



January 11, 2019

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

Certified Mail
Return Receipt Requested
7002 2410 0000 5896 6192

RE: Final Audit Determination
Audit Control No.: ED-OIG/A05M0009
OPE ID: 03339400

Dear President Pulsipher:

This letter advises Western Governors University (WGU) of Federal Student Aid's (FSA's) final audit determination concerning the Final Audit Report entitled "Western Governors University Was Not Eligible to Participate in the Title IV Programs." The audit covers WGU's administration of the programs authorized pursuant to Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070 *et seq.* (Title IV, HEA programs). The audit was conducted by the Office of Inspector General (OIG) for Audit in the Chicago/Kansas City Audit Region. The audit covers the period July 1, 2013 through June 30, 2014 (2013-2014 award year).

FSA has reviewed the OIG's audit report and WGU's responses to it. Enclosed is WGU's response to a draft of that audit report. In response to our additional inquiries, WGU provided additional responsive information and documentation. Any supporting information and documentation submitted with the institution's written responses to FSA is not included with this final audit determination, but will be retained and available for inspection by WGU upon request. Copies of the final audit determination, the institution's responses, and any supporting information and documentation may be subject to release under the Freedom of Information Act (FOIA) and can be provided to other oversight entities after this final audit determination is issued.

WGU must take actions to correct the deficiencies noted in this final audit determination and for the return of Title IV funds to the Department. WGU's independent auditor must comment on all the actions taken by the institution to correct the issues noted in this final audit determination, as well as any required actions in the enclosures to this letter, in the "Prior Audit" section of the next regularly scheduled non-federal audit. Repayment instructions for any liability owed to the

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Chicago/Denver School Participation Division
500 West Madison St., Suite 1576, Chicago, Illinois 60661

U.S. Department of Education (Department) are provided at the end of the enclosure to this letter.

Appeal Procedures

If WGU elects to appeal for a review of the monetary liabilities established by this final audit determination, the institution must file a written request for a hearing. The Department must receive WGU's request no later than 45 days from the date WGU receives this final audit determination letter. **An original and four copies of the information WGU submits must be included with WGU's request.** The request must be sent to:

Attn: Susan Crim, Director
Administrative Actions and Appeals Service Group
U.S. Department of Education
Federal Student Aid/PC/SEC
830 First Street NE, UCP3, Room 84F2
Washington, DC 20002-8019

WGU's appeal request must:

- (1) indicate the findings, issues, and facts being disputed;
- (2) state the institution's position, together with pertinent facts and reasons supporting its position;
- (3) include all documentation it believes the Department should consider in support of the appeal. Any documents relative to the appeal that include PII must be redacted except the student's name and last four digits of his/her social security number (please see the enclosed document, "Protection of Personally Identifiable Information," for instructions on how to mail records containing PII); and
- (4) include a copy of the final audit determination letter.

If there is an appeal request, the Department will schedule an administrative hearing in accordance with § 487(b)(2) of the HEA, 20 U.S.C. § 1094(b)(2). The procedures followed with respect to WGU's appeal are those provided at 34 C.F.R. Part 668, Subpart H.

Program records relating to the period covered by this audit must be retained until the later of: resolution of any loans, claims, or expenditures questioned in the audit, 34 C.F.R. § 668.24(e)(3)(i), or the end of the retention period applicable to the record under 34 C.F.R. § 668.24(e)(1) and (e)(2).

WGU's continued cooperation throughout the audit resolution process is appreciated. If the institution has any questions about our review and determinations, please call Kelli Goers at (312) 730-1524.

Sincerely,



Douglas Parrott
Division Director

Enclosures: Final Audit Determination
Protection of Personally Identifiable Information

cc: Bob Collins, Vice President of Financial Aid
Northwest Commission on Colleges and Universities (NWCCU)
State of Utah, Board of Regents
Department of Veterans Affairs
Department of Defense
Bureau of Consumer Financial Protection

Audit Finding 1:

The OIG's Final Audit Report concluded that WGU did not comply with the institutional eligibility requirement that limits the percentage of regular students who may enroll in correspondence courses. Specifically, the OIG determined that WGU was institutionally ineligible under the requirements of 34 C.F.R. § 600.7(a)(1)(ii) because it had greater than 50 percent of its students enrolled in correspondence courses during the 2013-2014 award year (hereafter the "50 percent rule"). The OIG determined that of the 61,180 regular students enrolled at WGU in the 2013-2014 award year, at least 37,899 students (62 percent) were enrolled in one or more courses that did not meet the definition of distance education.¹

In making this determination, the OIG identified the three largest programs offered by WGU in terms of student enrollment in the 2013-2014 award year: Bachelor of Science in Business Management, Bachelor of Arts in Interdisciplinary Studies for Prospective K-8 Teachers, and Bachelor of Science in Nursing (RN to BSN). The OIG then reviewed WGU's Institutional Catalog² and determined that students enrolled in these three programs were required to take 102 of the 980 courses offered by WGU in the 2013-2014 award year. In addition to the students enrolled in WGU's three largest programs, the OIG determined that another 25,513³ students were required to complete at least one of the 102 courses as part of their respective programs. As a result, of the 61,180 students enrolled in WGU during the 2013-2014 award years, the OIG determined that 39,398 (64 percent) were enrolled in these 102 courses.

