



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL

THE INSPECTOR GENERAL

MEMORANDUM

TO: Maureen McLaughlin
Deputy Assistant Secretary
Policy, Planning, and Innovation
Office of Postsecondary Education

SEP 28 2001

SEP 28 2001

FROM: Lorraine Lewis *Lorraine Lewis*

SUBJECT: FINAL AUDIT REPORT
*Olivet Nazareen University, School of Graduate and Adult Studies
Administration of Title IV Programs, Bourbonnais, Illinois*
Control Number ED-OIG/A05-B0014

Attached is a copy of the final audit report referenced above. We are furnishing this report to you because it may contain information of interest to you. No response on your part is necessary.

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

If you have any questions or wish to discuss the contents of this report, please contact Richard J. Dowd, Regional Inspector General for Audit, at 312-886-6503.

Attachment



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL

THE INSPECTOR GENERAL

MEMORANDUM

TO: Terry Abbott
Chief of Staff
Office of the Secretary

SEP 28 2001

FROM: Lorraine Lewis *Lorraine Lewis*

SEP 28 2001

SUBJECT: FINAL AUDIT REPORT
*Olivet Nazarene University, School of Graduate and Adult Studies Administration
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MEMORANDUM

TO: William D, Hansen
Deputy Secretary
Office of the Deputy Secretary

SEP 28 2001

FROM: Lorraine Lewis *Lorraine Lewis*

SUBJECT: FINAL AUDIT REPORT
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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL

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MEMORANDUM

TO: Eugene W. Hickok
Under Secretary
Office of the Under Secretary

SEP 28 2001

FROM: Lorraine Lewis *Lorraine Lewis*

SUBJECT: FINAL AUDIT REPORT
*Olivet Nazarene University, School of Graduate and Adult Studies Administration
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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL

THE INSPECTOR GENERAL

MEMORANDUM

SEP 28 2001

TO: Greg Woods
Chief Operating Officer
Student Financial Assistance

FROM: Lorraine Lewis

SUBJECT: FINAL AUDIT REPORT
*Olivet Nazarene University, School of Graduate and Adult Studies
Administration of Title IV Programs, Bourbonnais, Illinois*
Control Number ED-OIG/A05-B0014

Attached is our subject report presenting our finding and recommendations resulting from our audit of Olivet Nazarene University, School of Graduate and Adult Studies. The report identifies noncompliance with the Higher Education Act and Title IV regulations in the area of commissioned sales and course length.

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

If you have any questions or wish to discuss the contents of this report, please contact Richard J. Dowd at (312) 886-6503.

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

Attachment



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL

THE INSPECTOR GENERAL

MEMORANDUM

SEP 28 2001

TO: Laurie Rich
Assistant Secretary
Office of Intergovernmental
and Interagency Affairs

FROM: Lorraine Lewis *Lorraine Lewis*

SUBJECT: FINAL AUDIT REPORT
*Olivet Nazarene University, School of Graduate and Adult Studies
Administration of Title IV Programs, Bourbonnais, Illinois
Control Number ED-OIG/A05-B0014*

Attached is the above subject final audit report. We are furnishing this report to you because it may contain information of interest to you.

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If you have any questions concerning the audit report, please contact Richard J. Dowd at (312) 886-6503.

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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL

THE INSPECTOR GENERAL

CONTROL NUMBER
ED-OIG/A05-B0014

Dr. John C. Bowling, President
Olivet Nazarene University
1 University Avenue
Bourbonnais, Illinois 60914-2271

SEP 28 2001

Dear Dr. Bowling:

This **Final Audit Report** presents the results of our Audit of Course Length at Olivet Nazarene University (University). Our objective was to determine whether the University was in compliance with the Higher Education Act (HEA) and the regulations governing course length.

AUDIT RESULTS

We found that the University's documentation supporting the actual number of instructional hours spent in study groups used in the definition of an academic year for its four School of Graduate and Adult Studies (SGAS) programs did not provide the number of instructional hours required to meet the statutory definition of an academic year. The statutory definition of an academic year is set forth in Title 34, Code of Federal Regulations (CFR), Section 668.2(b). The regulations in this section that apply to institutions not using semester, trimester, or quarter systems are commonly known as the 12-Hour Rule. The 12-Hour Rule requires the equivalent of at least 360 instructional hours per academic year. An institution's academic year and the credit hours that a student is enrolled in are used, in part, to determine the amount of funds a student is eligible to receive from the Title IV programs.

The University did not maintain documentation to show that its SGAS programs provided the required amount of instructional time as defined by the 12-Hour Rule. The University's student handbook stated that SGAS students were required to meet for four hours each week in classroom instruction, and the equivalent number of hours in study group meetings without the presence of an instructor. The study group meetings were not regularly scheduled, nor were they held at locations monitored by the University. The University did not maintain adequate documentation to show that study groups met for the required number of hours. The University's academic year for its SGAS programs did not provide the required number of instructional hours as defined in the regulations. The University disbursed Title IV funds to students who were not eligible for all or part of the

funds. We estimated that the University overawarded and disbursed \$503,400 in Title IV funds to its SGAS students.¹

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

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

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

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

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

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

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

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

¹ The dollars we estimated as overawarded are duplicative of the dollars we determined as overawarded in ED-OIG/A05-A0030, Olivet Nazarene University, School of Graduate and Adult Studies Administration of Title IV Programs issued on May 21, 2001.

The University Did Not Maintain Documentation to Show That Students Received the Required 360 Hours of Instruction For Each Academic Year

Management controls are the policies and procedures adopted and implemented by an organization to ensure that it meets its goals which, as applicable to this situation, are compliance with laws and regulations. According to the University's student handbook, students were required to meet in class for four hours per week, and were expected to meet an additional four hours per week in study groups. The handbook describes the study group requirement as follows: "Each group meets outside of the required class time to discuss and prepare assignments and share learning resources." The University counted the study group time for purposes of the 12-Hour Rule. We found that the University did not establish and implement management controls to ensure that all students actually participated in study group meetings.

It was the University's policy that an instructor be present at regular classes and maintain attendance records for the classes. However, the University did not apply this policy to study groups. The University's policy was that if a student missed more than one class or study group, the student was withdrawn from the program. The University had a form to record attendance that study group members were required to complete and submit to the instructor. However, University officials informed us that the instructor returned the form to the students at the end of the course, and University did not maintain copies of the completed forms. We randomly selected six classes from each year of the audit period to review classroom and study group attendance, but the University was unable to provide us with any completed study group attendance forms.

