe of 65,968 student terms relevant to our audit period,²¹ we identified 462 student terms in which students completed 36 or more competency units in a student term, including 11 student terms in which students completed 80 or more competency units. Also, we identified 20,421 student terms in which students completed 6 or fewer competency units. Given these wide fluctuations in the number of competency units completed during any given student term, the school's advertisements and web site descriptions, and interviews with school officials, we concluded that the school's courses were self-paced.

²¹ During our audit period, 42,158 students received Title IV funds for 65,968 student terms (students could have received Title IV funds for more than one student term).

FINDING NO. 3 – Western Governors University Did Not Always Comply With the Requirements Governing the Return of Title IV Funds

Western Governors University did not always follow its own policy and properly handle Title IV funds when students did not begin attendance or withdrew. We randomly selected 25 student terms from a universe of 9,534 student terms in which a student received Title IV funds and withdrew, earned zero competency units, or both. The school was required to determine the amount of Title IV funds that 15 of the 25 students had earned for the payment period. The school properly determined the amounts that 10 of the 15 students earned for the payment period.

However, the school did not properly determine the amounts that 5 of the 15 students earned. One student never attended during the payment period but the school did not return any Title IV funds. One student unofficially withdrew after the payment period started (but before the midpoint of the payment period) but the school did not complete a calculation to determine the amount of Title IV funds that should have been returned. Two students unofficially withdrew after the payment period started (but before the midpoint of the payment period) but the school did not use a withdrawal date for each student that was the midpoint of the payment period or the student's last date of attendance at an academically-related activity when calculating the amount of Title IV funds that should be returned. One student officially withdrew after the midpoint of the payment period; however, the school did not use the date that the student began the withdrawal process by providing the school with official notification of the intent to withdraw as the withdrawal date when calculating the amount of Title IV funds that should be returned.

According to 34 C.F.R. 668.21(a), if a student does not begin attendance in a payment period or period of enrollment, the school must return all Title IV funds that were credited to the student's account at the school for that period. According to 34 C.F.R. § 668.22(a)(1), when a recipient of Title IV funds withdraws from a school during a payment period in which the recipient started attendance, the school must determine the amount of Title IV funds that the student earned as of the student's withdrawal date.

If a student ceases attendance without providing official notification, a school that is not required to take attendance may use the midpoint of the payment period or period of enrollment as a student's last date of attendance (34 C.F.R. § 668.22(c)(1)(iii)).²² Provided the school documents that an activity is academically related and documents the student's attendance at the activity, a school may use a student's last date of attendance at an academically-related activity as the student's withdrawal date (34 C.F.R. § 668.22(c)(3)). Academic attendance and attendance at an academically related activity include, but are not limited to, submitting an academic assignment; taking an exam, interactive tutorial, or computer-assisted instruction; participating in an online discussion about academic matters; and initiating contact with a faculty member to ask a question about the academic subject studied in the course (34 C.F.R. § 668.22(1)(7)(i)).

The withdrawal date for a student who withdraws from a school is the date that the student began the withdrawal process or notified the school of the intent to withdraw (34 C.F.R. §§ 668.22(c)(1)(i) and (ii)). For a student who unofficially withdraws before the 50 percent

²² Western Governors University is not required to take attendance.

completion date of the term, the withdrawal date is the date of the student's last academic activity (Western Governors University policy).

As a result of not following its own policy and not properly handling Title IV funds when students did not begin attendance or withdrew, the school (1) did not return to the Department \$5,957 of Title IV funds for one student who never attended during the payment period and (2) returned \$4,552 less than required for three students who unofficially withdrew before the midpoints of their payment periods.²³

Recommendations

We recommend that the Chief Operating Officer for FSA require Western Governors University to—

- 3.1 Return \$10,509 to the Department for students who did not begin attendance or withdrew.
- 3.2 Review the records for all 9,509 students whose files we did not review, determine the amount of Title IV funds that the students did not earn for the payment period, and return any unearned funds, not returned in response to Recommendation 1.2, to the Department.

Western Governors University's Comments and OIG Response

Western Governors University's Comments

Western Governors University stated that it will implement a more automated process to identify unofficial withdrawals but disagreed with four of the five instances cited in the finding.²⁴ The school explained its disagreement as follows:

- The regulations regarding the identification of the withdrawal of students who cease attendance during the term are not applicable to it.
- The OIG excluded student mentor contact activity when determining the withdrawal date for one student.
- The OIG misapplied the school's policy when determining the withdrawal date for three students.
- The OIG incorrectly considered a subsequent phone call with a student mentor as the withdrawal date for one student.

OIG Response

Western Governors University did not provide any additional evidence to support its position or cause us to withdraw this finding or the recommendations.

²³ The student who officially withdrew after the midpoint of the payment period did not require a return of funds.

²⁴ The school was still researching one of the instances.

We clarified in the finding that the school was not required to and did not take attendance. However, 34 C.F.R. § 668.22(a)(1) applies to all schools, both those that take attendance and those that do not. The requirements for determining the withdrawal date of a student who ceases attendance without providing official notification that specifically apply to schools that do not take attendance are at 34 C.F.R. §§ 668.22(c)(1)(iii) and (c)(3) and state that a school may use the midpoint of the payment period or a student's last date of attendance at an academically-related activity as the student's withdrawal date. The school's policy was that the withdrawal date for a student who unofficially withdrew before the 50 percent completion date of the term was the date of the student's last academic activity. We added information about the school's policy to the finding.

We considered all notes recorded in the student mentor contact logs. However, we did not consider notes documenting a student mentor's unsuccessful attempt to contact a student or a mass email to multiple students to be documentation of a student's academic attendance. For the one student who never attended, student mentor notes and other documentation did not demonstrate that the student engaged in any academic activity during the student term.

In addition to stating that students may be administratively withdrawn after lack of contact for 20 days, the school's policy states that "[s]tudents who are repeatedly inactive are subject to more immediate withdrawal." The three students cited in the finding did not have contact with their assigned student mentors for 75, 52, and 28 days, respectively. The school did not provide any additional evidence showing that it was aware of any of these interruptions being temporary or that it withdrew these students and then reversed the withdrawal when the student resumed contact.

When determining the date of withdrawal for one student, we used a student mentor note that showed the student requested through a live call for the student mentor to start the withdrawal process. Western Governors University did not provide any additional documentation to support that the student requested to withdraw 1 day sooner.

OTHER MATTERS

In addition to the three findings, we identified one instance of noncompliance with Title IV requirements that Western Governors University corrected during the audit period and one potential instance of noncompliance that requires the attention of the Department and the school.

Disbursements of Direct Loan Funds to Students Who Had Declined the Loans

While evaluating the school's compliance with the requirements to disburse Title IV funds only to students who started attendance and the requirements to make subsequent disbursements only to students who were eligible for them at the time of the disbursements, we identified one student who received a Direct Loan disbursement even though the student previously declined the loan. To determine whether the school disbursed Direct Loan funds to any other students who declined the loans, we judgmentally selected 15 students from a universe of 258 students who received Direct Loan funds from July 1, 2013, through August 27, 2014, after declining the loans. For these 15 students, we reviewed records to identify loans disbursed for the same loan period for which the students had declined loans. We found that the school disbursed Direct Loan funds to three other students who had declined the loans.

We asked a school official how such instances of noncompliance could occur. The Associate Director of Financial Aid explained that, from July 1, 2013, through August 27, 2014, students who declined loans could still receive loan disbursements because the school processed Title IV funds without excluding all Direct Loan funds that students declined. The Associate Director of Financial Aid further explained that the school corrected this issue on August 28, 2014; therefore, as of that date, the school had corrected the cause of Direct Loan funds being disbursed to students who previously declined the loans. To confirm this assertion, we reviewed the records for 15 students from the universe of 57 students who declined Direct Loan funds from August 28, 2014, through November 30, 2014. We looked for any Direct Loan funds that the school disbursed for the same period for which the students had declined loans. We did not identify any Direct Loan funds that Western Governors University disbursed to students who had previously declined the loans.²⁵

Increased Risk of Disbursing Pell Funds to Students Who Were Not Academically Active

During our audit period, Western Governors University did not always confirm that students had started attending the classes on which their eligibility was based before disbursing Pell funds on or after the first day of a payment period. According to the 2013–2014 Federal Student Aid Handbook (Volume 4, Chapter 2, page 4–27), when disbursing Pell funds, if a disbursement occurs on or after the first day of classes, the school must have a process to determine that the student started attendance in the classes on which his or her eligibility was based. Western Governors University considered the date of academic activity verification (AAV) to be each student's first day of attendance and disbursed Pell funds once AAV occurred. According to the

²⁵ We reviewed loan disbursements for the period through November 30, 2014, because student terms that started during the last month of our audit period (on June 1, 2014), ended on November 30, 2014.

Associate Provost for Mentoring, the activities occurring on the date of AAV consisted of selecting courses, registering for courses, and discussing the expected time to complete each course.

We randomly selected 25 student terms from the universe of 65,968 student terms in which a student received Title IV funds and which started during award year 2013–2014. The school disbursed Pell funds after the first day of the student term for 9 of the 25 student terms. Based on our review of the school's records for the nine student terms, we concluded that the school complied with 34 C.F.R. § 668.164(b)(3), which states that a school may disburse Title IV funds if a student is enrolled for classes for the payment period. However, for seven of the nine student terms, the school disbursed Pell funds without ensuring that it had evidence, other than the activity on the date of AAV, that the students started attending the classes on which their eligibility was based. The school maintained evidence that all seven students eventually attended classes on which their eligibility was based but the attendance occurred after disbursement of Pell funds.

Although Western Governors University considered the date of AAV to be each student's first day of attendance and disbursed Pell funds once AAV occurred, the date of AAV should not have automatically qualified as a day of academic attendance for Title IV purposes. On the date of AAV, students did not discuss subject matter, did not receive course instruction or interact with an instructor, and were not required to access available learning resources, submit an assignment, or take an exam. We interviewed six student mentors, and they all told us that AAV was the process to select courses or register for courses. To qualify as a day on which a student started attending the classes on which his or her eligibility was based, AAV should have included academic activities, such as students' receiving course instruction, interacting with an instructor, accessing available learning resources, submitting an assignment, or taking an exam.