The OIG concluded that the HEA and Title IV regulations do not define the terms "instructor," "substantive," and "regular." Therefore, the OIG considered the "ordinary meaning" of those terms and interpreted them as follows:

- Instructor: Someone who instructs or provides knowledge about the subject matter of a given course
- Substantive: Relevant to the subject matter in the course
- Regular: Occurring with some reasonable frequency considering the school-suggested length of the course⁴

The OIG reviewed WGU's course design materials for the 102 courses described above to determine whether the courses were designed to offer regular and substantive interaction between students and instructors, as defined above, to meet the institutional eligibility requirements of the HEA and Department regulations.⁵ For each of the 102 courses, the OIG reviewed, among other things, course design materials, including course outlines, pacing guides

¹ See the Final Audit Report, ED-OIG/A05M009 at 2.

² Western Governors University Institutional Catalog (May 1, 2014).

³ See the Final Audit Report, ED-OIG/A05M009 at 14.

⁴ See the Final Audit Report, ED-OIG/A05M009 at 14-15.

⁵ See regulatory and statutory analysis below in "Final Audit Determination." See also definition of "distance education" in 34 C.F.R. § 600.2 and 20 U.S.C. § 1003(7).

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.

The OIG then determined which Western Governors University employees could reasonably be considered "instructors" by (1) identifying who NWCCU 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. The OIG determined that only course mentors and course evaluators could be considered "instructors" for purposes of complying with the statutory and regulatory definitions of "distance education."

Based upon its review of course materials and WGU's academic policies, and after identifying the employees that it considered instructors, the OIG determined that an interaction was "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.

Finally, the OIG determined whether student interaction with instructors could reasonably be considered "regular" by identifying the number of interactions that appeared to be required by the course design materials for each course that it reviewed.

Based on this review, the OIG determined that 69 of the 102 courses were not designed to offer regular and substantive interaction between a student and an instructor (course mentor or course evaluator), and, therefore, did not meet the regulatory definition of distance education. Instead, the OIG concluded that each of these 69 courses met the regulatory definition of a correspondence course.

The OIG determined that, under the statute and regulations, WGU 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 2013-2014 award year. The OIG recommended that the Department initiate appropriate administrative action against WGU, pursuant to 34 C.F.R. § 600.41 and require WGU to return \$712,670,616.00, which is all Title IV monies drawn by WGU during the 2014-2015 and 2015-2016 award years, as well as all Title IV funding the institution drew after the 2015-2016 award year. The OIG further recommended that the Department determine whether or not WGU complied with the institutional eligibility requirements prior to the 2013-2014 award year and, if the Department were to determine that WGU did not comply with the institutional eligibility requirements, require WGU to return to the Department all the Title IV funds it disbursed during any award years in which the school was ineligible.

Final Audit Determination:

Based upon its review of the OIG's final audit report and supporting documentation, WGU's response to the draft of that audit report, and applying the same understanding of the requirements as the OIG did and the information available to it at the time, FSA believes the OIG's finding was supportable and understandable, but FSA does not agree with the corresponding recommendations regarding Finding 1.

34 C.F.R. § 600.7(a)(1)(ii), which was promulgated in 1994, has remained essentially unchanged and states, in pertinent part, that, for purposes of Title IV of the HEA, an institution that otherwise satisfies the institutional eligibility requirements described in 34 C.F.R. §§ 600.4, 600.5, or 600.6 nevertheless does not qualify as an eligible institution if for its latest complete award year "[f]ifty percent or more of the institution's regular enrolled students were enrolled in correspondence courses[.]"

34 C.F.R. § 600.7(b)(1)(ii) states that a correspondence course "may be a complete educational program offered by correspondence, or one course provided by correspondence in an on-campus (residential) educational program." Between 1999 and 2006, 34 C.F.R. § 600.2 differentiated as follows between correspondence courses, and telecommunication courses (with telecommunications courses then qualifying in certain circumstances for exemption from the 50 percent rule notwithstanding the physical separation of the student and instructor that characterized both kinds of programs):

Correspondence course:

- (1) A "home study" course provided by an institution under which the institution provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the institution. When students complete a portion of the institutional materials, the students take examinations that relate to that portion of the materials, and return the examinations to the institution for grading
- (2) A home study course that provides instruction in whole or in part through the use of video cassettes or video discs in an award year is a correspondence course unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at the institution during the same award year
- (3) A course at an institution that may otherwise satisfy the definition of "telecommunications course" is a correspondence course if the sum of telecommunications and other correspondence courses offered by that institution equals or exceeds 50 percent of the total courses offered at that institution.
- (4) If a course is part correspondence and part residential training, the Secretary considers the course to be a correspondence course.

Telecommunications course:

A course offered in an award year *principally* through the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable,

microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs. The term does not include a course that is delivered using video cassettes or disc recordings unless that course is delivered to students physically attending classes at an institution providing the course during the same award year. If the course does not qualify as a telecommunications course it is considered to be a correspondence course.