Based on our review of the University's written policies and procedures, interviews with University officials, and the lack of study group records, the University had no assurance that study groups were taking place to meet the requirements of the 12-Hour Rule.

Failing to Comply With the 12-Hour Rule Resulted in the University Overawarding \$503,400 of Title IV Funds To Its Undergraduate Students

Because the University did not ensure that study group meetings were actually taking place as required, the meetings do not qualify for inclusion in the 12-Hour Rule calculation. Consequently, the University-defined academic year of 45 weeks only provided 180 hours of the required minimum of 360 hours of instructional time (four hours of instruction per week for 45 weeks equals 180 hours of classroom hours). In order to meet the 360-hour requirement, the University's academic year would need to be 90 weeks in length. By using an academic year of 45 weeks rather than 90 weeks for awarding Title IV funds, the University disbursed amounts to students that exceeded the maximum amounts for an academic year allowed under the FFEL and Pell programs. We estimated that the University overawarded \$503,400 of Title IV funds to SGAS students. The students included in this amount had FFEL and Pell with loan/grant periods from July 1, 1996, through June 30, 1999.

- **FFEL Loan Limits.** Title 34 CFR § 682.603(d) stipulates that an institution may not certify a loan application that would result in a borrower exceeding the maximum annual loan amounts specified in 34 CFR § 682.204. We estimated that \$434,500 in FFEL disbursements exceeded the annual loan limits.
- **Pell Grant Maximum.** Title 34 CFR § 690.62(a) specifies that the amount of a student's Pell Grant for an academic year is based upon schedules published by the Secretary for each award year. The payment schedule lists the maximum amount a student could receive during a full academic year. We estimated that \$68,900 in Pell disbursements exceeded the maximum amount allowed.

Institutions were required to comply with the 12-Hour Rule as of July 1, 1995. Because the University's academic year for its SGAS programs did not meet the requirements of the 12-Hour Rule, the University improperly disbursed Title IV funds to its SGAS students for FFEL and Pell awarded during the period July 1, 1996, through June 30, 1999.

Recommendations

We recommend that the Chief Operating Officer for Student Financial Assistance require the University to:

1. Immediately develop an academic year for its SGAS programs that satisfies the 12-Hour Rule as a condition for continued participation in Title IV programs.
2. Return to lenders the FFEL funds disbursed that exceeded the loan limits for an academic year. We estimated the amount was \$434,500 for SGAS students who had loans with beginning dates between July 1, 1996 through June 30, 1999. Also, the University should repay the interest and special allowance costs incurred on federally subsidized loans.
3. Return the Pell funds disbursed to students that exceeded the allowable award for an academic year. We estimated that the amount was \$68,900 for students who had Pell with grant period dates beginning between July 1, 1996 through June 30, 1999.
4. Determine the amount of FFEL and Pell funds overawarded and disbursed from July 1, 1999 through the present. The amounts should be returned to lenders or the Department as appropriate.

The dollars in this section of the report are duplicative of the dollars contained in the *Recommendations* section of ED-OIG/A05-A0030, Olivet Nazarene University, School of Graduate and Adult Studies Administration of Title IV Programs issued on May 21, 2001 (discussed in Other Matters below). Only those amounts not recovered under OIG/A05-A0030 should be recovered by SFA as a result of this audit.

University Comments and OIG Response

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

In summary, the University stated that:

- I. The University's School of Graduate and Adult Studies programs satisfy the 12-Hour Rule, and the University has adequately documented its compliance.
 - A. Study group meetings constitute instructional activity.
 - B. Study group meetings were regularly scheduled.
 - C. The University adequately monitored study group meeting attendance.
 - D. Study groups are part of an integrated curriculum module, and faculty members were aware of which students did not attend the study group meetings in any given week.
 - E. Additional hours spent by students in preparation for examinations is includable under the 12-Hour Rule.
 - F. There is no statutory or regulatory basis for the OIG's requirement that the University "ensure that all students actually participate in study group meetings."
- II. The 12-Hour Rule is widely acknowledged to be unworkable and ill-suited for nontraditional educational programs.
- III. The recommended liability is based on an erroneous methodology and excludes significant amounts of time that count toward compliance with the 12-Hour Rule.
 - A. The draft audit report excludes clinical hours required of nursing majors.
 - B. The draft audit report wrongly excludes individual and group preparation for examinations, presentations and other graded activities that affected students' final grades.

The University's School of Graduate and Adult Studies Programs Satisfy the 12-Hour Rule, and the University Has Adequately Documented Its Compliance

The University stated that the Department has already concluded that "[t]here is no meaningful way to measure 12 hours of instruction" for nontraditional education programs like those questioned by the draft audit report. The University implemented various policies and procedures to ensure that the SGAS programs provided the requisite amount of regularly scheduled instruction, examinations or preparation for examinations

required by the 12-Hour Rule. The University also indicated that the OIG had established documentation rules that were without legal justification and in contrast to regulatory guidance.

OIG Response

The *Report to Congress on the Distance Education Demonstration Programs* quoted above refers to distance education classes that allow students to move at their own pace. The courses in the SGAS programs were not offered through distance education or telecommunications. Students in the SGAS programs were required to attend weekly study group meetings which the University did not consider as homework. The following excerpt from the report expands the quotation provided by the University to include additional clarifying information.

It is difficult if not impossible for distance education programs offered in nonstandard terms and nonterms to comply with the 12-hour rule. The regulation would seem to require that full-time distance education students spend 12 hours per week “receiving” instruction. There is no meaningful way to measure 12 hours of instruction in a distance education class. Distance education courses are typically structured in modules that combine both what [sic] an on-site course might be considered instruction and out-of-class work, so there is no distinction between instruction time an[d] ‘homework.’ In addition, when they are given the flexibility to move at their own pace, some students will take a shorter time to master the material, while others might take longer.

On August 10, 2000, the Department issued a Notice of Proposed Rulemaking (NPRM) concerning, among other items, changes to the 12-Hour Rule. In the NPRM, the Department stated, “[i]t was never intended that homework should count as instructional time in determining whether a program meets the definition of an academic year, since the 12-hour rule was designed to quantify the in-class component of an academic program.”