Without confirming that students started attendance (other than AAV) before disbursing Pell funds, the school increased the risk of disbursing Pell funds to students who were not academically active during the payment period. According to 34 C.F.R. § 668.21(a), if a student does not begin attendance in a payment period, the school must return all Title IV funds that were credited to the student's account for that payment period. Therefore, if a student does not start attendance in the classes on which his or her eligibility was based and only participates in AAV during the payment period, the school should be returning all Title IV funds disbursed to the student for the payment period.

We suggest that the Chief Operating Officer for FSA determine whether Western Governors University should be allowed to continue using the date of a student's AAV as the date on which the student started attending all the classes on which his or her Title IV eligibility was based.

Western Governors University's Comments

The school did not provide any comments on either of these matters.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our audit were to determine whether Western Governors University complied with Title IV and selected regulations governing institutional eligibility, program eligibility, disbursements, and return of Title IV aid. We evaluated compliance with the requirements for each objective independently of one another (that is, noncompliance with one requirement did not affect our conclusions about compliance or noncompliance with the other requirements). Specifically, we assessed compliance with the requirements that (1) limit the percentage of regular students who may enroll in correspondence courses, (2) prohibit a school from awarding Title IV funds to students based on credit for learning that took place before they enrolled in the school's courses, (3) require a school to disburse Title IV funds to students who had started attendance and to make subsequent disbursements to students who were eligible for them at the time of the disbursements, and (4) require a school to correctly determine the amount of Title IV funds students earned while enrolled. We evaluated compliance with these specific requirements for award year 2013–2014.

To accomplish our objectives, we first gained an understanding of selected provisions of Title IV of the HEA; Section 8020(b) of the Higher Education Reconciliation Act of 2005; the student financial assistance regulations in 34 C.F.R. Parts 600, 668, and 690; and Department guidance (dear colleague letters and the 2013–2014 Federal Student Aid Handbook) relevant to the audit objectives.

We then reviewed the Department's G5 system to identify the Title IV programs in which the school participated during our audit period. In addition, we reviewed the school's web site and documents that school officials provided us to gain an understanding of Western Governors University's history and organizational structure. We also reviewed school catalogs in effect during the audit period to identify information about the school's courses and programs. Further, we interviewed FSA officials to obtain information about the school's participation in the Title IV programs and Northwest Commission officials to obtain information about the accrediting agency's reviews of the school.

To identify any findings or recommendations relevant to our audit objectives and included in prior audits or reviews, we reviewed (1) an OIG audit report "Title IV of the Higher Education Act Programs: Additional Safeguards Are Needed to Help Mitigate the Risks That Are Unique to the Distance Education Environment" (control number A07L0001); (2) reports, issued by Mayer Hoffman McCann P.C., on annual audits of Western Governors University for the years that ended June 30, 2010, through June 30, 2014, conducted pursuant to Office of Management and Budget Circular A-133; (3) "Network Security Assessment" report (draft version, September 2014) on a review of the school's internal and external networks conducted by SilverSky; (4) FSA's "Expedited Final Program Review Determination Letter," March 7, 2011, explaining FSA's resolution of the program review of the school covering award years 2009–2010 and 2010–2011; (5) FSA's eligibility and certification approval letter (April 3, 2014); (6) an evaluation report completed by Northwest Commission ("Year Three Peer-Evaluation Report," October 28–30, 2013) on the school's compliance with the accrediting agency's eligibility requirements; and (7) an evaluation report completed by Distance Education and

Training Council (“Examining Committee Chair’s Report on the Examination of Western Governors University,” October 7, 2007) on compliance with the accrediting agency’s standards.²⁶

Internal Control

After gaining an understanding of the school’s system of internal control relevant to our audit objectives, we determined that the control activities standard was the only standard of internal control significant to our audit objectives. Accordingly, we assessed the adequacy of selected policies and procedures. To do so, we reviewed written policies and procedures and interviewed school officials and employees regarding (1) maintaining institutional eligibility, (2) maintaining program eligibility, (3) making disbursements, and (4) determining the amount of Title IV funds that students who withdrew from school earned while enrolled. We then completed analytical procedures to evaluate whether these selected policies and procedures had been implemented and were operating as intended.

Our assessment disclosed significant deficiencies in Western Governors University’s control activities over the administration of the Title IV programs. Specifically, we found that the

- policies and procedures for maintaining institutional eligibility did not ensure that the courses and programs being offered met the Title IV definition of distance education, ([Finding No. 1](#)),
- procedures for making disbursements did not ensure that Title IV funds were disbursed only to students who were eligible to receive the funds at the time of the disbursements ([Finding No. 2](#)), and
- procedures for handling Title IV funds when students did not start attendance or withdrew did not ensure that the school properly calculated the amount that should be returned to the Title IV programs ([Finding No. 3](#)).

Data Reliability

To achieve our audit objectives, we relied, in part, on a Western Governors University-provided list of all students who received Title IV funds and the amount of funds that each student received for student terms that started during award year 2013–2014. To gain an understanding of the data included on this list, we interviewed school officials regarding how the data were extracted from the information system. To assess the reliability of the data, we analyzed the list to ensure that all fields were populated with data as expected and dates and dollar amounts were within expected ranges. We also obtained read-only access to the information system and viewed data, such as student names, award amounts, and the Title IV programs that the awards were for, to confirm that data on the list were the same as the data in the information system. Based on our interviews, analysis, and comparison, we concluded that the Western Governors University-provided list of students who received Title IV funds and the amount of funds that each student received for student terms that started during award year 2013–2014 was

²⁶ Through March 30, 2013, Western Governors University was accredited by both Northwest Commission and Distance Education and Training Council. Effective March 30, 2013, Western Governors University voluntarily resigned from Distance Education and Training Council accreditation.

sufficiently reliable for the purposes of our audit. In addition to assessing the reliability of the list of students (including the individual amounts received), we confirmed the completeness and accuracy of the school's total Title IV award amounts, by program, by comparing those amounts to data in the Department's National Student Loan Data System.

In addition to the list of all students who received Title IV funds and the amount of funds that the students received, we also relied, in part, on a Western Governors University-provided list of all regular students enrolled during student terms that started during award year 2013–2014 and documentation of student mentor and course mentor discussions with students and student assessment information data retained in the school's information systems. To assess the reliability of this list and the documentation of discussions and assessments, we gained an understanding of the structure of the information systems, access controls, system checks, and data retention policies. In addition, we compared data from the school's multiple information systems to ensure the data were consistent across the systems. Based on our understanding of the information systems and our comparison, we concluded that the data retained in the school's information systems were sufficiently reliable for the purposes of our audit.

To confirm that the school had ceased disbursing Direct Loan funds to students who had declined the loans, we relied on two school-provided lists of students who received Direct Loan disbursements but had declined loans for the same period. One list covered students who declined loans from July 1, 2013, through August 27, 2014. The second list covered students who declined Direct Loan funds from August 28, 2014, through November 30, 2014. We confirmed the accuracy of these two lists by viewing, directly on the school's information system, that the students had declined loans.²⁷ We concluded that the list was sufficiently reliable for our limited purpose.

Finally, we relied on the school's course outlines describing the structure and content for 102 courses required to complete the school's 3 largest programs. However, the school did not (1) track the versions of the course outlines that were relevant to each student term included in our audit period or (2) include the effective dates for each course outline. Therefore, we could not confirm, through a review of the course outlines or other electronic records, that we received the correct versions. Rather than attempting to assess the reliability of the course outlines that we received, we relied on the Associate Provost for Academic Services' written assertion that the course outlines were relevant to our audit period.

Sampling Methodology and Analysis Techniques

We used sampling to achieve our audit objectives. We judgmentally selected courses and programs for our institutional eligibility analysis, student terms for our program eligibility analysis, student terms and students for our disbursements analysis, and student terms for our determination of the amount of Title IV funds that students earned analysis.

Institutional Eligibility

To determine compliance with the requirement that limits the percentage of regular students who may be enrolled in correspondence courses, we first identified all courses included in the

²⁷ We did not confirm the completeness of these lists because such an analysis was not necessary for the limited purpose of our tests.

school's three largest programs. To identify the three largest programs in terms of the number of Title IV recipients enrolled in the courses, we used a list of all students who received Title IV funds for student terms that started during award year 2013–2014. According to that list, 42,158 students received \$280,111,606 in Title IV funds for 65,968 student terms (students could have received Title IV funds for more than one student term). These 42,158 students were enrolled in 77 programs. The 3 largest programs in terms of Title IV recipient enrollment were (1) Bachelor of Science in Business Management (5,653 students enrolled), (2) Bachelor of Arts in Interdisciplinary Studies for Prospective K–8 Teachers (4,220 students enrolled), and (3) Bachelor of Science in Nursing (RN to BSN) (4,012 students enrolled). We selected all 102 courses included in the descriptions of these 3 largest programs in “Western Governors University Institutional Catalog,” May 1, 2014.

Next, we assessed whether these 102 courses were designed to offer regular and substantive interaction between students and instructors. To make this determination, we reviewed “Western Governors University Institutional Catalog” and the outline, pacing guide, and calendar of live events for each course. After concluding that 69 (of the 102) courses were not designed to offer regular and substantive interaction between students and instructors, we used a Western Governors University-provided file to count the number of unduplicated students who enrolled in these 69 courses. We then calculated the percentage of regular students who were enrolled in the 69 courses. During student terms that started during award year 2013–2014, 61,180 regular students were enrolled in at least 1 of the school's programs—37,899 of those regular students were enrolled in at least 1 of the 69 courses that we concluded were not designed to offer regular and substantive interaction between students and instructors.

Because we judgmentally selected the programs and courses, our sampling results might not be representative of the courses that we did not review. Therefore, our results cannot be projected to the universe of all courses.

Program Eligibility and Title IV Disbursements

Western Governors University operated as a school providing instruction through distance education. Therefore, when determining compliance with the requirements governing program eligibility and Title IV disbursements, we applied the requirements relevant to schools offering instruction through distance education. We did not apply the requirements for schools awarding aid to students enrolled in courses offered via correspondence.