(Emphasis added.) With enactment of the Higher Education Reconciliation Act of 2005, P.L. 109-171, Sections 102(a)(3), 481(b)(3) and 484(l) of the HEA were amended, effective July 1, 2006, to provide that, although institutions remain ineligible if 50 percent or more of their students are enrolled in “correspondence courses,” eligibility is not precluded for programs offered in whole or in part through “telecommunications” if the programs are offered by institutions that are accredited to offer distance education by accrediting agencies recognized by the Department for such accreditation.

Following this statutory change, effective September 8, 2006, the Department amended 34 C.F.R. § 600.2 to remove paragraph (3) of the regulatory definition of “correspondence course” quoted above, and to revise the regulatory definition of “telecommunications course” as follows:

Telecommunications course: A course offered principally through the use of one or a combination of technologies including television, audio, or computer transmission through open broadcast, closed circuit, cable, microwave, or satellite; audio conferencing; computer conferencing; or video cassettes or discs to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between these students and the instructor, either synchronously or asynchronously. The term does not include a course that is delivered using video cassettes or disc recordings unless that course is delivered to students physically attending classes at the institution providing the course during the same award year. If the course does not qualify as a telecommunications course, it is considered to be a correspondence course.

(Emphasis added.) In the subsequent reauthorization, effective August 14, 2008, the HEA was amended to include a definition of “distance education” at 20 U.S.C. § 1003, as follows:

Distance Education.

(A) In general

Except as otherwise provided, the term “distance education” means education that uses one or more of the technologies described in subparagraph (B) --

(i) to deliver instruction to students who are separated from the instructor;

and

(ii) to support regular and substantive interaction between the students and the instructor, synchronously or asynchronously.

(B) Inclusions

For the purposes of subparagraph (A), the technologies used may include --

- (i) the Internet;
- (ii) one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;
- (iii) audio conferencing; or
- (iv) 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 clauses (i) through (iii).

(Emphasis added.) Following the 2008 change to the statute, which was effective July 1, 2010, the Department revised 34 C.F.R. § 600.2 to include a regulatory definition of “distance education” that paralleled the statutory definition; to delete the now unnecessary regulatory definition of “telecommunications course;” and to revise the regulatory definition of “correspondence course” to read as follows:

Correspondence course: (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.

There was no further guidance issued on these provisions until the Department issued a Dear Colleague Letter in December 2014, shortly after the audited period. By the time the Dear Colleague Letter was issued, the Department had become aware that there was a need for further guidance on the statute and regulations with regard to some competency-based education programs.

In addition to reviewing the OIG’s audit report and the background and contextual information the OIG collected, including interviews with the institution’s administration, staff, and students, interviews and other communications exchanged with representatives of the institution’s accrediting agency, and course design materials for the audit period reviewed, FSA reviewed information received from the institution’s accrediting agency, the NWCCU, and requested and reviewed a significant amount of additional information from WGU regarding interactions between its staff and students during the audit period.

Because of the ambiguity of the law and regulations and the lack of clear guidance available at the time of the audit period, the information received from NWCCU, and the relevant information from WGU especially regarding staff and student interaction, FSA finds that it would not be appropriate to require WGU to return Title IV funds for violating the institutional eligibility requirements under 34 C.F.R. § 600.7(a)(1). The statements made and the actions

taken by the institution and its accrediting agency demonstrate that the institution made a reasonable and good faith effort to comply with the definition of distance education and provide regular and substantive interaction between the students and its instructional team during this period.

The terms “regular,” “substantive,” and “instructor” are not defined in the HEA or in the regulations, and, at the time of the audit, no guidance had been provided establishing the Department’s policy with respect to those terms.

- With respect to the term “regular,” it is unclear whether the law anticipated courses of indefinite length, and no guidance existed during or before the audit period regarding how to apply the term to self-paced coursework. Furthermore, there was no clear numerical threshold for interactions in the law or guidance.
- With respect to the term “substantive,” it is unclear whether the law anticipated an instructional model in which certain faculty perform academic support activities, including acting as liaisons to subject-matter experts when students needed additional instructional support.
- With respect to the term “instructor,” it is unclear whether the law anticipated a disaggregated faculty model in which certain faculty members played a support role, validated by the institution’s accrediting agency, that was part of a wider instructional team.

In 2014, after the end of the audit period, the Department published the Dear Colleague Letter⁶ discussed above that provided additional guidance to institutions with competency-based education programs, including programs with disaggregated faculty models like the one used by WGU. In that Dear Colleague Letter, the Department recognized that “[s]ome institutions design its 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 . . . , and still others responding to content questions.” The Department explained that “[s]uch a model may be used to ensure regular and substantive interaction between students and instructors.”

The same Dear Colleague Letter also indicated that “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.” The Dear Colleague Letter contemplates that “instruction” can be performed by more than one faculty member, and provides examples of the types of instructional roles that can be disaggregated to faculty other than those engaged directly in content delivery or

⁶ Dear Colleague Letter GEN 14-23, published December 19, 2014, Question and Answer #10.

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Institution: Western Governors University

Finding No. 1 - Western Governors University Was Not Eligible to Participate in the Title IV Programs, Page 10

who are subject matter experts in the content rather than subject matter experts in the specific role they play as part of the instructional team.