We have not established a documentation rule. An institution participating in the Title IV, HEA programs is required to establish and maintain on a current basis records that document the eligibility of its programs and its administration of the Title IV programs in accordance with all applicable requirements (34 CFR § 668.24(a)). Our audit procedures included reviewing any documentation that demonstrated the University’s compliance with the 12-Hour Rule. We did not *require* any specific documentation as part of our audit. We found that the available documentation and the University’s internal control system did not support a conclusion that the University complied with the 12-Hour Rule.

Study Group Meetings Constitute Instructional Activity

The University stated that study group meetings fall within the scope of “regularly scheduled instruction, examinations, or preparation for examinations.” The study group

meetings clearly relate to class preparation, and the regulations imply that activities relating to class preparation qualify as instructional time.

OIG Response

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

Study Group Meetings Were Regularly Scheduled

The University required that study groups complete a “Study Group Form” that established that particular group’s weekly meeting time and location, and “Study Group Contracts” that established procedures for changing the meeting time in any given week. Other factors that indicated that study groups were both regular and scheduled were: (i) weekly tasks to be completed were specified in the course module, (ii) all group members were required to participate in group activities, (iii) assignments and projects were required to be completed between classes in order for students to progress academically in the course, and (iv) faculty reviewed the group assignments and projects.

OIG Response

We found no reliable evidence to support the University's statement that meetings totaling four hours a week were regularly scheduled for all study groups. During the on-site field work, the University did not inform us that study group forms and study group contracts existed. During our follow-up visit on August 30, 2001, the University provided us only fourteen completed study group forms and three study group contracts. Thirteen of the study group forms were undated, so we could not determine if they were applicable to our audit period. The one form that was dated indicated the group planned to meet for two hours a week, not the four required hours. Of the undated forms, only 1 contained all information related to scheduled meetings; that is, the meeting times, location, and day of the week. Five forms had no meeting data and seven forms did not have an ending time, so they did not document that the groups scheduled the required four hours. The three study group contracts actually were undated "ground rules" the groups agreed they would follow. One group called its ground rules a contract, but did not include sufficient data to document that it planned to schedule four hours a week for the group meeting. The Associate Dean of the School of Graduate and Adult Studies informed us that the University does not have official study group contracts. Rather, as part of the first homework assignment, the groups are to create ground rules for the group, which are more informal in nature.

The University Adequately Monitored Study Group Meeting Attendance

In addition to the study group contracts, the University implemented an attendance policy which required students to be withdrawn if he or she missed more than one class or study group meeting. The OIG acknowledges this policy but disregards its relevance because the policy is insufficient without weekly attendance sheets for all study group meetings. There is no statutory or regulatory basis for this distinction. The OIG did not consider documentation showing that SGAS students were administratively transferred or withdrawn from courses due to poor attendance, which were brought to the University's attention through a "Study Group Written Complaint Form." Also, the OIG reviewed end-of-course surveys which included four questions on study groups, but rejects them as insufficient documentation. The University stated that the focus of the rule is on whether instructional time is regularly scheduled and not on whether an institution can document that students actually completed 12 hours of instructional activity in any given week.

OIG Response

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

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

It is incumbent on the University to demonstrate that it provides the requisite number of instructional hours. We examined whether study group meetings occurred in order to corroborate whether those meetings were regularly scheduled. In the draft report, the OIG acknowledged that the University established an attendance policy, which it considered to be highly important. The University did not provide us with any reliable evidence to support its assertions. With one exception that was prior to our audit period, it did not provide us with any documentation showing students were administratively transferred or withdrawn from courses. The University did not provide us with any completed study group written complaint forms during our on-site field work or when we made the follow-up visit to demonstrate that study group members brought poor attendance to its attention. The end-of-course surveys the University made available do not provide evidence that students actually scheduled and that study group meetings occurred. In the absence of study group attendance reports that reflected the occurrence of study group meetings or some other effective control, we have no basis to conclude that the University adequately monitored study group meeting occurrence or compliance with the 12-Hour Rule.

Study Groups Are Part of an Integrated Curriculum Module, and Faculty Members Were Aware of Which Students Did Not Attend the Study Group Meetings in Any Given Week

The University contends the OIG's position is that an instructor must be present at study group meetings in order for study groups to count as instructional time under the 12-Hour Rule. The 12-Hour Rule expressly states that time spent in preparation for examinations is included in the overall calculation of instructional activity. Faculty presence is not required when students prepare for examinations, nor is it required for the faculty member to assess whether a student adequately participated in the weekly meetings because the required work is reviewed and graded.

OIG Response

Our objective was to determine whether the University complied with the requirements of the 12-Hour Rule. The University defined its academic year to comply with the 12-Hour Rule, and this definition required that students schedule and attend four hours per week of study groups. Any time that students spent in preparation for examinations outside of study groups was not applicable to our review. Our determination that an instructor was not present at study group meetings was a result of our review of the University's overall internal control over study groups. If an instructor had been present at study group meetings, we would have considered this as evidence of a strong control. In addition, the University did not provide us with any completed study group attendance forms to show that the study group meetings were scheduled and occurred.

Additional Hours Spent By Students in Preparation for Examinations is Includable Under the 12-Hour Rule

Some SGAS courses utilize traditional examinations, in addition to the study group presentations and other graded activities. The draft audit report ignores the additional hours spent by students in those courses preparing for examinations, although the 12-Hour Rule explicitly permits time spent in preparation for examinations to be counted towards compliance.

OIG Response

The University defined its academic year as consisting of eight hours of instruction per week for 45 weeks. This definition provided the *minimum* 360 hours of instruction as required by the 12-Hour Rule. University policy required that 4 hours per week be spent in classroom workshops and 4 hours per week be spent in study group meetings. Whether or not students spent additional time preparing for exams is not relevant to the University's definition of an academic year. On August 10, 2000, the Department issued a NPRM concerning, among other items, changes to the 12-Hour Rule. The Department stated that "the only time spent in 'preparation for exams' that could count as instructional time was the preparation time that some institutions schedule as study days in lieu of scheduled classes between the end of formal class work and the beginning of

final exams.” The SGAS programs had no study days scheduled in lieu of scheduled classes.

There is No Statutory or Regulatory Basis for the OIG’s Requirement That the University “Ensure That All Students Actually Participate in Study Group Meetings”

The 12-Hour Rule requires only a minimum of regularly scheduled instructional hours, but the draft report attempts to expand the rule to require such hours be actually attended and well documented. There is no stated requirement for an institution to specifically document each hour spent by students in activities allowable under the 12-Hour Rule. The University stated that the SGAG programs were nontraditional, lifelong learning programs designed to reduce the number of days spent in a traditional classroom setting. The University implied that to some degree the SGAS programs consisted of internships, cooperative education programs, or independent study. There is no basis in statute, regulation, published guidance, or case law that establishes a requirement that the University must specifically monitor all educational activity in order to be counted under the 12-Hour Rule.