Program Eligibility

To assess compliance with the program eligibility requirement not to award Title IV funds to students for learning that took place before they enrolled in the school's courses, we reviewed records of the coursework for 10 student terms randomly selected from a universe of 462 student terms in which a student completed 36 or more competency units.²⁸ We selected these student terms because we considered students completing 36 or more competency units in one term to be most likely to have received credit for learning that took place before the student enrolled in the school's courses. At Western Governors University, all undergraduate students were considered full time, were enrolled in coursework totaling at least 12 competency units, and paid a fixed rate

²⁸ We developed this universe of 462 student terms from the universe of 65,968 student terms in which a student received Title IV funds and which started during award year 2013–2014.

of tuition each term, regardless of the number of competency units they completed during the term. Therefore, for each student, we reviewed records for evidence, such as submission of tasks, evaluator feedback, and completion of performance assessments, that the student attempted Western Governors University coursework totaling at least 12 competency units during the term.

Because we reviewed a small random sample, our sampling results might not be representative of all student terms and, therefore, cannot be projected to the universe.

Title IV Disbursements

To assess compliance with the requirement to disburse Title IV funds only to students who had started attendance in the classes on which their eligibility was based, we randomly selected 25 student terms from the universe of 65,968 student terms in which a student received Title IV funds and which started during award year 2013–2014. For each of these 25 student terms, we reviewed Western Governors University’s records relevant to the students’ completion of assessments and student and course mentor notes to determine whether the students started attendance in the classes on which their eligibility was based before receiving Title IV disbursements. Because we reviewed a small random sample, our sampling results might not be representative of all student terms, and, therefore, cannot be projected to the universe.

To assess compliance with the regulations to make subsequent disbursements of Title IV funds only to students who were eligible for them at the time, we judgmentally selected nine students who received Title IV funds and were enrolled in one of the school’s three largest programs. (See the [Institutional Eligibility](#) section). We selected 2 of 5,653 students enrolled in Bachelor of Science in Business Management; 3 of 4,220 students enrolled in Bachelor of Arts in Interdisciplinary Studies for Prospective K–8 Teachers; and 4 of 4,012 students enrolled in Bachelor of Science in Nursing (RN to BSN). Each of these nine students received Title IV funds in two student terms within the same academic year (two student terms were equivalent to two payment periods and made up 1 academic year). For each of these nine students, we reviewed transcripts to identify all courses in which the student enrolled during the academic year. To determine the number of weeks of instructional time that the academic year included for each student, we reviewed records and evaluated the length of every course in which each of the nine students enrolled during the academic year. For each course, we reviewed the “Western Governors University Institutional Catalog,” course outline, pacing guide, and calendar of live events. Using this documentation for each course, we counted 1 week of instructional time for every required examination (either an objective assessment or performance task) and each consecutive 7-day period with an available live event offering instruction (either a cohort or webinar). We did not determine whether students participated in these examinations or events. Because we judgmentally selected the students, our sampling results might not be representative of the entire universe and therefore, cannot be projected to the universe.

Additionally, after identifying 1 student who received a loan disbursement even though the student previously declined the loan, we judgmentally selected another 30 students. We selected the additional students to (1) identify any other instances when Western Governors University disbursed Direct Loan funds to students who previously declined those loans from July 1, 2013, through November 30, 2014, and (2) verify that the problem was resolved as of August 28, 2014. The school provided us with a list of all student terms in which students received Direct Loan disbursements from July 1, 2013, through November 30, 2014, and a list of all students who

declined loans during the same period. The list of all students who declined loans included (1) 258 students who received at least one Direct Loan disbursement from July 1, 2013, through August 27, 2014, and (2) 57 students who received at least one Direct Loan disbursement from August 28, 2014, through November 30, 2014.

In chronological order, we judgmentally selected the first 15 (of 258) students who declined loans on or after July 1, 2013, but still received at least 1 Direct Loan disbursement from July 1, 2013, through August 27, 2014. We then identified Direct Loan funds disbursed to these 15 students (for the same loan period for which they declined loans) by comparing the loan period for which each student declined the loans to the loan period for the Direct Loan disbursement. The Associate Director of Financial Aid told us that the cause of the improper disbursements was corrected as of August 28, 2014. Therefore, we judgmentally selected, in chronological order, the first 15 (of 57) students who declined loans on or after August 28, 2014, and received at least 1 disbursement from August 28, 2014, through November 30, 2014. We identified Direct Loan funds disbursed to these 15 students (for the same loan period for which they declined loans) by comparing the loan period for which each student declined the loans to the loan period for the disbursement. None of the 15 students received Direct Loan funds for the same loan period for which they had declined the loans. (See [OTHER MATTERS.](#))

Because we judgmentally selected the students, our sampling results might not be representative of the entire universes and, therefore, cannot be projected to the universes.

Determination of the Amount of Title IV Funds Students Earned

To assess compliance with the requirements to correctly determine the amount of Title IV funds that students earned while enrolled, we reviewed the school's records for 25 randomly selected student terms from a universe of 9,534 student terms in which a student received Title IV funds and withdrew, earned zero competency units, or both. We identified this universe from the 65,968 student terms in which a student received Title IV funds. For each of the 25 student terms, we reviewed the school's records, including student and course mentor notes, relevant to each student's attendance and the return of Title IV aid worksheet that the school completed. We determined whether the school properly identified the student as withdrawing from school and correctly determined the amount of Title IV funds that each student earned. If the student did not earn all of the Title IV funds that the school disbursed,²⁹ we identified the student's last date of attendance and calculated the amount that the student earned. We then compared our results with the school's calculation to determine whether Western Governors University used the appropriate last date of attendance and accurately calculated the amount that each of the 25 students earned. Because we reviewed the records for a small random sample, our sampling results might not be representative of all student terms and therefore, cannot be projected to the universe.

We conducted our audit at Western Governors University's offices in Salt Lake City, Utah, and our offices in Chicago, Illinois, and Kansas City, Missouri, from November 2014 through September 2016. We discussed the results of our audit with Western Governors University

²⁹ Only 15 of the 25 students required a determination of the amount of Title IV funds earned. Ten students attended throughout the payment period without earning any competency units or withdrew after the end of the payment period but they earned 100 percent of the funds disbursed for the term.

officials on September 22, 2015, and October 17, 2016, and provided a draft of this report to them on March 28, 2017.

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

ENCLOSURE: Western Governors University Comments



Scott D. Pulsipher
President

May 22, 2017

Chairman

Jim Geringer
Governor, Wyoming 1995-2003

Chairman Emeritus

Michael O. Leavitt
Governor, Utah 1993-2003

Member Governors

Governor Walker
Alaska
Governor Ducey
Arizona
Governor Brown
California
Governor Hickenlooper
Colorado
Governor Calvo
Guam
Governor Ige
Hawaii
Governor Otter
Idaho
Governor Holcomb
Indiana
Governor Bullock
Montana
Governor Ricketts
Nebraska
Governor Sandoval
Nevada
Governor Martinez
New Mexico
Governor Burgum
North Dakota
Governor Fallin
Oklahoma
Governor Brown
Oregon
Governor Daugaard
South Dakota
Governor Abbott
Texas
Governor Herbert
Utah
Governor Inslee
Washington
Governor Mead
Wyoming

Dear Mr. Whitman:

Western Governors University (WGU) respectfully, but strongly, disagrees with the findings in the Office of Inspector General's (OIG) draft audit report. WGU is, and has always been, fully compliant with Department of Education regulations since our founding 20 years ago by 19 U.S. governors. Our innovative learning model, which has the support of the law, the Department, our accreditor, and policymakers, is validated by the outcomes WGU is delivering for our 82,000 students and 81,000 graduates. Given this consistent record of compliance, accreditation, support, and outcomes, we strongly disagree with the findings in the draft audit report.

WGU is accredited by the Northwest Commission on Colleges and Universities ("NWCCU"), one of seven regional accrediting commissions recognized by the Secretary of Education as "a reliable authority as to the quality of education or training offered" by institutions of higher education. This accreditation was reaffirmed in February 2017. The University has been reviewed and evaluated by the Department, regulatory agencies, and other experts in higher education, earning praise and recognition for our academic model and the results we deliver for our students.

The findings in the OIG's report are based on misinterpretation and misapplication of statutory and regulatory guidance. The OIG has applied an arbitrary definition and antiquated interpretation of instruction and faculty roles that are not substantiated by the distance education provisions of the Higher Education Act of 1965, as amended. The OIG reviewers' approach may be appropriate for traditional campus-based higher education models, but it is not aligned with law nor consistent with today's online- and technology-enabled model.

As part of WGU's competency-based learning model, students study and learn online, on their own day-to-day schedules, with regular and individualized academic support from faculty who serve in disaggregated, or specialized, roles. Student-facing faculty at WGU include Student Mentors, subject matter experts in the program of study; Course Mentors, subject matter experts at the course level; and Evaluators, who review competency assessments and provide feedback. Notably, and quite counter to the reviewers' analysis, this model increases faculty access and quality academic engagement for students - as evidenced in outcomes and student / graduate surveys.



Scott D. Pulsipher
President

Furthermore, statutory authority for determining academic staff members as faculty rests with our accreditor, the NWCCU. Congress, through the same Higher Education Act of 1965, as amended, established the legal framework for oversight of institutions participating in Title IV Programs. The institutional accreditor recognized by the Secretary of Education is, *by law*, assigned responsibility for ensuring the academic quality of a Title IV eligible institution. An essential component of that oversight is the identification of faculty and determination of their qualifications. This NWCCU has done with great care, and most importantly, the NWCCU recognizes, and has always recognized, all of these roles as faculty consistent with its standards.

In the 5 years since the OIG began this audit, WGU has graduated nearly 70,000 working adults; 40% of them are first-generation college graduates. The University is providing a learning model that fits the way students study and learn today, combining technology with regular, individualized faculty support. The efficacy of WGU's academic model is proving itself every day in retention, satisfaction, and graduate success metrics well above the national averages.

In the attached response to the Draft Report, the University provides detailed evidence that refutes each of the OIG's findings. On behalf of our students, graduates, and faculty, I urge you to withdraw your findings and conclude this matter.