WGU is directed to review the Dear Colleague Letter and ensure that each of its programs, on an on-going basis, continues to be in compliance with the definition of distance education given the Department's current guidance on the matter. WGU is also directed to review its accreditor's definition of "instructor" and ensure only individuals who meet that definition are being relied upon to meet the requirements of "regular and substantive interaction."

The Department has announced⁷ that it will engage in negotiated rulemaking to develop new policies that more clearly define the requirements for regular and substantive interaction.

⁷ Federal Register notice published Tuesday, July 31, 2018 (83 FR 36814)

Audit Finding 2:

The OIG's audit report concluded that WGU disbursed Title IV funds to students based on requirements for term-based programs, but that its programs were not designed to provide students with the appropriate number of weeks of instructional time as required by the institution's definition of an academic year. The OIG states that the institution defined its academic year as consisting of 24 semester hours and 52 weeks, consisting of two 26-week terms. The OIG asserted that because the definition of a week of instructional time under 34 C.F.R. § 668.3(b)(2) states that a week of instruction includes at least one day of regularly scheduled instruction or examination, only providing access to learning resources for each week of an academic year does not comply with the Title IV requirements for instructional time.

The OIG stated that WGU's policies did not specify whether each week of instructional time included at least one day of scheduled instruction or examination. Furthermore, when the OIG reviewed all course materials for a sample of nine students, it determined that the design of the courses would have provided 52 weeks of instruction to only one of the students. The OIG did not determine whether students participated in instructional activities or examinations because compliance with requirements for weeks of instructional time does not depend on actual student participation.

The OIG concluded that the institution 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 or academic year. The OIG asserted, therefore, that WGU should have considered its program to be a nonterm program and should have defined its payment periods in accordance with the definition of payment periods in a nonterm program under 34 C.F.R. § 668.4(c) and disbursed Title IV aid in accordance with the corresponding regulations for disbursement in a nonterm program. The OIG stated that by failing to provide Title IV funds in accordance with requirements for a nonterm program, WGU provided Title IV funds to students who were ineligible for disbursements of Title IV aid at the time that the disbursements were made.

In its response, WGU disagreed with the finding and contended that it complied with the requirements for weeks of instructional time because it made the necessary instructional materials and faculty support available to students for every week of instructional time in its payment period and academic year, and that its courses were not self-paced. WGU referenced guidance provided by the Department in Dear Colleague Letter GEN-14-23 to support its position, and furthermore stated that its policies reflected standard industry practice. The OIG disagreed with WGU's response and stated that the guidance in the Dear Colleague Letter does not permit a school to substitute a week of availability of instructional materials or faculty support for the regulatory requirements for a week of instruction.

The OIG recommended that the Department require WGU to discontinue subsequent disbursements of Title IV funds until the institution implements policies and procedures for ensuring that it is making disbursements in accordance with the requirements for nonterm programs, including ensuring that students have completed the appropriate number of credit

hours and weeks before they receive subsequent disbursements. The OIG also recommended that the Department review the institutions' records for all students who began terms in the 2013-2014 award year through the 2015-2016 award year; identify any disbursements that were made to students who were ineligible based on requirements for disbursement in a nonterm program; recalculate students' Pell Grant awards in accordance with requirements for nonterm programs; and ensure that the institution's definition of an academic year will include at least 30 weeks of instructional time, and that each week included in that definition includes at least one day of regularly scheduled instruction or examination.

Final Audit Determination:

Based upon its review of the OIG's final audit report and supporting documentation, WGU's response to the draft of that audit report, and applying the same understanding of the requirements as the OIG did and the information available to it at the time, FSA believes the OIG's finding was supportable and understandable, but FSA does not agree with the corresponding recommendations regarding Finding 2. At the time of the audit period, there was a conflict between the statutory definition of "distance education," which includes asynchronous coursework, and the regulatory definition of a week of instructional time, which references scheduled instruction.

A credit hour is defined 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 –

- (1) One 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
- (2) At least an equivalent amount of work as required in paragraph (1) of this definition 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."

34 C.F.R. § 600.2 (definition of credit hour).

An academic year for a program offered in credit hours must include at least 30 weeks of instructional time, and at least 24 semester or trimester credit hours or 36 quarter credit hours. 34 C.F.R. §§ 668.3(a)(1)(i), (a)(2)(i). The regulations define a week of instructional time as any week in which at least one day of regularly scheduled instruction or examinations occurs or, after the last scheduled day of classes for a term or payment period, at least one day of study for final examinations occurs. 34 C.F.R. § 668.3(b)(2). Instructional time does not include any vacation periods, homework, or periods of orientation or counseling. 34 C.F.R. § 668.3(b)(3).

For an eligible program that measures progress in credit hours and uses standard terms (semesters, trimesters, or quarters) or nonstandard terms that are substantially equal in length, a payment period is defined as the academic term. 34 C.F.R. § 668.4(a). If a program is longer than one academic year in length, and is measured in credit hours without academic terms, a payment period is defined as the period of time during which a student successfully completes half of the number of credit hours and half of the number of weeks of instructional time in the academic year, or the remainder of the program, whichever is shorter at the time the student completes the prior academic year. 34 C.F.R. § 668.4(c)(2)(i). If the remaining portion of the program is not more than half an academic year, the final payment period is the remainder of the program. 34 C.F.R. § 668.4(c)(2)(iii).