OIG Response

During our review, we considered the University’s monitoring of study group attendance as one possible element of the University’s internal control system, and we determined that this control was weak because the University did not maintain documentation regarding the scheduling or occurrence of study group meetings. University officials did not inform us during the on-site field work that study groups participated in any cooperative educational-type activities at employers within the community, and did not provide any evidence to support the implication that its SGAS programs consisted of internships, cooperative education programs, or independent study as part of its response to the draft report. In addition, the University’s catalog contained no indications that this was part of the students’ curriculum.

The 12-Hour Rule is Widely Acknowledged To Be Unworkable and Ill-Suited for Nontraditional Education Programs

The University stated that the underlying basis for the 12-Hour Rule and its continued applicability to the Title IV programs are presently in serious doubt. The HEA requires a minimum of 30 weeks of instructional time; however, the 12-hour per week requirement was added by regulation and therefore does not have any statutory basis. The appropriateness of the 12-Hour Rule, and the enormous paperwork burden it has created for institutions, has recently come under increased scrutiny. Despite the due date of March 31, the Department did not issue its report on the 12-Hour Rule until July. The recently introduced Internet Equity and Education Act of 2001 effectively eliminates the 12-Hour Rule.

OIG Response

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

The Recommended Liability is Based on an Erroneous Methodology and Excludes Significant Amounts of Time That Count Toward Compliance With the 12-Hour Rule

A. The Draft Audit Report Excludes Clinical Hours Required of Nursing Majors

The University stated that we omitted the 124 clinical hours in the nursing program when quantifying its liability.

OIG Response

We have no basis for including additional hours for nursing students in our liability calculation. During our on-site field work, the University did not inform us that the defined academic year for nursing students differed from the academic year for other SGAS students because of clinical hours. The financial aid data the University provided us did not identify nursing students separately, and did not indicate that the aid for any SGAS student was calculated on a different basis. Although the Faculty and Program Coordinator of the Nursing Program and the University's catalog indicated that nursing students have to attend both clinical hours and study group meetings, they did not specify the number of clinical hours required, or whether they are in addition to or combined with study group hours.

B. The Draft Audit Report Wrongly Excludes Individual and Group Preparation for Examinations, Presentations and Other Graded Activities That Affected Students' Final Grades

The OIG fails to consider that instructional activity includable under the 12-Hour Rule occurs outside of the classroom and study group meetings. Students' grades are determined through traditional examinations, graded individual presentations and papers, graded group projects, or a combination thereof. No legal authority requires the time spent on these activities to be monitored or measured under the 12-Hour Rule, but it must be assumed that students spent additional time preparing for these examinations and graded activities.

OIG Response

The University defined its academic year as consisting of a minimum of four hours per week in classroom workshops, and four hours per week in study group meetings. If individual students spent additional time in preparation for examinations or homework-type activities, it would not be relevant to the University's compliance with the 12-Hour Rule. Students were *required* to spend four hours per week in study *group* meetings. Our review focused on whether the University had documentation to show that students spent the required four hours per week in these group meetings. As previously noted, the Department has stated that "[i]t was never intended that homework should count as instructional time in determining whether a program meets the definition of an academic year, since the 12-hour rule was designed to quantify the in-class component of an academic program."

OTHER MATTERS

During our audit work, we also identified an issue relating to payments made to the Institute for Professional Development (IPD), a subsidiary of the Apollo Corporation. The payments were made under a contract between the University and IPD and were based on IPD's success in securing enrollments. This matter was addressed in a separate report that was issued to the University in final on May 21, 2001, ED-OIG/A05-A0030, Olivet Nazarene University, School of Graduate and Adult Studies Administration of Title IV Programs.

BACKGROUND

Founded in 1907, the University is a liberal arts university with its main campus in Bourbonnais, Illinois. The North Central Association of Colleges and Schools accredits it to offer Associate, Baccalaureate, and Masters degrees. In 1949, the University began to approve adult education when its North Central Association Studies Committee recommended that it place an increased emphasis on adult education and "the opportunities for lifelong learning."

On October 17, 1989, the University contracted with IPD, a subsidiary of the Apollo Corporation, to help improve its existing School of Graduate and Adult Studies. As a result, the University added Baccalaureate degree programs in Management, Nursing, and Business Administration to the SGAS, and revised its existing Masters of Business Administration program. The University contracted with IPD for marketing and accounting support, while it provided the curriculum, facilities, and faculty. The University and IPD split tuition revenue equally, but the University received 100 percent of book, material, computer, and other miscellaneous fees.

During the period July 1, 1996, through June 30, 1999, the University participated in the Perkins, FSEOG, Pell, and FFEL programs. University or Department records indicated that, during the period, the University or lenders disbursed \$3,161,750 on behalf of students in the SGAS programs. Specifically, the University's records indicated that it

disbursed Perkins totaling \$2,000 and FSEOG totaling \$18,740. The Department's records (Student Payment Summary for Pell and National Student Loan Data System for FFEL) indicated the University disbursed Pell totaling \$137,901 and lenders disbursed FFEL of \$3,003,109. Title IV of the HEA of 1965, as amended, authorizes these programs, and they are governed by regulations contained in 34 CFR Parts 674, 676, 682, and 690, respectively. In addition, these programs are subject to the provisions contained in the Student Assistance General Provisions regulations (34 CFR Part 668), and the University must comply with the Institutional Eligibility regulations (34 CFR Part 600) to participate in these programs. Regulatory citations in the report are to the codifications revised as of July 1, 1996, 1997, and 1998.

AUDIT SCOPE AND METHODOLOGY

The objective of the audit was to determine compliance with the HEA and Title IV regulations in the area of course length. We focused our review on the area of required hours of instruction in an academic year under the 12-Hour Rule.

To accomplish our objective, we reviewed the University's written policies and procedures and student financial assistance reports. We randomly selected and reviewed six classes from each year during the audit period. We interviewed University and IPD management officials and staff.