Sincerely,

/s/

Scott D. Pulsipher
President

Western Governors University

Response to Draft Audit Report

ED-OIG/A05M0009

May 22, 2017



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This document constitutes the response of Western Governors University (the “University” or “WGU”) to the assertions set forth in the Draft Audit Report titled “Western Governors University Was Not Eligible to Participate in the Title IV Programs,” Control Number ED-OIG/A05M0009, dated March 28, 2017 (the “Draft Report”), issued by the Office of Inspector General (the “OIG”) of the U.S. Department of Education (the “Department”) covering the period July 1, 2013 through June 30, 2014 (the “Audit Period”). Our detailed response establishes that the findings in the Draft Report are fundamentally flawed based on misunderstanding of material facts and misapplication of the relevant law, regulation, and guidance from the Department.

Executive Summary

WGU categorically refutes any assertion made in the Draft Report that led the OIG to erroneously conclude that the University was not eligible to participate in the programs of student financial aid authorized pursuant to Title IV of the Higher Education Act of 1965 (“HEA”), as amended. Since our first Title IV Program disbursement in 1999, WGU, our programs, our faculty model, and our technology-enabled student experience have been in compliance with all statutes and regulations governing institutions participating in Title IV programs. Furthermore, the quality and compliance of our institution and our programs have consistently been validated by appropriately qualified experts, including our institutional accreditor, the Department, policymakers and legislators. Significantly, in February 2017, our regional accreditor, Northwest Commission on Colleges and Universities (NWCCU), reaffirmed our accreditation we have held since 2003.

The primary finding in the Draft Report incorrectly applies “regular and substantive interaction” provision respecting distance education contained in the HEA. In coming to their factually and legally incorrect conclusion, the OIG reviewers applied an arbitrary definition and antiquated interpretation of instruction and faculty roles that may be more consistent with traditional, campus-based higher education models, but it is entirely inconsistent with today’s online- and technology-enabled models that more effectively serve contemporary students. Thus, we can only interpret the OIG reviewers’ position as a fundamental challenge by the past to innovative models in teaching and learning that define higher education in the 21st century; and, models that are, we hasten to add, entirely consistent with the requirements for Title IV programs.

First, the OIG reviewers’ approach is flawed, resulting in findings not supported by law. Specifically, the Draft Report highlights the OIG reviewers’ use of arbitrary definitions for “instruction”, “instructor”, “regular”, and “substantive” – such as, measures of frequency, or substantive requirements for being “direct” or “live” interactions. Such definitions are not contained in the law. Additionally, the analysis of interactions excluded “asynchronous” engagement, which is specifically included in HEA language.

OIG reviewers only reviewed course materials in assessing whether the courses and programs *were designed* to provide regular and substantive faculty/student interaction and ignored the many interactions, augmented instruction, supplementary faculty materials, and student engagements that occur between WGU faculty and students. This misguided approach implies a legal standard not contained in the HEA – which makes no requirement that all interactions be written into course materials. And, the OIG recognizes its own weakness in its

reviewers' analysis – in that, reviewing less than 10% of the University's courses, the findings "cannot be projected to the universe of all courses". Thus, it cannot possibly support a conclusion that WGU failed the institutional eligibility requirement.

Second, the OIG reviewers evaluated WGU's designed and accredited model against their own opinion of what higher education should be, rather than applicable law and regulatory guidance. Specifically, the OIG viewed WGU programs only as a collection of courses, and focused on each course – ignoring that, unlike traditional models where students have a choice of which courses to take, WGU students are required to enroll in a degree program with a set course plan without electives. Given this design, students will interact with all of WGU's student-facing faculty: Course Mentors, Student Mentors, and Evaluators. Thus, inappropriately and rather narrowly, the OIG reviewers applied the "regular and substantive" standard to each faculty role separately, rather than the students' academic program experience and faculty interactions in their entirety.

More importantly, the OIG reviewers' findings have unilaterally applied their own definition of "instructor". They decided that Student Mentors, WGU's program faculty, are not providing instruction, and therefore, ignored interactions with Student Mentors in the determination of "substantive". Doing so excludes interactions that are integral components of WGU's educational model, are included in applicable statute and regulation, and are consistent with common academic practice. Notably, they recognize student interactions with Student Mentors as "regular". Further, this fundamental error completely disregards those qualified and empowered by law to make such decisions – namely, the institution and its accreditor. Congress, through the HEA, established the legal framework for oversight of institutions

participating in Title IV Programs. The institutional accreditor recognized by the Secretary of Education is, by law, assigned responsibility for ensuring the academic quality of a Title IV eligible institution.

Lastly, the findings of the Draft Report fail to apply the regulatory and sub-regulatory guidance afforded higher education institutions by the Department of Education. In particular, in Dear Colleague, GEN-14-23 (Dec. 18, 2014), the Department provided clear guidance in defining required conditions for regular and substantive instructor/student interactions in relation to Competency-based Education (“CBE”) programs – noting that “to ensure regular and substantive interaction” an institution might utilize “a faculty model where no single faculty member is responsible for all aspects of a given course or competency”, as long as in “applying such a model, an institution must ensure that the interaction is provided by institutional staff who meet accrediting agency standards . . . , that the interaction is regular, and that the amount of faculty resources . . . [are] sufficient in the judgment of the accrediting agency”. As noted previously, in February 2017, our regional accreditor, Northwest Commission on Colleges and Universities (NWCCU), reaffirmed our accreditation we have held since 2003.

In compliance with law and regulatory guidance, WGU has been innovating on behalf of students for 20 years – leveraging new, highly engaging faculty models and technology-rich, immersive content to improve quality and expand access of higher education, particularly for working adults not served by conventional campus-based models. Even since the beginning of the OIG’s review in 2012, WGU has graduated nearly 70,000 individuals, who completed their degrees in less time with less cost and less debt, and have higher employment rates, income gains, and overall well-being than the national averages.

Introduction

Western Governors University is an online, nonprofit university founded in 1997 by 19 U.S. governors. These governors saw advancement in technology as an opportunity to expand access to higher education by making it possible to study and learn independent of time and place, as well as to demonstrate competency-based education (CBE) as an effective learning model.

Designed to meet the learning needs of busy adults with financial, family, and career responsibilities, CBE focuses on measuring learning rather than classroom time. CBE recognizes that adults have different levels of knowledge and learning styles, so rather than having fixed course times, students advance as soon as they demonstrate subject matter mastery. Students study and learn online, on their own schedules, with regular, individualized faculty interaction. Programs and curricula are developed with input from academic and industry leaders to ensure their relevance to employers and the workplace.

WGU's defining principle is focus on the student—every initiative and decision starts with consideration of impact on students. Student success and support are the focus of all WGU faculty and staff. To provide the high touch, individualized instruction and support necessary for our students' success, we disaggregated the faculty model into specialized roles: Curriculum Faculty, Course Faculty (referred to as Course Mentors), Program Faculty (referred to as Student Mentors), and Evaluators. The student-facing faculty, Course Mentors, Student Mentors, and Evaluators, not only offer the subject-matter expertise at the course level, but also the program level, and personalize their engagement to each individual student. In third-

party studies and surveys, our students and graduates consistently highlight their engagement with faculty as being the major contributor to their progress and degree attainment.

The success of WGU's learning model is demonstrated in outcomes—student, graduate, and employer satisfaction levels that are significantly higher than the national average; dramatically lower debt levels decreasing annually; and better employment outcomes for graduates. The outcomes are particularly notable as WGU serves working adults with some college, but no degree. These are individuals failed by the traditional higher education systems, which are limited at meeting these students' needs of access, affordability, and flexibility. These WGU student outcomes not only fulfill the intent of higher education and align with the design of federal student aid policy, but also confirm that WGU is meeting the needs of society.

WGU is accredited by the Northwest Commission on Colleges and Universities ("NWCCU"), one of seven regional accrediting commissions recognized by the Secretary of Education as "a reliable authority as to the quality of education or training offered" by institutions of higher education.³⁰ WGU has continuously held regional accreditation since 2003³¹, with such accreditation most recently reaffirmed in February 2017. It is notable that in its seven-year reaffirmation letter, NWCCU commended WGU "on its effective and efficient use of data to continuously improve and enhance the student learning experience," and the University's "institution-wide focus on helping students succeed".

Congress, through the Higher Education Act of 1965, as amended ("HEA"), established the legal framework for oversight of institutions participating in the federal student financial

³⁰ 34 C.F.R. § 602.3. See 34 C.F.R. Part 602 for regulations governing the Secretary's recognition of accrediting agencies.

³¹ Initial institutional accreditation was granted by the Interregional Accrediting Committee (IRAC), formed by four of the regional accrediting commissions to accommodate the multi-regional nature of the University. Subsequently, NWCCU assumed responsibility as WGU's institutional accreditor.

assistance programs established pursuant to Title IV of the HEA (the “Title IV Programs”). Core to that framework is the explicit delegation to recognized institutional accreditors of statutory authority for evaluating and ensuring the quality of the education provided, and more specifically validating whether, and which of an institution’s academic roles are to be considered faculty. In the case of WGU, that task is the exclusive responsibility of NWCCU. The definition of faculty, and the authority to designate a role as such, is the fundamental argument upon which the review of WGU’s model hinges. If a role is designated faculty by a recognized accrediting agency, then by definition, all academic interactions of that role with students are substantive. Once NWCC has designated an academic role as faculty, the additional requirement is to ensure that interaction between those designated faculty and students is regular.

As a threshold matter, it is important to recognize that WGU is emphatically not an institution offering “correspondence courses”, as that term is defined in the HEA. Dating back to its enactment in 1965, the HEA has distinguished between institutions offering “correspondence courses” and other institutions of higher education, limiting the former’s access to the Title IV Program funds.³² As the technologies of learning evolved in the decades since the enactment of the HEA, there developed considerable confusion as to what indeed would constitute correspondence study. Therefore, Congress inserted into the HEA a statutory definition of “distance education” as distinct from a “correspondence course”.³³ The explicit intent of this distinction was to allow the provision of distance education without the

³² *Id.* § 1002(a)(3)(B); 34 C.F.R. § 600.7(a)(1).