While the regulations do state that a week of instruction is “any week in which at least one day of regularly scheduled instruction or examination occurs,” and exclude “homework,” for a non-residential program such as WGU’s, those regulations were last amended in 2002⁸, prior to enactment of the Higher Education Reconciliation Act of 2005, which specifically provided for distance education offered using asynchronous instruction. At the time of the audit period, no clear guidance was available to the institution, resulting in a conflict between the statutory definition of “distance education,” which includes asynchronous coursework, and the regulatory definition of a week of instructional time, which references scheduled instruction.

WGU’s credit hour policies were reviewed and approved by its accrediting agency. Except in extraordinary cases placing the accreditor’s knowledge or diligence at issue, the Department relies on the accreditor’s performance of that role to ensure that an accredited institution’s programs include sufficient content to support the credit hours awarded pursuant to generally accepted practice within the academic community. Accordingly, FSA is not requiring any further action related to this finding.

The Department has announced⁹ that it will engage in negotiated rulemaking to develop new policies that define the requirements for a week of instructional time in a program that uses asynchronous instruction in order to clarify this requirement in the future.

⁸ Federal Register notice published Friday, November 1, 2002 (67 FR 67048)

⁹ Federal Register notice published Tuesday, July 31, 2018 (83 FR 36814)

Audit Finding 3:

The OIG's Final Audit Report described deficiencies in the institution's process for returning Title IV funds to the Department when a student withdraws.

The OIG randomly selected 25 students who received Title IV funds for a term and subsequently withdrew, earned no competency units, or both. Of those 25, the institution was required to perform Return of Title IV funds calculations for 15 students. The OIG asserts that WGU correctly determined the amount of Title IV aid earned for 10 of those students for whom return calculations were required, but the institution did not properly determine the amount of Title IV aid earned by the other five students.

The OIG provided the following information about the five students whom it identified as having returns performed incorrectly:

- One student never attended during the payment period but WGU did not return any of the student's Title IV funds for that period.
- One student unofficially withdrew after the payment period started (but before the midpoint of the payment period), but the institution did not complete a Return of Title IV funds calculation for the student.
- Two students unofficially withdrew after the payment period started (but before the midpoint of the payment period), but WGU did not use a withdrawal date for each student that was the midpoint of the payment period or the student's last date of 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, but the institution did not use as the student's withdrawal date the date that the student began the withdrawal process by notifying the institution of his or her intent to withdraw.

The OIG also noted that the institution's policy was to use the last date of academic activity as the withdrawal date for a student who unofficially withdrew before the 50% point of the term.

The OIG asserted that, as a result of not following its own policy and not properly handling Title IV funds when students did not begin attendance or withdrew, WGU did not return to the Department \$5,957.00 in Title IV funds for one student who did not attend during a payment period and returned \$4,552.00 less than required for three students who unofficially withdrew before the midpoints of payment periods.

In its response, WGU indicated that it would implement a more automated process to identify unofficial withdraws. However, the institution disagreed with four of the five instances of noncompliance cited in the OIG's audit report, asserting that:

- As an institution that is not required to take attendance, it is not required to maintain a process to determine each student's day-to-day activity, or use attendance records to determine a student's withdrawal date.
- For three students cited in the Audit Report, the OIG incorrectly interpreted WGU's internal policy for treatment of students who were not in contact with faculty for 20 days, believing that the policy required the institution to withdraw students in that circumstance when in fact the policy provides flexibility to its staff in determining whether a withdrawal is warranted. WGU notes that the policy states that a student "may" be administratively withdrawn, not that a student "must" or "will" be administratively withdrawn, for lack of contact with faculty.
- For one student cited in the Audit Report, the OIG incorrectly considered a subsequent phone call with the Student Mentor as the basis for the student's withdrawal date, when in fact the institution had used an email sent by the Student Mentor on the prior day, and the prior day was used as the basis for the student's withdrawal date in the Return of Title IV funds calculation.
- The OIG inconsistently applied its rationale for considering the basis for the institution's determination of students' withdrawal dates, in several cases using Student Mentor contact logs as a basis for its findings, but in another case excluding Student Mentor contact activity in the determination of a student's withdrawal.

The OIG indicated that WGU did not provide additional evidence to support its position or that would cause the OIG to withdraw the finding or their recommendations.

The OIG recommended that the Department require WGU to return \$10,509.00 for students who did not begin attendance or withdrew, and that the Department review the records for all 9,509 students whose files the OIG did not review, determine the amount of Title IV funds that any students did not earn for the payment period in which they withdrew, and return any unearned funds not already returned in response to another finding in the Audit Report.