We relied on computer-processed data the University extracted from its financial assistance database. We used award and disbursement data from the Department's Student Payment Summary and National Student Loan Data System to corroborate information obtained from the University. We did this by comparing Pell and loan disbursements for all students in the Department's records with University data. We held discussions with University officials to gain an understanding of the processes for requesting and drawing down Federal funds, and for its accounting of revenue from the SGAS programs. Based on these tests and assessments, we concluded that the data the University provided were sufficiently reliable to use in meeting the audit's objectives.

The audit covered the period July 1, 1996, through June 30, 1999. We performed the on-site fieldwork in Bourbonnais, Illinois, during the periods August 15-25, September 6, and September 29, 2000. We made a follow-up visit on August 30, 2001, to review documents the University referred to in its response to the draft report. We conducted the audit in accordance with government auditing standards appropriate to the scope of review described above.

Methodology Used to Determine the Title IV Funds Improperly Disbursed by the University

The University's academic year would need to be 90 weeks in length for it to meet the 360-hour requirement for an academic year. Therefore, the University could not disburse Title IV funds to students during a 90-week academic period that exceeded the

maximum annual amounts for an academic year allowed under the FFEL and Pell programs.

FFEL Disbursement in Excess of Annual Limits. We compared the disbursements to the applicable loan limit. Students were not eligible to receive the amounts that exceeded the limit. For the two groups (as described below), we estimated \$434,500 in disbursed Title IV funds exceeded the annual limits.

For the FFEL estimates, we analyzed disbursement for two separate groups of students identified from the University-provided files. For students in each group, we analyzed loan period start dates and the loan disbursements covering a 90-week academic period.

The first group consisted of students who received disbursements for *loans with loan start dates* in the period July 1, 1996, through June 30, 1997, AND disbursements for *loans with loan start dates* in the period July 1, 1997, through June 30, 1998.

The second group, which excludes students included in the first group, consisted of students who received disbursements for *loans with loan start dates* in the period July 1, 1997, through June 30, 1998, AND disbursements for *loans with loan start dates* in the period July 1, 1998, through June 30, 1999.

Pell Disbursements in Excess of Annual Limits. We identified the Pell funds awarded to students who started between July 1, 1996 and June 30, 1997, and the Pell funds awarded to students who started between July 1, 1997 and June 30, 1998. To determine the amount of Pell funds that a student may receive in a payment period, institutions without standard terms multiply the maximum amount shown on schedules published by the Secretary by a specified fraction. The numerator of the fraction is the number of credit hours in a payment period and the denominator is the number of credit hours in an academic year. Because the University used the credit hours for a 45-week academic year rather than a 90-week academic year as the denominator, the Pell awards were overstated by one-half, or 50 percent. We estimated \$68,900 in Pell disbursements exceeded the maximum amount allowed.

STATEMENT ON MANAGEMENT CONTROLS

As part of our review, we gained an understanding of the University's management control structure, as well as its policies, procedures, and practices applicable to the scope of the audit. We identified applicable significant controls related to student enrollment and definition of an academic year. To determine the level of control risk, we initially tested disbursements to 55 Pell and 117 loan recipients. Subsequently, we decided to compare Pell and loan transactions for all students in the SGAS programs.

Due to inherent limitations, a study and evaluation made for the limited purpose stated above would not necessarily disclose all material weaknesses in the management controls. However, we identified a significant management control weakness over the University's ability to administer the Title IV programs related to its SGAS programs. This weakness consists of inadequate control over the amount of time spent in instruction that violated the requirements contained in the HEA and the regulations. The Audit Result section of this report fully discusses this weakness and its effects.

ADMINISTRATIVE MATTERS

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

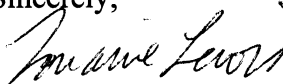
Greg Woods, Chief Operating Officer
Student Financial Assistance
Regional Office Building, 7th and D Streets, S.W.
ROB Room 4004, Mail Stop 5132
Washington, DC 20202

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

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

If you have any questions or wish to discuss the contents of this report, please contact Richard J. Dowd, Regional Inspector General for Audit, Chicago, Illinois, at (312)886-6503. Please refer to the control number in all correspondence relating to this report.

Sincerely,



Lorraine Lewis



August 15, 2001

Mr. Richard J. Dowd
Regional Inspector General for Audit – Region V
U.S. Department of Education
Office the Inspector General
111 N. Canal Street, Suite 940
Chicago, IL 60606

**RE: Draft Audit Report; Olivet Nazarene University
(Control Number ED-OIG/A05-B0014)**

Dear Mr. Dowd:

Attached please find Olivet Nazarene University's response to the Draft Audit Report issued on June 4, 2001 by the United States Department of Education, Office of Inspector General, Division of Audit. For all of the reasons presented therein, the University does not concur with the Findings and Recommendations set forth in the Draft Report.

We appreciate the opportunity to comment on the Draft Report, and the University reserves the right and opportunity to respond further to any final report as may be issued.

Respectfully submitted,

A handwritten signature in cursive script that reads "John C. Bowling".

Dr. John C. Bowling
President

Attachment

**OLIVET NAZARENE UNIVERSITY'S RESPONSE TO THE DRAFT AUDIT REPORT
OF THE U.S. DEPARTMENT OF EDUCATION OFFICE OF INSPECTOR GENERAL
(Control Number ED-OIG/A05-B0014)**

Olivet Nazarene University (the "University, or "ONU") is a private, not-for-profit, liberal arts university founded in 1907. Located in the historic village of Bourbonnais, Illinois, the University is sponsored by the Church of Nazarene and is comprised of approximately 2,400 students (1,800 undergraduates) from 36 states and 20 countries, representing more than 30 religious denominations. The University is accredited by the North Central Association of Colleges and Schools, the National League for Nursing, the American Dietetics Association, the Council on Social Work Education, and the National Association of Schools of Music, among others. The University has consistently maintained low cohort default rates: 3.8 percent in Fiscal Year ("FY") 1999, 3.1 percent in FY 1998, 4.8 percent in FY 1997, and 7.2 percent in FY 1996.

The Draft Audit Report ("Draft Audit Report") focuses upon federal student financial aid funds ("Title IV funds") received by students who enrolled in the University's School of Graduate and Adult Studies ("SGAS") programs. The SGAS programs use a "cohort model" of learning in which small groups of students progress together through the academic program on a course-by-course basis. The curriculum relies on peer-based learning teams, in-class instruction, individual projects and group activities. The SGAS undergraduate courses average six weeks in length and are offered in a structured sequence with students completing one course at a time, allowing complete focus in each topic area. The Draft Audit Report erroneously claims that the University "did not maintain documentation to show its SGAS programs provided the required amount of instructional time as defined by the 12-Hour Rule." Draft Audit Report at 3. Following this conclusion, the Office of Inspector General ("OIG") incorrectly asserts that the University overawarded Title IV funds to SGAS students. Draft Audit Report at 4.