³³ Initially, the statute and regulations referred to “telecommunications”, but that term was replaced by “distance education” in 2008.

restrictions imposed on correspondence education. Simply put, an institution offering “distance education” would not henceforth be declared an institution offering “correspondence courses”. The HEA plainly defines “distance education” as “education that uses one or more technologies....to deliver instruction to students who are separated from the institution; and to support regular and substantive interaction between the students and the instructor, synchronously or asynchronously”.³⁴

Over the 25 years since the HEA was amended to recognize distance learning as a regular mode of instruction, and as the technology of distance learning has evolved, both in terms of the capabilities of the internet and the simultaneous evolution of learning technologies, the Department has promulgated regulations and provided sub-regulatory guidance interpreting the 1992 statutory provision. By any reasonable reading of applicable law, regulation, or guidance, WGU is an eligible institution providing competency-based, online education that complies with all of the requirements of law.

It is important to recognize that WGU does far more than merely operate within the four corners of applicable law. It is achieving exceptional measurable outcomes for tens of thousands of learners while charging tuition that is significantly lower than what is common for comparable high-quality institutions and programs. Tellingly, in the context of the OIG findings challenged here, the Gallup study found that a very significant driver of the remarkable success of WGU in serving the needs of its students is the unique academic team that works with students from the day they enroll until the day they complete their studies. It is ironic that it is the nature of this unique academic team that forms the basis for the OIG’s unsupportable

³⁴ 20 U.S.C. § 1003(7).

conclusion that much of WGU's program should be classified as passive correspondence study and therefore WGU students should not be eligible to participate in the federal student grant and loan programs under Title IV of the HEA.

FINDING NO. 1: Western Governors University Was Not Eligible to Participate in the Title IV Programs

In the Draft Report, the OIG concludes that more than 50% of WGU's regular enrolled students were enrolled in correspondence courses during the 2013-2014 award year, and therefore, the University was not eligible to participate in the Title IV Programs for the 2014-2015 and 2015-2016 award years. For the reasons discussed below, the University strongly disagrees with this Finding.

WGU Response to OIG Finding No. 1³⁵

The OIG's analysis in the Draft Report is fundamentally flawed and not consistent with the applicable statutory and regulatory requirements; in fact, under applicable law, none of the courses the OIG reviewers erroneously determined to be correspondence courses are properly so characterized. They are, in fact, distance education courses as expressly contemplated by the HEA, applicable Department regulation and guidance, and common practice.

The legal requirement applicable to institutional eligibility relied upon by the OIG for its conclusion provides as follows:

[A]n educational institution . . . does not qualify as an eligible institution. . . if—(1) For its latest complete award year— (i) More than 50 percent of the institution's courses were correspondence courses as calculated under paragraph (b) of this section; [or] (ii) Fifty percent or more of the institution's regular enrolled students were enrolled in correspondence courses. 34 C.F.R. § 600.7(a)(1)

³⁵ The University reserves all arguments available to it and does not, by providing this response to the Draft Report, forego any additional analysis, argument, or response to any report or finding issued by the OIG.

The key to this provision is the determination of whether specific courses in which WGU students enrolled constitute distance education courses or correspondence courses. The definition of “distance education” provides:

Distance education means education that uses one or more of the technologies listed in paragraphs (1) through (4) of this definition to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. The technologies may include—

- (1) The internet;
- (2) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;
- (3) Audio conferencing; or
- (4) Video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3) of this definition. 34 C.F.R. § 600.2

The definition of a “correspondence course” provides:

- (1) A course provided by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor. Interaction between the instructor and student is limited, is not regular and substantive, and is primarily initiated by the student. Correspondence courses are typically self-paced.
- (2) If a course is part correspondence and part residential training, the Secretary considers the course to be a correspondence course.
- (3) A correspondence course is not distance education.³⁶ 34 C.F.R. § 600.2

In undertaking its review, the OIG reviewed 102 of the University’s 980 courses and determined that 69 of the courses it reviewed (68%) were correspondence courses and, that

³⁶ As the converse of the third prong of the definition of correspondence course, a course or program that is within the definition of distance education cannot be classified as a correspondence course.

37,899 of 61,180 regular students attending WGU with terms starting in the 2013-2014 award year were enrolled in at least one of these 69 courses. The OIG, therefore, concluded that the University did not meet the eligibility requirements of 34 C.F.R. § 600.7.

As an initial matter, before even discussing why the OIG's conclusions in this finding are substantively unsupported, it is important to note that it is unclear how the OIG reviewers made the determination that 37,899 students were actually enrolled in at least one of these 69 courses designated by the OIG as correspondence courses. The OIG used a judgmental sample to select courses to review that had a high student count relative to the entire population. Its review encompassed only 69 out of 980 courses, or 7% of the courses offered by WGU. The student numbers themselves, independent of the question of correspondence courses versus distance education, may be skewed in that some students may have been counted more than once, and the numbers may have included students who transferred course credits from other institutions for the 69 courses. In fact, a majority of the 69 courses deemed by the OIG to be correspondence courses are general education for which many WGU students receive transfer credit. The Draft Report did not include a listing of unduplicated students enrolled in this course to support their conclusion that 37,899 students were, in fact, enrolled in at least one of the 69 courses. Further, it is useful to note that the OIG, in its Draft Report, discloses a weakness in its own analysis, stating: "Because [the OIG] judgmentally selected the programs and courses, our sampling results might not be representative of the courses [the OIG] did not review. Therefore, our results cannot be projected to the universe of all courses." (Draft Report, at p.

29) To the extent that the OIG by its own admission judgmentally reviewed only a tenth of WGU's courses, and may not have correctly categorized the student enrollments, it cannot possibly support a conclusion that WGU failed the institutional eligibility requirement.

Further, in reaching its flawed conclusion, the OIG claims that its reviewers undertook the following analysis to determine if the 102 courses reviewed were distance education or correspondence courses. First, the OIG states that its personnel reviewed course outlines, pacing guides, and calendars for live events referenced in the course outlines and pacing guides for evidence that the University designed each of the 102 courses in a way that its reviewers considered as meeting the prong of the Title IV definition of distance education, which requires a course to be designed to offer "regular and substantive interaction between students and instructors". Importantly, the OIG further explains that because the Title IV regulations do not define the terms "instructor," "substantive," or "regular," it used its own subjective interpretation of the meaning of those terms to assess whether the University designed the 102 courses to offer regular and substantive interaction between students and instructors. The Draft Report further states that its personnel reviewed the school's course design materials for evidence of interaction that was: (1) "with someone who instructs or provides knowledge about the subject matter of the course," which the OIG defines as the instructor, (2) "relevant to the subject matter," which the OIG conflates with "substantive", and (3) occurring with what OIG personnel concluded to be "reasonable frequency" considering the school-suggested length of the course, thereby constituting "regular".

As a highly effective institution organized by the founding governors not to be bound by traditional conventions and terminology, WGU does not, in fact, have a typical faculty structure,

certainly not when compared to traditional, campus-based, time-based education with a single instructor standing in front of rows of students in an auditorium. The OIG reviewers reached their own conclusions as to which WGU academic employees should be considered “instructors”. They accomplished this task by reviewing the University’s descriptions of employee roles against those that the OIG defined as valid, and concluded that only those academic roles designated as Course Mentors and Evaluators, not those designated as Student Mentors, could, in the opinion of OIG reviewers, “reasonably” be considered “instructors”.

In conducting their analysis, the OIG reviewers therefore unilaterally determined that an interaction was substantive only if the course design materials described student interaction with a Course Mentor or required an individual submission of a performance task for which an Evaluator provided the student feedback. In doing so, the OIG reviewers excluded a variety of forms of what WGU and its recognized accreditor have long considered substantive interaction between students and instructors, and are disregarding written guidance from the Department. Specifically, the OIG reviewers excluded (1) any contact with Student Mentors on the OIG reviewers’ assumption that such Student Mentors are not faculty and do not provide instruction; (2) objective assessments that students submitted for evaluation because, in the opinion of the OIG reviewers, feedback on objective assessments was computer-generated only, did not incorporate instructor guidance, and did not facilitate synchronous or asynchronous interaction between students and instructors; (3) recorded webinars, videos, and reading materials if the course design materials did not require the students to watch the webinars or videos and then interact with an instructor; and (4) all student-initiated contacts. It is notable that nowhere in law, regulation, or guidance are these distinctions mentioned. The

Draft Report simply created its own framework against which to evaluate WGU, and then unsurprisingly, given the OIG reviewers' demonstrated bias against non-classroom-based instruction, found it wanting.³⁷

Finally, the OIG reviewers considered whether student interaction with instructors could "reasonably" be considered regular. The OIG reviewers reportedly looked at the course design materials for the 102 courses and counted the number of substantive interactions planned for each course. On that basis, the OIG reviewers concluded that there was no evidence in course design materials that planned student interactions with Course Mentors and Evaluators could be considered as occurring with "reasonable frequency" (that is, "regular"), given the school-suggested pacing of the courses. Stated more succinctly, the OIG reviewers first found that the only evidence of regular interaction of student contact is with Student Mentors and, second, that since Student Mentors did not provide instruction, there was no regular interaction. Expressed another way, the OIG did find "regular" interaction, but with a category of WGU faculty that the OIG reviewers (as distinct from WGU itself or its accreditor) decided were not faculty.

The OIG's application of the regulations and its conclusions are, simply put, erroneous and without factual or legal basis. The entire basis for Finding No. 1 lies in the OIG reviewers replacing the appropriate academic determinations of the University and its accreditors with OIG's own opinion of the proper definition of the words "regular", "substantive", and "instructor". As will be fully established below, the interaction between students and faculty in

³⁷ The OIG even admits its bias in this regard, by stating in the Draft Report: "We have previously identified distance education programs as presenting challenges to the Department and school officials because little or no in-person interaction between school officials and a student presents difficulties in verifying the student's academic attendance." Draft Report, at p.5. The OIG does not appear to recognize the value of distance education and its bias in favor of campus-based education is clear.

the University's courses is regular and substantive, and those persons serving as Student Mentors are, without any question, WGU faculty.

WGU Educational Model of Regular and Substantive Interaction

In reviewing the University's courses to determine if the interaction between students and faculty was regular and substantive, the OIG reviewers discounted key interactions that are clearly included by the applicable regulations and common academic practice, and in fact are integral components of WGU's educational model. The primary difficulty is that the OIG reviewers evaluated WGU's designed and accredited academic model against its own opinion of what higher education should be, rather than against applicable law and regulatory guidance.