Final Audit Determination:

If a student does not begin attendance in a payment period or period of enrollment, the institution must return all Title IV funds that were credited to the student's account at the institution for that period. 34 C.F.R. § 668.21(a). When a Title IV aid recipient begins attendance in a payment period or period of enrollment and subsequently withdraws, the institution must determine the amount of Title IV funds that the student earned as of his or her withdrawal date. 34 C.F.R. § 668.22(a)(1). The regulations set forth specific guidelines for calculating the amount of unearned Title IV funds that an institution must return to the Department. 34 C.F.R. § 668.22(e).

For a student who officially withdraws from an institution that is not required to take attendance, the withdrawal date is either the date the student began the withdrawal process prescribed by the institution or the date that the student otherwise provided official notification to the institution, in writing or orally, of his or her intent to withdraw. 34 C.F.R. §§ 668.22(c)(1), (2). If the student ceases attendance without providing official notification to the institution of his or her

withdrawal, the institution may use the midpoint of the payment period or period of enrollment. 34 C.F.R. § 668.22(c)(1)(iii).

An institution can also use as a student's withdrawal date the student's last date of attendance at an academically-related activity, provided that the institution documents that the activity is academically related and documents the student's attendance at the activity. 34 C.F.R. § 668.22(c)(3). Academically-related activities 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(l)(7)(i).

FSA reviewed the institution's policies and procedures related to withdrawals and performing the Return of Title IV funds calculation. The institution's policy for student mentor contact with students ("Communication Protocol") states that students and mentors are required to maintain frequent communication with one another, and that "[i]nactive students who fail to re-establish phone contact with the mentor within 20 days from the date of the last call attended by the student may be administratively withdrawn from WGU." WGU asserts that the Communication Protocol permits, but does not require, the administrative withdrawal of a student who cannot be contacted, and there does not appear to be any evidence to contradict that assertion. Therefore, FSA does not treat that policy as authoritative with respect to the timing of administrative withdrawals and disagrees with the OIG's assertion that the institution should have withdrawn any student if there was no contact with the student for at least 20 days.

WGU is not required to take attendance, and the institution's policy for administrative withdrawals addresses cases where students unofficially withdraw from the institution. The policy indicates that students can be administratively withdrawn during the term for a number of reasons, including if the student "does not remain in contact with the mentor as described in the Communication Protocol" as noted above. Under the institution's policy, the institution indicates that in cases of administrative withdrawals it considers the date of withdrawal is the last date of academic activity or 50% completion of the term, whichever date is later. There is no prohibition on the use of such a policy, since under 34 C.F.R. § 668.22(c), an institution that is not required to take attendance can either use the midpoint of the period as the withdrawal date or the last date of an academically-related activity.

The OIG also stated that the institution did not provide adequate documentation during the audit to support its use of withdrawal dates for four of the students referenced in the Audit Report, and did not perform a Return of Title IV Funds calculation for one student when such calculation was required. In order to make a determination regarding these issues, FSA reviewed the OIG's work papers and requested additional information from the institution in order to review the institution's documentation for each student. Based on that review, FSA made the following determinations regarding each of the students referenced in Finding 3 of the OIG's Audit Report:

- Student #1: The OIG indicated that the student officially withdrew and the withdrawal date that the institution used was February 12, 2014, even though the student mentor log has an entry on February 13, 2014, stating that the student wished to withdraw. The institution indicated that the February 12 withdrawal date was based on an email communication from the student requesting withdrawal from WGU. The institution provided documentation of the above-referenced February 12 email that constitutes official notification to the institution of the student's intent to withdraw under 34 C.F.R. § 668.22(c)(2). Therefore, because the withdrawal date used by the institution is supported by appropriate documentation, FSA did not identify any error with respect to the institution's use of a withdrawal date for this student.
- Student #2: The OIG asserted that the institution used June 10, 2014 as the student's withdrawal date despite lacking supporting documentation. The OIG also stated that it could not find any indication that the student engaged in any academic activity during the payment period, and categorizes the student as a "nonstart" subject to the requirements in 34 C.F.R. § 668.21. The institution provided documentation of a June 10, 2014, telephone call between the student and the student mentor in which the student mentor discussed the timeframes for the student's objective and performance assessments during the term. In accordance with 34 C.F.R. § 668.22(l)(7)(B)(4), this interaction is considered academic counseling; thus, cannot be categorized as an academically related activity for the purposes of the Return of Title IV calculation. However, FSA disagrees with the OIG's conclusion that the student was a "nonstart", as documentation provided by WGU indicated that the student had "Learning Resource Engagement" for the Introduction to Accounting course on June 9. As the student was engaged in an academic activity (i.e. accessed a reading for the course), this date should have been utilized as the student's last date of attendance for the Return of Title IV calculation. The result of the corrected Return of Title IV calculation completed by FSA concludes that the student earned 100% of the Title IV which was disbursed to him; therefore, there are no liabilities as a result of this calculation error by WGU.
- Student #3: The OIG asserted that the institution used the last date of the payment period as the student's withdrawal date even though the student did not complete any competencies during that payment period and the school had not been in contact with the student since May 2014, with a documented last date of attendance in June of 2014. In a communication with FSA, the institution indicated that it agreed with the OIG regarding this student, and that it should have performed a Return of Title IV funds calculation using an accurate withdrawal date for the student. WGU asserted that the correct last day of attendance that should have been included in the Return of Title IV calculation was June 23, 2014. However, this interaction was an e-mail conversation between the student and student mentor to discuss retaking a preassessment exam. Under 34 C.F.R. § 668.22(l)(7)(B)(4), participation in academic advisement cannot be categorized as attendance at an academically related activity for the purposes of the Return of Title IV calculation. Nonetheless, WGU did provide documentation that indicated that the student completed a preassessment exam for the PCDC course on May 26, 2014.