The University demonstrates that its SGAS programs fully satisfied the 12-Hour Rule and that such compliance is fully and appropriately documented. The additional documentation sought by the OIG (hereinafter referred to as the "OIG's purported documentation rule") exceeds any level of documentation required by the applicable statutes and regulations. Additionally, the recommended liability is based on an erroneous methodology and excludes significant amounts of time that count toward compliance with the 12-Hour Rule and demonstrates a lack of familiarity with the SGAS programs.

I. THE UNIVERSITY'S SCHOOL OF GRADUATE AND ADULT STUDIES PROGRAMS SATISFY THE 12-HOUR RULE, AND THE UNIVERSITY HAS ADEQUATELY DOCUMENTED ITS COMPLIANCE.

The SGAS programs deliver high-quality, accredited educational content to adult "lifelong learners" and other nontraditional students through two integrated instructional components. All students meet once a week in large groups with a faculty member for four hours, and again each week in smaller "study groups." The study groups generally consist of no more than five students, which meet at an agreed-upon location for four hours of additional

instructional activities.¹ Because all SGAS programs include at least eight hours of instruction per week, and the duration of the programs is 45 weeks, the University provides at least 360 instructional hours to all SGAS students. The Draft Audit Report, however, disallows all study group hours because they fail to satisfy the OIG's purported documentation rule. As a result, the OIG claims that the SGAS programs provide only one-half of the instructional time required by the 12-Hour Rule.

Although the Department has already concluded that "[t]here is no meaningful way to measure 12 hours of instruction"² for nontraditional education programs like those questioned by the Draft Audit Report, the OIG is now attempting to hold the University accountable to specific attendance tracking procedures and other documentation rules that it purports are required by the regulation. As discussed herein, this action by the OIG is without any legal justification, and stands in stark contrast to the limited and vague regulatory guidance provided by the Department to date. Despite the vast confusion created by the Department about this issue, and contrary to the erroneous assertions contained in the Draft Audit Report, the University implemented various policies and followed specific procedures to ensure that the SGAS programs provided the requisite amount of "regularly scheduled instruction, examinations, or preparation for examinations" required by the 12-Hour Rule, published at 34 C.F.R. § 668.2(b)(2)(ii)(B).

A. Study group meetings constitute instructional activity.

The SGAS study group meetings fall within the scope of "regularly scheduled instruction, examinations, or preparation for examinations." The regulatory text confirms this conclusion, stating that "instructional time" excludes "activity not related to class preparation or examinations," 34 C.F.R. § 668.2(b)(2)(iii), implying that activity related to class preparation or examination is included. The study group meetings entail completing academically rigorous projects, learning course content, and engaging in group tasks that develop and enhance problem-solving skills that are integral to the students' achievement of designated course outcomes. The study group meetings are, therefore, clearly related to class preparation, and qualify as instructional activity under the 12-Hour Rule.³

¹ Students in the University's nursing program must complete additional clinical hours to receive their degree, as discussed in greater detail infra.

² U.S. Department of Education, Office of Postsecondary Education, "Report to Congress on the Distance Education Demonstration Programs" (January 2001), at page 24. This report and its conclusions regarding the 12-Hour Rule and nontraditional educational programs are discussed in greater detail in Section II.

³ The Draft Audit Report does not seem to dispute that study group meetings constitute instructional activity, however the OIG excludes all of the SGAS study group meetings from its 12-Hour Rule calculations because they fail to satisfy the OIG's purported documentation rule.

B. Study group meetings were regularly scheduled.

The curriculum module for each SGAS course expressly requires students to attend study group meetings, in order to discuss course material and prepare graded assignments, and share learning resources.⁴ Each student is expected to contribute to the completion of all study group assignments, which include oral and written presentations. In the first course for all SGAS programs, instructors informed the students of the study group meeting requirements. The students, in the first week of the program, completed a "Study Group Form" listing the names and addresses of all group members, and stating where and when the study group planned to hold its weekly meetings throughout the program. Each study group submitted this form to the course instructor. The instructor then had each study group sign a "Study Group Contract" stating the regularly scheduled study group meeting time and the procedures for changing the meeting time in any given week.⁵ During this first course of the program, the students were also required to complete "team analyses" analyzing the strengths and weaknesses of the study group members.

In addition to the obvious documentary evidence described above, several other factors clearly indicate that the study group meetings were "regular," "scheduled," and under the supervision of University faculty. The specific tasks to be performed and completed by the study group in a given week were specified in the course module, and all students enrolled in the course were required to participate in study group activities. Also, each designated study group session was, by curriculum design, slated to occur between specified meetings with the faculty instructor. During study group meetings, students completed rigorous team assignments, often preparing specified projects that were presented during the next faculty-led workshop, in order to progress academically in the course. Finally, the faculty exerted control over the study group meetings by reviewing the designated team assignments and projects. The study group meetings were therefore "regularly scheduled" as required by the 12-Hour Rule, and the Draft Audit Report's conclusions to the contrary are simply wrong.

C. The University adequately monitored Study group meeting attendance.

In addition to the Study Group Contracts, the University implemented a program-wide attendance policy for all SGAS courses, which mandated that a student be withdrawn from any course in which he or she missed more than one class or study group meeting. The OIG acknowledges this policy (Draft Audit Report at 3), but then rejects its relevance without adequate explanation. According to the OIG's purported documentation rule, the attendance policy is insufficient under the 12-Hour Rule unless the University can also provide weekly attendance sheets for all study group meetings. As discussed below in greater detail, this

⁴ Promotional materials, including written brochures, applications, and videotapes, also repeatedly emphasized the study group component of the SGAS programs, and that study group activities would comprise at least four hours of each week's total course time.