Specifically:

- 1) The OIG reviewers viewed the WGU program as only a collection of *courses*, so it focused only on what was happening within each course. This represents a fundamental flaw in the OIG reviewers' analysis. Unlike at traditional colleges and universities, WGU students are required to enroll in a degree "program" with a set learning plan, without electives. Stated differently, WGU students *cannot* enroll in individual courses. Every WGU degree program contains a defined set of competencies that students must demonstrate mastery of to graduate. These competencies are the same for all students in the program. Courses are a component of the process that enables students to master the requisite competencies, but it is the mastery of the competencies that constitutes the overall program requirements. It is that overall mastery that is the province of precisely those faculty that the OIG reviewers chose to ignore. While the OIG reviewers correctly identified WGU Course Mentors as course experts, providing instruction *within* a course, it

missed the point that WGU Student Mentors are an equally important faculty component in the WGU model; they are the “program” experts that guide and direct students through the process of gaining mastery of the competencies necessary to the successful completion of the entire program by supporting students in their learning, actively providing pacing direction, guiding them to Course Mentor support, evaluating students’ readiness to take competency assessments, and generally providing augmented instruction, guidance, and assistance throughout the entire program.

Most notably, given the requirement to enroll in a degree program, students, by design, must interact with all of WGU’s student-facing faculty: Course Mentors, Student Mentors, and Evaluators. This fact is ignored in the OIG reviewers’ analysis, in that the reviewers considered each role separately in determining regular and substantive interaction, rather than considering the students’ academic program experience in its entirety.

- 2) The OIG reviewers only recognized “regular and substantive interaction with an instructor” when they saw *direct instruction*. They applied the classroom model to what is emphatically not a classroom-based model. Once again, the OIG fails to recognize other important and substantive interactions between faculty and students, which are at least as important as direct instruction. These include contextualizing what they are learning to their own work and career aspirations, helping students develop good study habits and time management, modeling professional roles and values, analyzing and managing student progress to keep students on track (pacing), and providing a listening ear and professional advice. These are roles of the Student Mentor, which the OIG ruled outside

its definition of “regular and substantive interaction with an instructor”, but which are an integral – indeed essential – part of the WGU educational model.

- 3) The OIG limited what it counted as regular and substantive interaction to what the OIG personnel found in the WGU course outlines; however, WGU is explicit in its educational model that significant interactions between faculty and students regularly take place that are not spelled out in the course syllabus. There is nothing in law or regulation that suggests that all interaction must be spelled out in a syllabus or course outline. In fact, recognizing that every student comes to higher education knowing different things and learns in different ways and at different rates, both Student Mentors and Course Mentors (collectively referred to as “Faculty Mentors”), as a regular part of their job, provide a range of individualized supplemental materials to students that the Faculty Mentor himself/herself creates to meet student needs, which may include additional electronic documents, new websites with academic related content, short videos on difficult concepts, recorded webinars, and other educational resources.

Further, Faculty Mentors use computer analytics to identify students who appear to be having difficulty mastering the competencies, and *proactively* reach out to these students, both through phone (synchronously) and email (asynchronously) to provide additional help and guidance. The WGU model specifically does not limit interactions to “scheduled events” since it is impossible to schedule when each student will need extra help. The WGU mentoring model is built on analytics and unscheduled events that nevertheless provide substantive interaction on a regular basis. These interactions are

captured in Faculty Mentor notes, which the OIG reviewers did not count as interactions between students and faculty.

Additionally, when a Faculty Mentor prepares a lesson to guide a student through a concept and calls to guide the student through the lesson, it is clearly interaction, but it would not be listed in the WGU course of study since it is individualized to the student. Further, when the Faculty Mentor prepares this interactive lesson and shares it asynchronously with all or many students, the students' use of this lesson would not be counted by the OIG reviewers as interaction with an instructor, unless there was live interaction (synchronous rather than asynchronous).

In the same way, the OIG reviewers count as interaction direct feedback on assessments from Evaluators, but does not count the equally valuable feedback students receive on objective assessments through detailed coaching reports. These reports are developed by Faculty Mentors and highlight concepts that are not yet understood, identifying where students need to focus their study.

With this more complete description of the WGU academic delivery model, the University argues that unlike correspondence courses, the interaction between students and faculty at WGU is unquestionably regular and substantive and is *primarily* initiated

by the University through its NWCCU-recognized faculty.³⁸ Certainly, WGU students are “not left to ‘educate themselves’”.³⁹

WGU Rebuttal to OIG Institutional Eligibility Testing

As discussed fully below, WGU vehemently disputes the OIG’s “institutional eligibility testing”. The OIG reviewers have applied their own arbitrary definition of what constitutes “interaction between a student and an instructor”, counting only direct instruction as interaction and ignoring all other forms of interaction between faculty and students. This interpretation has no basis in either law or regulation, is contrary to the affirmative determination of WGU’s institutional accreditors, and is contrary to good educational practices. More succinctly, it is plainly wrong.

In the description of the process it followed, entitled “Institutional Eligibility Testing – Review of All Courses for Three Programs,”⁴⁰ the OIG work papers state as follows:

We consider a course to be distance education if the course design offered three or more live events or required three or more individual submissions of performance assessments or tasks to Taskstream for feedback (or any combination of three or more of these). We consider three or more live events offered or individual submissions of performance tasks to Taskstream to be substantive and regular interaction with a student. . . . A course is distance education if it provided substantive, regular interaction with an instructor; or if it required three or more performance assessments or tasks (individual submissions for evaluation) or a combination of live events and required performance tasks adding to three or more. (Emphases added)

³⁸ We would note that the definition of distance learning does not limit “regular and substantive” interaction to instructor-initiated contact. Rather, the applicable definition of a correspondence course says the course work is “primarily initiated by the student”. Student-initiated contact is only one indicator that a course might be correspondence. It is not a required factor in the definition of correspondence courses and likewise does not require a determination that a course is not distance education.

³⁹ “Dear Accrediting Agency Executive Directors,” U.S. Department of Education, Office of Postsecondary Education, June 9, 2015, by Herman Bounds, Director, Accreditation Group.

⁴⁰ This document was provided to the University during the course of the audit at the time the University was provided a preliminary opportunity to provide factual corrections to exception reports that constitute the initial summary of the findings that the OIG expected to include in the Draft Report.

The first clear error by the OIG reviewers was to unilaterally determine that only Course Mentor interactions or individual submissions of performance tasks for which an Evaluator provided feedback would count as substantive interaction, and that a certain number of such events was required to constitute regular and substantive. There is nothing in the law, regulations, or published guidance that defines what constitutes or that requires a particular number of interactions to be regular and substantive.

An even more significant error arose because of the similarly arbitrary ways the OIG reviewers declined to consider various kinds of substantive student / instructor interactions as previously described. Specifically, the OIG reviewers counted only live interactions in determining whether such interaction was regular and substantive. The description of what the OIG reviewers counted was revised between the exception reports provided to the University earlier in the process and issuance of the Draft Report. However, the ultimate determination of what counts for the OIG reviewers' purposes is the same. In the applicable exception report, the first interaction counted by the OIG reviewers was what it described as "live events", which it further defined to be "cohorts and webinars". In the Draft Report, the OIG reviewers articulated this factor to equate to interaction with Course Mentors, which would include "webinars and meetings with groups of students to discuss issues, solve problems, and share research", Draft Report, at p. 13. Similarly, in the Draft Report, the OIG reviewers counted individual submission of a performance task for which an Evaluator provided feedback as an interaction. Based on careful review of the Draft Report, it seems the OIG reviewers chose only to consider synchronous ("live") interactions. However, the statutory and regulatory language is absolute in specifically encompassing asynchronous (i.e., time-shifted) modes of instruction to

satisfy the need for regular and substantive interaction in the delivery of instruction to students who are separated from the instructor. Indeed, the applicable regulation cited by the OIG reviewers, as well as the statutory language upon which the regulation is built, specifically allows for interaction that is provided “either synchronously or asynchronously”. See also 20 U.S.C. § 1003(7). The OIG reviewer’s definition of interaction takes into account only “live” events, i.e., synchronous events, therefore disregarding the option of asynchronous education defined in statute and regulations.

A review of the courses determined to be correspondence by the OIG reviewers and the Draft Report establishes that the OIG’s analysis completely ignored significant components of student-faculty interaction. Specifically, the OIG reviewers rejected as interaction: (1) objective assessments that students submitted for evaluation because the feedback was computer-generated; (2) recorded webinars, videos, and reading materials if there was no related instructor interaction (as instructor is defined by the OIG reviewers); and (3) contact with Student Mentors. Because the Draft Report recognizes that interaction with the Student Mentors is regular (Draft Report, at p. 16), the fundamental error of this Draft Report is that the OIG reviewers have decided that Student Mentors are not providing instruction, and, therefore, failed to include interactions with Student Mentors in the determination of “substantive”.

This fundamental error flies in the face of the determinations by those qualified and empowered by law to make such decisions: the institution and its accreditor recognized by the Secretary as the arbiter of institutional academic quality. Specifically, Student Mentors are unambiguously considered by both the University and its accreditor, the NWCCU, to be “faculty”. The determination of an institution’s eligibility to participate in the Title IV Programs

is based on the concept of shared responsibilities. The institutional accreditor recognized by the Secretary of Education is, by law, assigned responsibility for ensuring the academic quality of the educational programs provided by an eligible institution. Importantly, NWCCU recognizes, and has always recognized, WGU Student Mentors as faculty consistent with its standards. In fact, NWCCU's 2013 Report of the 3-year peer evaluation of the University unambiguously states that the "[t]he use of faculty members as Student Mentors to monitor the progress of students through degrees appears to be an extremely useful mechanism for promoting retention and completion", (emphasis added). It is absolutely clear that Student Mentors are faculty as defined by the University and the NWCCU.

In fact, the Draft Report recognized that NWCCU considered Student Mentors to be faculty. Draft Report, at p.16. The OIG reviewers' unilateral classification of the roles of academic personnel is in direct contravention of the exclusive authority granted WGU's institutional accreditor by the HEA and applicable regulation as the entity imbued with academic oversight. The OIG reviewers' insertion of its own uninformed and legally unsupportable opinion as to what activities should be treated as academic in nature and its blithe rejection of interactions with Student Mentors is a perfect example of the OIG seeking to control the nature of academic activities, when those activities should occur, who should carry them out, and on what schedule. 20 U.S.C. § 1232a provides:

No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system.