Consequentially, this date should have been utilized as the student's last date of attendance for the Return of Title IV calculation. The result of the corrected R2T4 calculation performed by FSA concludes that \$2,607.00 in Title IV funds must be returned by WGU (\$819.00 in Federal Pell Grant; \$1,732.00 in subsidized Direct Loans; and \$56.00 in unsubsidized Direct Loan).

- Student #4: The OIG stated that the institution administratively withdrew this student on October 22, 2014 and the institution used the date that the student was administratively withdrawn as the student's official withdrawal date. The OIG asserted that the institution should have withdrawn the student earlier based on its policy for withdrawing students after 20 days without contact; however, based on FSA's analysis of the institution Communication Protocol policy, that policy permits, but does not require, withdrawals in such circumstances. The institution provided documentation to FSA of an October 22 interaction between the student and the student mentor in which the two parties discussed the student's assessments for two courses in which the student was enrolled. FSA has reviewed the documentation and determined that the interaction meets the definition of an academically-related activity under 34 C.F.R. § 668.22(l)(7)(i). Therefore, because the withdrawal date used by the institution is supported by appropriate documentation, FSA did not identify any error with respect to the institution's return of funds for this student.
- Student #5: The OIG indicated that the institution did not perform a Return of Title IV Funds calculation for the student even though the student did not complete any competences during the payment period. The OIG further stated that the student's last date of documented academically-related activity was a webinar that the student attended on May 6, 2014, and the student mentor did not have any contact with the student until July 21, 2014, and therefore should have been withdrawn by the institution under its policies; however, based on FSA's analysis of the institution Communication Protocol policy, that policy permits, but does not require, withdrawals in such circumstances. The institution provided documentation to FSA of an October 13, 2014 telephone call in which the student discussed with the student mentor her progress on several courses in which she was enrolled during that payment period. FSA considers this and other contacts between the student and a student mentor related to course matters to constitute academically-related activities. The institution performed a Return of Title IV funds calculation for this student in response to FSA's request using a withdrawal date of October 13, 2014, and the calculation indicated that the student had earned 100% of her Title IV aid for the payment period. However, the institution could not provide documentation that it had determined the student's withdrawal date or determined the amount that the student had earned during the payment period within 30 days of the end of that payment period. Therefore, though no Title IV funds are required to be returned for this student, FSA considers that the institution failed to comply with the requirements under 34 C.F.R. § 668.22(j)(2) for determining this student's withdrawal date in a timely manner.

ACN: ED-OIG/A05M0009

Institution: Western Governors University

Finding No. 3- Western Governors University Did Not Always Comply With the Requirements
Governing the Return of Title IV Funds, page 19

FSA identified three isolated errors in the sample of 25 students reviewed by the OIG during its audit. Given the low error rate, FSA does not believe that a full file review is necessary with respect to the institution's compliance with requirements to return Title IV funds when a student withdraws. Furthermore, the institution's plans to automate its process for returning Title IV aid when a student withdraws is likely to reduce the occurrence of isolated errors similar to the three described above.

The institution must return \$2,607.00 in Title IV funds to the Department for Student #3.
Payment instructions for these liabilities are included below.

ACN: ED-OIG/A05M0009
Institution: Western Governors University
Payment Instructions

Payment Instructions

WGU owes to the Department \$2,607.00. Payment must be made by forwarding a check made payable to the "U.S. Department of Education" to the following address within 45 days of the date of this letter:

U.S. Department of Education
P.O. Box 979026
St. Louis, MO 63197-9000

Remit checks only. Do not send correspondence to this address.

If the check is sent special delivery (signature/receipt required), the check must be sent to the following address:

U.S. Bank
1005 Convention Plaza
St. Louis, MO 63101
Attn: Govt. Lockbox Tram MO-SL-C2GL
Re: For Dept. of Ed. 979026

Payment must be made via check and sent to the above Post Office Box. Payment and/or adjustments made via G5 will not be accepted as payment of this liability. Instead, WGU must first make any required adjustments in COD as required by the applicable finding and Section II – Instructions by Title IV, HEA Program (below), remit payment, and upon receipt of payment the Department will apply the funds to the appropriate G5 award (if necessary).

The following identification data must be provided with the payment:

Amount:	\$2,607.00
DUNS:	129936902
TIN:	841383926
Audit Control Number:	ED-OIG/A05M0009

Section I - Terms of Payment

As a result of this final audit determination, the Department has created a receivable for this liability and payment must be received by the Department within **45 days of the date of this letter**. If payment is not received within the 45-day period, interest will accrue in monthly increments from the date of this determination, on the amounts owed to the Department, at the current value of funds rate in effect as established by the Treasury Department, until the date of receipt of the payment. WGU is also responsible for repaying any interest that accrues. If WGU has any questions regarding interest accruals or payment credits, contact the Department's

ACN: ED-OIG/A05M0009
Institution: Western Governors University
Payment Instructions

Accounts Receivable & Bank Management Group at (202) 245-8080 and ask to speak to WGU's account representative.