⁵ There is nothing in the OIG's audit workpapers to indicate that the OIG reviewed these Study Group Forms or Study Group Contracts.

requirement is not supported by either the applicable statute or regulation. Moreover, the OIG either ignored or failed to consider documentation showing that SGAS students were administratively transferred between study groups or withdrawn from courses due to problems with attendance, which were routinely brought to the University's attention by other study group members.⁶

At the end of each SGAS course, students are also required to complete end-of-course surveys. These surveys contain four questions specifically regarding the study groups, including one asking whether group members regularly attended the scheduled study group sessions. The OIG reviewed these surveys, according to the audit workpapers, but summarily rejects them as insufficient documentation. After dismissing the course module statements about study group attendance, failing to consider the Study Group Forms and Study Group Contracts stating attendance requirements and signed by the students, and then rejecting the end-of-course surveys, the OIG reaches the conclusion that "the University had no assurance that study groups were taking place." Draft Audit Report at 3. This statement simply and wrongly ignores the available documentation.

In addition to demanding an unjustified amount of documentation, the OIG is fundamentally mistaken in its claim that the University must have "assurance" that study groups "were taking place." There is simply no statutory or regulatory basis for this claim, and the report provides no legal authority for that interpretation of the rule. Rather, all that is required by the 12-Hour Rule is that study group meetings were "regularly scheduled," which they were as described above. This more reasonable interpretation, tracking the actual text of the regulation, is consistent with amendments to the 12-Hour Rule that took effect July 1, 2001. The revised 12-Hour Rule requires an institution to provide "[a]t least 12 hours of regularly scheduled instruction or examination" or "[a]fter the last scheduled day of classes for a payment period, at least 12 hours of study for final examinations." 34 C.F.R. § 668.2(b)(2) (2001). This revision makes clear that the focus of the rule, both before and after the regulatory change, is on whether instructional time is "regularly scheduled" and not on whether an institution can document that students actually completed twelve hours of instructional activity in any given week.

D. Study groups are part of an integrated curriculum module, and faculty members were aware of which students did not attend the study group meetings in any given week.

The Draft Audit Report also reflects the OIG's purported documentation rule in apparently requiring the physical presence of faculty for instructional time to count towards 12-

⁶ Problems within study groups, including failure of an individual to attend and participate in required instructional activities, were brought to the University's attention either informally or through a "Study Group Written Complaint Form." The complaint form was developed for students to formally report another study group member's violation of the Study Group Contract, including attendance at study group meetings.

Hour Rule compliance.⁷ However, the 12-Hour Rule expressly states that time spent in “preparation for examinations” is included in the overall calculation of instructional activity. Clearly the regulation does not require a faculty member to be present whenever a student studies or prepares for examination, in order for such time to be included.

Likewise, faculty presence during study group meetings is not required for the faculty member to assess whether a student adequately participated in the weekly study group meetings. The course module indicates that study group meetings are devoted to the development of group projects and preparation of presentations for the next faculty-led workshop. These projects and presentations are graded and comprise part of each student’s final grade.⁸

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

Some SGAS courses utilize traditional examinations, in addition to the study group presentations and other graded activities. The Draft Audit Report ignores the additional hours spent by students in those courses preparing for their examinations, although the 12-Hour Rule explicitly permits time spent in “preparation for examinations” to be counted towards compliance.⁹ The OIG’s purported documentation rule essentially requires all exam preparation to be strictly regulated by the University or supervised by a faculty member, in order for the time to be included. Because that level of supervision is not required by any legal authority, any calculation under the 12-Hour Rule must presume, by the simple fact the exams occurred, that students in those courses were expected to spend, and did spend, additional time preparing for the exams.

F. There is no statutory or regulatory basis for the OIG’s requirement that the University “ensure that all students actually participate in study group meetings.”

The 12-Hour Rule requires only a minimum number of “regularly scheduled” instructional hours. The Draft Audit Report is a far-reaching attempt to expand the rule to require such hours be “actually attended” and well documented by the University. This action by the OIG ignores the Department’s prior statements about the nature and scope of the rule. When

⁷ “SGAS students were required to meet for four hours each week in classroom instruction, and the equivalent number of hours in study group meeting without the presence of an instructor.” Draft Audit Report at 1. “It was the University’s policy that an instructor be present at regular classes and maintain attendance records for the classes. However, the University did not apply this policy to study groups.” Draft Audit Report at 3.

⁸ The Department is statutorily barred from exercising any “direction, supervision, or control over the curriculum” of the University. 20 U.S.C. § 1232a. Therefore, to the extent this audit raises questions about the SGAS course curriculum, such issues are plainly beyond the OIG’s scope of authority.

⁹ The University acknowledges that traditional “home work,” which is not related to preparation for an examination or an analogous activity, would not count toward compliance with the 12-Hour Rule.

Mr. Richard J. Dowd

August 15, 2001

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promulgating the regulation and considering a variety of educational contexts, the Department published the following:

Comments: One commenter observed that many external degree and adult learning programs are trying to reduce the number of days spent in the classroom. One commenter requested that the Secretary utilize the diversity and plurality of the education system by recognizing the amount of time the student spends in different educational settings. . . .

Discussion: The Secretary agrees that internships, cooperative education programs, independent study, and other forms of regularly scheduled instruction can be considered as part of an institution's academic year.

59 Fed.Reg. 61148 (Nov. 29, 1994) (emphasis added). Significantly, the Department did not use a phrase such as "actually provided instruction" or "instruction with documented attendance" to explain the scope of the rule. The concern of the Department was simply that educational programs, particularly non-traditional, "lifelong learning" programs like the SGAS courses at issue in the present audit, have a minimum amount of "regularly scheduled instruction." In addition, the Department based the 12-Hour Rule on its definition of a full-time student (see Section II below). The regulations define a "full-time student," in relevant part, as follows:

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

...

34 C.F.R. § 668.2 (emphasis added); see also 34 C.F.R. § 682.200. The emphasized language demonstrates the Department's recognition that a student's academic workload may consist of activities including "work," "research," and "special studies that the institution considers sufficient." There is no stated requirement, however, for an institution to specifically document each and every hour spent by a student on such activities, so long as they are "regularly scheduled."

The Draft Audit Report simply provides no basis in statute, regulation, published guidance, or case law to support its heightened requirement that the University monitor students' actual attendance for the "regularly scheduled instruction" to be counted under the 12-Hour Rule. Moreover, any attempt by the OIG to establish such a policy through this audit constitutes improper agency rulemaking and falls outside the scope of the OIG's authority under the Inspector General Act of 1978, which precludes an agency from delegating "program operating responsibilities" to an OIG. See 5 U.S.C. App. 3 § 8G(b).