Even before the enactment of the HEA, the entirety of the Executive Branch of the federal government has been expressly prohibited from interfering in an institution's curriculum

decisions. Indeed, this is the foundational principle undergirding the allocation of academic oversight to independent, non-governmental accrediting commissions. While the Secretary is empowered to establish standards for the recognition of accrediting bodies, he or she is expressly forbidden from setting standards for the exercise of their academic discretion. The OIG recommendation that Federal Student Aid substitute its academic judgment for that of WGU's recognized accrediting commission would clearly violate this prohibition.

There can be no doubt that WGU faculty include both Student Mentors and Course Mentors. WGU students are assigned a Student Mentor the day they start at the University. That Student Mentor works with the student on a weekly or bi-weekly basis until the student graduates. Student Mentors provide direct, comprehensive, program-level and competency-specific **guidance**. Student Mentors have at least a master's degree as well as professional expertise, and provide a breadth of academic assistance that spans the student's entire academic program, including program guidance, course selection, help with learning resources, pacing of course content, goal setting, and assessment preparation and feedback. Student Mentors have a scheduled weekly or bi-weekly call with students as well as ongoing communication through email, text, or additional phone calls that may be initiated by either the Student Mentor or the student as needed. In addition, students have a Course Mentor for every course, who is the subject matter expert for that course. Most Course Mentors have a terminal degree plus significant professional experience. Course Mentors provide students with one-on-one instructional support via phone or email, as well as group webinars and cohort experiences (either synchronous or asynchronous), and also engage students in discussions through "course communities and message boards". Importantly, in addition to scheduled

events identified in course materials, both Student Mentors and Course Mentors use computer analytics to identify and proactively initiate contact with students who are struggling and need extra help. Faculty Mentors are also readily available to respond to student requests via phone, email, or text.

Complementary to the roles of Faculty Mentors, students' competency assessments are graded by a separate group of Evaluator faculty, generally also with terminal degrees, who provide substantive, competency-specific feedback. Students also receive substantive feedback from objective assessments through automated coaching reports developed by assessment faculty that provide course and competency specific feedback to students. Assessment feedback is reviewed and discussed with Student Mentors and, as needed, with Course Mentors, to assist in the students' mastery of competencies.

The only appropriate way to view the University's faculty is to consider all classifications of faculty as one faculty unit. Contacts with Student Mentors and Course Mentors alike must be included in the determination of whether the interaction with students is regular and substantive. Indeed, the Department of Education has specifically recognized the concept of disaggregated faculty. In Dear Colleague, GEN-14-23 (Dec. 18, 2014), the Department published the following Q and A:

Q10 What are the required conditions for regular and substantive interaction between students and instructors for CBE programs, including direct assessment programs?

A10 We do not consider interaction that is wholly optional or initiated primarily by the student to be regular and substantive interaction between students and instructors. Interaction that occurs only upon the request of the student (either electronically or otherwise) would not be considered regular and substantive interaction.

Some institutions design their CBE programs using a faculty model where no single faculty member is responsible for all aspects of a given course or competency. In these models, different instructors might perform different roles: for example, some working with students to develop and implement an academic action plan, others evaluating assessments and providing substantive feedback (merely grading a test or paper would not be substantive interaction), and still others responding to content questions.

Such a model may be used to ensure regular and substantive interaction between students and instructors. However, in applying such a model, an institution must ensure that the interaction is provided by institutional staff who meet accrediting agency standards for providing instruction in the subject matter being discussed, that the interaction is regular, and that the amount of faculty resources dedicated to the program is sufficient in the judgment of the accrediting agency. Interactions between a student and personnel who do not meet accrediting agency standards for providing instruction in the subject area would not be considered substantive interaction with an instructor.

In addition to counting both Course Mentors and Student Mentors in the determination of regular and substantive interaction, the OIG must understand the significant degree of interaction that is required by the University. Students and their Faculty Mentors are required to maintain frequent communication with each other. To ensure that this communication takes place, Faculty Mentors contact students at least as often as detailed in the applicable University protocols. Specifically, during the first term, the Student Mentor and student meet at least once each week for a substantive discussion about engaging learning and assessments until the student achieves on-time progress (OTP), i.e., the students' progress reflects that they are meeting on-time progress toward graduation. After the first term, for students who meet OTP, Faculty Mentors and students meet at least once every two weeks for a substantive discussion about engaging learning and assessments. For students on financial aid warning or termination, the Faculty Mentor and students meet at least once each week for a substantive discussion about engaging learning and assessments until the student achieves OTP.

The OIG reviewers further erred by only counting live events as interaction and ignoring recorded webinars and videos. By completely ignoring recorded webinars and videos, the OIG has read asynchronous learning out of the distance education definition. As noted above, 20 U.S.C. § 1003(7) provides that regular and substantive interaction between the student and the instructor may be provided synchronously or asynchronously. Certainly, therefore, the University's utilization of asynchronous internet-based webinars and other technology-facilitated academic delivery models qualifies as interaction. In addition, the OIG reviewers also ignore other types of interactions including interactive learning, coaching reports, instant grading feedback, course communities, program communities, e-mail exchanges between faculty and students, and other learning materials specific to the students' academic needs. Furthermore, the University uses, but the OIG reviewers ignore, interactive curriculum such as adaptive learning techniques, gaming technology, online business simulations, and nursing lab medical mannequins as very practical and effective methods of interactive learning. Given that these interactions are designed and overseen by WGU faculty and delivered asynchronously over the internet, they also constitute regular and substantive interaction. Advances in learning science, combined with new technologies and data analytics, create highly individualized learning pathways that increase, rather than decrease, student-faculty interaction, as well as increasing knowledge acquisition and program completion.

The OIG's argument is also flawed in that it counts only those synchronous events and performance tasks that were included in the written "course of study". For their review, the OIG was provided a .pdf version describing the courses that were offered during the 2013-2014 award year. Due to the nature of the .pdf version of the courses, the OIG relied only on the

content that was written in the course of study and did not have the benefit of reviewing the course within the course delivery platform that included calendars, student communities, announcements, and other support resources that would have been used by Faculty Mentors to support students beyond just the content listed in the .pdf version of the course. Essentially, the OIG made its determination by reviewing the equivalent of a syllabus and disregarded all other forms of Faculty Mentor communication and learning resource support. There is no regulatory requirement that all content covered in a course must be listed in the syllabus.

The OIG's arguments are further flawed in that its original exception reports showed that it only counts performance assessments in which there were three or more individual tasks to be submitted for evaluation.⁴¹ All performance assessments, regardless of the number of tasks included in them, often require multiple iterations and Evaluator feedback to get to a final submission that will receive a passing grade. In fact, the more complex single task assessments are more challenging and require greater support and more iterations than smaller, less complex tasks. Counting the number of tasks is arbitrary and has no basis in application of statute or regulation. Furthermore, the OIG reviewers discounted all computer-based assessments, including pre-assessments and the larger final objective assessments, determining incorrectly that such assessments do not require Faculty Mentor or Evaluator interaction. In fact, all computer-based pre-assessments and objective assessments at WGU include substantive, real-time coaching reports for students. The coaching report is developed and maintained by the faculty on the program development team, in conjunction with the Faculty

⁴¹ This understanding is based on the workpapers provided to the University as it prepared its response to the exception reports. Given significant changes between the initial exception reports and the Draft Report, the University will need to review a complete set of the OIG workpapers to ensure that the information provided to the University is complete.

Mentors and Evaluators, to provide robust feedback to students that identifies areas of weakness and directs the student to specific learning resources for competency gaps. In other words, this computer-based feedback must count as interaction, based on the disaggregated faculty model. However, even further, these coaching reports are reviewed with the students in meetings with their Student Mentors, providing yet another instance of student / instructor interaction.

For the reasons discussed above, Finding No. 1 is entirely without merit. While it is illuminating as an exposition of the OIG's preferences for what it considers appropriate for the conduct of competency-based online distance education, it has no bearing on WGU's eligibility to participate in the Title IV Programs.

FINDING NO. 2: Western Governors University Disbursed Title IV Funds to Students Before the Students Were Eligible to Receive the Funds

In the Draft Report, the OIG concluded that the University did not define its academic year and payment periods in accordance with federal requirements. It reached this conclusion based on its determination that the University failed to provide the required number of weeks of instructional time in its academic year and that its programs were self-paced. Based on these assumptions, the Draft Report asserted that the University should have disbursed Title IV Program funds consistent with the requirements governing non-term programs. From that conclusion, the Draft Report determined that the University was not properly disbursing Title IV Program funds or adjusting Federal Pell Grant awards consistent with the Title IV requirements related to non-term educational programs.

WGU Response to OIG Finding No. 2

The University strongly disagrees with this finding. In reaching its conclusions, the OIG tested nine students enrolled in the institution's three largest educational programs to determine the number of weeks of instructional time included in the courses and the number of weeks of instructional time completed by the students. The student records were reviewed to determine if WGU students participated in 52 weeks of instruction over two six-month payment periods. The OIG reviewers used the same methodology to determine instructional weeks as was used to determine what activities constitute interaction. The OIG's analysis is fundamentally flawed because the OIG reviewers counted only weeks in which the student participated in an OIG determined qualifying activity and excluded all other weeks in the term.

The OIG reviewers also conclude that the University's courses are self-paced⁴² and uses that as a basis to assert that the University should be operating on a non-term calendar. The OIG is simply wrong: WGU courses are not self-paced. Students are given a pacing guide, published by WGU and referenced by the OIG, and are expected to complete a certain number of competency units each term. In addition, a key role of the WGU Student Mentor is to guide the pace of academic progress with individual students to ensure course completion by a certain date so that the student makes on-time progress toward graduation. There is some flexibility in the pacing because WGU's model is based on outcomes, i.e., mastery of outcomes, rather than seat time, which means, by its very nature, students will move through the content at different rates. Because WGU's educational model requires students to truly demonstrate

⁴² The definition of distance education does not prohibit such courses from being self-paced, and the definition of correspondence study does not state that all self-paced courses are correspondence or that all correspondence courses are self-paced.

competencies, students must be able to vary pacing in the required timeframe to allow for their individual competency development. However, that does not mean that the course of study is “self-paced”. Pacing is clearly established and actively managed by the University through the Student Mentors.