If full payment cannot be made within **45** days of the date of this letter, contact the Department's Accounts Receivable & Bank Management Group to apply for a payment plan. Interest charges and other conditions apply. Written request may be sent to:

U.S. Department of Education
OCFO Financial Management Operations
Accounts Receivable & Bank Management Group
550 12th Street, S.W., Room 6114
Washington, DC 20202-4461

If within 45 days of the date of this letter, WGU has neither made payment in accordance with these instructions nor entered into an arrangement to repay the liability under terms satisfactory to the Department, the Department intends to collect the amount due and payable by administrative offset against payments due WGU from the Federal Government. **WGU may object to the collection by offset only by challenging the existence or amount of the debt.** To challenge the debt, WGU must **timely appeal** this determination under the procedures described in the "Appeal Procedures" section of the cover letter. The Department will use those procedures to consider any objection to offset. **No separate appeal opportunity will be provided.** If a timely appeal is filed, the Department will defer offset until completion of the appeal, unless the Department determines that offset is necessary as provided at 34 C.F.R. § 30.28. This debt may also be referred to the Department of the Treasury for further action as authorized by the Debt Collection Improvement Act of 1996.

Section II – Instructions by Title IV, HEA Program

IIA. William D. Ford Federal Direct Loan (Direct Loan) Liabilities

Direct Loan Closed Award Years (Request Extended Processing):

Finding: 3
Appendix B:

WGU must repay the following Direct Loan liabilities:

Direct Loan – Closed Award Year		
Amount (Principal)	Amount (Interest)	Award Year
\$1,788.00	\$0.00	2013-14
Total Principal	Total Interest	
\$1,788.00	\$0.00	

ACN: ED-OIG/A05M0009
Institution: Western Governors University
Payment Instructions

The disbursement record for the student identified in the appendix listed above must be adjusted in the Common Origination and Disbursement (COD) system based on the recalculated amount identified in the appendix. A copy of the adjustment to the student's COD record must be sent to Kelli Goers **within 45 days of the date of this letter**.

Request Extended Processing

COD adjustments are necessary for the closed award year listed above. Before any student level adjustments can be processed, WGU must immediately request extended processing through the COD Website (<http://cod.ed.gov>).

- Click on the Request Post Deadline/Extended Processing link under the School menu.
- On the request screen, the institution should indicate in its explanation that the request is based on an audit resolution, and provide the audit control number.
- The institution will be notified of the status of the request at the time of submission, and will also be notified by email to the FAA and President when extended processing has been authorized. At that time, WGU must transmit student/borrower level adjustments to COD for the closed award year.

IIB. Liabilities Owed to the Department in the case of Title IV Grants

Federal Pell Grant – Closed Award Year:

Finding: 3
Appendix B:

WGU must repay:

Federal Pell Grant - Closed Award Year		
Amount (Principal)	Amount (Interest)	Award Year
\$819.00	\$0.00	2013-14
Total Principal	Total Interest	
\$819.00	\$0.00	

The disbursement record for the student identified in the appendix to the applicable finding must be adjusted in the Common Origination and Disbursement (COD) system based on the recalculated amount identified in the appendix.

Adjustments in COD must be completed prior to remitting payment to the Department. Payment cannot be accepted via G5. Once the Department receives payment via check to the Department will apply the principal payment to the applicable G5 award.

ACN: ED-OIG/A05M0009

Institution: Western Governors University

Payment Instructions

A copy of the adjustment to the student's COD record must be sent to Kelli Goers **within 45 days of the date of this letter.**

PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION

Personally Identifiable Information (PII) being submitted to the Department must be protected. PII is any information about an individual which can be used to distinguish or trace an individual's identity (some examples are name, social security number, date and place of birth).

PII being submitted electronically or on media (e.g., CD-ROM, floppy disk, DVD) must be encrypted. The data must be submitted in a .zip file encrypted with Advanced Encryption Standard (AES) encryption (256-bit is preferred). The Department uses WinZip. However, files created with other encryption software are also acceptable, provided that they are compatible with WinZip (Version 9.0) and are encrypted with AES encryption. Zipped files using WinZip must be saved as Legacy compression (Zip 2.0 compatible).

The Department must receive an access password to view the encrypted information. The password must be e-mailed separately from the encrypted data. The password must be 12 characters in length and use three of the following: upper case letter, lower case letter, number, special character. A manifest must be included with the e-mail that lists the types of files being sent (a copy of the manifest must be retained by the sender).

Hard copy files and media containing PII must be:

- sent via a shipping method that can be tracked with signature required upon delivery
- double packaged in packaging that is approved by the shipping agent (FedEx, DHL, UPS, USPS)
- labeled with both the "To" and "From" addresses on both the inner and outer packages
- identified by a manifest included in the inner package that lists the types of files in the shipment (a copy of the manifest must be retained by the sender).

PII data cannot be sent via fax.