II. THE 12-HOUR RULE IS WIDELY ACKNOWLEDGED TO BE UNWORKABLE AND ILL-SUITED FOR NONTRADITIONAL EDUCATIONAL PROGRAMS.

The underlying basis for the 12-Hour Rule and its continued applicability to the Title IV programs are presently in serious doubt, particularly as applied to nontraditional educational programs such as those offered in the University's School of Graduate and Adult Studies. The section of the Higher Education Act ("HEA") concerning the minimum period of academic instruction for Title IV eligibility reads:

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

20 U.S.C. § 1088(a)(2). The HEA mandates nothing further regarding the length or structure of a traditional, four-year institution of higher education's period of undergraduate instruction. In regulations implementing the above HEA provision, however, the Department created an additional requirement for educational programs that use credit hours but that do not use a semester, trimester, or quarter system. For such programs, "the Secretary considers a week of instructional time to be any week in which at least 12 hours of regularly scheduled instruction, examinations, or preparation for examinations occurs." 34 C.F.R. § 668.2(b)(2)(ii)(B).¹⁰ This requirement was added by regulation without any statutory basis.

The appropriateness of the 12-Hour Rule, and the immeasurable burden it creates for institutions that wish to prove compliance, have recently come under increased scrutiny. The conference report to the Department's fiscal year 2001 appropriations act included the following:

The conferees are aware of concerns in the higher education community about the so-called "12 hour rule" and its unsuitability to address the needs of institutions of higher education throughout the nation that serve non-traditional students engaged in lifelong learning. The conferees are concerned about the potential for enormous paperwork burdens being placed on institutions of higher education in their attempts to comply with the 12-hour rule. The conferees understand that the Department of Education has agreed to meet with the higher education community about this issue.... The Department is requested to report the results of the discussions and any anticipated action on the part of the Department with

¹⁰ For educational programs that use a semester, trimester, or quarter system, "the Secretary considers a week of instructional time to be any week in which at least one day of regularly scheduled instruction, examinations, or preparation for examinations occurs." 34 C.F.R. § 668.2(b)(2)(ii)(A).

respect to the 12-hour rule to the relevant Congressional committees by March 31, 2001.

H.R. Conf. Rep. No. 106-1033, at 194 (2000) (emphasis added). Despite the due date of March 31, the Department did not issue its report on the 12-Hour Rule until July.¹¹ This latest report, however, does nothing more than summarize the confusion created by the rule, and to acknowledge that some change to the rule is probably necessary. The University therefore objects to the issuance of the Draft Audit Report concerning the 12-Hour Rule, and having to respond to the OIG at this time, when the Department is obviously uncertain about its continued feasibility.

As this audit is pending, Congress is simultaneously considering legislation that would repeal the 12-Hour Rule. The "Internet Equity and Education Act of 2001" (H.R. 1992), adopted by the House of Representatives Committee on Education and the Workforce,¹² would uniformly define "week of instructional time" to be "a week in which at least one day of instruction, examination, or preparation for examination occurs," thus negating the regulation creating the 12-Hour Rule. The bill is a tacit acknowledgement of the Department's own findings that "[t]here is no meaningful way to measure 12 hours of instruction" for courses "typically structured in modules that combine both what [traditionally] might be considered instruction and out-of-class work, so there is no distinction between instructional time and 'home work.'"¹³ The University's SGAS course modules – combining traditional, faculty-led "classes," mandatory "study groups" in which students worked on graded group projects, and individually assigned graded projects – fall within this category of educational programs. The SGAS courses thereby exemplify the regulatory dilemma created by the 12-Hour Rule and, to date, left unresolved by the Department.

III. THE RECOMMENDED LIABILITY IS BASED ON AN ERRONEOUS METHODOLOGY AND EXCLUDES SIGNIFICANT AMOUNTS OF TIME THAT COUNT TOWARD COMPLIANCE WITH THE 12-HOUR RULE.

A. The Draft Audit Report excludes clinical hours required of nursing majors.

The audit workpapers reveal that the OIG was informed of additional instructional hours required of students in the University's nursing degree program. Specifically, Olivet Nazarene requires its nursing students to have four hours of classroom instruction and four hours of study

¹¹ U.S. Department of Education, Office of Postsecondary Education, "Student Financial Assistance and Nontraditional Education Programs (Including the "12-Hour Rule): A Report to Congress" (July 2001).

¹² The Committee reported H.R. 1992 favorably to the full House of Representatives on August 1, 2001.

¹³ U.S. Department of Education, Office of Postsecondary Education, "Report to Congress on the Distance Education Demonstration Programs" (January 2001), at page 24. While the quoted statement was made in specific regard to "distance education" courses, the Report goes on to define such nontraditional courses in a manner that is equivalent to the educational programs at issue in this audit.

group meetings per week, plus an additional 124 hours of clinical study over the program's two year duration. The Draft Audit Report completely disregards these additional clinical hours when determining the number of non-classroom instruction hours required for nursing students. This discrepancy calls into question the OIG's audit methodology, which cannot therefore be used as a basis for any extrapolated liability.

B. The Draft Audit Report wrongly excludes individual and group preparation for examinations, presentations and other graded activities that affected students' final grades.

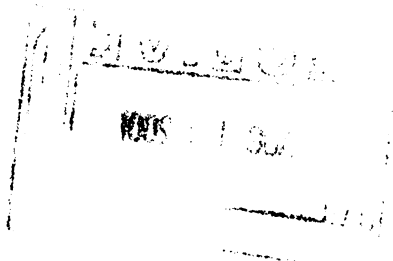
The OIG also fails to consider that instructional activity includable under the 12-Hour Rule necessarily occurs outside of both the faculty-led classes and the study group meetings. For example, the regulation permits time spent in "preparation for examinations" to be counted. The OIG's purported documentation rule either ignores this portion of the regulation, or has wrongly adopted an interpretation requiring all preparation to be strictly regulated by the University, supervised by a faculty member, or take place in closely-monitored University facilities. Students' grades for SGAS courses are determined through traditional examinations, graded individual presentations and papers, graded group projects, or a combination thereof. Although it cannot be, nor is it required by any legal authority to be, monitored and measured by the University, any calculation under the 12-Hour Rule must presume that students spent additional time preparing for these examinations and graded activities.

CONCLUSION

For all of these reasons, the University disagrees with the preliminary findings and recommendations set forth in the Draft Audit Report (Control Number ED-OIG/A05-B0014), and we urge the Office of Inspector General to close the audit. We reserve the right and opportunity to respond further to any final report as may be issued.

Respectfully submitted,

OLIVET NAZARENE UNIVERSITY
Dr. John C. Bowling, President



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