Further, as established in the response to Finding No. 1, the OIG’s methodology is flawed and outside the scope of its authority. If this flawed methodology were applied across the board to all institutions participating in the Title IV Programs, most would be found to be non-compliant. The Draft Report applies the test of instructional weeks on a student-by-student basis. Stated another way, the OIG requires that each student participate in each week of the academic period. However, students at most campus-based institutions do not participate in academic activities in each week of their term. The determination of instructional time must measure the weeks of instruction available to the student and not the actual weeks in which the individual student participates in the available instruction. In fact, in Finding No. 1, the OIG specifically recognized that the definition of distance education requires that courses must be designed “to offer regular and substantive interaction between students and instructors”. There is no requirement that each student participate in each week of offered instruction. Based on an appropriate analysis, the University offered instruction in enrolled courses for the entire 26-week term and 52-week academic year.

The OIG’s analysis is in stark conflict with what is standard industry practice, and with the guidance provided by the Department on the determination of an instructional week in a competency-based education program, as noted in the *2015-2016 FSA Handbook*, pages 2-23 and 2-24:

A school must ensure that the instructional materials and faculty support necessary for academic engagement are available to students every week that the school counts toward its defined payment period or academic year. Educational activity in a CBE program includes, but is not limited to:

- participating in regularly scheduled learning sessions (where there is an opportunity for direct interaction between the student and the faculty member);
- submitting an academic assignment;
- taking an exam, an interactive tutorial, or computer-assisted instruction;
- attending a study group that is assigned by the institution;
- participating in an online discussion about academic matters;
- consultations with a faculty mentor to discuss academic course content; and
- participation in faculty-guided independent study (as defined in 34CFR 668.10(a)(3)(iii)).

Further, in DCL GEN-14-23 concerning competency-based education programs, the

following questions and answers were provided to institutions:

Q8 Does each student have to engage in educational activity every week in a CBE program?

A8 While it is expected that students will generally be academically engaged throughout an educational program, there is no requirement that the institution be able to document academic engagement for each student for every week of instructional time.

Q6 Is there a specific calendar format- standard term, nonstandard term, or nonterm -that CBE programs must use?

A6 All CBE programs, including direct assessment programs, could be offered as nonterm programs. A CBE program may also be offered as a standard or nonstandard term program; however, to be offered as a standard or as a nonstandard term program, a CBE program must require students to start and finish competencies within established term dates.

As noted above, the University is not obligated or required to document that each student was academically engaged each week of the term as the OIG suggests in this Finding. The

appropriate standard requires the University to make the instructional materials available to students throughout the term and requires students to start and finish competencies within established term dates, which the University clearly does. The University has a sufficient number of instructional weeks to meet the payment period and academic year definitions established by the University. As such, the University appropriately awarded and disbursed Title IV Program funds to students based on the requirements governing disbursements for non-standard terms, which are substantially equal in length.

Therefore, Finding No. 2 in the Draft Report is without merit or basis.

FINDING NO. 3 - Western Governors University Did Not Always Comply With the Requirements Governing the Return of Title IV Funds

In this Finding, the Draft Report asserts that the University did not properly withdraw and perform a return of Title IV funds (“R2T4”) calculation for certain sampled students who withdrew, earned zero competency units, or both.

WGU Response to OIG Finding No. 3

The University respectfully disagrees with four of the instances cited as the basis for this Finding and is still researching one instance. As an initial matter, it is important to note that the OIG reviewers did not consider the concerns cited in this Finding No. 3 to rise to the level of a finding in any of the correspondence prior to the Draft Report. Specifically, the concerns raised in this finding were identified as no more than a reference in the “Other Matters” category, which includes items that the OIG wants to make note of, but that do not rise to the level of a finding. The University only learned that the OIG reviewers decided to convert this issue to a finding when the OIG was prepared to issue the Draft Report. The OIG’s last-minute decision to

make this issue a finding received only limited explanation by the OIG reviewers, and one must wonder how significant it can be, given the OIG reviewers prior treatment of the issue. Because this issue was not a finding previously, the individual student-level detail was not provided by the OIG and reviewed by the University until after the receipt of the Draft Report. Due to this short response period, the University only had a limited amount of time to conduct the research to formulate this response.

Based on the limited research that the University had time to conduct on the five students included in this Finding, the University determined that the OIG reviewers considered the regular and substantive interactions with Student Mentors in its methodology to determine if students should have been withdrawn. Specifically, the OIG reviewers utilized Student Mentor contact logs in reviewing the files of three of the five students cited as a basis for this finding. At the same time, the Draft Report excluded the Student Mentor contact activity in the determination of the withdrawal date for another of the five students. The inconsistency in treatment with respect to the students in this Finding demonstrates the OIG's confusion on the appropriate use of the faculty-student interactions in calculating R2T4.

For three of the five students included in the Finding, the OIG cites the University's internal policy for the withdrawal of students who are not in contact with faculty for 20 days. However, in applying this policy, the OIG misstates the terms of the policy and misunderstands the rationale for the policy. The University is not attendance taking. As such, it is not required to maintain a process to determine the student's day-to-day activity. Nonetheless, the University has developed a policy to facilitate and monitor regular and substantive interaction between students and faculty. This policy has an element of flexibility with respect to a student who has

a temporary interruption that exceeds 20 days and allows the University to reverse a withdrawal for students who subsequently reestablish contact with their faculty. In fact, unlike the treatment by the OIG reviewers in this Finding, the University's policy states that the student "may" be administratively withdrawn and not "must" or "will" be administratively withdrawn for lack of contact with their faculty. The driving force behind this internal policy is to allow the University to identify students who have actually withdrawn while avoiding penalizing students, like three of the five students cited in this finding, for a temporary interruption in their studies during the term.

Attendance is not required at WGU and the regulations regarding the identification of the withdrawal of students who cease to attend during the term are not applicable. The University's "Communication Protocol" policy is an institutional policy that is subject to application by faculty and staff who have direct contact with students and can make an appropriate assessment of the student's enrollment status. Each of these three students had a temporary interruption that exceeded 20 days, but each student reengaged and completed the term. On that basis, the University did not consider these students to be withdrawn, and they should not be included in this Finding.

One of the five students included in this Finding was cited for having an incorrect withdrawal date identified by the University. This student notified her Student Mentor by email of her desire to withdraw and the date of this email was identified by the University as the student's withdrawal date. The OIG incorrectly considered a subsequent phone call with the Student Mentor on the following day as the date of withdrawal. Additionally, WGU is still in the

process of researching the interaction and academic activities of the remaining student in this Finding, including review of the University's 2014 academic archives.

As a standard operating principle, the University continuously reviews its Title IV operations, including its R2T4 processes, to identify potential areas of improvement in the systems and processes utilized in the administration of Title IV Program funds. In fact, the Chicago Case Team of the U.S. Department of Education conducted a program review covering the 2015-2016 award year focused specifically on the determination of last date of attendance and the use of this date in the completion of the R2T4 calculation. On April 25, 2017, the case team issued an Expedited Final Program Review Determination Letter, which closed the program review with "no significant findings identified" and no further action required by the University.

Additionally, as part of the University's ongoing system improvement initiatives, the University is in the process of implementing a more automated process for the identification of unofficial withdrawals, which will be implemented during the 2017-2018 award year. This automated process will further improve the adherence to the University's withdrawn student processing policies and procedures and ensure the timely identification of students who have unofficially withdrawn and the accurate determination of the withdrawal date.

As with Findings No.1 and No.2, and as highlighted in the above response, there is no basis for this Finding No. 3 in the Draft Report.

Closing

A defining principle at WGU is focus on the student – each initiative and decision starts with our students. Student success and support are the focus of all faculty and staff. In its 20-

year history, WGU has produced more 81,000 graduates from its Health Professions, Teachers, Business, and Information Technology Colleges. WGU is the proof of concept – clearly meeting the definitional requirements of distance education and providing an exemplar for the higher education community.

As WGU has driven innovation in improve quality and expanding access of higher education, we have always done so in full compliance with statutory, regulatory, and accreditation standards. Further, our outcomes are irrefutable⁴³:

- National Survey on Student Engagement highlights WGU students’ quality of interaction with faculty, exceeding national averages.
 - 72% of WGU students rated the quality of interactions with faculty as very good or excellent, versus the national average of 60%.
 - 83% of WGU students said that WGU provides academic support for students (quite a bit or very much) versus the national average of 73%.
- 78% year-one retention, compared with the national average of 74%.
- Gallup studies emphasize our graduates’ recognition of WGU’s academic rigor, satisfaction with Mentors, employment levels, and overall well-being. This survey also notes that 91% of our graduates believe WGU was worth the cost, vs. 67% nationally.
- Harris Poll Online survey highlights of WGU graduates:
 - \$19,100 increase in income within four years of graduation.
 - 88% full-time employment (vs. 71% nationally), 87% employment in field of study (vs. 82% nationally).

⁴³ WGU 2016 Annual Report https://www.wgu.edu/about_WGU/annual_report.

- 86% of WGU graduates satisfied with academic support, compared to the national average of 81%.
- Harris Poll of employers of WGU graduates:
 - 94% report that WGU graduates exceed their expectations.
 - 100% report that WGU graduates were prepared for their jobs; 75% say they were extremely well prepared.
- WGU students graduate with an average of \$16,862 in student loans, less than half the national average exceeding \$37,000. More notably, WGU's responsible borrowing initiatives, in the last four years alone, have reduced annual student borrowing by 41%.

The overarching purpose of the Higher Education Act and the Department of Education is to ensure high quality education and effective use of federal dollars. Ultimately, results matter – and WGU outcomes demonstrate a high quality, affordable higher education with positive student learning outcomes, student satisfaction and retention well above the national average, high graduate success, high graduate employment and income gains, and employer and alumni satisfaction.

Given that a) the OIG's findings are neither substantiated by law, nor supported by regulatory guidelines or accreditation standards; b) that WGU has consistently complied with all law and accreditation standards; and c) WGU's model is fulfilling the overarching purpose of the HEA in improving quality and expanding access to higher education, we respectfully request that the OIG withdraw its findings and conclude this matter.